

NMFS proposes to authorize incidental take of 16 marine mammal species (with 17 managed stocks). The total amount of takes proposed for authorization relative to the best available population abundance is less than 8 percent for one stock (bottlenose dolphin northern coastal migratory stock) and less than 4 percent of all other species and stocks, which NMFS preliminarily finds are small numbers of marine mammals relative to the estimated overall population abundances for those stocks (please see Table 4).

Based on the analysis contained herein of the proposed activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

#### Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

#### Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever NMFS proposes to authorize take for endangered or threatened species, in this case with NMFS Greater Atlantic Regional Fisheries Office (GARFO).

The NMFS OPR is proposing to authorize the incidental take of four species of marine mammals which are listed under the ESA: The North Atlantic right, fin, sei, and sperm whales. The OPR has requested initiation of Section 7 consultation with NMFS GARFO for the issuance of this IHA. NMFS will conclude the ESA section 7 consultation prior to reaching a determination regarding the proposed issuance of the authorization.

#### Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to Garden State for conducting marine site characterization surveys off the coasts of Delaware and New Jersey for one year from the date of issuance, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed IHA can be found at <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>.

#### Request for Public Comments

We request comment on our analyses, the proposed authorization, and any other aspect of this notice of proposed IHA for the proposed marine site characterization surveys. We also request at this time comment on the potential renewal of this proposed IHA as described in the paragraph below. Please include with your comments any supporting data or literature citations to help inform decisions on the request for this IHA or a subsequent renewal IHA.

On a case-by-case basis, NMFS may issue a one-time, 1-year renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical or nearly identical, or nearly identical, activities as described in the Description of Proposed Activity section of this notice is planned or (2) the activities as described in the Description of Proposed Activity section of this notice would not be completed by the time the IHA expires and a renewal would allow for completion of the activities beyond that described in the *Dates and Duration* section of this notice, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to the needed renewal IHA effective date (recognizing that the renewal IHA expiration date cannot extend beyond one year from expiration of the initial IHA).

- The request for renewal must include the following:

- (1) An explanation that the activities to be conducted under the requested renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.*, reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take).

- (2) A preliminary monitoring report showing the results of the required

monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

Upon review of the request for renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

Dated: April 21, 2021.

**Catherine Marzin,**

*Acting Director, Office of Protected Resources,  
National Marine Fisheries Service.*

[FR Doc. 2021-08681 Filed 4-26-21; 8:45 am]

**BILLING CODE 3510-22-P**

## BUREAU OF CONSUMER FINANCIAL PROTECTION

### Fair Lending Report of the Bureau of Consumer Financial Protection, April 2021

**AGENCY:** Bureau of Consumer Financial Protection.

**ACTION:** Fair Lending Report of the Bureau of Consumer Financial Protection.

**SUMMARY:** The Bureau of Consumer Financial Protection (Bureau) is issuing its ninth Fair Lending Report of the Bureau of Consumer Financial Protection (Fair Lending Report) to Congress. The Bureau is committed to ensuring fair, equitable, and nondiscriminatory access to credit for both individuals and communities. This report describes our fair lending activities in supervision and enforcement; guidance and rulemaking; interagency coordination; and outreach and education for calendar year 2020.

**DATES:** The Bureau released the 2020 Fair Lending Report on its website on April 14, 2021.

#### FOR FURTHER INFORMATION CONTACT:

Bobby Conner, Senior Policy Counsel, Fair Lending, at 1-855-411-2372. If you require this document in an alternative electronic format, please contact [CFPB\\_Accessibility@cfpb.gov](mailto:CFPB_Accessibility@cfpb.gov).

#### SUPPLEMENTARY INFORMATION:

### 1. Fair Lending Report of the Bureau of Consumer Financial Protection, April 2021

#### Message From the Acting Director

The Bureau recognizes April as fair lending and fair housing month—a time to specifically highlight the importance of equity in our financial markets. As

such, I am pleased to present the Fair Lending Annual Report to Congress, describing the Consumer Financial Protection Bureau's fair lending work in 2020.

I want to express how incredibly proud I am of the Bureau, the Office of Fair Lending and Equal Opportunity (Office of Fair Lending) and the work they have been able to accomplish in the past year—a challenging year for all of us on so many different levels.

As I have made clear before, as Acting Director, my top priorities for this agency are to take bold and swift action to address issues of pervasive racial injustice and the long-term economic impacts of the COVID-19 pandemic on consumers. Although the true severity of the economic impacts of COVID-19 are just starting to be understood, it is clear that the pandemic is exacerbating racial inequality in all markets, including rising housing insecurity among the most vulnerable consumers. This, combined with the lingering impacts of over 400 years of chattel slavery and Jim Crow laws that sought to limit racial equality through institutionalized discrimination, deepens our nation's longstanding racial inequities. To fully understand and address these issues, it is crucial that the Bureau apply a racial equity lens and to find practical ways to make freedom from racial prejudice and pursuit of racial equity a priority in the full breadth of the Bureau's work. The Office of Fair Lending will play an integral part in achieving this mission.

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) established the Bureau's Office of Fair Lending to provide "oversight and enforcement of Federal laws intended to ensure the fair, equitable, and nondiscriminatory access to credit for both individuals and communities."

During my tenure, the Bureau will continue to use all the tools Congress gave it, including enforcement, supervision, rulemaking, guidance, research, and education to ensure fair, equitable and nondiscriminatory access to credit. The Bureau will identify and act on opportunities to focus on consumers in underserved communities, while vigorously pursuing racial and economic justice. This includes, but is in no way limited to, robust enforcement of fair lending laws under the Bureau's jurisdiction.

As we are in the midst of a national emergency the likes of which have not been seen in a lifetime, the time for bold action is now. The hard work has already begun. I am eager for all that the Bureau, and the Office of Fair Lending,

will accomplish on behalf of all consumers.

Sincerely,  
*David K. Uejio.*

*Message From the Fair Lending Director*

The events of 2020 challenged our nation in many ways. The COVID-19 pandemic has caused great physical, emotional, and economic suffering. Millions of Americans face economic uncertainty and financial insecurity, are underemployed or unemployed, are at the brink of eviction or foreclosure, and are desperate for help.

Of those struggling, people and communities of color have been disproportionately affected. Women- and minority-owned small businesses are more likely to face more severe economic consequences than their white counterparts. Black and Hispanic homeowners are also less likely to access mortgage relief and forbearance, a troubling trend that the Bureau will continue to address.

Further, I would be remiss to not say the names of Black men, women, and children like George Floyd, Breonna Taylor, Tamir Rice and Ahmaud Arbury, sadly among the many who were assaulted and murdered last year. These incidents highlight racial and economic inequities and their impacts on the country. As such, the Bureau's fair lending work is more important now than perhaps ever.

I am proud of what we have been able to accomplish in the past year. After hearing questions from financial institutions and consumer and civil rights groups about ways to support financial inclusion, the Bureau issued guidance on special purpose credit programs, which are innovative ways to expand access to credit to traditionally underserved communities, including minority and other underserved consumers. The Bureau also continued to examine and investigate institutions for compliance with the Home Mortgage Disclosure (HMDA) and Equal Credit Opportunity (ECOA) Acts. Last year, the Bureau filed a lawsuit against Townstone Financial, Inc., a nonbank retail-mortgage creditor that alleged, among other things, that Townstone illegally discouraged prospective African-American applicants and prospective applicants living in African-American neighborhoods in the Chicago MSA from applying to Townstone for mortgage loans. We also embraced responsible innovation, hosting our first ever Tech Sprint, where participants creatively leveraged technology to develop innovative proposals on ways that lenders could better educate consumers by providing more useful

explanations of adverse actions on their credit applications, and what those consumers can do to strengthen their next application for credit.

Additionally, in 2020, Bureau staff participated in more than 90 outreach events with our external stakeholders, allowing the Bureau to hear perspectives on emerging issues and topics to better inform policy decisions.

Last year (2020) tested us, but 2021 will prove to be consequential for consumers as the Bureau vigorously works to ensure an equitable recovery from the economic fallout of the COVID-19 pandemic. As the Bureau enters its tenth year of existence in 2021, I am reminded of the crisis in which this agency was conceived, the Great Recession. I am also reminded of the difference the Bureau has made in the lives of consumers over that decade. Most of all, the Bureau is still here, and much work remains to be done. Looking toward the future of the Bureau, and the Office of Fair Lending, we remain committed to fulfilling our statutory mandate to ensure fair, equitable, and nondiscriminatory access to credit for all consumers.

Sincerely,  
*Patrice Alexander Ficklin.*

*1. From the Great Recession to a National Emergency: Marking the 10th Year of the Consumer Financial Protection Act During a Pandemic*

The year 2020 marked the 10th anniversary of the passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), from which the Consumer Financial Protection Bureau (CFPB or Bureau) was born. At that time, the nation found itself at a crossroads, reeling from the Great Recession—what was thought to have been a "once in a lifetime" economic crisis that devastated communities and families across the country. At its inception, the Bureau's statutory lodestar was to make consumer financial markets work better for consumers, families, small businesses, and communities, for responsible lenders and financial institutions, and for the American economy as a whole. The agency was built on the understanding that when the rules are fair and are applied as such, we have a chance to build stronger families and a stronger nation. A key component to this has been the Bureau's fair lending work to ensure the fair, equitable, and nondiscriminatory access to credit for both individuals and their communities.

This year, the nation once again finds itself at a crossroads, facing the fallout of the devastating COVID-19 pandemic

which, at the time of this publication, has resulted in the deaths of more than 550,000 of American lives, as well as the destruction of millions of livelihoods. The events of 2020 caused the Bureau to quickly pivot from planned activities to respond to the consumer protection issues of the day. Enactment of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) and the creation of the Small Business Administration's (SBA) Paycheck Protection Program (PPP) required new guidance and interpretation, detailed in section 4.2.3 of this report. Additionally, in 2020, prioritized supervisory assessments were executed to identify risks to consumers, further explained in section 2 of this report. The Bureau also launched a hub of web-based COVID-19 content for consumers and other stakeholders, with resources available in multiple languages.<sup>1</sup>

In the midst of the COVID-19 pandemic, racial injustice issues also came to the forefront of America's public dialogue. These issues were exposed by the inequitable burden communities and people of color bore from higher infection and mortality rates and greater resulting economic impacts, as well as high-profile deaths of Black and Brown Americans at the hands of law enforcement. Confronting the devastating impacts of the COVID-19 pandemic and resulting economic crisis, the Bureau's fair lending work necessarily carried on.

The Bureau solicited feedback from the public in a Request for Information (RFI) about how to enhance compliance with the Equal Credit Opportunity Act (ECOA), a key civil rights law, and received over 140 comments, further described in section 6.2.2 of this report. The Bureau also filed an enforcement action against an institution accused of redlining and another for violating the Home Mortgage Disclosure Act (HMDA) (see section 2.3.1 of this report) and provided guidance on special purpose credit programs to enable creditors to expand credit to traditionally underserved consumers and communities (see section 4.2.1 of this report).

The Bureau recognizes that the economic fallout from the pandemic is only beginning, and the pandemic's effects and impacts are not yet fully known. What is certain, though, is that the Bureau's fair lending work is and will continue to be a critical component of the Bureau and the Federal government's response to the pandemic and the elimination of racial injustice.

In 2021, the Bureau's Fair Lending Office will be front and center in the agency's efforts to advance racial and economic equity.

## 2. Fair Lending Supervision and Enforcement

### 2.1 Risk-Based Prioritization

Because Congress charged the Bureau with the responsibility of overseeing many lenders and products, the Bureau has long-used a risk-based approach to prioritizing supervisory examinations and enforcement activity. This approach helps ensure that the Bureau focuses on areas that present substantial risk of credit discrimination for consumers.<sup>2</sup>

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

The prioritization process incorporates a number of additional factors, including tips and leads from industry whistleblowers, advocacy groups, and government agencies; supervisory and enforcement history; consumer complaints; and results from analysis of HMDA and other data. As a result of its annual risk-based prioritization process for 2020, the Bureau focused its fair lending supervision efforts on mortgage origination, small business lending, and student loan origination.

As in previous years, the Bureau's 2020 mortgage origination work continued to focus on redlining (and whether lenders intentionally discouraged prospective applicants living or seeking credit in minority neighborhoods from applying for credit); assessing whether there is discrimination in underwriting and pricing processes such as steering; and HMDA data integrity and validation reviews (both as standalone exams and in preparation for ECOA exams that will follow).

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

<sup>2</sup> For additional information regarding the Bureau's risk-based approach in prioritizing supervisory examinations, see section 2.2.3, Risk-Based Approach to Examinations, *Supervisory Highlights Summer 2013*, available at [https://files.consumerfinance.gov/f/201308\\_cfbp\\_supervisory-highlights\\_august.pdf](https://files.consumerfinance.gov/f/201308_cfbp_supervisory-highlights_august.pdf).

The Bureau's student loan origination work focused on whether there is discrimination in policies and practices governing underwriting and pricing.

In May 2020, in response to the COVID-19 pandemic, the Bureau rescheduled about half of its planned examination work and instead conducted Prioritized Assessments. Prioritized Assessments were designed to cover a greater number of institutions than the typical examination schedule allows, gain a greater understanding of industry responses to pandemic-related challenges, and help ensure that entities were attentive to practices that may result in consumer harm. The Bureau's Supervision program evaluated fair lending risks through Prioritized Assessments in the small business lending and mortgage servicing, automobile loan servicing, and credit card markets.

### 2.2 Fair Lending Supervision

The Bureau's Fair Lending Supervision program assesses compliance with Federal fair lending consumer financial laws and regulations at banks and nonbanks over which the Bureau has supervisory authority. As a result of the Bureau's efforts to fulfill its fair lending mission during 2020, the Bureau initiated 13 fair lending examinations/targeted reviews. The Bureau also initiated a significant number of Prioritized Assessments that included important fair lending components.

In 2020, the Bureau issued several fair lending-related Matters Requiring Attention, directing entities to take corrective actions that will be monitored by the Bureau through follow-up supervisory events. The Bureau also issued Supervisory Recommendations in 2020 relating to weak or nonexistent fair lending policies and procedures, risk assessments, and fair lending training.<sup>3</sup>

### 2.3 Fair lending enforcement

The Bureau has the statutory authority to bring actions to enforce the requirements of ECOA and HMDA. The

<sup>3</sup> Consumer Fin. Prot. Bureau, *BCFP Bulletin 2018-01: Changes to types of supervisory communications* (Sept. 25, 2018), [https://files.consumerfinance.gov/f/documents/bcfp\\_bulletin-2018-01\\_changes-to-supervisory-communications.pdf](https://files.consumerfinance.gov/f/documents/bcfp_bulletin-2018-01_changes-to-supervisory-communications.pdf). Additional activity has occurred with this matter since the end of this reporting period. On March 31, 2021, the Bureau issued *CFPB Bulletin 2021-01: Changes to Types of Supervisory Communications*, which announces changes to how examiners articulate supervisory expectations to supervised entities in connection with supervisory events, [https://files.consumerfinance.gov/f/documents/cfbp\\_bulletin\\_2021-01\\_changes-to-types-of-supervisory-communications\\_2021-03.pdf](https://files.consumerfinance.gov/f/documents/cfbp_bulletin_2021-01_changes-to-types-of-supervisory-communications_2021-03.pdf) (Mar. 31, 2021).

<sup>1</sup> <https://www.consumerfinance.gov/coronavirus/>.

Bureau has the authority to engage in research, conduct investigations, file administrative complaints, hold hearings, and adjudicate claims through the Bureau's administrative enforcement process regarding ECOA and HMDA. The Bureau also has independent litigation authority and can file cases in federal court alleging violations of fair lending laws under the Bureau's jurisdiction. Like other Federal regulators, the Bureau is required to refer matters to the Department of Justice (DOJ) when it has reason to believe that a creditor has engaged in a pattern or practice of lending discrimination.<sup>4</sup>

### 2.3.1 Public Enforcement Actions

In 2020, the Bureau announced two public fair lending enforcement actions: Townstone Financial Inc., and Washington Federal Bank, N.A.

#### *Townstone Financial Inc.*

On July 15, 2020, the Bureau filed a lawsuit in federal district court in the Northern District of Illinois against Townstone Financial, Inc. (Townstone), a nonbank retail-mortgage creditor based in Chicago. On November 25, 2020, the Bureau amended the complaint.<sup>5</sup> The Bureau alleges that Townstone violated ECOA and Regulation B. As alleged in the complaint, from 2014 through 2017, Townstone drew almost no applications for mortgages on properties in African American neighborhoods located in the Chicago-Naperville-Elgin Metropolitan Statistical Area (Chicago MSA) and few applications from African Americans throughout the Chicago MSA. The Bureau alleges that Townstone engaged in acts or practices, including making statements during its weekly radio shows and podcasts through which it marketed its services, that illegally discouraged African American prospective applicants from applying for mortgage loans and engaged in illegal redlining by engaging in acts or practices that discouraged prospective applicants living or seeking credit in African American neighborhoods in the Chicago MSA from applying for mortgage loans. The Bureau's complaint seeks an injunction against Townstone, as well as damages, redress to consumers, and the imposition of a civil money penalty. Litigation is ongoing.

#### *Washington Federal Bank, N.A.*

On October 27, 2020, the Bureau settled with Washington Federal Bank, N.A. (Washington Federal), a federally-insured national bank, to address the Bureau's finding that it reported inaccurate HMDA data about its mortgage transactions for 2016 and 2017.<sup>6</sup> Inaccurate HMDA data can make it difficult for the public and regulators to discover and stop discrimination in home mortgage lending or for public officials and lenders to tell whether a community's credit needs are being met. The settlement requires Washington Federal to pay a \$200,000 civil money penalty and develop and implement an effective compliance-management system to prevent future violations.

Washington Federal reported HMDA data for over 7,000 mortgage applications in both 2016 and 2017. The Bureau found that these data included significant errors, with some samples having error rates as high as 40%. The Bureau found that the errors in Washington Federal's 2016 HMDA data were caused by a lack of appropriate staffing, insufficient staff training, and ineffective quality control. The errors in its 2017 HMDA data were directly related to weaknesses in Washington Federal's compliance-management system. The Bureau found weaknesses in the areas of board and management oversight, monitoring, and policies and procedures. The significant errors in reported mortgage-application data violated HMDA and Regulation C. These violations also constituted violations of the Consumer Financial Protection Act.

### 2.3.2 ECOA Referrals to the Department of Justice

The Bureau must refer to DOJ a matter when it has reason to believe that a creditor has engaged in a pattern or practice of lending discrimination in violation of ECOA.<sup>7</sup> The Bureau may refer other potential ECOA violations to DOJ.<sup>8</sup> In 2020, the Bureau referred four matters to DOJ about discrimination pursuant to section 706(g) of ECOA. Two referrals involved redlining in mortgage origination based on race and national origin. One referral involved discrimination based on receipt of public assistance income in mortgage origination and one referral involved pricing discrimination in mortgage origination based on race and sex.

### 2.3.3 Implementing Enforcement Orders

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

In January 2020, DOJ and the Bureau, together with BancorpSouth Bank (BancorpSouth), submitted a joint motion for early termination of the Consent Order in the BancorpSouth case, which was granted by the court.<sup>9</sup>

More information about our enforcement activity, past and present, is available at [www.consumerfinance.gov/enforcement/actions/](http://www.consumerfinance.gov/enforcement/actions/).

### 2.3.4 Pending Fair Lending Investigations

In 2020, the Bureau had a number of ongoing and newly opened fair lending investigations of institutions. The Bureau investigated potential discrimination in several markets, including student lending, payday lending, credit cards, and mortgage lending, including the unlawful practice of redlining. These matters are ongoing.

### 3. Interagency Reporting on ECOA and HMDA

The Bureau is statutorily required to file a report to Congress annually describing the administration of its functions under ECOA, summarizing public enforcement actions taken by other agencies with administrative enforcement responsibilities under ECOA, and providing an assessment of the extent to which compliance with ECOA has been achieved.<sup>10</sup> In addition, the Bureau's annual HMDA reporting requirement calls for the Bureau, 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 certain mortgage loan data.<sup>11</sup>

<sup>6</sup> Consent Order, *In re Washington Federal Bank, N.A.*, CFPB No. 2020-BCFP-0019 (Oct. 24, 2020), [https://files.consumerfinance.gov/f/documents/cfpb\\_washington-federal-na\\_consent-order\\_2020-10.pdf](https://files.consumerfinance.gov/f/documents/cfpb_washington-federal-na_consent-order_2020-10.pdf).

<sup>7</sup> 15 U.S.C. 1691e(g).

<sup>8</sup> *Id.*

<sup>9</sup> Order, *United States v. BancorpSouth Bank*, No. 1:16-cv-00118-MPM-DAS (N.D. Miss. Jan. 27, 2020), ECF No. 8, [https://files.consumerfinance.gov/f/documents/cfpb\\_bancorpsouth\\_order-terminating-consent-order.pdf](https://files.consumerfinance.gov/f/documents/cfpb_bancorpsouth_order-terminating-consent-order.pdf).

<sup>10</sup> 15 U.S.C. 1691f.

<sup>11</sup> 12 U.S.C. 2807.

<sup>4</sup> See 15 U.S.C. 1691e(h).

<sup>5</sup> Consumer Fin. Prot. Bureau, *Townstone Financial, Inc.* (July 15, 2020), <https://www.consumerfinance.gov/enforcement/actions/townstone-financial-inc-and-barry-sturner/>.

## 3.1 Reporting on ECOA Enforcement

The enforcement efforts and compliance assessments made by the

eleven agencies assigned enforcement authority under section 704 of ECOA are discussed in this section. Each of the agencies reported information

describing their efforts to achieve general compliance.

BILLING CODE 4810-AM-P

TABLE 1: FFIEC AGENCIES WITH ADMINISTRATIVE ENFORCEMENT OF ECOA<sup>12</sup>






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

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

NON-FFIEC AGENCIES			
	Agricultural Marketing Service (AMS) of the U.S. Department of Agriculture (USDA) <sup>13</sup>	Department of Transportation (DOT)	Farm Credit Administration (FCA)
NON-FFIEC AGENCIES			
	Federal Trade Commission (FTC)	Securities and Exchange Commission (SEC)	Small Business Administration (SBA) <sup>14</sup>

<sup>12</sup> Collectively, the Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), the Office of the Comptroller of the Currency (OCC), and the Bureau of Consumer Financial Protection (Bureau) comprise the Federal Financial Institutions

Examination Council (FFIEC). The State Liaison Committee was added to FFIEC in 2006 as a voting member. Federal Financial Institutions Examination Council, <http://www.ffiec.gov> (last visited Mar. 30, 2021).

<sup>13</sup> The Grain Inspection, Packers and Stockyards Administration (GIPSA) was eliminated as a stand-

alone agency within USDA in 2017. The functions previously performed by GIPSA have been incorporated into the Agricultural Marketing Service (AMS), and ECOA reporting comes from the Packers and Stockyards Division, Fair Trade Practices Program, AMS.

<sup>14</sup> 15 U.S.C. 1691c.

BILLING CODE 4810-AM-C

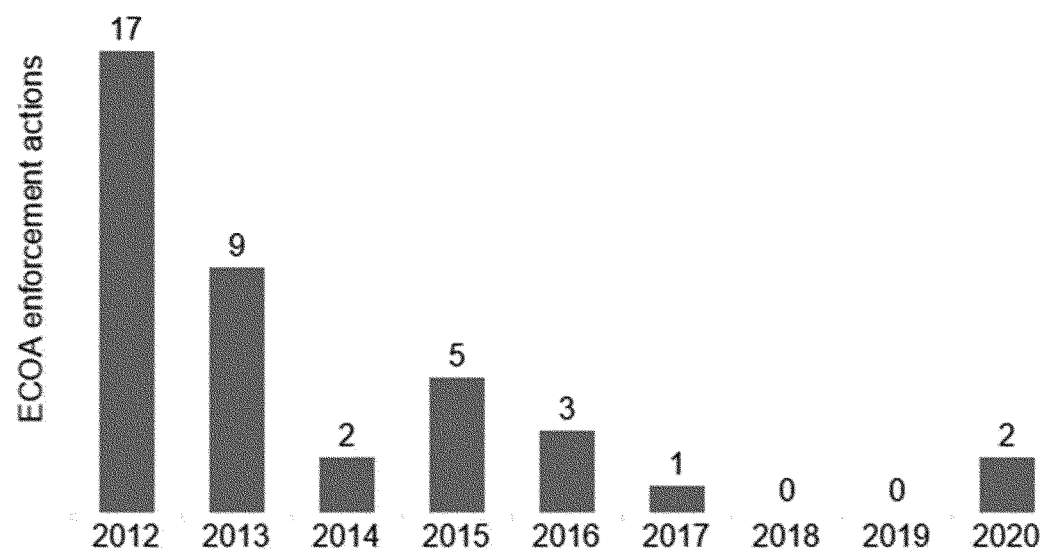
3.1.1 Public Enforcement Actions

In 2020, two of the eleven Federal agencies with ECOA enforcement authority brought public enforcement actions for violations of ECOA. The FTC brought an enforcement action in federal court against New York City car dealer Bronx Honda and its general manager, Carlo Fittanto, alleging that defendants violated ECOA and Regulation B by discriminating against African American and Hispanic consumers who financed vehicle purchases. According to the FTC’s complaint, among other things,

defendants charged African American and Hispanic customers higher markups and fees for financing than similarly situated non-Hispanic white consumers. In May 2020, the defendants agreed to pay \$1.5 million to settle the charges. In addition, along with relief for other illegal practices alleged by the complaint, defendants are also required to establish a fair lending program that will, among other requirements, cap the amount of any additional interest markup they charge consumers. The FTC issued refunds totaling nearly \$1.5 million to individuals affected by the allegedly unlawful financing and sales

practices of defendants, with refunds averaging about \$371 each to 3,977 victims of Bronx Honda’s practices. As described in section 2.3, in July 2020, the Bureau brought a public enforcement action in federal district court in the Northern District of Illinois against Townstone Financial, Inc., a nonbank retail-mortgage creditor based in Chicago, alleging discouragement of prospective applicants, redlining, and other violations of ECOA and Regulation B. Below is an overview of the number of ECOA enforcement actions by all Federal agencies since 2012:

TABLE 3: NUMBER OF ECOA ENFORCEMENT ACTIONS (2012-2020)<sup>15</sup>



3.1.2 Number of Institutions Cited for ECOA/Reg B Violations

In 2020, the Federal Banking Agencies and the CFPB reported citing 81

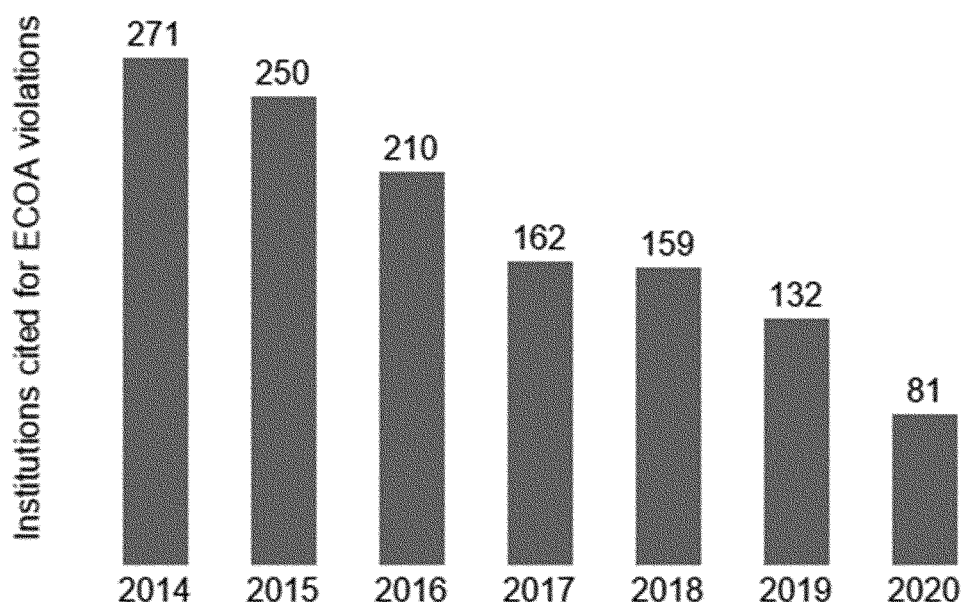
institutions with violations of ECOA and/or Regulation B.<sup>16</sup> Below is an overview of the number of institutions cited with ECOA and

Regulation B violations by the Federal Banking Agencies and the CFPB since 2014:

<sup>15</sup> Table 3 identifies public enforcement actions by the year they were initiated (when filed and announced publicly).

<sup>16</sup> For these purposes, the Federal Banking Agencies refer to the FDIC, FRB, and OCC. In addition to the number of institutions cited by the

Federal Banking Agencies and the CFPB, the NCUA reported citing 116 credit unions for ECOA and/or Regulation B violations in 2020.

TABLE 4: NUMBER OF INSTITUTIONS CITED FOR ECOA VIOLATIONS (2014-2020)<sup>17</sup>

### 3.1.3 Violations Cited During ECOA Examinations

Among institutions examined for compliance with ECOA and Regulation

B, the FFIEC agencies reported that the most frequently cited violations were as follows:

TABLE 5—REGULATION B VIOLATIONS CITED BY FFIEC AGENCIES, 2020

Regulation B violations: 2020	FFIEC agencies reporting
<i>12 CFR 1002.4(a), 1002.4(b), 1002.7(d)(1): Discrimination:</i> Discrimination on a prohibited basis in a credit transaction; discouragement of prospective applicants on a prohibited basis; a creditor shall not inquire about the race, color, religion, national origin, or sex of an applicant or any other person in connection with a credit transaction; improperly considering receipt of public assistance in a system of evaluating applicant creditworthiness; improperly requiring the signature of the applicant's spouse or other person.	NCUA, <sup>18</sup> OCC, <sup>19</sup> FRB, <sup>20</sup> CFPB. <sup>21</sup>
<i>12 CFR 1002.9(a)(1), (a)(1)(i)–(ii), (a)(2), (b)(2): Adverse Action:</i> Failure to provide notice to the applicant 30 days after receiving a completed application concerning the creditor's approval of, counteroffer or adverse action on the application; failure to provide appropriate notice to the applicant 30 days after taking adverse action on an incomplete application; failure to provide sufficient information in an adverse action notification, including the specific reasons for the action taken.	FDIC, <sup>22</sup> NCUA, <sup>23</sup> OCC, <sup>24</sup> FRB, <sup>25</sup> CFPB. <sup>26</sup>
<i>12 CFR 1002.12(b)(1): Record Retention:</i> Failure to preserve application records .....	CFPB.
<i>12 CFR 1002.14 (a)(1), (a)(2), (a)(3), (a)(4): Appraisals and Valuations:</i> Failure to provide appraisals and other valuations.	OCC, <sup>27</sup> FDIC. <sup>28</sup>

Among institutions examined for compliance with ECOA and Regulation B, the Non-FFIEC agencies reported that

the most frequently cited violations were as follows:

<sup>17</sup> Table 4 reflects data provided only by the Federal Banking Agencies and the CFPB. NCUA data is not included in the table because the relevant data are unavailable for years 2014–2019. The NCUA reported citing 116 credit unions for ECOA and/or Regulation B violations in 2020.

<sup>18</sup> 12 CFR 1002.4(a).

<sup>19</sup> 12 CFR 1002.7(d)(1).

<sup>20</sup> 12 CFR 1002.7(d)(1).

<sup>21</sup> 12 CFR 1002.4(a) and 1002.4(b).

<sup>22</sup> 12 CFR 1002.9(a)(2), 1002.9(b)(2).

<sup>23</sup> 12 CFR 1002.9(a)(1), 1002.9(a)(2), 1002.9(b)(2).

<sup>24</sup> 12 CFR 1002.9(a)(1)(i), 1002.9(a)(1)(ii), 1002.9(a)(2).

<sup>25</sup> 12 CFR 1002.9 (a)(2), 1002.9(b)(2).

<sup>26</sup> 12 CFR 1002.9(a)(1); 1002.9(a)(2); 1002.9(b)(2).

<sup>27</sup> 12 CFR 1002.14(a)(1), 1002.14(a)(2).

<sup>28</sup> 12 CFR 1002.14(a)(1), 1002.14(a)(2), 1002.14(a)(3), 1002.14(a)(4).

TABLE 6—REGULATION B VIOLATIONS CITED BY NON-FFIEC AGENCIES ENFORCING ECOA, 2020

Regulation B violations: 2020	Non-FFIEC agencies reporting
12 CFR 1002.9(a)(1)(i): <i>Adverse Action</i> : Failure to provide notice to the applicant 30 days after receiving a completed application concerning the creditor's approval of, counteroffer or adverse action on the application; failure to provide sufficient information in an adverse action notification, including the specific reasons for the action taken; failure to provide ECOA notice.	FCA.

The AMS, SEC, and the SBA reported that they received no complaints based on ECOA or Regulation B in 2020. In 2020, the DOT Office of Aviation Enforcement and Proceedings reported that it “may have received a relatively small number of consumer inquiries or complaints concerning credit matters possibly covered by ECOA,” which it “processed informally.”

#### 3.1.4 Additional Efforts To Ensure Compliance With ECOA and Regulation B

The agencies with administrative enforcement responsibilities under ECOA engage in other activities to ensure compliance with ECOA and Regulation B. Below is a sample of activities that agencies reported for 2020:

- Hosting or participating in meetings, conferences, and trainings with consumer advocates, industry representatives, and interagency groups on fair lending and consumer protection issues.
- Releasing publications focused on consumer compliance.
- Hosting or participating in interagency webinars on fair lending supervision.
- Providing technical assistance and outreach to educate community banks

regarding the requirements of the regulation.

- Providing comments in response to the Bureau's Request for Information on ECOA and Regulation B.
- Providing training and workshops for military consumers on protections provided by ECOA and Regulation B.
- Issuing blog posts for consumers and businesses regarding ECOA and Regulation B on important topics, such as artificial intelligence.

#### 3.1.5 Referrals to the Department of Justice

The agencies assigned enforcement authority under section 704 of ECOA must refer a matter to DOJ when there is reason to believe that a creditor has engaged in a pattern or practice of lending discrimination in violation of ECOA.<sup>29</sup> They also may refer other potential ECOA violations to DOJ.<sup>30</sup> In 2020, four agencies (CFPB, FDIC, FRB, and NCUA) made twelve such referrals to DOJ involving discrimination in violation of ECOA. A brief description of those matters follows.

As reported in section 2.3.2, in 2020, the Bureau referred four matters to DOJ. Two referrals involved redlining in mortgage origination based on race and national origin. One referral involved discrimination based on receipt of public assistance income in the

mortgage servicing context and one referral involved pricing discrimination in mortgage origination based on race and sex.

In 2020, FDIC referred three matters to DOJ. The first referral involved discrimination in the underwriting of unsecured consumer loans on the basis of age and receipt of public assistance income. The second referral involved discrimination in the pricing of unsecured consumer loans on the basis of marital status. The third referral involved discrimination in underwriting and the pricing of unsecured consumer loans on the bases of age, sex, and receipt of public assistance income.

The NCUA referred three matters to DOJ in 2020. One referral was for discrimination on the prohibited basis of age and two referrals were for discrimination on the basis of marital status.

In 2020, FRB referred two matters to DOJ. One matter involved discrimination based on marital status in requiring spousal guarantees on loans. The second matter involved a pattern or practice of redlining in mortgage lending based on race or national origin.

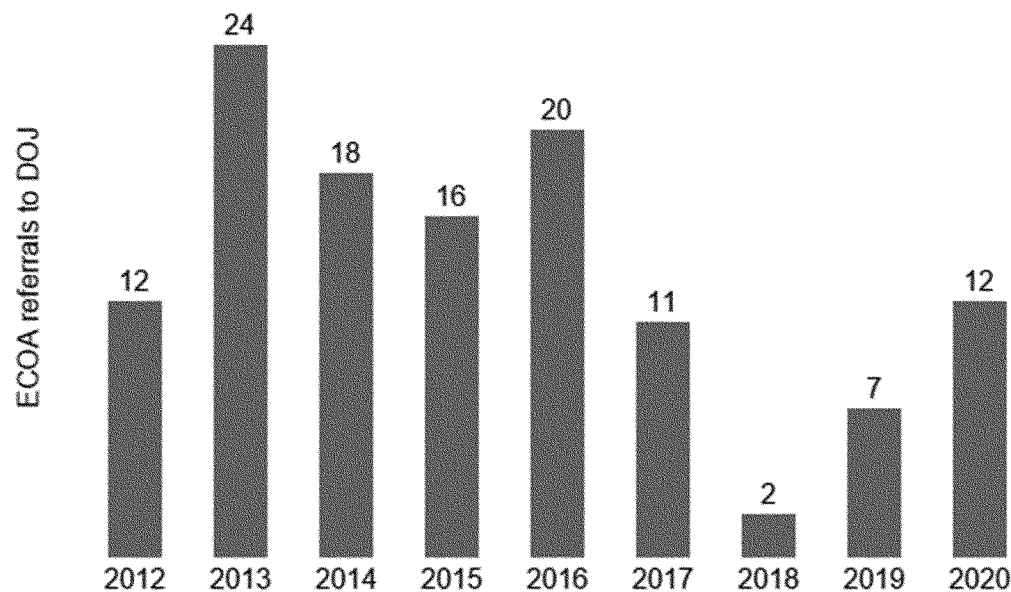
Below is an overview of the number of ECOA referrals to DOJ by all Federal agencies since 2012:

<sup>29</sup> 15 U.S.C. 1691e(g).

<sup>30</sup> *Id.*



TABLE 7: NUMBER OF ECOA REFERRALS TO DOJ (2012-2020)



### 3.2 Reporting on HMDA

The Bureau's annual HMDA reporting requirement calls for the Bureau, in consultation with HUD, to report annually on the utility of HMDA's requirement that covered lenders itemize loan data in order to disclose the number and dollar amount of certain mortgage loans and applications, grouped according to various characteristics.<sup>31</sup> The Bureau, in consultation with HUD, finds that itemization and tabulation of these data furthers the purposes of HMDA.

### 4. Guidance and Rulemaking

#### 4.1 ECOA and Regulation B Rulemaking

##### 4.1.1 Small Business Lending and Data Collection

In the Dodd-Frank Act, Congress directed the Bureau to adopt regulations governing the collection of small business lending data. Section 1071 of the Dodd-Frank Act (section 1071) amended ECOA to require financial institutions to compile, maintain, and submit to the Bureau certain data on applications for credit for women-owned, minority-owned, and small businesses.

Congress enacted section 1071 for the purpose of facilitating enforcement of fair lending laws and enabling communities, governmental entities, and creditors to identify business and community development needs and

opportunities for women-owned, minority-owned, and small businesses.

Under the process established by Congress in the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), the Bureau is required to consult with representatives of small entities likely to be directly affected by the regulations the Bureau is considering proposing and to obtain feedback on the likely impacts the rules under consideration would have on small entities.

In September 2020, the Bureau released its *Outline of Proposals Under Consideration and Alternatives Considered for Section 1071 of the Dodd-Frank Act* governing small business lending data collection and reporting, which described proposals under consideration to implement section 1071 along with the relevant law, the regulatory process, and an economic analysis of the potential impacts of the proposals on directly affected small entities.<sup>32</sup>

The Bureau also convened a Small Business Advocacy Review panel in October 2020. The panel was comprised of a representative from the Bureau, the Chief Counsel for Advocacy of the SBA, and a representative from the Office of Information and Regulatory Affairs in the Office of Management and Budget. The panel collected comments and

recommendations from representatives of small entities that are likely to be subject to the regulation that the Bureau is considering proposing.

In December 2020, the Bureau released the *Final Report of the Small Business Review Panel on the CFPB's Proposals Under Consideration for the Small Business Lending Data Collection Rulemaking*.<sup>33</sup> This report includes a summary of the feedback received from small entity representatives (SERs) during the panel process, and findings and recommendations made by the panel.

In their feedback, SERs were generally supportive of the Bureau's statutory mission to enact rules under section 1071 and several SERs stated that a 1071 rulemaking is necessary to better understand the small business lending market. Further, SERs requested, and the panel agreed that, among other things, the Bureau should issue implementation and guidance materials specifically to assist small financial institutions in complying with an eventual section 1071 rule, and to consider providing sample disclosure language.

The feedback from small entity representatives and the panel's findings and recommendations will be used by the Bureau as it prepares a notice of

<sup>32</sup> Consumer Fin. Prot. Bureau, *Small Business Advisory Review Panel For Consumer Financial Protection Bureau Small Business Lending Data Collection Rulemaking* (Sept. 15, 2020), [https://files.consumerfinance.gov/f/documents/cfpb\\_1071-sbreffa\\_outline-of-proposals-under-consideration\\_2020-09.pdf](https://files.consumerfinance.gov/f/documents/cfpb_1071-sbreffa_outline-of-proposals-under-consideration_2020-09.pdf).

<sup>33</sup> Consumer Fin. Prot. Bureau, *Final Report of the Small Business Review Panel on the CFPB's Proposals Under Consideration for the Small Business Lending Data Collection Rulemaking* (Dec. 14, 2020), [https://files.consumerfinance.gov/f/documents/cfpb\\_1071-sbreffa-report.pdf](https://files.consumerfinance.gov/f/documents/cfpb_1071-sbreffa-report.pdf).

<sup>31</sup> 12 U.S.C. 2807.

proposed rulemaking to implement section 1071.

## 4.2 ECOA and Regulation B Guidance

### 4.2.1 Special Purpose Credit Program Interpretive Rule

In December 2020, the Bureau issued an interpretive rule, styled as an Advisory Opinion, related to special purpose credit programs, clarifying the regulations and promoting equitable access to credit for historically economically disadvantaged groups and communities.<sup>34</sup> This interpretive rule followed the Bureau's issuance of an RFI on ECOA and Regulation B (see section 6.2.2), where the Bureau sought public opinion on, among other things, special purpose credit programs. Through extensive stakeholder feedback and comments received in response to the RFI, the Bureau learned that stakeholders were interested in additional guidance to help them develop compliant special purpose credit programs.

As detailed in the interpretive rule, ECOA and Regulation B prohibit discrimination on certain prohibited bases in any aspect of a credit transaction, but the statute and regulation clarify that it is not discrimination for for-profit organizations to provide special purpose credit programs designed to meet special social needs. The Bureau does not determine whether individual programs qualify for special purpose credit status. Instead, the creditor offering the special purpose credit program must determine the status of its program. Regulation B provides creditors with general guidance for developing special purpose credit programs that are compliant with ECOA.

To guide this determination and to address regulatory uncertainty, the Bureau issued this interpretive rule with the hope that more creditors will offer special purpose credit programs and increase access to credit to underserved groups. Specifically, the Bureau clarified the content that a for-profit organization must include in a written plan that establishes and administers a special purpose credit program under Regulation B. The interpretive rule also clarified the type of research and data that may be appropriate to inform a for-profit organization's determination that

a special purpose credit program would benefit a certain class of people.

This, and other interpretive rules issued by the Bureau, are available at [www.consumerfinance.gov/compliance/advisory-opinion-program/](http://www.consumerfinance.gov/compliance/advisory-opinion-program/).

### 4.2.2 ECOA Valuations Rule Fact Sheets

Regulation B requires creditors to provide applicants free copies of all appraisals and other written valuations developed in connection with an application for a loan to be secured by a first lien on a dwelling. Known as the ECOA Valuations Rule, the rule also requires creditors to notify applicants in writing that copies of appraisals will be provided to them promptly upon completion or no later than three business days before consummation or account opening, whichever is earlier. In April 2020, the Bureau released two factsheets on the ECOA Valuations Rule. The factsheets provide information on transaction coverage<sup>35</sup> under the Valuations Rule and delivery method and timing requirements for appraisals and other written valuations.<sup>36</sup> The Bureau also published a frequently asked questions sheet (FAQ) related to the ECOA Valuations Rule in light of the COVID-19 pandemic.<sup>37</sup>

### 4.2.3 Paycheck Protection Program FAQs

On March 27, 2020, Congress passed the Coronavirus Aid, Relief, and Economic Security Act (the CARES Act),<sup>38</sup> which included a temporary small business lending program known as the Paycheck Protection Program (PPP). Under this program, small businesses could receive loans from private lenders to cover eligible payroll, costs, business mortgage payments and interest, rent, and utilities for either an 8- or 24-week period after disbursement. Each loan is fully guaranteed by the SBA, which administers the PPP; small business borrowers do not have to make any payments during the first six months of the loan term and may receive a deferral up to one year; and

small businesses may receive complete or partial forgiveness of their loans if they use their loans to cover certain expenses and meet other requirements. A wide range of financial institutions were eligible to participate as lenders in the PPP, including institutions that normally do not participate in the SBA's 7(a) lending program.<sup>39</sup> This includes federally insured depository institutions, credit unions, and nonbanks.<sup>40</sup>

In May 2020, the Bureau issued clarifying FAQs to support small businesses that applied for a loan under the PPP.<sup>41</sup> Creditors are generally required under ECOA and Regulation B to notify applicants within 30 days of receiving a "completed application" of the creditor's approval, counteroffer, denial or other adverse notice regarding the application. Regulation B notifications of action taken are designed to help consumers and businesses by providing transparency to the credit underwriting process in a timely manner. Information that is generally included in a complete application includes any approvals or reports by governmental agencies or others who can guarantee, insure, or provide security for the credit or collateral. In its FAQs, the Bureau clarified that a PPP application is only a "completed application" once the creditor has received a loan number from the SBA or a response about the availability of funds. This ensures that the time awaiting this information from the SBA does not count toward the 30-day notice requirement, and that applications will therefore not "time out" during the process.

The FAQs also made clear that if the creditor denies an application without ever sending the application to the SBA, the creditor must give notice of this adverse action within 30 days. The FAQs further clarified that a creditor cannot deny a loan application based on incompleteness, where an application is incomplete regarding matters the applicant cannot provide, such as a loan number or response about the availability of funds from the SBA.

<sup>35</sup> Consumer Fin. Prot. Bureau, *Factsheet: Transaction coverage under the ECOA Valuations Rule* (May 14, 2020), [https://www.consumerfinance.gov/documents/8736/cfpb-ecoa-valuation\\_transaction-coverage-factsheet.pdf](https://www.consumerfinance.gov/documents/8736/cfpb-ecoa-valuation_transaction-coverage-factsheet.pdf).

<sup>36</sup> Consumer Fin. Prot. Bureau, *Factsheet: Delivery of appraisals* (June 5, 2020), [https://www.consumerfinance.gov/documents/8737/cfpb-ecoa-valuation\\_delivery-of-appraisals-factsheet.pdf](https://www.consumerfinance.gov/documents/8737/cfpb-ecoa-valuation_delivery-of-appraisals-factsheet.pdf).

<sup>37</sup> Consumer Fin. Prot. Bureau, *The Bureau's Mortgage Origination Rules FAQs related to the COVID-19 Emergency* (Apr. 29, 2020), [https://files.consumerfinance.gov/f/documents/cfpb-mortgage-origination-rules\\_faqs-covid-19.pdf](https://files.consumerfinance.gov/f/documents/cfpb-mortgage-origination-rules_faqs-covid-19.pdf).

<sup>38</sup> Coronavirus Aid, Relief, and Economic Security Act, Public Law 116-136, 134 Stat. 281 (Mar. 27, 2020).

<sup>39</sup> The 7(a) loan program is the SBA's primary program for providing financial assistance to small businesses. The program's name comes from section 7(a) of the Small Business Act, 15 U.S.C. 636(a). The SBA offers several different types of loans through the program.

<sup>40</sup> Institutions that were not SBA-certified did have to apply to the SBA and receive delegated authority to process PPP loan applications.

<sup>41</sup> Consumer Fin. Prot. Bureau, *Consumer Financial Protection Bureau Issues Clarifications to Support Small Business Applying for PPP Loans* (May 6, 2020), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-issues-clarifications-support-small-business-applying-ppp-loans/>.

<sup>34</sup> Consumer Fin. Prot. Bureau, *Consumer Financial Protection Bureau Issues Advisory Opinion to Help Expand Fair, Equitable, and Nondiscriminatory Access to Credit* (Dec. 21, 2020), <https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-issues-advisory-opinion-to-help-expand-fair-equitable-and-nondiscriminatory-access-to-credit>.

#### 4.2.4 Supervisory Highlights Issue 22, Summer 2020

The Bureau periodically publishes *Supervisory Highlights* to communicate about the Bureau's supervisory activity and to share key examination findings. These reports also communicate operational changes to our supervision program and provide a convenient and easily accessible resource for information on our recent guidance documents.

In September 2020, the Bureau published Issue 22 of *Supervisory Highlights*.<sup>42</sup> In this edition, the Bureau noted that one or more lenders violated ECOA and Regulation B by intentionally redlining majority minority neighborhoods in two MSAs by engaging in acts or practices directed at prospective applicants that may have discouraged reasonable people from applying for credit.

Additionally, Bureau examiners found that one or more lenders violated ECOA and Regulation B by maintaining a policy and practice that excluded certain forms of public assistance income, including unemployment compensation and Supplemental Nutrition Assistance Program (SNAP benefits)—commonly known as food stamps, from consideration in determining a borrower's eligibility for mortgage modification programs. ECOA and Regulation B prohibit lenders from discriminating in any aspect of a credit transaction against an applicant "because all or part of the applicant's income derives from any public assistance program."<sup>43</sup>

All editions of *Supervisory Highlights* are available at [www.consumerfinance.gov/compliance/supervisory-highlights/](http://www.consumerfinance.gov/compliance/supervisory-highlights/).

#### 4.2.5 Help Desk Program

To promote fair lending compliance, during 2020, the Bureau hosted "Fair Lending Help Desks." The help desks, hosted at two external stakeholder conferences, allowed conference participants to engage with Bureau subject matter experts on regulatory compliance issues relating to ECOA and Regulation B, as well as HMDA and Regulation C.

#### 4.3 HMDA and Regulation C Rulemaking

##### 4.3.1 Final Rule Raising Reporting Thresholds Under HMDA

In April 2020, the Bureau issued a final rule raising the loan-volume coverage thresholds for financial institutions reporting data under HMDA. The final rule, amending Regulation C, increased the permanent threshold for collecting, recording, and reporting data about closed-end mortgage loans from 25 to 100 loans, effective July 1, 2020. The final rule will also amend Regulation C to increase the permanent threshold for collecting, recording, and reporting data about open-end lines of credit from 100 to 200, effective January 1, 2022, when the current temporary threshold of 500 of open-end lines of credit expires.

##### 4.3.2 HMDA Notices of Proposed Rulemaking

In the Fall 2020 Rulemaking Agenda, the Bureau announced that it anticipated publishing two Notices of Proposed Rulemaking (NPRMs) in early 2021 concerning possible revisions to the 2015 HMDA rule. One of these indicated that it followed an Advance Notice of Proposed Rulemaking in May 2019 concerning certain data points that are required to be reported under the HMDA rule and coverage of certain business or commercial purpose loans, addressing concerns about regulatory burden. The second indicated it would address the public disclosure of HMDA data in light of consumer privacy interests, so that stakeholders can concurrently consider and comment on the collection and reporting of data points and public disclosure of those data points. Concurrent with the publication of the Fall 2020 Unified Agenda, the Bureau's Office of Regulations issued a blog post on the Bureau's website stating that the data points and disclosure rules may not be released by the anticipated February target in the Unified Agenda.

#### 4.4 HMDA and Regulation C Guidance

##### 4.4.1 HMDA Data Point Articles With Observations of the 2019 HMDA Data

In 2020, the Bureau released two HMDA data point articles presenting Bureau analysis of the 2019 HMDA data. The first was issued in June 2020, which describes mortgage market activity over time based on data reported under HMDA. It summarizes the historical data points in the 2019 HMDA data, as well as recent trends in mortgage and housing markets.

The second article was released in August 2020. The focus of the article

was on the data points newly added or revised by the 2015 HMDA rule, specifically through cross-sectional analyses, *i.e.*, using the data contained in one year's loan application register (LAR) to explore various patterns and relationships between different data fields to provide some initial observations. To the extent some of those patterns or relationships might have changed significantly over the last year, the article highlighted such changes. Otherwise, the majority of the analyses were limited to the data collected in 2019 and reported in 2020.

##### 4.4.2 HMDA Reporting Notification Program

On occasion, the Bureau will send notification letters to advise recipients that the Bureau has information that appears to show that the recipients might be in violation of Federal consumer financial law. The letters are not accusations of wrongdoing. Instead, they are intended to help recipients review certain practices to ensure that they comply with Federal law. One such letter pertains to compliance with HMDA, through the Bureau's HMDA Reporting Notification Program (HMDA RNP).

As part of the HMDA RNP, in September 2020, the Bureau issued notification letters to 40 non-depository mortgage lenders regarding potential non-compliance with certain reporting requirements of HMDA and Regulation C. Specifically, the letters informed recipients that they may be required to collect, record, and report data about their mortgage-lending activity under HMDA and Regulation C, and that they may be in violation of those requirements. The letters also provided information about specific reporting requirements under HMDA and Regulation C and provided links to educational resources for HMDA reporters. The letters urged recipients to review their practices to ensure compliance with all relevant laws. The recipients were encouraged to respond to the Bureau to advise if they had taken, or would take, steps to ensure compliance with the law. Recipients were invited to tell the Bureau if they thought their activities did not meet HMDA reporting thresholds.

The Bureau's HMDA RNP sought to increase HMDA compliance through education and direct outreach to potential non-reporting mortgage lenders, and to improve HMDA data quality and completeness through accurate reporting. Since commencing the HMDA non-reporters project pilot in 2016, more than 224,000 previously

<sup>42</sup> Consumer Fin. Prot. Bureau, *Supervisory Highlights, Summer 2020* (Sept. 2020), [https://files.consumerfinance.gov/f/documents/cfpb\\_supervisory-highlights\\_issue-22\\_2020-09.pdf](https://files.consumerfinance.gov/f/documents/cfpb_supervisory-highlights_issue-22_2020-09.pdf).

<sup>43</sup> 15 U.S.C. 1691(a)(2); 12 CFR 1002.2(z).

unreported mortgage loan records have now been reported.

#### 4.4.3 HMDA Data Browser Webinars

HMDA data are the most comprehensive source of publicly available information on the U.S. mortgage market. Each year, thousands of financial institutions are required to maintain, report, and publicly disclose loan-level information about mortgages under HMDA. These data serve multiple purposes: Helping to show whether lenders are serving the housing needs of their communities, giving public officials information that helps them make decisions and policies, and shedding light on lending patterns that could be discriminatory. The public data are modified to protect applicant and borrower privacy.

In 2019, the HMDA Data Browser was launched as a tool to access HMDA data collections for the years 2018 and onward. While a single year of HMDA data may contain tens of millions of records and require special software to analyze, the HMDA Data Browser allows users to filter and download more manageable and targeted HMDA datasets, including by geographic area. Upon selection, users can download a comma separated values (CSV) file, compatible with Excel, that includes this geographic data, along with all 99 public data fields. If a user would like to filter data further, they can select from up to two of 11 available variables. Users can then view an aggregated summary table of the data requested and download a CSV file of the filtered data.

In 2020, the Bureau hosted five webinars on HMDA and the HMDA Data Browser, which were presented to educate civil rights groups, consumer advocates, industry, and other government agencies on the tool. These skill-building webinars provided background information on HMDA, including the types of mortgage transactions and the specific data points reported under the law and a step-by-step demonstration on how to use the HMDA Data Browser.

A recorded version of the live HMDA Data Browser webinar is available at [www.consumerfinance.gov/about-us/events/archive-past-events/hmda-data-browser/](http://www.consumerfinance.gov/about-us/events/archive-past-events/hmda-data-browser/).

Access to the HMDA Data Browser is available at <https://ffiec.cfpb.gov/data-browser/>. For questions or suggestions about HMDA or the HMDA Data Browser, contact [HMDAHelp@cfpb.gov](mailto:HMDAHelp@cfpb.gov).

#### 4.4.4 Other HMDA Guidance and Resources

The Bureau maintains a suite of resources on its public website to help

facilitate compliance with HMDA and Regulation C, including an Executive Summary of HMDA rule changes; Small Entity Compliance Guide; Key Dates Timeline; Institutional and Transactional Coverage Charts; Reportable HMDA Data Chart; sample data collection form; and FAQs, in addition to downloadable webinars, which provide an overview of the HMDA rule. The Bureau also provides on its website an Interactive Bureau Regulations version of Regulation C.

The Bureau routinely updates its HMDA resources throughout the year to ensure HMDA reporters have the most up-to-date information. For example, in November 2020, the Bureau released the 2021 Filing Instructions Guide (FIG) and the Supplemental Guide for Quarterly Filers. Together with the FFIEC, in January 2020, the Bureau also published the 2020 edition of the HMDA Getting it Right Guide. The Bureau also works with the FFIEC to publish data submission resources for HMDA filers and vendors on its Resources for HMDA Filers website, <https://ffiec.cfpb.gov>.

In addition, HMDA reporters can ask technical questions about HMDA and Regulation C, including how to submit HMDA data, by emailing the Bureau's HMDA Help at [HMDAHelp@cfpb.gov](mailto:HMDAHelp@cfpb.gov). The Bureau also offers financial institutions, service providers, and others, informal staff guidance on specific questions about the statutes and rules the Bureau implements, including ECOA and Regulation B and HMDA and Regulation C, through its Regulation Inquiries platform at [www.reginquiries.consumerfinance.gov](http://www.reginquiries.consumerfinance.gov). Additionally, questions about HMDA may be asked at the Bureau's Fair Lending Help Desks as referenced in section 4.2.5.

#### 5. Tech Sprints: Using Innovative Technology To Address Fair Lending Compliance

The Bureau's Tech Sprint Program gathers regulators, technologists, academics, financial institutions, vendors, and subject matter experts from key stakeholders for several days to work together to develop innovative solutions to specific challenges at the intersection of emerging technology and Federal consumer protection laws. Inspired by a similar program successfully launched by the Financial Conduct Authority in the United Kingdom, the Tech Sprint program aims to (1) develop actionable technology-focused solutions to a variety of regulatory and consumer protection challenges; (2) harness technology to reduce burden, improve results, and create greater efficiencies across

financial markets; and (3) explore how technology can reshape compliance and speed effective interaction between regulators and financial institutions.

During a Tech Sprint, participants work together in small teams. The teams include participants from both the regulator and a diversity of entities to ensure the inclusion of regulatory, consumer advocate, industry, academic, and technologist perspectives. The regulator assigns a specific regulatory compliance or market problem to each team and challenges the teams to solve or mitigate the problem using modern technologies and approaches. The teams then work for several days to produce actionable ideas, write computer code, and present their solutions. On the final day, each team presents their solutions to an independent panel of evaluators that selects the outstanding teams in several categories. The most promising ideas can then be further developed either in collaboration with the regulator or by external parties.

In June 2020, the Bureau announced its first Tech Sprint which was held October 5–9, 2020, virtually, due to the pandemic. This Tech Sprint focused on electronically delivered adverse action notices that that serve statutory purposes under ECOA and the Fair Credit Reporting Act (FCRA).<sup>44</sup> The event challenged participants to develop innovative approaches to electronically-delivered ways to notify consumers of, and inform them about, adverse credit actions. Teams were asked to show how their solution could improve on current adverse action notices to better realize three core goals:

- Accuracy—using accurate information to take adverse action;
- Anti-discrimination—preventing illegal discrimination in credit decisions; and
- Education—helping consumers fare better in future credit applications.

Participants were informed that innovations could include any aspect, or potential aspect, of adverse action communication. The Tech Sprint attracted numerous expressions of interest, and more than 80 participants formed into 13 “sprint teams.” Participants represented a wide variety

<sup>44</sup> Consumer Fin. Prot. Bureau, *CFPB Announces Tech Sprints To Empower Consumers, Reduce Regulatory Burden* (June 29, 2020), <https://www.consumerfinance.gov/about-us/newsroom/tech-sprints>. Additional activity has occurred with this matter since the end of the reporting period. The second Tech Sprint occurred from March 22–26, 2021. During this week, 17 teams, with over 100 total members participated in the Tech Sprint. Teams presented their solutions to a panel of evaluators on the last day, which included many novel and innovative solutions to the problem statement.

of stakeholders including large financial institutions, community and consumer organizations, FinTechs, research organizations, and academia.

On the final day of the Tech Sprint, the teams presented their solutions to a panel of evaluators. The solutions developed by the sprint teams were creative and varied. Some of the solutions included providing more detailed information on what role each denial reason played in the credit decision; identifying how the denied applicant might obtain a credit approval in the future by, for example, raising the credit score to a certain level, decreasing credit inquiries to a certain number, or requesting a different loan term or amount; delivering additional information or educational content with the electronic notice to the consumer to assist them in making more informed financial decisions; and proposing methodologies for identifying principal reasons for adverse action when algorithms—including, potentially, algorithms that make use of artificial intelligence—are used in the credit decision.

Following the conclusion of the Tech Sprint, some of the participants informed the Bureau that they would work to incorporate their innovations into their delivery of adverse action notices or would consider working with the Bureau to further develop their ideas. The creative solutions presented will also help better inform the Bureau's policy making.

The Bureau also announced its second Tech Sprint, focused on improvements to submitting and publishing HMDA data, to be held between March 22–26, 2021.<sup>45</sup> Participants in this Tech Sprint were invited to help create additional tools for users on the HMDA Platform and to develop and document HMDA Platform Applicant Programming Interfaces (APIs). Alternatively, participants may develop additional enhancements to HMDA data products and services, or new ways to interact with existing products, data analysis capabilities, or interfaces to other datasets. Details about the HMDA Tech Sprint will be published in the 2022 Annual Report.

## 6. Outreach: Promoting Fair Lending Compliance and Education

Pursuant to the Dodd-Frank Act, the Bureau regularly engages in outreach with stakeholders, including consumer advocates, civil rights organizations, industry, academia, and other government agencies, to (1) educate them about fair lending compliance and

access to credit issues and (2) hear their views on the Bureau's work to inform its policy decisions.<sup>46</sup>

In coordinating fair lending efforts Bureau-wide, throughout 2020, the Office of Fair Lending worked closely with other Bureau offices to execute the Bureau's fair lending outreach and education efforts.

### 6.1 Educating Stakeholders About Fair Lending Compliance and Access to Credit Issues

#### 6.1.1 Bureau Blog Posts, Statements, Reports, and Press Releases

The Bureau regularly uses blog posts, statements, reports, and press releases as tools to timely and effectively communicate with consumers, small business owners, financial institutions, and other stakeholders about fair lending issues, emerging areas of concern, Bureau initiatives, and more. In 2020, the Bureau published seven blog posts related to fair lending topics including the announcement of the 2019 Fair Lending Annual Report to Congress;<sup>47</sup> the importance of fair and equitable access to credit for minority and women-owned businesses, including businesses applying for PPP relief;<sup>48</sup> providing adverse action notices when using artificial intelligence and machine learning models;<sup>49</sup> announcing an RFI related to ECOA;<sup>50</sup> expanding access to credit to underserved communities through the special purpose credit programs provisions of ECOA and Regulation B;<sup>51</sup>

the availability of Bureau resources for consumers in multiple languages;<sup>52</sup> a request for public comments to inform Bureau guidance on serving LEP consumers;<sup>53</sup> and the Bureau's first tech sprint on improving electronically-delivered adverse action notices to consumers.<sup>54</sup> The Bureau's blog posts, including those related to fair lending, may be accessed at [www.consumerfinance.gov/blog](http://www.consumerfinance.gov/blog).

In 2020, the Bureau also issued ten press releases related to fair lending topics including the flexibilities provided to financial institutions during the COVID-19 pandemic relating to certain HMDA reporting requirements;<sup>56</sup> the release of the Bureau's *Outline of Proposals Under Consideration and Alternatives* Considered regarding section 1071 of the Dodd-Frank Act;<sup>57</sup> the release of 2019 HMDA data to the public;<sup>58</sup> the Bureau's analysis of 2019 HMDA data

31, 2020), <https://www.consumerfinance.gov/about-us/blog/expanding-access-credit-underserved-communities/>.

<sup>52</sup> Desmond Brown, Keo Chea, and Frank Vespa-Papaleo, Consumer Fin. Prot. Bureau, *More CFPB resources available in multiple languages* (Aug. 26, 2020), <https://content.consumerfinance.gov/about-us/blog/cfpb-multilingual-resources-webinar/>.

<sup>53</sup> Elena Babinecz and Frank Vespa-Papaleo, Consumer Fin. Prot. Bureau, *Bureau seeks formal comments to inform forthcoming guidance on serving LEP consumers* (Nov. 16, 2020), <https://www.consumerfinance.gov/about-us/blog/bureau-seeks-formal-comments-to-inform-forthcoming-guidance-serving-lep-consumers/>.

<sup>54</sup> Additional activity has occurred with this issue since the end of this reporting period. In January 2021, the Bureau issued a statement to encourage financial institutions to better serve consumers with limited English proficiency (LEP) and to provide principles and guidelines to assist financial institutions in complying with the Dodd-Frank Act, ECOA, and other applicable laws. More information can be found here: <https://www.consumerfinance.gov/rules-policy/notice-opportunities-comment/open-notices/statement-regarding-the-provision-of-financial-products-and-services-to-consumers-with-limited-english-proficiency/>.

<sup>55</sup> Albert Chang, Tim Lambert, and Jennifer Lassiter, Consumer Fin. Prot. Bureau, *CFPB's first tech sprint on October 5–9, 2020: Help improve consumer adverse action notices* (Sept. 1, 2020), <https://www.consumerfinance.gov/about-us/blog/cfpb-tech-sprint-october-2020-consumer-adverse-action-notices/>.

<sup>56</sup> Consumer Fin. Prot. Bureau, *CFPB Provides Flexibility During COVID-19 Pandemic* (March 26, 2020), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-provides-flexibility-during-covid-19-pandemic/>.

<sup>57</sup> Consumer Fin. Prot. Bureau, *CFPB Releases Outline of Proposals Under Consideration to Implement Small Business Lending Data Collection Requirements* (Sept. 15, 2020), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-releases-outline-proposals-implement-small-business-lending-data-collection-requirements/>.

<sup>58</sup> Consumer Fin. Prot. Bureau, *FFIEC Announces Availability of 2019 Data on Mortgage Lending* (June 24, 2020), <https://www.consumerfinance.gov/about-us/newsroom/ffiec-announces-availability-2019-data-mortgage-lending/>.

<sup>46</sup> Consumer Fin. Prot. Bureau, *Fiscal Year 2020: Annual Performance Plan and Report, and Budget Overview*, Performance goal 2.1.1, at 69 (Feb. 2021), [https://files.consumerfinance.gov/f/documents/cfpb\\_performance-plan-and-report\\_fy20.pdf](https://files.consumerfinance.gov/f/documents/cfpb_performance-plan-and-report_fy20.pdf).

<sup>47</sup> Patrice Alexander Ficklin and J. Frank Vespa-Papaleo, Consumer Fin. Prot. Bureau, *Protecting consumers and encouraging innovation: 2019 Fair Lending Report to Congress* (Apr. 30, 2020), <https://www.consumerfinance.gov/about-us/blog/protecting-consumers-and-encouraging-innovation-2019-fair-lending-report-congress/>.

<sup>48</sup> Patrice Alexander Ficklin, Grady Hedgespeth, and Lora McCray, Consumer Fin. Prot. Bureau, *The importance of fair and equitable access to credit for minority and women-owned businesses* (Apr. 27, 2020), <https://www.consumerfinance.gov/about-us/blog/fair-equitable-access-credit-minority-women-owned-businesses/>.

<sup>49</sup> Patrice Alexander Ficklin, Tom Pahl, and Paul Watkins, Consumer Fin. Prot. Bureau, *Innovation spotlight: Providing adverse action notices when using AI/ML models* (July 7, 2020), <https://www.consumerfinance.gov/about-us/blog/innovation-spotlight-providing-adverse-action-notices-when-using-ai-ml-models/>.

<sup>50</sup> Kathleen L. Kraninger, Consumer Fin. Prot. Bureau, *The Bureau is taking action to build a more inclusive financial system* (July 28, 2020), <https://www.consumerfinance.gov/about-us/blog/bureau-taking-action-build-more-inclusive-financial-system/>.

<sup>51</sup> Susan M. Bernard and Patrice Alexander Ficklin, Consumer Fin. Prot. Bureau, *Expanding access to credit to underserved communities* (July

<sup>45</sup> *Id.*

points;<sup>59</sup> the issuance of a final HMDA rule raising data reporting thresholds;<sup>60</sup> the issuance of an RFI on ECOA<sup>61</sup> and an extension of its public comment period;<sup>62</sup> the Bureau's announcements of public enforcement actions against Townstone Financial, Inc.<sup>63</sup> and Washington Federal Bank<sup>64</sup>; and the issuance of an interpretive rule pertaining to special purpose credit programs.<sup>65</sup>

The Bureau's statements and press releases, including those related to fair lending, may be accessed at [www.consumerfinance.gov/about-us/newsroom](http://www.consumerfinance.gov/about-us/newsroom).

### 6.1.2 Bureau Outreach Engagements With Stakeholders

Bureau staff participated in 93 outreach engagements throughout 2020 about fair lending compliance and access to credit issues. In many of those engagements, Bureau personnel also received information and feedback on the Bureau's policy decisions.

Specifically, in 2020, the Bureau communicated directly with stakeholders through speeches, presentations, webinars, and smaller

discussions on issues pertaining to fair, equitable, and nondiscriminatory access to credit. Some examples of the topics covered in these engagements included the impacts of the COVID-19 pandemic on the economy, and racial and economic justice issues; fair lending supervision and enforcement priorities; innovations in lending; HMDA and Regulation C; ECOA and Regulation B; small business lending; access to credit for LEP consumers; providing adverse action notices when using machine learning models; and the use of alternative data in credit underwriting.

### 6.2 Listening to Stakeholders To Inform the Bureau's Policy Decisions

#### 6.2.1 Bureau Outreach Engagements With Stakeholders

As described above in section 6.1, Bureau outreach engagements with stakeholders inform the Bureau's policy decisions. In these events, Bureau staff received feedback from stakeholders on issues pertaining to fair, equitable, and nondiscriminatory access to credit.

For example, in July 2020, the Bureau hosted a roundtable discussion on credit access issues faced by Limited English Proficient (LEP) consumers and the challenges financial institutions face when addressing language access needs. Throughout 2020, the Bureau engaged in eight additional meetings with stakeholders to inform Bureau guidance on serving LEP consumers.<sup>66</sup>

The Bureau also engaged with stakeholders throughout the year on a variety of other issues related to fair lending, including section 1071 governing small business lending data collection and reporting; HMDA; agricultural and rural lending; student lending; alternative data; artificial intelligence and machine learning methods; and credit reporting.

#### 6.2.2 Request for Information: Building a More Inclusive Financial System

On July 28, 2020, the Bureau issued an RFI on the following topics under ECOA and Regulation B:

- Disparate impact.

- Serving LEP consumers.<sup>67</sup>
- Special Purpose Credit Programs.
- Affirmative advertising to disadvantaged groups.
- Small business lending.
- Sexual orientation and gender identity discrimination.<sup>68</sup>
- Scope of federal preemption of state law.
- Public assistance income.
- Artificial intelligence and machine learning.
- Adverse action notices under ECOA.

The Bureau received 144 comments from consumer and civil rights advocates, industry, academics and researchers, government agencies and entities, as well as individuals, attorneys, and law firms. The information provided will help the Bureau continue to explore ways to address regulatory compliance challenges while fulfilling the Bureau's core mission to prevent unlawful discrimination.

For example, in response to many commenters' requests for additional guidance regarding the special purpose credit programs provisions of ECOA and Regulation B, in December 2020, the Bureau issued an interpretive rule styled as an Advisory Opinion to address regulatory uncertainty regarding Regulation B, as it applies to certain aspects of special purpose credit programs. Additional information regarding the interpretive rule on special purpose credit programs can be found in section 4.2.1 of this report.

### 7. Amicus Program and Other Litigation

The Bureau files *amicus*, or "friend-of-the-court," briefs in significant court cases concerning Federal consumer financial protection laws, including ECOA.

In 2020, the Bureau and the FTC jointly filed an amicus brief in *TeWinkle v. Capital One, N.A.*, explaining that the term "applicant" in ECOA and Regulation B includes both those who are currently seeking credit and those currently receiving credit. This interpretation is the best reading of the

<sup>59</sup> Consumer Fin. Prot. Bureau, *CFPB Issues Analysis of HMDA Data Points* (Aug. 27, 2020), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-issues-analysis-hmda-data-points/>.

<sup>60</sup> Consumer Fin. Prot. Bureau, *CFPB Issues Final Rule Raising Data Reporting Thresholds Under the Home Mortgage Disclosure Act* (Apr. 16, 2020), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-issues-final-rule-raising-data-reporting-thresholds-under-hmda/>.

<sup>61</sup> Consumer Fin. Prot. Bureau, *CFPB Requests Information on Ways to Prevent Credit Discrimination and Build a More Inclusive Financial System* (July 28, 2020), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-rfi-prevent-credit-discrimination-build-more-inclusive-financial-system/>.

<sup>62</sup> Consumer Fin. Prot. Bureau, *CFPB Extends Comment Period on Request for Information on Ways to Prevent Credit Discrimination and Build a More Inclusive Financial System* (Aug. 19, 2020), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-extends-rfi-comment-period-ways-prevent-credit-discrimination-build-more-inclusive-financial-system/>.

<sup>63</sup> Consumer Fin. Prot. Bureau, *CFPB Files Suit Against Mortgage Creditor for Discriminatory Mortgage-Lending Practices* (July 15, 2020), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-files-suit-against-mortgage-creditor-discriminatory-mortgage-lending-practices/>.

<sup>64</sup> Consumer Fin. Prot. Bureau, *CFPB Announces Settlement With Washington Federal Bank, N.A. For Flawed Mortgage-Loan Data Reporting* (Oct. 27, 2020), <https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-announces-settlement-washington-federal-bank-na-flawed-mortgage-loan-data-reporting/>.

<sup>65</sup> Consumer Fin. Prot. Bureau, *Consumer Financial Protection Bureau Issues Advisory Opinion to Help Expand Fair, Equitable, and Nondiscriminatory Access to Credit* (Dec. 21, 2020), <https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-issues-advisory-opinion-to-help-expand-fair-equitable-and-nondiscriminatory-access-to-credit/>.

<sup>66</sup> Additional activity has occurred regarding this issue since the end of this reporting period. On January 13, 2021, in response to requests for additional guidance regarding providing products and services to LEP consumers, the Bureau issued a statement to encourage financial institutions to better serve consumers with limited English proficiency and to provide principles and guidelines to assist financial institutions in complying with the Dodd-Frank Act, ECOA, and other applicable laws. More information can be found here: <https://www.consumerfinance.gov/rules-policy/notice-opportunities-comment/open-notices/statement-regarding-the-provision-of-financial-products-and-services-to-consumers-with-limited-english-proficiency/>.

<sup>67</sup> *Id.*

<sup>68</sup> Additional activity has occurred regarding this issue since the end of this reporting period. On March 9, 2021, the Bureau issued an interpretive rule clarifying that the prohibition against sex discrimination under ECOA and Regulation B includes sexual orientation discrimination and gender identity discrimination. This prohibition also covers discrimination based on actual or perceived nonconformity with traditional sex- or gender-based stereotypes, and discrimination based on an applicant's social or other associations. More information can be found here: <https://www.consumerfinance.gov/about-us/newsroom/cfpb-clarifies-discrimination-by-lenders-on-basis-of-sexual-orientation-and-gender-identity-is-illegal/>.

statute itself, and any doubt whether the term “applicant” includes current borrowers is put to rest by Regulation B, which for decades has expressly defined the term to include current borrowers. Information regarding the Bureau’s amicus program, including a description of previously filed amicus briefs, is available on the Bureau’s website, at [www.consumerfinance.gov/policy-compliance/amicus/](http://www.consumerfinance.gov/policy-compliance/amicus/).

With regard to other litigation, in 2019, the Bureau was sued in the U.S. District Court for the Northern District of California by the California Reinvestment Coalition, *et al.*, regarding the Bureau’s obligation to issue rules implementing section 1071. In February 2020, the court approved a stipulated settlement agreement. As part of the agreement, the Bureau agreed to a September 15, 2020, deadline for the release of an outline of proposals under consideration and alternatives considered, consistent with SBREFA. The settlement agreement also provided a process for setting appropriate deadlines for the issuance of a proposed and final rule implementing section 1071. The Bureau has made significant progress with this rulemaking. For a comprehensive update on 1071 activity, see section 4.1.1 of this report.

In August 2020, the Bureau was sued in the U.S. District Court for the District of Columbia by the National Community Reinvestment Coalition, *et al.*, over the Bureau’s final rule amending Regulation C to raise the loan-volume coverage thresholds for financial institutions reporting data under HMDA (the 2020 HMDA rule). The Plaintiffs argue that the 2020 HMDA rule violates the Administrative Procedure Act. The litigation is ongoing.

#### 8. Interagency Coordination and Engagement

Throughout 2020, the Bureau coordinated fair lending regulatory, supervisory, and enforcement activities with those of other Federal agencies and state regulators to promote consistent, efficient, and effective enforcement of Federal fair lending laws. Interagency engagement occurs in numerous ways, including through several interagency organizations.

In 2020, the FFIEC was chaired by the Bureau’s Director.<sup>69</sup> Through the FFIEC,

the Bureau has robust engagement with other partner agencies that focus on fair lending issues. For example, in 2020, the Bureau chaired the FFIEC HMDA/Community Reinvestment Act (CRA) Data Collection Subcommittee of the FFIEC Task Force on Consumer Compliance. This subcommittee oversees FFIEC projects and programs involving HMDA data collection and dissemination, the preparation of the annual FFIEC budget for processing services, and the development and implementation of other related HMDA processing projects as directed by the FFIEC Task Force.

Additionally, the Bureau, along with the Federal Trade Commission (FTC), Department of Housing and Urban Development (HUD), Federal Deposit Insurance Corporation (FDIC), Federal Reserve Board (FRB), National Credit Union Association (NCUA), Office of the Comptroller of the Currency (OCC), Department of Justice (DOJ), and the Federal Housing Finance Agency (FHFA), comprise the Interagency Task Force on Fair Lending. In 2020, the Bureau chaired the Interagency Task Force, which met regularly to discuss fair lending enforcement efforts, share current methods of conducting supervisory and enforcement fair lending activities, and coordinate fair lending policies.<sup>70</sup>

Further, the Bureau also participated in the Interagency Working Group on Fair Lending Enforcement, a standing working group of Federal agencies—DOJ, HUD, and FTC—that met regularly to discuss issues relating to fair lending enforcement. The agencies use these meetings to also discuss fair lending developments and trends, methods for evaluating fair lending risks

The Bureau is also a member of the FFIEC’s Appraisal Subcommittee (ASC) that provides federal oversight of state appraiser and appraisal management company regulatory programs, and a monitoring framework for the Appraisal Foundation and the Federal Financial Institutions Regulatory Agencies in their roles to protect federal financial and public policy interests in real estate appraisals utilized in federally related transactions. The ASC is considering its authorities and ability to promote

fairness and equity, and prevent bias, in appraisals.<sup>71</sup>

Also, in October 2020, the Bureau signed a Memorandum of Understanding (MOU) with the FTC, HUD, FDIC, FRB, NCUA, OCC, DOJ, and FHFA—representing Federal agencies that, in addition to the Bureau, conduct fair lending analyses. The MOU allows economists from the agencies to voluntarily share confidential information with respect to analytical methodologies used to understand and assess compliance with fair lending laws.<sup>72</sup>

In addition to these established interagency organizations, Bureau personnel meet regularly with the DOJ, HUD, state Attorneys General, and the prudential regulators to coordinate the Bureau’s fair lending work.

#### 9. Coordination With the Bureau’s Innovation Programs

The Dodd-Frank Act established the Bureau’s mission to include both fair lending and innovation components. Specifically, the Bureau is authorized to exercise its authorities under Federal consumer financial law for the purposes of ensuring—with respect to consumer financial products and services—that consumers are protected from unfair, deceptive, or abusive acts and practices and from discrimination,<sup>73</sup> and that markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation.<sup>74</sup>

As part of its coordination function, the Office of Fair Lending worked in 2020 with the Office of Innovation regarding applications to the Bureau’s innovation programs that involved fair lending and access to credit matters.

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

<sup>71</sup> The Appraisal Subcommittee includes the FFIEC agencies, HUD, and the FHFA.

<sup>72</sup> For more information on the MOU, see *Director Kraninger’s Remarks During “Current Priorities in Consumer Financial Protection Seminar” At Harvard Kennedy School* (Oct. 29, 2020), <https://www.consumerfinance.gov/about-us/newsroom/director-kraningers-remarks-current-priorities-seminar-harvard-kennedy-school/>.

<sup>73</sup> Dodd-Frank Act sec. 1021(b)(2).

<sup>74</sup> Dodd-Frank Act sec. 1021(b)(5).

<sup>69</sup> Collectively, the FRB, FDIC, NCUA, OCC, and the Bureau comprise the FFIEC. The FFIEC is a “formal interagency body empowered to prescribe uniform principles, standards, and report forms for the federal examination of financial institutions” by the member agencies listed above and the State Liaison Committee “and to make recommendations to promote uniformity in the supervision of financial institutions.” Federal Financial

Institutions Examination Council, <http://www.ffiec.gov> (last visited Mar. 30, 2021). The State Liaison Committee was added to FFIEC in 2006 as a voting member. Additional activity has occurred on this issue since the end of this reporting period. In April 2021, the NCUA’s Chairman took over as chair of the FFIEC.

<sup>70</sup> Additional activity has occurred since the end of this reporting period. In 2021, the FDIC took over as chair of the Interagency Task Force on Fair Lending.



In 2020, Upstart Network, Inc. (Upstart) was granted a No-Action Letter (NAL).<sup>75</sup> Upstart, a company that that

uses alternative data and machine learning in making credit underwriting and pricing decisions, received a NAL

pertaining to regulatory uncertainty under ECOA and Regulation B.<sup>76</sup>

#### APPENDIX A—DEFINED TERMS

Term	Definition
AMS .....	Agricultural Marketing Service of the U.S. Department of Agriculture.
APA .....	Administrative Procedure Act.
API .....	Application Programming Interface.
ASC .....	FFIEC's Appraisal Subcommittee.
Bureau .....	Consumer Financial Protection Bureau/Bureau of Consumer Financial Protection.
CARES Act .....	Coronavirus Aid, Relief, and Economic Security Act.
CMS .....	Compliance Management System.
COVID-19 .....	Coronavirus Disease/Pandemic 2019.
Dodd-Frank Act .....	Dodd-Frank Wall Street Reform and Consumer Protection Act.
DOJ .....	U.S. Department of Justice.
DOT .....	U.S. Department of Transportation.
ECOA .....	Equal Credit Opportunity Act.
FCA .....	Farm Credit Administration.
FCRA .....	Fair Credit Reporting Act.
FDIC .....	Federal Deposit Insurance Corporation.
HFHA .....	Federal Housing Finance Agency.
Federal Reserve Board or FRB .....	Board of Governors of the Federal Reserve System.
FFIEC .....	Federal Financial Institutions Examination Council—the FFIEC member agencies are the Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), the Office of the Comptroller of the Currency (OCC), and the Bureau of Consumer Financial Protection (The Bureau). The State Liaison Committee was added to FFIEC in 2006 as a voting member.
FTC .....	Federal Trade Commission.
GIPSA .....	Grain Inspection, Packers and Stockyards Administration of the U.S. Department of Agriculture.
HMDA .....	Home Mortgage Disclosure Act.
HUD .....	U.S. Department of Housing and Urban Development.
LAR .....	Loan Application Register (HMDA).
LEP .....	Limited English Proficient.
MSA .....	Metropolitan Statistical Area.
MOU .....	Memorandum of Understanding.
NCUA .....	National Credit Union Administration.
NPRM .....	Notice of Proposed Rulemaking.
OCC .....	Office of the Comptroller of the Currency.
PPP .....	Paycheck Protection Program (CARES Act).
RFI .....	Request for Information.
SBA .....	Small Business Administration.
SBREFA .....	Small Business Regulatory Enforcement Fairness Act of 1996.
SEC .....	Securities and Exchange Commission.
SER .....	Small Entity Representatives.
SNAP .....	Supplemental Nutrition Assistance Program ("Food Stamps").
USDA .....	U.S. Department of Agriculture.

#### Signing Authority

The Acting Director of the Bureau, David Uejio, having reviewed and approved this document, is delegating the authority to electronically sign this document to Laura Galban, a Bureau Federal Register Liaison, for purposes of publication in the **Federal Register**.

Dated: April 22, 2021.

**Laura Galban,**

*Federal Register Liaison, Bureau of Consumer Financial Protection.*

[FR Doc. 2021-08716 Filed 4-26-21; 8:45 am]

**BILLING CODE 4810-AM-P**

#### DEPARTMENT OF DEFENSE

##### Office of the Secretary

##### Revised Non-Foreign Overseas Per Diem Rates

**AGENCY:** Defense Human Resources Activity, Department of Defense (DoD).

**ACTION:** Notice of revised per diem rates in non-foreign areas outside the continental U.S.

**SUMMARY:** Defense Human Resources Activity publishes this Civilian

<sup>75</sup> Consumer Fin. Prot. Bureau, *Upstart Network No-Action Letter* (Nov. 30, 2020), [https://files.consumerfinance.gov/f/documents/cfpb\\_upstart-network-inc\\_no-action-letter\\_2020-11.pdf](https://files.consumerfinance.gov/f/documents/cfpb_upstart-network-inc_no-action-letter_2020-11.pdf). In addition to the Upstart NAL, in 2020, the Bureau granted a total of three Approvals under the

Compliance Assistance Sandbox policy and six NAL or NAL Templates. These applications, however, do not directly pertain to fair lending issues. All granted applications can be found on the Bureau's website, at <https://>

[www.consumerfinance.gov/rules-policy/innovation/granted-applications](https://www.consumerfinance.gov/rules-policy/innovation/granted-applications).

<sup>76</sup> On September 14, 2017, Upstart was granted a NAL for a term of three years. This NAL expired on December 1, 2020.