

February 2013

Regulatory Alert – Fair Lending

What you need to know:

- The CFPB is considering enforcement actions against 4 large banks for potentially discriminatory practices related to indirect auto lending (in particular, interest rate mark ups or “dealer participations”). The CFPB is reportedly focused on whether the mark ups are applied consistently among similarly situated applicants or whether they are applied in a discriminatory manner.
- The CFPB recently issued its first *Fair Lending Report* and its first *Supervisory Highlights*, both of which stress how critical a robust fair lending function is as part of an effective and comprehensive Compliance Management System. The releases also include plans for the CFPB’s supervision and enforcement authority over Fair Lending and Consumer Protection including remedies for customers who have suffered financial harm.
- With the CFPB’s authority over Fair Lending regulations, there comes the expected focus on mortgage products but also a heightened scrutiny over non-mortgage products like auto-loans, private student banking products and credit cards. Examinations will be consumer focused and very data-driven with data analytics discussions from the start.
- In related news, last week the Department of Housing and Urban Development (HUD) published a final regulation on disparate impact under the *Fair Housing Act* (FHA). This new rule is more of a formal interpretation of the FHA and puts the burden on financial institutions to prove that any lending practice alleged to be discriminatory has a legitimate and non-discriminatory purpose. HUD interprets the FHA to prohibit practices with an unjustified discriminatory effect, regardless of intent to discriminate.

What you need to consider:

- Conduct a gap assessment of your Fair Lending Compliance program to ensure it is robust and comprehensive based on the size and complexity of your institution’s product and service offerings and includes broader principles of fair, consistent and responsible banking.

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Financial Services Regulatory Practice

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- Conduct a targeted Fair Lending review of your mortgage and non-mortgage products and services portfolio with particular attention to:
 - Fair lending analyses across the portfolio of consumer products and services throughout the entire lifecycle including pricing, fees, underwriting, marketing, servicing and default management at the portfolio, as well as dealer, branch and other more granular levels.
 - Incorporating ongoing fair-lending risk-ranking of decisioning models used throughout your institution, based on attributes used in those models, potential customer impacts perspective, and current regulatory environment.
 - Incorporating ongoing disparate impact testing and substitution analysis for models with potentially higher fair lending risk.
 - Analyzing service providers/vendors and third party oversight.
 - Consideration and resolution of consumer complaints, including complaints against service providers/vendors.
- Develop enhancements to lending standards and corresponding training to meet the formal interpretation of the new disparate impact regulation.
- Conduct a comprehensive analysis of mortgage and non-mortgage products to review lending practices in light of the new disparate impact regulation.

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