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.