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# Our Nation has a Clear Public Policy against Discrimination in Lending

- HMDA Has Moved From a Backwater Compliance Issue to the Top of the List
- Technology Drives and Controls the Data Collection—which drives the Analysis

## Goals of this Introduction—

- To Look at the Fair Lending Laws
- To Look at HMDA and its Requirements
- To Analysis the Importance of the Interface Between Record Keeping  Requirements and Technology Challenges

- The Fair Lending Laws
  - The Equal Credit Opportunity Act
  - The Fair Housing Act
  - Proxies for Several other Civil Rights Statutes

ECOA and FHA Prohibits Discriminatory Allocation of Credit Based Upon Race and Ethnicity—

- ECOA Specifically Governs Lending Process
- FHA Addresses Lending Within the Housing Context

# Fair Lending and HMDA

The ECOA and the FHA Prohibit Discrimination on the Basis of Race, Color, Religion, Sex, Familial Status, National Origin or Handicap—

- Includes Discriminatory Practices When Applying for Loans
- Includes Sales or Leasing of Homes
- Includes Providing Associated Services
- Includes Outright Refusals to Lend
- Includes So-Called Targeting Discrimination–
  - Racial Steering
  - Redlining
  - Reverse Redlining
  - Pricing

MORTGAGE BANKERS ASSOCIATION

# Fair Lending Enforcement

- Department of Housing and Urban Development (HUD)
- Department of Justice (DOJ)
- Federal Banking Agencies
- Private Enforcement Permitted
- Many State Counterparts

# Surprisingly—Mortgage Lending Historically Has Not Been The Subject of Many Discrimination Lawsuits

- Credit is Individualized—Not Similar to the Employment Discrimination Arena
- Absence of Reliable Statistical Data
- Lack of Data to Prove Intentional Discrimination
- Lack of Data to Show "Disparate Impact"

## HMDA — Historical Background

- 12 USC § 2801 *et seq.*
- First Adopted in 1975
- Coverage Eventually Expanded to Include Most Non-Depository Mortgage Lenders
- Purposes Are To—
  - Provide Data to Demonstrate Whether Lenders Are Serving the Credit Needs of Communities
  - Assist Public Officials in Targeting Credit Needs
  - Gather Data to Identify Discriminatory Lending Patterns

# Regulation C

- Originally Adopted December 15, 1989
- Requirements of Regulation C
  - LARS — The Loan Application Register
    - Assembly of Data — Throughout the Year
    - Submission of Data — by March 1st of Subsequent Year
    - Data Compiled by FFIEC (Actually by the FRB)
    - Publication of Data Required by Each Lender

# The Pre-2004 Statistical Value of LARs Data—Not Much

- A Very Limited Data Set Created
- Statistically Unreliable to Prove Fair Lending Violations
- Recognized as Unreliable by Federal Agencies
- Risk-Based Credit is Individualized
- Omitted Data Elements Relevant for Fair Lending Analysis—Particularly Pricing Data
- Ineffectual to Prove "Disparate Impact"
- Difficulty in Obtaining Data Prevented HMDA to be Used to Proved Intentional Discrimination

# Fair Lending and HMDA

## For Each App or Loan—

- Identification number
- Date of application
- Action taken & date
- Loan Type-Conv, FHA,VA
- Loan Purpose-Purchase, Refi, home improvement
- Type of purchaser, if sold, GSE, bank
- Request for pre-approval

## For Each Property—

- Occupancy-owner or non-owner occupied
- Type - 1-4 or 5 or more units
- Location- state & county & census tract

## For Each Borrower—

- Ethnicity, race & gender
- Income

# Fair Lending and HMDA

## Regulation C Developments—Pricing

- Regulation C 2002 Amendments — February 15, 2002
- 67 Fed. Reg. 7221 (2002)
- FRB Expanded Required Data Elements
  - Lien Status- First or second mortgage
  - Manufactured home
  - Pre-approval applications (most)
  - Expanded Racial and Ethnic Categories
- Imposed Reporting Requirements for Pricing for Certain Mortgage Loans
  - All HOEPA Loans and Corresponding APRs
  - Senior Lien Loans — APRs 3 Percentage Points Or Higher than Comparable Federal Funds Rate
  - Junior Lien Loans — APRs 5 Points or Higher than Comparable Federal Funds Rate
- Compliance with New Rules Postponed Until January 1, 2004

# What Does the Revised LARs Data Demonstrate?

- Permits Comparison of Lending Patterns Between “Whites” and Minority and Ethnic Groups
- Identifies Location of Reportable Loans and HOEPA Loans—Permitting a Comparison Between Census Tracts in Which Lower Interest Rate Loans are Originated
  - Ability to Geocode Reportable Loan Locations to LMI Census Tracts and Minority Population Centers
- Possible Claims of Redlining, Reverse Redlining and Targeting
- Ancillary State Claims Under State Fair Lending Statutes

## What the Data Shows—

- 2005 - HMDA data on 30.2 million loan applications in 2005 and reported in 2006
- 2005 – 11.7 million for single family purchases, 15.9 million refis, 2.5 million for home improvements also 5.9 million loan purchases and 397,000 pre-approvals
- 1994 – 10.69 million total applications and 1.5 million loans purchased
- 1994 Many less originations

# Why Is Regulation C Significant?

- It is an ***Evidentiary Proof*** Issue—
- Standards Now Available for Proving Fair Lending Claims
  - Potentially Much Easier to Prove Than Predatory Lending Claims
- Intentional Misconduct May Be Irrelevant
- The Investigative/Discovery Burden is Considerable