NFHA NATIONAL FAIR HOUSING ALLIANCE

REDLINING TOOLKIT

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FAIR HOUSING MONTH NFHA

Redlining Toolkit

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Introduction

The identification of redlining risk and/or violations is critically important at this time. In America, homeownership is the key to financial stability as well as other opportunities, such as home equity for college education, home repairs, medical bills, small business loan collateral, or retirement. Unfortunately, the Black/White homeownership gap is currently as big as it was before passage of the Fair Housing Act in 1968 and the Black/White wealth gap is large and persistent, even when controlling for education. In addition, Latino homeownership still significantly lags White homeownership. Researchers from the Federal Reserve Bank of San Francisco have identified redlining as one of the key structural barriers that caused a staggering $22.9 trillion in losses to U.S. economic output over the past 30 years.

Given the central role that homeownership plays in the economic security of the American consumer, the National Fair Housing Alliance ("NFHA") is providing this Redlining Toolkit to help civil rights and consumer advocates understand the public data relating to redlining risk to protect borrowers and their communities and ensure fair and equitable access to credit. Although this toolkit is mainly addressed to advocates, it can also serve as a roadmap for lenders and government entities that want to ensure compliance with fair lending laws and promote racial equity. Finally, journalists, scholars, and researchers may find this toolkit to be an instructive guide to understanding the history of the dual credit market, the regulatory structure, and the role of public data in ensuring fair access to credit.

This Redlining Toolkit is divided into two parts. Part I describes the history and legal framework for redlining and provides tools to identify specific lenders with high redlining risk. Part II is still under construction, but will provide guidance for taking action when a lender shows high redlining risk in a community of color and also provide useful resources, such as a step-by-step guide on how to analyze the data. This Redlining Toolkit is based on an analysis of the fair lending laws and regulations, federal financial regulator policies and guidance, case law, and the precedent set by public enforcement actions by the U.S. Department of Justice, the Consumer Financial Protection Bureau, and the U.S. Department of Housing and Urban Development.

It will take coordinated and concerted efforts to reverse centuries of discrimination in financial services, including the redlining of communities of color. We hope that this toolkit will empower advocates, lenders, government entities, journalists, scholars, and researchers who want to take action to promote racial equity and fair access to credit for people and communities throughout the nation.

Note on the Language in This Toolkit: As a civil rights organization, we are aware that there is no universal agreement on the appropriate race or ethnicity label for the diverse populations in the United States or even on whether or not particular labels should be capitalized. We intend in all cases to be inclusive, rather than exclusive, and in no case to diminish the significance of the viewpoint of any person or to injure a person or group through our terminology. Generally, we have utilized the following language (except in cases where a resource, reference, case, or quotation may use alternate terminology): Black, Latino, Asian American and Pacific Islander, Native American, and White. We are aware that some use the term "African American," but there are some who feel that this term is exclusive, and we intend to be as inclusive as possible. We are also aware that many people prefer the term "Hispanic" or "Latinx." We intend in this report to include those who prefer “Hispanic” or “Latinx” in the term “Latino” and intend no disrespect. Generally, we refer to “neighborhoods of color,” “communities of color,” “people of color,” or specify the predominant race(s), rather than utilizing the term “minority.” However, in some cases, we use the term “minority” (as in “majority minority census tract”) because that is the term recognized by practitioners. We also use the term “disability,” rather than “handicap” (the term used in the Fair Housing Act).

Legal Disclaimer: The information provided in this Redlining Toolkit does not, and is not intended to, constitute legal advice; instead, all information is for general informational purposes only. Readers of this toolkit should contact their attorney to obtain advice with respect to any particular legal matter. This toolkit may contain links to other third-party websites. Such links are only for the convenience of the reader; NFHA does not recommend or endorse the contents of the third-party sites.

Section I: History and Legal Framework

History: Redlining Perpetuated a Dual Credit Market and Is One of the Key Drivers of Today's Wealth Gap

Consumers in the U.S. do not have equal or equitable access to the financial markets. Centuries of discriminatory policies, segregation, and disinvestment have led to the creation of the dual credit market in which banks and credit unions are concentrated in predominantly White communities, while payday lenders, check cashers, title money lenders, and other non-traditional financial services providers are concentrated in predominantly Black and Latino communities. An analysis by Trulia revealed stark disparities in the location of financial services. The research showed that communities of color had 35 percent fewer mainstream lenders than predominantly White communities. Moreover, there were twice as many non-traditional financial institutions — like payday lenders and check cashers — in communities of color. This, of course, is a legacy of our nation's long history of redlining and lending discrimination. However, current practices are also contributing to the growing disparity in credit access. For example, according to one analysis by Standard and Poor's, banks today are closing their branches in high-income, affluent Black neighborhoods at a higher rate than they are closing branches in low-income non-Black areas.

This dual credit market arose because for much of America's history, communities of color were systematically excluded from economic opportunities through explicit policy decisions. In fact, many of our laws — Indian Removal Acts, Slave Codes, Fugitive Slave Acts, Repatriation Acts, Chinese Removal Act, Black Codes, Sundown Ordinances, Japanese Internment Act, Racially Restrictive Covenants, and much more — were explicitly and purposefully designed to provide opportunities to Whites and to simultaneously deny opportunities to people of color.

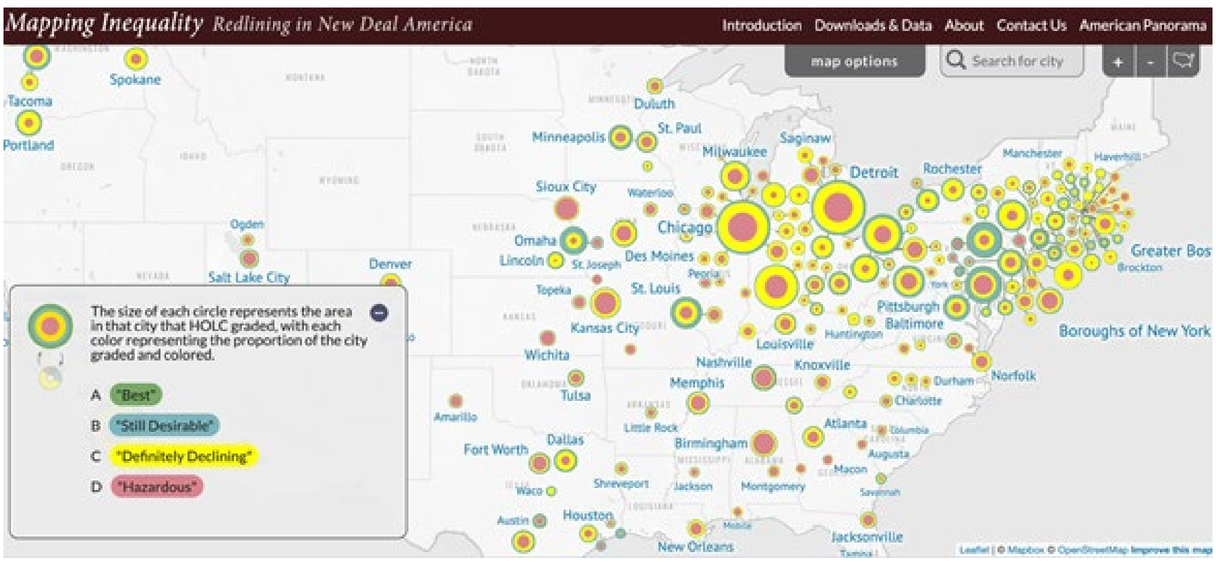
New Deal Policies Created Redlining and Perpetuated the Dual Credit Market

Even laws that appeared to be racially neutral were implemented with racialized policies. In particular, the New Deal's federal Home Owners Loan Corporation ("HOLC") developed one of the most harmful policies in the housing and financial services markets by perpetuating a system that included race as a fundamental factor in determining the desirability and value of neighborhoods. This system included Residential Security Survey forms that explicitly captured the percentage of "Negro" populations and other racial groups living in an area and then utilized that race-based data to grade the neighborhood. The HOLC's policies and procedures helped systematize redlining as well as the unfounded association between race and risk in U.S. housing and financial services markets.

The HOLC appraisal system also included the creation of appraisal maps that were color-coded to indicate the desirability of neighborhoods. Areas that were homogenous and White were deemed to be the First Grade and shaded as green on the map. Communities of color were coded as "hazardous,' were signified by red shading on the map, and were assigned a lower value. Areas that contained even small numbers of Black residents were coded as "hazardous" and shaded red. Moreover, areas that were adjacent to communities with Black residents could be downgraded simply based on their proximity to a community of color. These communities were downgraded based on an unfounded association between race and risk, not based on an analysis of whether a particular resident could afford a mortgage loan.

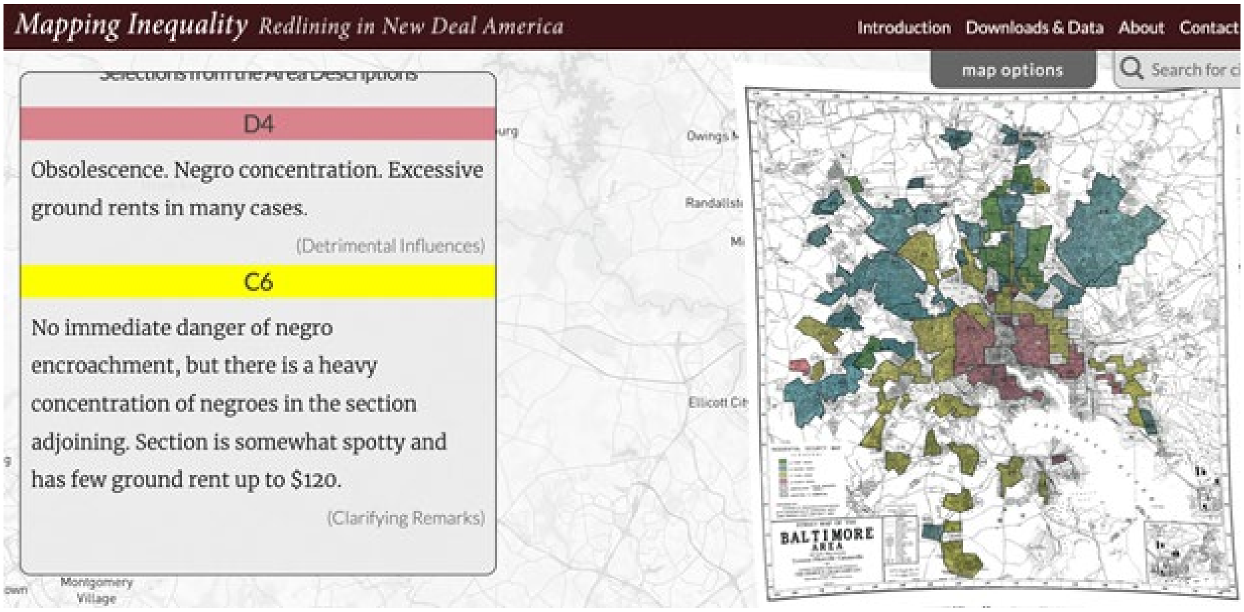
Notably, the data used to create the maps were not just collected randomly, but rather were based on the opinions of the leading real estate professionals at the time. Later, the Federal Housing Administration adopted these maps and race-based policies as the basis for its mortgage insurance underwriting decisions. Thus, the maps not only reflected the race-conscious views of the nation's housing industry leaders at the time, but were also used to amplify and codify these views throughout the housing system.

A collaboration of academics has produced an interactive online tool known as ["Mapping Inequality,"](#) which documents how the HOLC used their racially biased views to determine the economic value of a community on the basis of race. Below are examples of the tool and an archived HOLC map of Baltimore.



Source: [Mapping Inequality](#)

This is the landing page of the "Mapping Inequality" tool. The graphic at the left shows the HOLC map legend where red signifies a community that was deemed "Hazardous."



Source: [Mapping Inequality]

This is the HOLC's map of Baltimore, which color coded the communities of color as red and "hazardous" based in part on "Negro concentration."

Underwriting and Appraisal Policies Further Perpetuated the Unfounded Association between Race and Risk

In addition to the mapping system, explicitly discriminatory underwriting and appraisal policies perpetuated the unfounded association between race and risk in the nation's housing and financial markets. For example, the Federal Housing Administration encouraged the use of racially restrictive covenants and required them in exchange for supporting the new housing developments built throughout the nation's suburban communities. Even after the Supreme Court declared that racially restrictive covenants were not enforceable [in 1948], the Federal Housing Administration [gave preferential treatment] to developers that adopted them. Additional examples include (emphasis added):

1938: Federal Housing Administration Underwriting Manual —

"Areas surrounding a location are investigated to determine whether **incompatible racial and social groups** are present, for the purpose of making a prediction regarding the probability of the locations being invaded by such groups. If a neighborhood is to retain stability, it is necessary that properties continue to be occupied by the **same social and racial classes**. A change in social or racial occupancy generally contributes to instability and a decline in values."

1967: American Institute of Real Estate Appraisers ("AIREA") Manual, The Appraisal of Real Estate —

"The causes of racial and ethnic conflicts are not the appraiser's responsibility. However, he must recognize the fact that values change when **people who are different** from those presently occupying an area advance into and **infiltrate** a neighborhood."

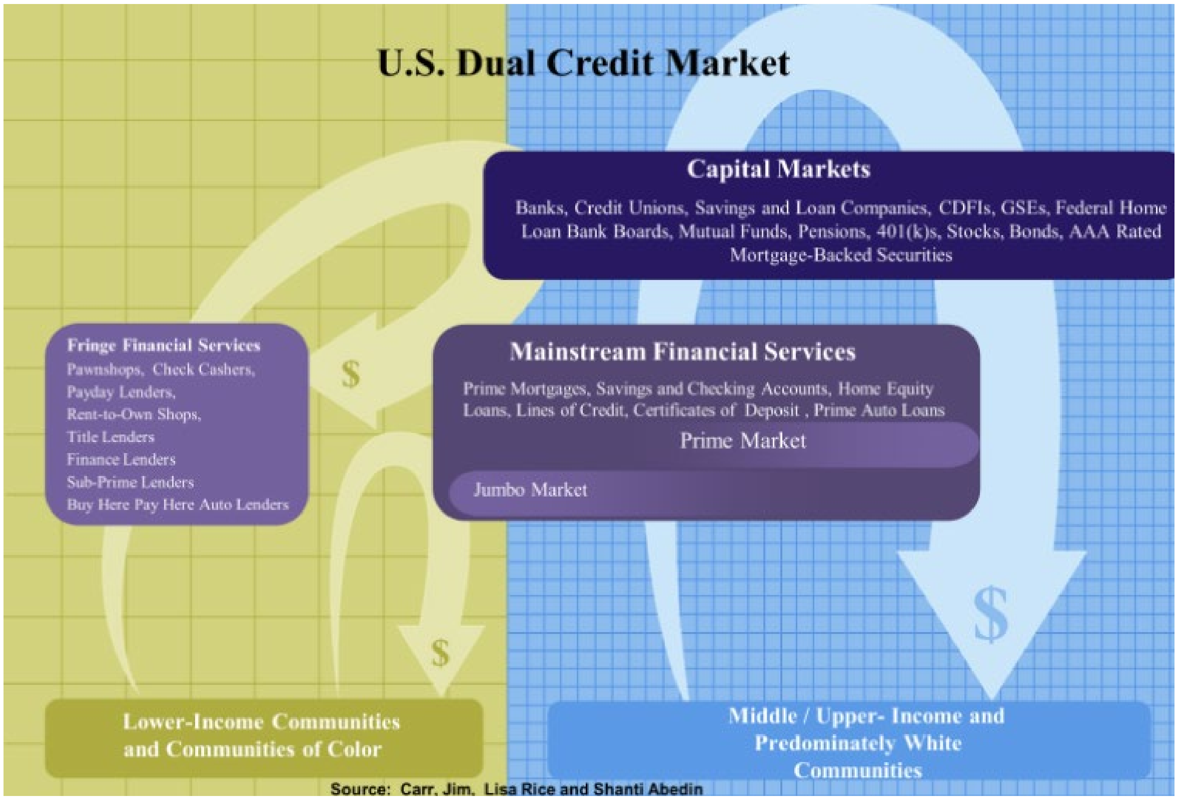
1973: AIREA Course Material —

"Ethnological information also is significant to real estate analysis. As a general rule, homogeneity of the population contributes to stability of real estate values. Information on the **percentage of native born whites, foreign whites, and non-white population is important**, and the changes in this composition have a significance.... As a general rule, minority groups are found at the bottom of the socio-economic ladder, and **problems associated with minority group segments** of the population can hinder community growth."

After decades of these explicitly discriminatory policies, in 1977, the U.S. Department of Justice ("DOJ") filed suit against the AIREA and three other defendants for violations of the Fair Housing Act, alleging that the defendants had caused lenders and appraisers to treat race and national origin as negative factors in determining the value of dwellings and in evaluating the soundness of home loans. The AIREA settled and agreed to adopt certain policies, including a policy stating that it is improper to base a conclusion or opinion of value, or a conclusion with respect to neighborhood trends, upon stereotyped or biased presumptions relating to race, color, religion, sex, or national origin.

Prior Discriminatory Policies Created Today's Dual Credit Market as Well as Massive and Persistent Homeownership and Wealth Gaps

The U.S. has a dual credit market driven by centuries of discriminatory policies and practices. The graphic below illustrates this concept with non-traditional, poorly regulated and often less safe financial institutions reflected on the green side of the graphic and safer, more regulated financial institutions reflected on the blue side.



Unfortunately, borrowers who access credit with subprime or non-traditional lenders often get trapped and find it extremely difficult to access credit from mainstream lenders. One reason is because some credit scoring systems penalize borrowers who access credit from high-cost or finance company lenders – even if the borrower always pays her bill on time. Many alternative financial services providers (the green side of the graphic) do not report positive credit payments to credit reporting agencies. This means that consumers who access credit from the fringe market typically will not gain the benefit of making positive payments because other creditors cannot see that positive payment history. But consumers who access credit from the financial mainstream (the blue side of the graphic) typically gain positive benefits by having their timely payments reported. The ability to access credit from financial institutions who report timely payments to credit reporting agencies is so important because this information is used to enable consumers to develop and build solid credit scores.

Consumers who primarily access credit from alternative financial services providers (the green side of the graphic) are often "credit invisible." That this, they lack sufficient credit data to generate a score. People of color are disproportionately represented among the credit invisible. One reason is that mainstream, traditional lenders (the blue side of the graphic) have long redlined and abandoned communities of color. Even today, banks are closing branches in high-income Black communities at a higher rate than they are closing branches in low-income non-Black communities. Conversely, nontraditional and alternative financial services providers are hyper-concentrated in communities of color. Thus, institutions that report consumers' positive credit behavior are sparsely located in communities of color while institutions that typically do not report consumers' positive behavior are highly concentrated in those communities.

These discriminatory policies and the dual credit market have created distinct advantages for White families, leading to massive homeownership, wealth, and credit gaps that persist today. In particular, because home value has been the cornerstone of intergenerational wealth in the U.S., the historical housing practices have had long term effects in creating some of the current wealth inequalities where White wealth has soared while Black wealth has remained stagnant. In 2019, White family wealth sat at $188,200 (median) and $983,400 (mean). In contrast, Black families' median and mean net worth were $24,100 and $142,500, respectively. These wealth disparities, in turn, reflect intergenerational transfer disparities: 29.9 percent of White families have received an inheritance, compared with only 10.1 percent of Black families. Ultimately, these disparities harm the economy as a whole. For example, researchers from the Federal Reserve Bank of San Francisco have identified redlining as one of the key structural barriers that caused a staggering $22.9 trillion in losses to U.S. economic output over the past 30 years.

This bevy of laws, regulations, and policies created structural inequities and systemic bias that are still being manifest in our society. Residential and school segregation, the inextricable link between place and opportunity, the dual credit market, the inequitable health ecosystem, the patchwork of exclusive and restrictive zoning systems, and additional structurally unfair systems all stem from a long stream of laws that were either explicitly racist, implemented with racialized policies, or produced disparate impacts on communities of color. The effect of these policies was to widen the racial homeownership, income, and wealth gaps.

Legal Framework: Redlining Violates the Fair Housing Act and the Equal Credit Opportunity Act

The fair lending laws were designed to remedy credit discrimination, including redlining. The federal financial regulators have long recognized that redlining violates the fair lending laws, including in the following policy documents:

> 1994 Interagency Policy Statement on Discrimination in Lending: Redlining refers to the illegal practice of refusing to make residential loans or imposing more onerous terms on any loans made because of the predominant race, national origin, etc., of the residents of the neighborhood in which the property is located. Redlining violates both the Fair Housing Act and the Equal Credit Opportunity Act.
>
> 2009 Interagency Fair Lending Examination Procedures: Redlining is a form of illegal disparate treatment in which a lender provides unequal access to credit, or unequal terms of credit, because of the race, color, national origin, or other prohibited characteristic(s) of the residents of the area in which the credit seeker resides or will reside or in which the residential property to be mortgaged is located.

Similarly, courts have repeatedly recognized that redlining is a violation of the Fair Housing Act and the Equal Credit Opportunity Act. *See, e.g., Ring v. First Interstate Mortgage, Inc.*, 984 F. 2d 924 (8th Cir. 1993); *Hirschfeld v. Metlife Bank, N.A.*, 2012 WL 3240669 (E.D.N.Y. July 31, 2012); *JAT, Inc. v. Nat'l City Bank of Midwest*, 460 F. Supp. 2d 812, 819-20 (E.D. Mich. 2006); *Hargraves v. Capital City Mortg. Corp.*, 140 F. Supp. 2d 7, 21 (D.D.C. 2000); *Milton v. Bancplus Mortgage Corp.*, 1996 WL 197532 (N.D. Ill. Apr. 19, 1996); *Old West End Ass'n v. Buckeye Federal Sav. &*

Loan, 675 F. Supp. 1100 (N.D. Ohio 1987); *Harrison v. Otto G. Heinzeroth Mortg. Co.,* 430 F. Supp. 893 (N.D. Ohio 1977); *Laufman v. Oakley Bldg. & Loan Co.*, 408 F. Supp. 489 (S.D. Ohio 1976).

Finally, since the 1990s, the DOJ has litigated multiple court-approved settlements alleging redlining as a violation of the Fair Housing Act and the Equal Credit Opportunity Act. *See* DOJ Case List.

Redlining Violates the Fair Housing Act

The Fair Housing Act, 42 U.S.C. § 3601, *et seq.*, prohibits discrimination in housing and "residential real estate-related transactions" on the basis of race, color, national origin, sex, religion, familial status, or disability. A "residential real estate-related transaction" includes making loans or providing other financial assistance for purchasing, constructing, improving, repairing, or maintaining a dwelling. 42 U.S.C.§ 3605(b)(1)(A). In addition, the U.S. Department of Housing and Urban Development ("HUD") has the authority to promulgate regulations to implement the Fair Housing Act, which can be found at 24 C.F.R. Part 100.

Redlining is prohibited under the following provisions of the Fair Housing Act (in relevant part) and its implementing regulation:

- It shall be unlawful for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race, color, or national origin.
  Fair Housing Act: 42 U.S.C. § 3605(a).
  Regulations: 24 C.F.R. §§ 100.110(b), 100.120(a)-(b).

- It shall be unlawful to discriminate against any person in the terms, conditions, or privileges of the sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, or national origin.
  Fair Housing Act: 42 U.S.C. § 3604(b).
  Regulations: 24 C.F.R. §§ 100.50(b)(2), 100.65.

- It shall be unlawful to refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, or national origin.
  Fair Housing Act: 42 U.S.C. § 3604(a).
  Regulation: 24 C.F.R. § 100.50(b)(3).

- It shall be unlawful to make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, or national origin, or an intention to make any such preference, limitation, or discrimination.
  Fair Housing Act: 42 U.S.C. § 3604(c).
  Regulation: 24 C.F.R. § 100.50(b)(4).

Redlining Violates the Equal Credit Opportunity Act

The Equal Credit Opportunity Act ("ECOA"), 15 U.S.C. § 1691, *et seq.*, prohibits a creditor from discriminating in any aspect of a credit transaction on the basis of race, color, national origin, sex, religion, marital status, age, because all or part of the applicant's income derives from any public assistance program, or because of the applicant's exercise in good faith of any right under the Consumer Credit Protection Act. ECOA applies to any extension of credit, including mortgage loans and small business loans. 15 U.S.C. § 1691a(d). In addition, the Consumer Financial Protection Bureau ("CFPB") has the authority to promulgate regulations to implement the ECOA, which is known as "Regulation B" and can be found at 12 C.F.R. Part 1002.

Redlining is prohibited under the following provisions of the ECOA and its implementing regulation:

- It shall be unlawful for any creditor to discriminate against any applicant, with respect to any aspect of a credit transaction, on the basis of race, color, or national origin.
  Equal Credit Opportunity Act, 15 U.S.C. § 1691(a)(1).
  Regulation: 12 C.F.R. § 1002.4(a).

- A creditor shall not make any oral or written statement, in advertising or otherwise, to applicants or prospective applicants that would discourage, on the basis of race, color, or national origin, a reasonable person from making or pursuing an application.
  Regulation: 12 C.F.R. § 1002.4(b). (*See also* Equal Credit Opportunity Act, 15 U.S.C. § 1691(a)(1)).

ECOA and Regulation B prohibit discrimination on a "prohibited basis," which includes on the basis of race, color, and national origin. 12 C.F.R. § 1002.2(z). The commentary to Regulation B clarifies that a creditor may not discriminate against persons associated with the applicant on a prohibited basis, including, for example, "because of the race of other residents in the neighborhood where the property offered as collateral is located." 12 C.F.R. Part 1002, Supp. I, ¶ 2(z)-1.

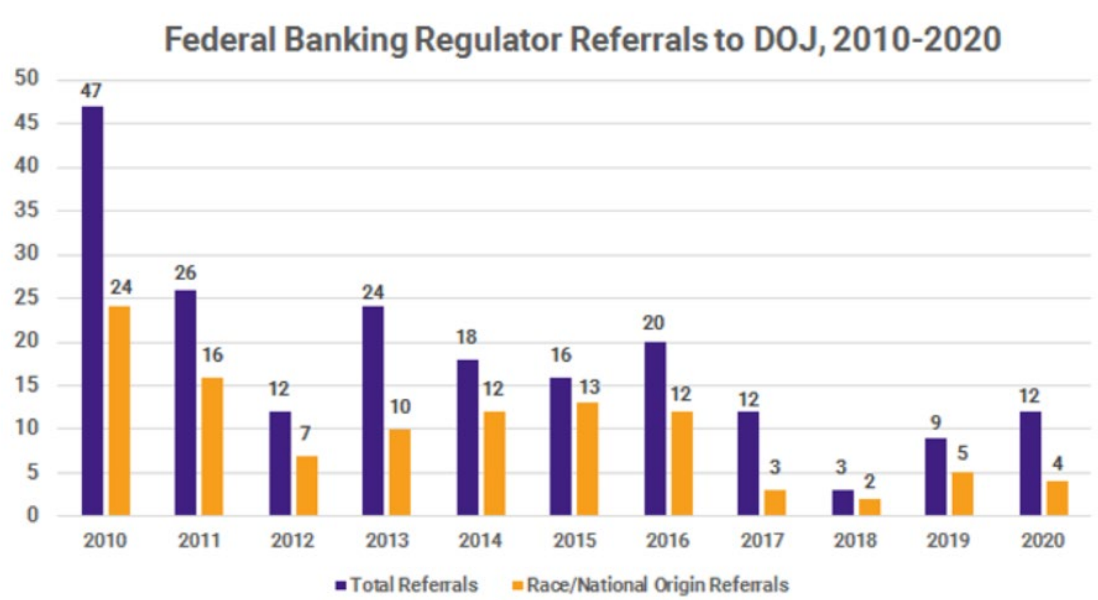
Regulatory Framework: Bank Supervision and Enforcement Has Been on The Decline

Each of the federal financial regulators has the authority to examine and supervise the regulated financial institutions within its jurisdiction for compliance with the fair lending laws: the Fair Housing Act and ECOA. The federal financial regulators are: the CFPB, the Board of Governors of the Federal Reserve ("Board"), the Federal Deposit Insurance Corporation ("FDIC"), the National Credit Union Administration ("NCUA"), and the Office of the Comptroller of the Currency ("OCC"). This means that the federal financial regulators can routinely access the internal data, policies, and procedures of financial institutions to determine whether there is fair lending risk and/or a violation.

Under ECOA, the federal financial regulators are required to refer matters to the DOJ when they have reason to believe a creditor has engaged in a pattern or practice of discrimination. The

DOJ is staffed with attorneys who specialize in fair lending enforcement, but they do not have automatic access to the data and documents or authority for civil investigative demands. Similarly, it can be challenging for HUD, state agencies, and civil rights and consumer advocates to gain access to the data and documents useful for definitively proving a fair lending case. Therefore, it is critically important that the federal financial regulators use the full scope of their authority to identify fair lending discrimination, provide timely and well-documented referrals to the DOJ, and ensure an efficient and effective process to mitigate and remedy harm to borrowers and communities of color, and other protected groups.

Despite the federal financial regulators' broad authority, recent data show a concerning decline in fair lending referrals to the DOJ. In 2010, the federal financial regulators referred 47 matters to the DOJ based on a belief that the lender had engaged in a pattern or practice of discrimination. By 2020, that number had plummeted to just 12 matters. Similarly, the number of referrals based on race or national origin discrimination decreased from 24 matters in 2010 to just four matters in 2020. The trend for race and national origin referrals is particularly disturbing because redlining, which represents the highest risk of systemic harm, is based on race or national origin discrimination. From 2010 to 2020, the DOJ engaged in only 10 public enforcement actions related to redlining.

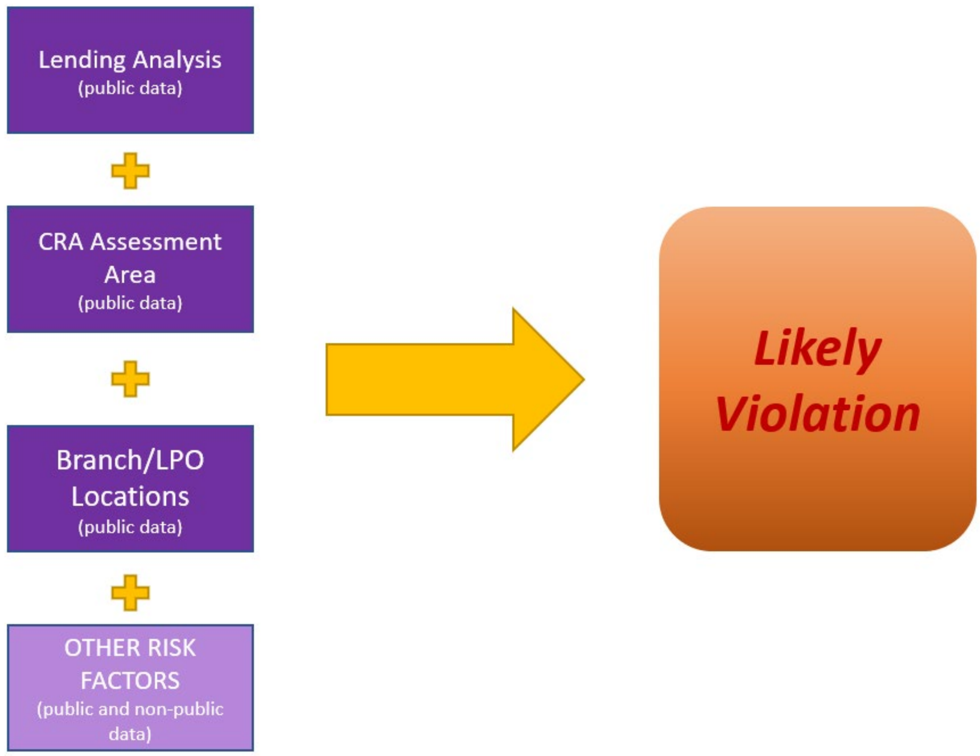


Source: National Fair Housing Alliance, 2021 Fair Lending Trends Report; DOJ, The Attorney General's 2019 Annual Report to Congress Pursuant to the Equal Credit Opportunity Act Amendments of 1976 (July 2020); CFPB, Fair Lending Report of the Bureau of Consumer Financial Protection (April 2021)

These trends raise the concern that the federal financial regulators are not using the full scope of their supervisory authority to effectively identify a potential pattern or practice of lending discrimination, which can result in a drain on the resources of the civil rights and consumer advocates, DOJ, HUD, and state agencies. That is, advocates and others may need to divert resources from other efforts in order to conduct the robust fair lending investigations that could have been conducted by federal financial regulators. In addition, recent reports raise concerns about the regulators' commitment to fair lending. The Board's Office of Inspector General recently released a report disclosing that the Board delegated high risk redlining reviews to examiners (instead of the Board's specialized Fair Lending Section) even though the Board is aware that the examiners' reviews "often required material changes or lacked support." Similarly, a news article disclosed that over the last few years, OCC staff discovered at least six banks were allegedly engaging in discriminatory lending practices, but none were penalized or even publicly reprimanded. On the other hand, the DOJ has acknowledged the importance of addressing redlining violations by announcing an ambitious new "Combatting Redlining Initiative." However, if the federal financial regulators do not use their resources and authority to identify redlining risk and/or violations and assist the DOJ and others, then communities of color may be unfairly denied credit, financial stability, and life opportunities.

Given the uneven supervision and enforcement by the federal financial regulators, it is critically important that civil rights and consumer advocates understand the public data relating to redlining risk. Lenders can also review their internal data, policies, and procedures to ensure compliance with the fair lending laws. We hope that this Redlining Toolkit will help concerned parties protect the borrowers in their communities and ensure fair and equitable access to credit.

Section II: How to Identify Specific Lenders with High Redlining Risk



Most public redlining enforcement actions are centered on three risk factors, so it is reasonable for advocates to conclude that if a lender shows high risk for each of these three risk factors, then that lender has high redlining risk overall. In that situation, the lender should promptly take remedial action to address the risk and to avoid harming consumers and communities. This section will focus mainly on the three key risk factors, which are based on publicly-available information:

1-Lending Analysis
2-CRA Assessment Area
3-Branch/LPO Locations

In addition, this section will discuss other risk factors that are based on information that is not generally available to the public, but, if available, may be additional indicators of risk. This section will conclude with guidance on how to conduct the final evaluation.

Lending Analysis

Description of High Risk

Generally, a lender shows high redlining risk in lending if there are statistically significant disparities between the percentage of the Home Mortgage Disclosure Act ("HMDA") applications or originations that the lender generates in majority minority census tracts within a certain geographic area when compared to similar peer lenders in that same area. In addition, the risk can be further confirmed if a map of the lender's applications or originations shows a "doughnut" or "horseshoe" pattern where applications or originations appear surrounding but not including the majority minority census tracts in the geographic area.

How to Find the HMDA Data and Mapping Tools

The HMDA data is the most comprehensive source of free publicly available data on the U.S. mortgage market. The HMDA Data Browser is a public database that allows users to filter, aggregate, download, and visualize HMDA datasets collected in or after 2018. The CFPB has a public presentation that walks through how to filter the data using the HMDA Data Browser. The HMDA Maps tool permits the user to browse subsets of HMDA data collected in or after 2018 and filter by popular variables. HMDA data collected in or before 2017 can be found on the Federal Financial Institutions Examination Council's (FFIEC) Home Mortgage Disclosure Act website under the heading "Public Data."

Metrics for Identifying Lending Disparities

The lending analysis can begin with the selection of a geographic area and then the identification of the lenders with statistically significant disparities in applications or originations when compared to peer lenders. Metrics and methodologies for measuring disparities can vary. One common approach is to assess the subject lender's lending patterns against peer institutions. Typically, the analysis contains the following elements:

- *Geographic Area*. The analysis should be focused on a geographic area, typically a Metropolitan Statistical Area ("MSA").
- *Relevant Time Period*. The analysis often spans three years or more and looks for disparities in each of the three years and all three years combined.
- *Majority Minority Census Tracts*. Generally, the majority minority census tracts are defined as those tracts that are more than 50% Latino, Black, Asian American and Pacific Islander, and Native American. In some instances, it may also be appropriate to analyze the results for high minority census tracts (which are often defined as greater than 80% minority) or a single race, such as majority Black.
- *Peer Lenders.* Peer lenders are typically defined as those lenders that originated between 50% to 200% of the loan application volume of the subject lender (that is, between half and double the lender's volume by number of applications).
- *Percentage.* Dividing the number of applications in majority minority census tracts by the lender's total number of applications in the geographic area yields the percentage of applications in majority minority census tracts.

- *Disparity*. The disparity can be calculated by subtracting the peer lenders' percentage from the subject lender's percentage. A negative number means that the lender lags behind its peers in generating applications in majority minority census tracts.
- *Statistical Significance*. A simple Excel tool or software can determine the level of statistical significance. The disparity should be considered statistically significant at the 5% level, which means that there is only a 5% chance that the results happened by random chance. That said, weaker results at the 10% level (that is, the 90% confidence level) can be indicators of risk, especially if this disparity appears in the first year of the analysis but the amount of the disparity and the statistical significance continue to get stronger over time.
- *Rate*. In some cases, it may be helpful to display the rate at which the peer lenders outpaced the subject lender in generating applications in majority minority census tracts. The rate can be calculated by dividing the peer lenders' percentage by the subject lender's percentage.
- *Appropriate Assessment Area.* Initially, the analysis can be run on the full geographic area, such as the MSA. However, after identifying lenders that show statistically significant disparities for the full geographic area, the next step is to determine whether the appropriate geography for each lender is actually smaller than, for example, the MSA. This step involves analyzing the lender's current assessment area (the Original Assessment Area) and determining whether it appropriately includes the majority minority census tracts or whether it should be revised to include those tracts (the Appropriate Assessment Area). Then the analysis should be run on the Appropriate Assessment Area, which is the area that appropriately includes the majority minority census tracts.

The DOJ and CFPB complaint against BancorpSouth Bank can be used as an example. (*See United States of America and Consumer Financial Protection Bureau v. BancorpSouth Bank*, Complaint filed June 29, 2016 N.D. Miss.) In this case, the bank served the Memphis TN-MS-AR MSA, but the bank's Original Assessment Area included five of the eight counties in the MSA and excluded most of the majority minority census tracts in Shelby County (where Memphis, which is majority people of color, is located). However, the Appropriate Assessment Area would have consisted of the five whole counties, including all of the majority minority census tracts in Shelby County. Thus, the lending analysis could be run on the Appropriate Assessment Area, which was smaller than the MSA (excluding three counties) but appropriately included all of the majority minority census tracts. The bank later revised its assessment area to include the five whole counties, which was approved by the bank's CRA regulator (the FDIC).

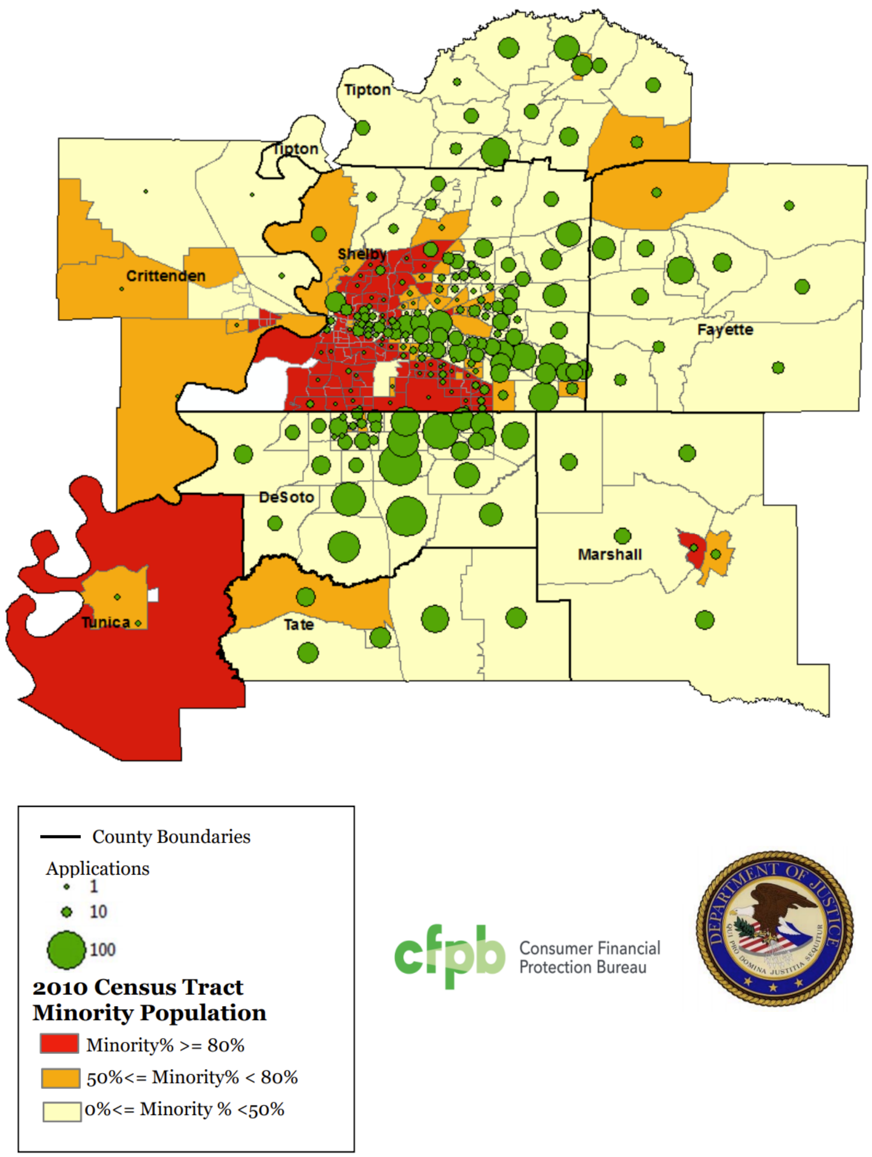
The complaint's analysis showed statistically significant disparities in applications in the Appropriate Assessment Area, which is a key indicator of risk and, in this case, of an alleged violation. The complaint showed that BancorpSouth Bank generated only 518 applications, or 9% of its applications, in majority minority census tracts in the Appropriate Assessment Area over the entire three-year review period of 2011-2013. By comparison, the peer lenders generated 28% of their applications in majority minority census tracts. This is a disparity of 19%, which was statistically significant at the 5% level. Put another way, the peer lenders were able to generate more than three times the percentage of applications in majority minority census tracts as the bank. The analysis could have been further supported by showing the results for each year separately, but the complaint relied on the results for the combined years. This section of the complaint concluded by stating: "These disparities between BancorpSouth and its peers show that there were applicants seeking mortgage loans in majority-minority and high-minority neighborhoods in the MSA. These disparities are statistically significant. These disparities cannot be explained by a legitimate non-discriminatory reason."

Lending Analysis	Lender	Peer Lenders			
All Years Combined 2011-2013 (3 years)					
# of Applications in Majority Minority Census Tracts	518	Not Available In the Complaint			
Total # of Applications	5,762	Not Available in the Complaint			
% of Applications in Majority Minority Census Tracts	9%	28%	**Disparity** -19%	**Statistically Significant (Y/N)** Yes	**Rate** 3

Mapping the Applications

The lending analysis risk can be further confirmed by using a map to show that the lender has failed to generate applications in majority minority census tracts. In the BancorpSouth Bank case, the bank failed to generate a meaningful number of applications in majority minority census tracts, resulting in a classic "horseshoe" pattern of applications around but not including the majority minority census tracts. The map of applications showed that the bank chose to serve majority White census tracts while excluding majority minority census tracts. The map clearly demonstrated that the bank generated applications in a manner that avoided the majority minority census tracts.

BancorpSouth Application Volume, 2011 – 2013, Memphis MSA



Common Arguments and Replies

The lender may pose certain arguments in defense of its applications or originations data. In some instances, the arguments may provide a reasonable explanation for the lender's results; in other instances, however, the arguments may warrant a reply and further discussion. Below are some common arguments and replies.

General Objection: The lender may raise a general objection to the lending analysis.

> *Reply*: The lending analysis has long been used by the DOJ and regulators to identify redlining risk. The lender needs to produce a legitimate, non-discriminatory reason for the

difference in outcomes. That is, the disparities suggest that the lender's peers are able to serve the majority minority census tracts, so the lender needs to explain why it is uniquely unable to serve the majority minority census tracts.

Analysis Overlays: The lender may wish to change the analysis by, for example, adding additional criteria for peer selection or limiting the types of applications.

Reply: The lender should have a legitimate non-discriminatory reason for changing the analysis. Moreover, the additional analysis may still show statistically significant disparities.

Pros and Cons of This Approach

There are certain pros and cons to this type of lending analysis. On the con side, the analysis does not convey the extent of the problem when all lenders in a geographic area are failing to serve majority minority census tracts. On the positive side, however, this analysis clearly identifies lenders who lag the market in serving majority minority areas. This analysis also provides a fairly strong legal argument that there are applicants seeking loans in the majority minority areas and that the subject lender needs to provide a legitimate, non-discriminatory reason why it is uniquely unable to generate applications in the area when its peers are already doing so.

Conclusion

In summary, if there are statistically significant disparities between the percentage of applications or originations that the subject lender generates in majority minority census tracts when compared to peer lenders, then the lender has high risk for this risk factor.

Risk Factor	Analysis	Risk Level
Lending Analysis	Statistically significant application or origination disparities	**High**
CRA Assessment Area		
Branch Locations		
	Overall Redlining Risk	

CRA Assessment Area

Description of High Risk

Generally, the lender's Community Reinvestment Act ("CRA") assessment area shows high redlining risk if it consists of a partial geography that inappropriately excludes majority minority census tracts. The "geography" is the MSA, Metropolitan Division ("MD"), county, city, town, or other political subdivision. In addition, the risk can be further confirmed if a map of the subject lender's CRA assessment area shows a "doughnut" or "horseshoe" pattern where applications or originations appear surrounding but not including the majority minority census tracts in the geographic area.

Credit Unions and Nonbank Lenders. The Community Reinvestment Act only applies to insured depository institutions; it does not apply to credit unions or non-bank lenders. In those situations, the lender's description of its "trade area" or other service area, if available, can be used for the analysis. Advocates can review the lender's website and other public materials (such as SEC filings) to determine if there is a description of the trade area.

How to Find the CRA Assessment Area Data and Mapping Tools

A description of the lender's CRA assessment area can be found in the lender's most recent CRA Performance Evaluation, which is issued by its prudential regulator: the Board, the FDIC, or the OCC. The FFIEC publishes certain census, income and Metropolitan Area data for geographies, which can be accessed through the FFIEC Online Census Data System. The FFIEC also has a Geocoding and Mapping System, which provides Census demographic information relevant for the respective CRA assessment areas. Both tools can be found on the FFIEC's CRA website.

Appropriate Assessment Area

Assuming there are no legitimate non-discriminatory reasons or business justifications for the subject lender's current assessment area (the Original Assessment Area), the Appropriate (or Revised) Assessment Area can be determined by including the full MSA, MD, or county, as appropriate, which includes all of the majority minority census tracts. Depending on the subject lender's business model, the Appropriate Assessment Area may or may not include all of the counties in the MSA or MD. However, the analysis will show which counties that contain majority minority census tracts should be included. Once the Appropriate Assessment Area is determined, it will then serve as the basis of analyzing the risks associated with the subject lender's Original Assessment Area, branch locations, and any potential lending disparities.

Metrics for Identifying a High Risk CRA Assessment Area

The CRA assessment area risk can be identified through a simple analysis of the census tracts. The analysis can show the total number of majority minority census tracts in the Appropriate Assessment Area and the number of those tracts that are excluded by the lender's Original Assessment Area. Some simple division shows the percentage of majority minority census tracts excluded by the lender's Original Assessment Area.

# of Majority Minority Census Tracts
<u>Excluded by the Lender's Original Assessment Area</u> = **% of Majority Minority Census Tracts Excluded**
# of Majority Minority Census Tracts
In the Appropriate Assessment Area

The DOJ and CFPB complaint against BancorpSouth Bank can be used as an example. (*See United States of America and Consumer Financial Protection Bureau v. BancorpSouth Bank*, Complaint filed June 29, 2016 N.D. Miss.) In that case, the lender's Original Assessment Area excluded 123 of the 126 majority minority census tracts that were in the Appropriate Assessment Area (that included all of Shelby County), which meant that the lender's assessment area excluded 96% of the majority minority census tracts. While there is no exact percentage threshold to show risk, in this case, the census tract analysis clearly showed high redlining risk for the CRA assessment area risk factor. The complaint stated: "The Bank's exclusion of nearly all majority minority neighborhoods from its CRA assessment area reduced credit availability and investment in those neighborhoods and discouraged prospective applicants and lending in those neighborhoods."

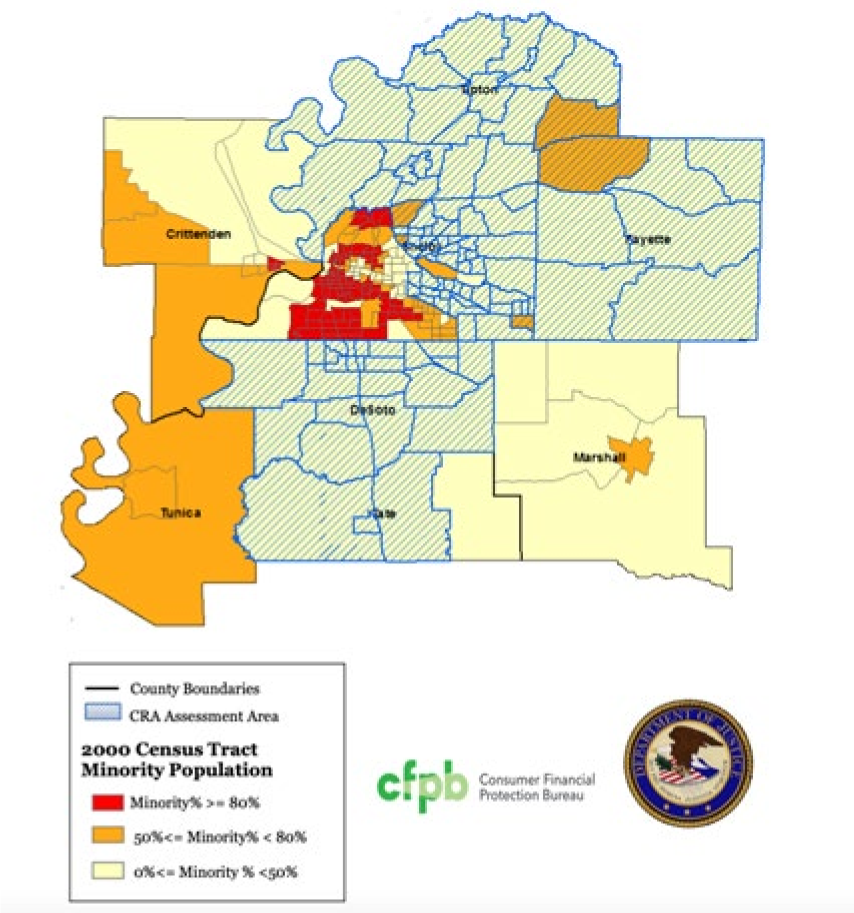
CRA Assessment Area Analysis	
#Majority Minority Census Tracts Excluded by the Lender's Original Assessment Area	123
# Majority Minority Census Tracts in the Appropriate Assessment Area	128
% Majority Minority Census Tracts Excluded by the Lender's Original Assessment Area	96%

Mapping the Assessment Area

The CRA assessment area risk can be further confirmed by using a map to visually show that the lender has failed to include the majority minority tracts. In the BancorpSouth Bank case, the bank served the Memphis TN-MS-AR MSA, which consisted of the following eight counties: Fayette (TN), Shelby (TN), Tipton (TN), Crittenden (AR), DeSoto (MS), Marshall (MS), Tate (MS), and Tunica (MS). As depicted in the map below, the bank's Original Assessment Area consisted of a partial MSA and a partial county. The bank only included the whole counties of Fayette, Tipton, and DeSoto, and parts of the counties of Tate and Shelby. Most importantly, the map showed that that bank's Original Assessment Area excluded most of the majority minority census tracts in Shelby County, which contained most of the majority minority census tracts for the MSA. The lender's delineation resulted in a classic "horseshoe" pattern where the assessment area surrounded but did not include the majority minority census tracts. The map clearly demonstrated the risk of taking only a partial county that excluded most of the majority minority tracts.

Exhibit A:

BancorpSouth Pre-January 2013 Assessment Area, Memphis MSA



Additional Risk Considerations

Policy regarding "Undesirable" Areas. The lender's redlining risk may be further elevated if the lender has a policy that states that the bank's "primary trade area" is its CRA assessment area and that loans made outside this trade area are "undesirable." That is, the redlining risk posed by a CRA assessment area that excludes communities of color can be further compounded by an official policy that discourages lending outside of that area. If the lender's CRA assessment area shows high risk, advocates should determine whether the lending policy is available and can be reviewed for this additional risk. (*See, e.g., United States of America and Community State Bank*, Complaint filed Jan. 15, 2013 E.D. Mich.)

Changes to the Risk Profile. The lender's risk may be further elevated in situations where the lender is engaged in a merger or acquisition, where the lender is opening or closing branches or loan production offices, or there are other changes that may impact the CRA assessment area.

If the lender is engaged in these changes to its risk profile, advocates should review whether the CRA assessment area is appropriate.

Regulator Comments in the CRA Performance Evaluation. The lender's risk may be further elevated if the regulator made comments in the CRA Performance Evaluation regarding weaknesses in the lender's CRA assessment area and the lender has not taken action to reduce the risk by expanding the assessment area to include more majority minority tracts. In this case, advocates should add the regulator's notes to their final determination of the lender's redlining risk.

Overlap with HOLC Maps. The subject lender's risk may be further elevated if its Original Assessment Area is similar to historically discriminatory maps. In the 1930's, the New Deal's federal Home Owners Loan Corporation ("HOLC") developed one of the most harmful policy decisions in the housing market by creating a mapping system that included race as a fundamental factor in determining the desirability of neighborhoods. To determine the risk that the subject lender is replicating historically discriminatory patterns, advocates should compare the subject lender's Original Assessment Area to mapping tools that depict the HOLC's original discriminatory maps.

Common Arguments and Replies

The lender may pose certain arguments in defense of the current assessment area. In some instances, the arguments may provide a reasonable explanation for the current delineation; in other instances, however, the arguments may warrant a reply and further discussion. Below are some common arguments and replies.

Circular Reasoning Based on the Location of the Lender's Branches. The lender may argue that its CRA assessment area is appropriate because it includes all the census tracts in each county in which the lender has a branch. Similarly, the lender may argue that it only included census tracts within a certain radius of its branches.

> *Reply #1.* This appears to be circular reasoning. The lender failed to serve communities of color by not opening or acquiring any new branches in majority-minority census tracts. The lender cannot then argue that it cannot serve communities of color because it has not historically served communities of color.
>
> *Reply #2.* The lender's argument regarding branch radius can be tested by using software to draw the asserted radius (for example, five miles) around the branches as well as any loan production offices. From there, an analysis can be conducted to determine whether the lender made any loans outside of that radius, particularly in non-majority minority census tracts.

Limitations Based on the Lender's Size. The CRA's implementing regulations allows a lender to adjust its CRA assessment area if it would be "extremely large" and may take into account the "bank's size." (Board: 12 CFR § 228.41(d), (e); FDIC: 12 CFR § 435.41(d), (e); OCC: 12 CFR § 25.41(d), (e)) The lender may argue that it cannot include majority minority census tracts in its CRA assessment area because it would make the CRA assessment area too large for a lender of its size.

Reply. The lender still would need to show some analysis of why it could serve an assessment area of a certain size with non-majority minority census tracts, while failing to serve the majority minority census tracts. Moreover, the analysis of lending disparities may show that peer lenders with a similar volume of applications (50% to 200% of the lender's application volume) were able to serve majority minority census tracts.

Limitations Based on Significant Geographic Barriers. The CRA's implementing regulation allows a lender to adjust its CRA assessment area based on "significant geographic barriers." (Board: 12 CFR § 228.41(d); FDIC: 12 CFR § 435.41(d); OCC: 12 CFR §25.41(d)) The lender may argue that it cannot include majority minority census tracts in its CRA assessment area because the lender cannot overcome certain geographic barriers, such as interstates or bodies of water.

Reply. In the present time, such barriers have posed fewer challenges as lenders now have many ways to reach borrowers. Moreover, this assertion can be tested by analyzing (a) whether the lender extends credit beyond similar barriers in non-majority minority census tracts, and (b) whether peer lenders are able to make loans in the excluded majority minority census tracts despite the supposed barriers.

Authority to Enforce the Community Reinvestment Act. The lender may argue that the consumer advocate does not have the authority to enforce the CRA.

Reply. The review of the CRA assessment area is not meant to signal enforcement of the CRA, but rather is evidence of the lender failing to serve majority minority census tracts without a legitimate non-discriminatory reason or business justification. Moreover, many lenders use their CRA assessment area as their trade area; loans made outside the CRA assessment area may be viewed as "undesirable," further discouraging providing credit to those communities.

Conclusion

In summary, if the lender's current CRA assessment area consists of partial geographies that exclude majority minority census tracts, then the lender has high risk for this risk factor.

Risk Factor	Analysis	Risk Level
Lending Analysis	Statistically significant application or origination disparities	**High**
CRA Assessment Area	Partial geographies that exclude majority minority census tracts	**High**
Branch Locations		
	Overall Redlining Risk	

Branch/LPO Locations

Description of High Risk

Generally, the lender's branch locations show high redlining risk if the data show that the branches are concentrated in non-majority minority census tracts, thereby failing to serve majority minority census tracts. This risk also applies to loan production offices ("LPOs"), which are lending locations that do not take deposits. Sometimes, lenders first open an LPO before undertaking the expense of a full-service branch. Thus, the LPO locations can be additional indicators of risk if the lender is not placing locations in majority minority tracts and is failing to plan to serve communities of color. In addition, the risk can be further confirmed if a map of the subject lender's branches and LPOs shows a "doughnut" or "horseshoe" pattern where locations appear surrounding but not including the majority minority census tracts in the geographic area.

Credit Unions and Nonbank Lenders. Credit unions, nonbank lenders (including internet and fintech lenders), and some depository institutions may have a business model that does not rely on physical branch locations to generate mortgage applications. In those situations, advocates can review the lender's website and other public materials (such as SEC filings) to determine the lender's business model for generating applications and analyze whether the business model raises the risk of avoiding service to communities of color.

How to Find the Branch/LPO Data and Mapping Tools

Nearly every lender includes branch and office locations on their publicly available website. In addition, the FDIC maintains detailed information on financial institutions, including a list of locations. These locations can be matched against maps or tables representing the race and national origin demographics of census tracts in an area. For example, the FFIEC maintains a geocoding system that can match the address to the demographics of the census tract. Mapping these locations visually can also illuminate patterns that may not be evident from simply comparing tables—for example, that branches in majority minority census tracts are located only in areas immediately adjacent to non-majority minority census tracts.

Metrics for Identifying High Risk Branch and LPO Locations

The branch/LPO location risk can be determined by using census tract information to identify the extent to which the lender has branches/LPOs in majority minority census tracts. The analysis can show the total number of branch/LPO locations and the number of those locations that are in majority minority census tracts. Some simple division shows the percentage of locations in majority minority census tracts.

$$\frac{\text{\# of Branch/LPO Locations In Majority Minority Census Tracts}}{\text{Total \# of Branch/LPO Locations}} = \textbf{\% of Locations in Majority Minority Census Tracts}$$

The DOJ and CFPB complaint against BancorpSouth Bank can be used as an example. (*See United States of America and Consumer Financial Protection Bureau v. BancorpSouth Bank*, Complaint filed June 29, 2016 N.D. Miss.) In that case, the bank failed to locate any branches in majority minority census tracts. While there is no exact percentage threshold to show risk, in this case, the census tract analysis clearly showed high redlining risk for branch/LPO location risk factor. The complaint stated: “BancorpSouth concentrated its branches to serve the credit needs in areas outside of, and avoid lending in, minority neighborhoods, thereby discouraging prospective applicants in those minority neighborhoods.”

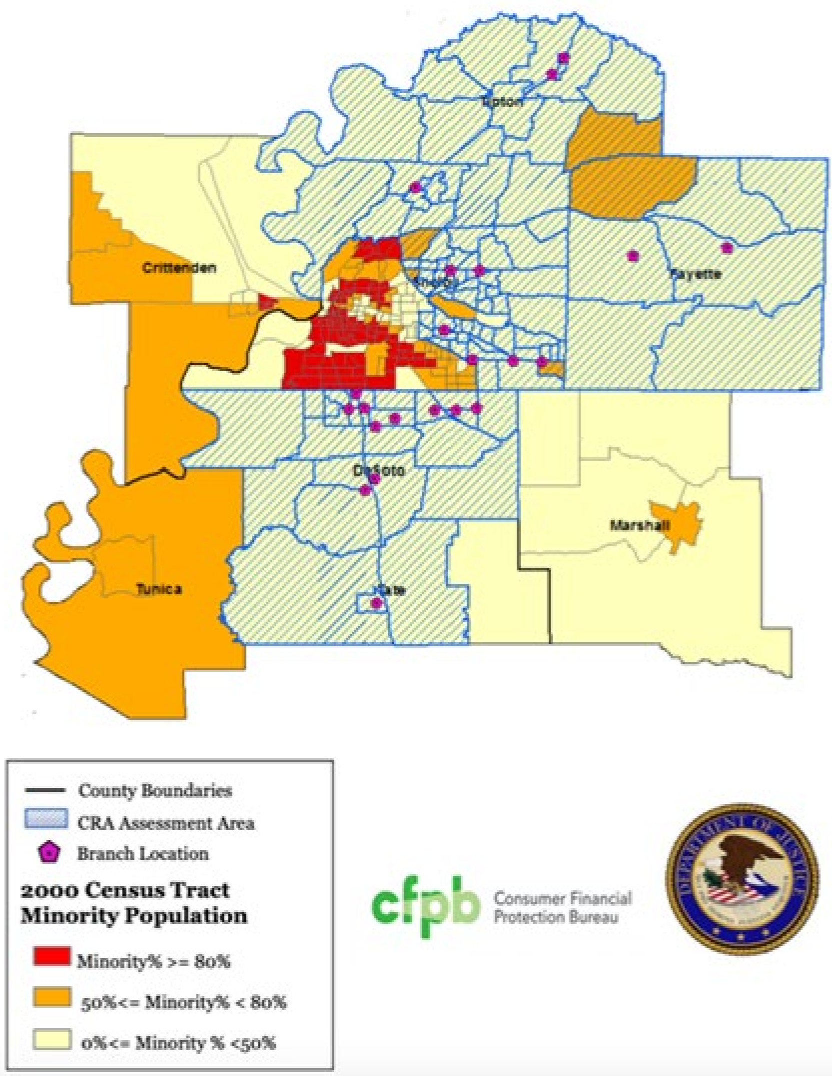
Branch/LPO Location Analysis	Branches	Loan Production Offices
# Locations in Majority Minority Census Tracts	0	N/A
Total # Locations	34	N/A
% Locations in Majority Minority Census Tracts	0%	N/A

Mapping the Branch/LPO Locations

The branch/LPO location risk can be further confirmed by using a map to show that the lender has failed to locate branches and LPOs in majority minority tracts. In the BancorpSouth Bank case, the banks’ branch locations avoided majority minority census tracts in a classic “horseshoe” pattern, which mirrored the bank’s Original Assessment Area. For both the branch locations and the CRA assessment area, the bank chose to serve majority White census tracts while excluding majority minority census tracts. The map clearly demonstrated the risk of locating the branches in a manner that avoided the majority minority census tracts.

Exhibit B:

BancorpSouth Pre-January 2013 Assessment Area and Branches, Memphis MSA



Additional Risk Considerations

Branch Acquisition History. The lender's redlining risk may be elevated where the lender has a history of acquiring branches without regard to redlining risk. For example, the bank may make acquisitions based on opportunities presented without analyzing the redlining risk. In some situations, the lender may end up with a series of branches that exclude majority minority tracts and form a "donut hole" or "horseshoe" around the majority minority census tracts. If possible, advocates should determine whether the lender has evaluated branch acquisition opportunities in the context of redlining risk and the pattern shown over the history of the bank's acquisitions.

Applications within a Certain Radius of the Branches/LPOs: The lender's risk can be further elevated if the majority of the applications are within a certain radius of the branches or LPOs, and those locations are not in majority minority census tracts. This suggests that the lender's business model is highly dependent on physical locations to generate applications, and the lender has not taken into account the redlining risk of failing to locate branches or LPOs in majority minority census tracts. To analyze this risk, advocates can create maps showing the census tracts, the radius around the branches/LPOs (e.g., five miles out), and the location of the applications.

Applications outside a Certain Radius of the Branches/LPOs. Similarly, the lender's risk can be further elevated if the majority of the applications that are received from *outside* of a certain radius of the branches or LPOs are *not* in majority minority census tracts. This suggests that even when the lender deviated from its usual business model and generated applications beyond a certain radius, the lender tended to generate those applications in non-majority minority census tracts. To analyze this risk, advocates can create maps showing the census tracts, the radius around the branches/LPOs (e.g., five miles out), and the location of the applications.

Common Arguments and Replies

The lender may pose certain arguments in defense of the current branch/LPO locations. In some instances, the arguments may provide a reasonable explanation for the locations; in other instances, however, the arguments may warrant a reply and further discussion. Below are some common arguments and replies.

Branch Acquisitions: The lender may argue that it acquired branches based on the opportunities presented and that no opportunities were presented in majority minority census tracts.

> *Reply #1*: Branch locations have long been viewed as a key redlining risk factor. The lender should have reviewed its branch acquisitions for redlining risk and taken steps to mitigate the risk.
>
> *Reply #2*: The lender should be able to identify the reasons and metrics used to select the branches and to demonstrate that these reasons and metrics were applied equally to minority and non-minority areas.

Consumer Demand: The lender may argue that it saw no need to open a branch in a majority minority census tract as it did not perceive a consumer demand for home mortgage credit in that area.

> *Reply*: The lender should have some analysis to support this assertion, particularly if there are lending disparities, which indicate that the lender's peers have experienced consumer demand in the majority minority census tracts.

Conclusion

In summary, if the lender has limited branch or LPO locations in majority minority census tracts, then the lender has high risk for this risk factor.

Moreover, if the lender shows high risk for all three of the key risk factors (lending analysis, CRA assessment area, branch/LPO locations), then it can be concluded that the lender has high overall redlining risk and should take remedial action to address the issue.

Risk Factor	Analysis	Risk Level
Lending Analysis	Statistically significant application or origination disparities	**High**
CRA Assessment Area	Partial geographies that exclude majority minority census tracts	**High**
Branch Locations	Limited branch locations in majority minority census tracts	**High**
	Overall Redlining Risk	***High***

Other Risk Factors

Although most public enforcement actions are centered on the three risk factors described above, there may be additional indicators of redlining risk. For these factors, the lender's risk is described as "elevated," which means that, depending on the circumstances, the lender's risk may or may not be "high" but it is at least "elevated." Many of the factors described below are based on non-public information. However, if the information is available, advocates may use it to show additional indicators of risk.

Marketing

Generally, the lender's marketing risk is elevated if the lender's marketing and outreach tend to exclude majority minority census tracts. In addition, the risk is high if the content of the marketing materials tends to show only White human models. In fact, the Official Staff Commentary to Regulation B states that illegal discouragement includes: "The use of words, symbols, models or other forms of communication in advertising that express, imply, or suggest a discriminatory preference or a policy of exclusion in violation of the [Equal Credit Opportunity] Act." 12 C.F.R. Part 1002, Supp. I, ¶ 4(b)-1(ii).

Common examples of marketing activities with elevated risk include the following:

- The lender's marketing is limited to the lender's CRA assessment area and that assessment area inappropriately excludes majority minority census tracts.
- The lender's marketing is focused on current customers even though the lender has very few customers in majority minority census tracts.
- The lender's marketing tends to be deployed to areas around branches even though the lender does not have any branches in majority minority census tracts.
- The lender has used targeted marketing (direct mail, social media affinity groups) that tends to exclude applicants in majority minority census tracts.
- The lender does not conduct affirmative marketing, even though the lending record shows that it is not generating applications or originations in majority minority census tracts.
- The lender does not use diverse human models in its marketing materials.

Business Model: Generally, the marketing analysis starts with an understanding of the lender's business model and how it generates home mortgage applications. From there, the various marketing methods can be analyzed for fair lending risk to see whether they tend to exclude majority minority census tracts (e.g., by zip code, by current customer lists, by branch radius, by social media affinity groups).

Marketing Plan: Marketing has long been considered a key redlining risk. It may pose a risk if the lender does not have a marketing plan or cannot explain its reasoning for its marketing activities. Conducting marketing activities without considering the redlining risk may result in excluding certain communities on a prohibited basis.

Public Information: Generally, the lender will not have much public information available related to its marketing strategy. Therefore, it may be difficult for an advocate to generate a map or metrics analyzing the lender's marketing activities. However, the lender's publicly-available marketing materials (website, mailers, social media) can be analyzed for the presence of diverse human models and other indicators that the lender is attempting to serve borrowers and communities of color. In some instances, public complaints on social media may indicate that the lender is excluding certain communities on a prohibited basis.

Staff Diversity

Generally, the lender's risk is elevated if the lender does not have staff or leadership of color, or has not hired any bilingual staff if speakers of other languages would be expected in the lender's Appropriate Assessment Area. Advocates can often find this information by reviewing the lender's website, with a particular focus on lending staff and the management or leadership team.

Complaints/Social Media

Generally, the lender's risk is elevated if there are complaints alleging redlining and/or discrimination. The definition of "complaints" can be fairly broad. Following is a description of types of complaints and where advocates may find this information:

Complaint Type	Public Availability
Press articles raising concerns about the lender's practices	Press articles are publicly available
Concerns raised in the CRA Performance Evaluation	The CRA Performance Evaluation is publicly available
Complaints found on Internet websites or social media	Social media may include, for example, the lender's public Facebook page or Twitter feed
Concerns raised by community advocates	The advocate can ask fellow community advocates for feedback on the lender
Lawsuits by any party (private or government)	The lawsuit may be public
Complaints to the lender, regulator, or federal or state agencies, such as the state Attorney General	The complaining party may have made the complaint public The CFPB's consumer complaint database is public
Inquiries or investigations by federal or state agencies	The inquiry or investigation may be public or may be found in SEC filings

Overt Statements

Generally, the lender's risk is elevated if the lender's policies, procedures, or staff express a discriminatory preference. The DOJ and CFPB complaint against BancorpSouth Bank can be used as an example. (*See United States of America and Consumer Financial Protection Bureau v. BancorpSouth Bank*, Complaint filed June 29, 2016 N.D. Miss.) In that case, the lender had a policy that explicitly instructed loan officers to turn down minority applicants more quickly than White applicants and not to provide credit assistance to "borderline" applicants that other applicants may have received. In addition, in discussing the explicitly race-based policy, a loan officer was recorded as saying that "they need to get their credit up" and "stop paying their...bills late" and then laughed. These show both an overt policy and an overt statement demonstrating a discriminatory preference for White applicants. Advocates should be aware that any policies, procedures, or statements that indicate a discriminatory preference may also be used to indicate redlining risk.

Minimum Loan Amounts

Generally, the lender's risk is elevated if it sets a minimum loan amount for home mortgages. Borrowers of color tend to apply for smaller loan amounts, so this policy could be an unnecessary barrier to homeownership. Advocates should review the lender's website to see if there are any minimum loan amounts. In addition, advocates should compare the subject lender's application volume in majority minority census tracts to the volume of peers who do not have a minimum loan amount policy.

Compliance Management System

Generally, the lender's risk is elevated if its compliance management system (often referred to as "CMS") is weak and not well-designed to prevent fair lending violations. The Uniform Interagency Consumer Compliance Rating System is a public document that shows how financial institution examiners can assess risk, including fair lending risk, and ultimately assign a consumer compliance rating (which is not public). Although most of the relevant CMS information is not public, during the course of conversations with the subject lender, the advocate may be able to determine whether the redlining risk is elevated. Among other things, the advocate can evaluate:

- Board and Management Oversight:
  - Do the board and senior management show a clear commitment to managing redlining risk?
  - Do the board and senior management consider redlining risk as part of their change management process (e.g., when a new branch is acquired)?
  - Do the board and senior management identify, comprehend, and identify redlining risk as it arises?
  - Have the board and senior management self-identified any redlining risks and taken appropriate corrective action?
- Compliance Program:
  - Are the lender's policies and procedures appropriate to manage redlining risk?
  - Is the redlining risk training current and tailored to staff responsibilities?

- Are the monitoring and audit functions sufficient to encompass redlining risk throughout the institution?
- Is the consumer complaint resolution process effective and responsive with respect to redlining risks?

Fair Lending Testing

Generally, the lender's risk is elevated if fair lending testing shows that consumers of color or consumers from majority minority census tracts are treated less favorably than White borrowers or borrowers from White census tracts. Fair lending testing may also reveal evidence of practices or policies, such as minimum loan amount policies, that further elevate redlining risk. Advocates may not need to conduct fair lending testing to show high redlining risk if the CRA assessment area, branching, and lending disparities all show high redlining risk. That said, fair lending testing may be helpful in certain situations.

Final Analysis and Conclusion

After gathering all the information related to the subject lender's redlining risk factors, the final analysis can be performed and documented. Most DOJ complaints, for example, tends to use the following order:

- CRA assessment area,
- Branch/LPO locations,
- Lending analysis, and
- Other risk factors.

This format first establishes the Appropriate Assessment Area and the geographic boundaries for the analysis and then reviews the other risk factors using that geography.

Generally, the strongest argument for high redlining risk is present when the subject lender shows high risk for all three of the key risk factors: the CRA assessment area, the branch/LPO locations, and the lending analysis. That said, there may be situations when the totality of the risk factors shows high redlining risk, even if one of the three key risk factors is not high risk. For example, the subject lender may have delineated a CRA assessment area that appropriately includes all of the majority minority census tracts, but the lender has still failed to locate any branches/LPOs in those tracts and the lending analysis shows statistically significant disparities. Under those circumstances, it may still be appropriate to take action. Advocates should weigh the totality of the information to draw a conclusion about whether the redlining risk is sufficiently high to warrant further action.

Below is a checklist of the redlining risk factors to facilitate the analysis.

Checklist of Redlining Risk Factors - Final Analysis and Conclusion

Risk Factor	High Risk? Yes, No, Need More Information	Notes and Conclusion
CRA Assessment Area		
Branch/LPO Locations		
Lending Disparities		
Marketing		
Staff Diversity		
Complaints/Social Media		
Overt Statements		
Minimum Loan Amounts		
Compliance Management System		
Fair Lending Testing		
Final Conclusion		