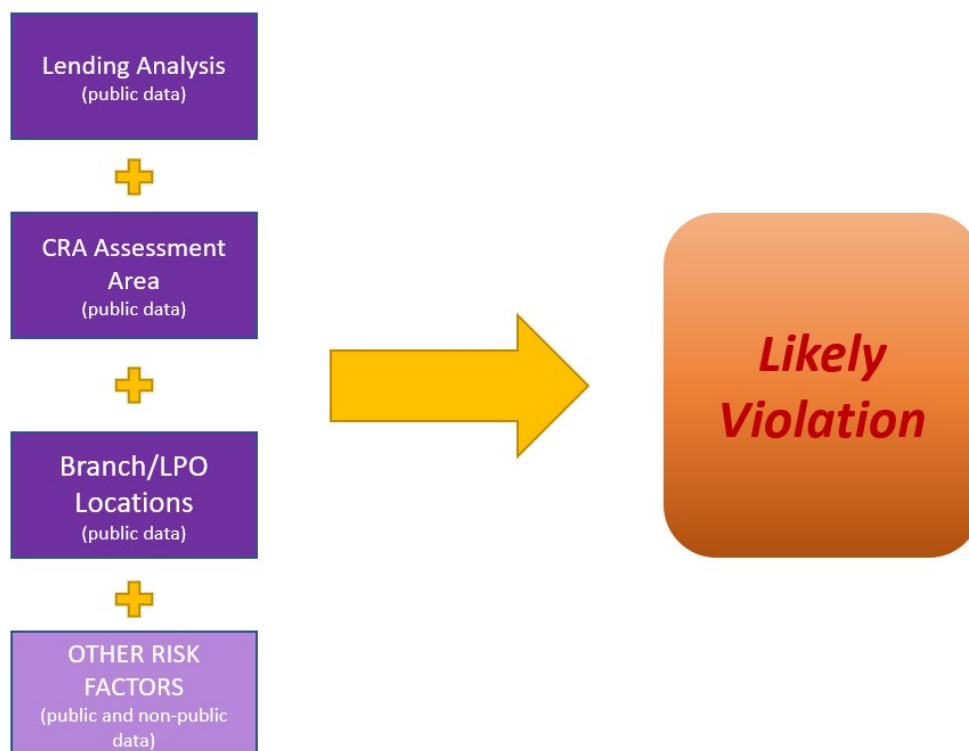


Section II: How to Identify Specific Lenders with High Redlining Risk



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).

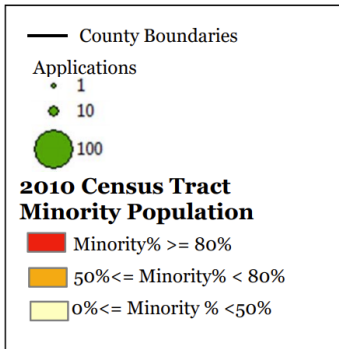
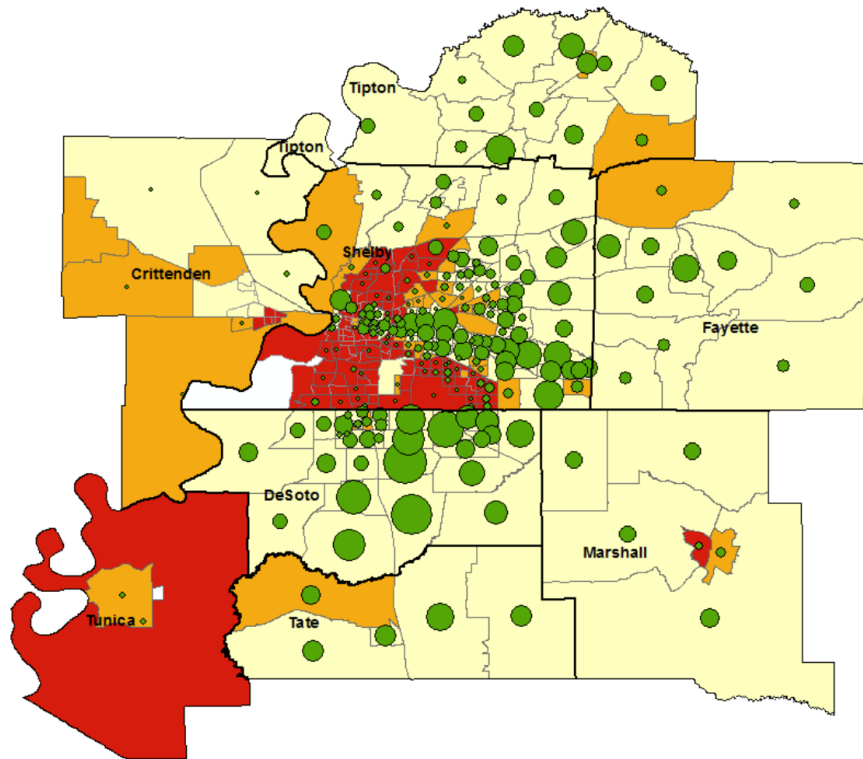
The complaint's analysis showed statistically significant disparities in applications in the Appropriate Assessment Area, which is a key indicator of risk and, in this case, of an alleged violation. The complaint showed that BancorpSouth Bank generated only 518 applications, or 9% of its applications, 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.



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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		
	<u>Overall Redlining Risk</u>	