

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.

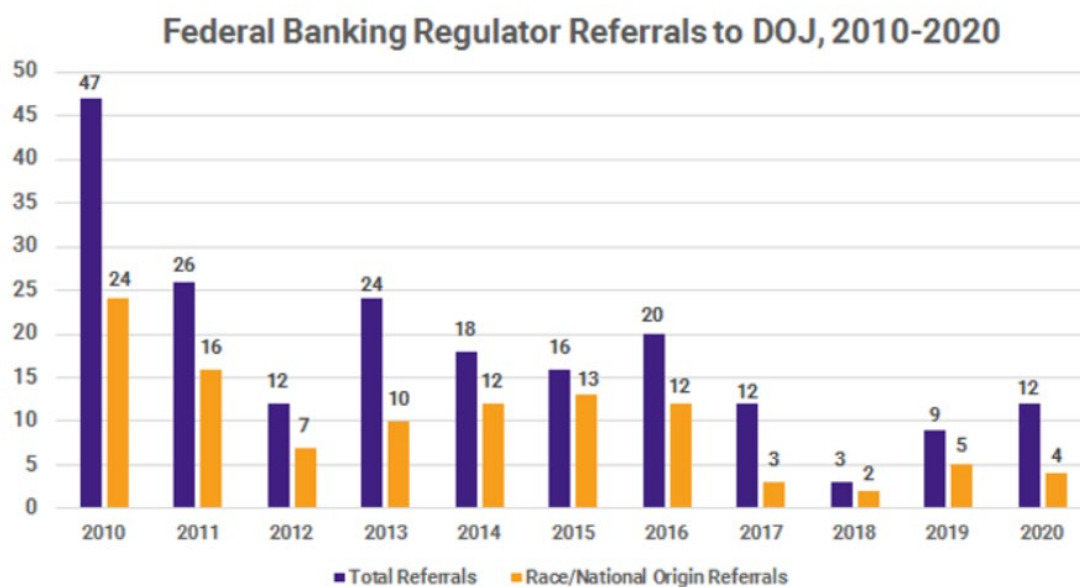
Regulatory Framework: Bank Supervision and Enforcement Has Been on The Decline

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.