



THE BUREAU'S PURSUIT OF FAIR LENDING

JONATHAN FOXX *

By now it is a known fact that one of the most important features of an examination conducted by the Consumer Financial Protection Bureau (“CFPB” or “Bureau”) is a rigorous review of fair lending compliance. So, given its importance, it behooves us to learn about what the CFPB has found out about fair lending and what actions are needed to ensure its compliance. In this article, I provide an analysis of the CFPB’s most recent findings in the mortgage space as well as practical actions to be taken that help to build a vibrant fair lending initiative, gleaned from both the Bureau’s own issuances and actions, as well as my firm’s experience in assisting institutions with their CFPB fair lending examinations.

On April 30, 2014, the Bureau issued an Annual Report, entitled “Fair lending Report of the Consumer Financial Protection Bureau” (“Report”).¹ Richard Cordray, Director of the CFPB, stated in the Report’s preamble:

“Far too many consumers still must navigate a financial marketplace laden with deceptive

* Jonathan Foxx is the President & Managing Director of Lenders Compliance Group, Inc.

© 2014 Lenders Compliance Group, Inc. All Rights Reserved. © 2014 NMP Media Corp. All Rights Reserved. This article is copyrighted material and provided to you as a courtesy for your personal use only. You may upload this article to a public server, online service, network, or bulletin board without prior written permission from the article’s author. You may use this article in print or online media as long as you properly acknowledge the author and source. Reproduction or storage of this article is subject to the U.S. Copyright Act of 1976, Title 17 U.S.C.

LENDERS COMPLIANCE GROUP of companies are the first mortgage risk management firms in the United States that provide professional guidance and support to financial institutions in all areas of residential mortgage compliance, including the following: Mortgage Acts & Practices • Legal and Regulatory Compliance • Forensic Mortgage Audits • HUD Exam Readiness • Licensing Compliance • HMDA/CRA • Information Technology & Security • Portfolio Risk Management • Quality Control Audits • Prefunding Audits • Retail, Wholesale, and Correspondent Platforms • Broker and TPO Compliance • Investor and Servicer Compliance • Loss Mitigation Strategies • Marketing Compliance • Due Diligence • Credit Risk Management • Loan Analytics Audits • Compliance Audits • Banking Exam Readiness • GSE Applications • Ginnie Mae Applications • Training & Education • CFPB Exam Readiness • Anti-Money Laundering Program Compliance • TPO Approvals • Vendor Compliance. Information contained herein is not intended to be and is not a source of legal advice.

Lenders Compliance Group, Inc. | 167 West Hudson Street – Suite 200 | Long Beach | NY | 11561

[Lenders Compliance Group](#) | [Brokers Compliance Group](#) | [Servicers Compliance Group](#)

Phone: (516) 442-3456. Website: www.LendersComplianceGroup.com

marketing, debt traps, dead ends, and discrimination. At the Consumer Bureau, we are fierce advocates for a consumer financial marketplace that allows all Americans to pursue a path to greater opportunity. To that end, we are working to remove the unnecessary obstacles too many Americans face in the consumer financial marketplace. This includes ferreting out discrimination in credit markets, including the markets for home mortgages and auto lending.”²

The Report generally covers the period from July 21, 2012 through December 31, 2013. In addition, there is Interagency Reporting on ECOA and HMDA contained therein, which conveys information on the Bureau’s and other administrative agencies’ functions under ECOA and HMDA, as required by those statutes, for the period of January 1, 2012 to December 31, 2013.

Patrice Alexander Ficklin, the Bureau’s Director of Fair Lending and Equal Opportunity, offered this overview of the Report:

“In this report we describe our steady focus on ensuring that consumers have fair, equitable, and nondiscriminatory access to credit by using all of the tools at our disposal – including research, supervision, enforcement, consumer education and outreach, rulemaking, and interagency engagement.”³

The Bureau issued the Report to Congress “in fulfillment of its statutory obligation and continued commitment to accountability and transparency.”⁴ In this regard, the Bureau is relying on its claimed efforts to fulfill its fair lending monitoring mandate, and provides additional reporting required by the Equal Credit Opportunity Act (ECOA) and the Home Mortgage Disclosure Act (HMDA).⁵

Dodd-Frank established the Office of Fair Lending and Equal Opportunity (the “Office of Fair Lending”) within the CFPB, and charged it with “providing oversight and enforcement of Federal laws intended to ensure the fair, equitable, and nondiscriminatory access to credit for both individuals and communities that are enforced by the Bureau,” including ECOA and HMDA.⁶ The Office of Fair Lending is required to coordinate “fair lending efforts of the Bureau with other

* Jonathan Foxx is the President & Managing Director of Lenders Compliance Group, Inc.

© 2014 Lenders Compliance Group, Inc. All Rights Reserved. © 2014 NMP Media Corp. All Rights Reserved. This article is copyrighted material and provided to you as a courtesy for your personal use only. You may upload this article to a public server, online service, network, or bulletin board without prior written permission from the article’s author. You may use this article in print or online media as long as you properly acknowledge the author and source. Reproduction or storage of this article is subject to the U.S. Copyright Act of 1976, Title 17 U.S.C.

LENDERS COMPLIANCE GROUP of companies are the first mortgage risk management firms in the United States that provide professional guidance and support to financial institutions in all areas of residential mortgage compliance, including the following: Mortgage Acts & Practices • Legal and Regulatory Compliance • Forensic Mortgage Audits • HUD Exam Readiness • Licensing Compliance • HMDA/CRA • Information Technology & Security • Portfolio Risk Management • Quality Control Audits • Prefunding Audits • Retail, Wholesale, and Correspondent Platforms • Broker and TPO Compliance • Investor and Servicer Compliance • Loss Mitigation Strategies • Marketing Compliance • Due Diligence • Credit Risk Management • Loan Analytics Audits • Compliance Audits • Banking Exam Readiness • GSE Applications • Ginnie Mae Applications • Training & Education • CFPB Exam Readiness • Anti-Money Laundering Program Compliance • TPO Approvals • Vendor Compliance. Information contained herein is not intended to be and is not a source of legal advice.

Federal agencies and State regulators, as appropriate, to promote consistent, efficient, and effective enforcement of federal fair lending laws,” and works “with private industry, fair lending, civil rights, consumer and community advocates on the promotion of fair lending compliance and education.”⁷

Since the Bureau’s last report to Congress in December 2012, the Bureau has built fair lending tools and materials and engaged in public dialogue in order to educate, inform, and learn from consumers, advocates, and industry. It introduced a Home Mortgage Disclosure Act Database, which allows the public to study trends in the mortgage market across the nation and in their own communities. Additionally, the Bureau has published a bulletin on lending discrimination to help consumers and industry stakeholders recognize fair lending and access to credit risks in the home mortgage and auto lending markets.⁸

REPORT’S CONCLUSIONS

We can derive certain salient observations about the Report’s findings.

In the first place, the Bureau has noted increasing efficiencies in fair lending activity. Thus, they have “created, refined, and implemented a risk-based fair lending prioritization process” to ensure that their supervisory procedures focus on the “areas presenting the greatest fair lending risk to consumers.” The approach, dubbed “risk-based prioritization” by the Bureau, uses the collection of both quantitative and qualitative data to assess fair lending risk to consumers as well as assessments of risk in order to prioritize enforcement actions.⁹

Importantly, with respect to providing guidance on its examinations, the Bureau publicly released information about the three methods its examiners use in fair lending supervisory reviews: (1) ECOA Baseline Reviews, (2) ECOA Targeted Reviews, and (3) HMDA Data Integrity Reviews. In the period subject to the Report, the CFPB has completed dozens of examinations on ECOA and HMDA compliance.¹⁰ Through these examinations the Bureau detected some violations of ECOA and HMDA. However, it also found that many lenders have instituted and maintained strong fair lending Compliance Management Systems (“CMS”) and had no violations of ECOA or HMDA. With

* Jonathan Foxx is the President & Managing Director of Lenders Compliance Group, Inc.

© 2014 Lenders Compliance Group, Inc. All Rights Reserved. © 2014 NMP Media Corp. All Rights Reserved. This article is copyrighted material and provided to you as a courtesy for your personal use only. You may upload this article to a public server, online service, network, or bulletin board without prior written permission from the article’s author. You may use this article in print or online media as long as you properly acknowledge the author and source. Reproduction or storage of this article is subject to the U.S. Copyright Act of 1976, Title 17 U.S.C.

LENDERS COMPLIANCE GROUP of companies are the first mortgage risk management firms in the United States that provide professional guidance and support to financial institutions in all areas of residential mortgage compliance, including the following: Mortgage Acts & Practices • Legal and Regulatory Compliance • Forensic Mortgage Audits • HUD Exam Readiness • Licensing Compliance • HMDA/CRA • Information Technology & Security • Portfolio Risk Management • Quality Control Audits • Prefunding Audits • Retail, Wholesale, and Correspondent Platforms • Broker and TPO Compliance • Investor and Servicer Compliance • Loss Mitigation Strategies • Marketing Compliance • Due Diligence • Credit Risk Management • Loan Analytics Audits • Compliance Audits • Banking Exam Readiness • GSE Applications • Ginnie Mae Applications • Training & Education • CFPB Exam Readiness • Anti-Money Laundering Program Compliance • TPO Approvals • Vendor Compliance. Information contained herein is not intended to be and is not a source of legal advice.

Lenders Compliance Group, Inc. | 167 West Hudson Street – Suite 200 | Long Beach | NY | 11561

[Lenders Compliance Group](#) | [Brokers Compliance Group](#) | [Servicers Compliance Group](#)

Phone: (516) 442-3456. Website: www.LendersComplianceGroup.com

respect to self-assessments, the Bureau has issued guidance describing how to conduct them, so as to be in compliance with ECOA and HMDA. Guidance has been provided through the Bureau's Supervisory Highlights and Bulletins discussing fair lending topics.

The Bureau has used the collection of data to analyze its supervision and enforcement priorities and determine two key priorities: mortgage lending and auto finance. With respect to mortgage lending, the CFPB conducted fair lending supervisory reviews of a number of mortgage lenders, finding that many lenders have strong fair lending compliance management systems and no violations of ECOA or HMDA. However, the Bureau did allege some instances of fair lending non-compliance. Consequently, it took enforcement action against two mortgage lenders for violating HMDA, which resulted in assessments of civil monetary penalties and other relief. It is important to note that, in addition to jointly investigating certain matters with the United States Department of Justice (DOJ), the CFPB also made several referrals to the Department of Justice for violations of ECOA, one of which actually resulted in a recent enforcement action.

The interagency coordination and collaboration is a critical feature of the Bureau's pursuit of violations. The CFPB continues to coordinate with the Federal Financial Institutions Examination Council (FFIEC) agencies, as well as the DOJ, the Federal Trade Commission (FTC), and the Department of Housing and Urban Development (HUD), in enforcing fair lending statutes. In fact, in 2012, the CFPB formalized its fair lending enforcement relationship with the DOJ via a Memorandum of Understanding (MOU).¹¹

COMPLAINTS AND WHISTLEBLOWERS AND PRIORITIES

The CFPB uses input from a variety of external and internal stakeholders to inform its fair lending prioritization process. Thus, it considers fair lending complaints received by its Office of Consumer Response or brought to the Office of Fair Lending's attention by advocacy groups, whistleblowers, and other government agencies (at the local, state, and federal levels). As part of the prioritization process, the Office of Fair Lending also considers public and private litigation.

The Bureau uses risk-based prioritization to consider many qualitative and quantitative factors at

* Jonathan Foxx is the President & Managing Director of Lenders Compliance Group, Inc.

© 2014 Lenders Compliance Group, Inc. All Rights Reserved. © 2014 NMP Media Corp. All Rights Reserved. This article is copyrighted material and provided to you as a courtesy for your personal use only. You may upload this article to a public server, online service, network, or bulletin board without prior written permission from the article's author. You may use this article in print or online media as long as you properly acknowledge the author and source. Reproduction or storage of this article is subject to the U.S. Copyright Act of 1976, Title 17 U.S.C.

LENDERS COMPLIANCE GROUP of companies are the first mortgage risk management firms in the United States that provide professional guidance and support to financial institutions in all areas of residential mortgage compliance, including the following: Mortgage Acts & Practices • Legal and Regulatory Compliance • Forensic Mortgage Audits • HUD Exam Readiness • Licensing Compliance • HMDA/CRA • Information Technology & Security • Portfolio Risk Management • Quality Control Audits • Prefunding Audits • Retail, Wholesale, and Correspondent Platforms • Broker and TPO Compliance • Investor and Servicer Compliance • Loss Mitigation Strategies • Marketing Compliance • Due Diligence • Credit Risk Management • Loan Analytics Audits • Compliance Audits • Banking Exam Readiness • GSE Applications • Ginnie Mae Applications • Training & Education • CFPB Exam Readiness • Anti-Money Laundering Program Compliance • TPO Approvals • Vendor Compliance. Information contained herein is not intended to be and is not a source of legal advice.

Lenders Compliance Group, Inc. | 167 West Hudson Street – Suite 200 | Long Beach | NY | 11561

[Lenders Compliance Group](#) | [Brokers Compliance Group](#) | [Servicers Compliance Group](#)

Phone: (516) 442-3456. Website: www.LendersComplianceGroup.com

the institution, product, and market levels to determine what, where, and how fair lending risks to consumers should be addressed.

These are the factors constituting the risk-based prioritization:¹²

1. Complaints and tips from consumers, advocacy groups, whistleblowers, and other government agencies;
2. Supervisory and enforcement history;
3. Quality of lenders' Compliance Management Systems;
4. Data analysis; and,
5. Market insights.

The Office of Fair Lending integrates all of the forgoing information into the fair lending prioritization process, which is then incorporated into the Bureau's larger risk-based prioritization process, and then the Bureau allocates its fair lending resources to the areas it considers of greater risk to consumers.

Furthermore, the Bureau utilizes information gathered from its own and other regulators' prior fair lending work, including any supervisory or enforcement actions. At the institutional level, the Bureau considers results from past reviews, the extent and nature of any violations previously cited, and remediation efforts. Additionally, the Bureau considers self-identified issues and whether the institution took appropriate corrective action when it identified those issues. The CFPB also closely monitors institutions' compliance with any administrative orders arising from previous enforcement actions pursued by the CFPB or, in some cases, by other federal government agencies.

FAIR LENDING IN COMPLIANCE MANAGEMENT SYSTEMS

A Compliance Management System consists of many moving parts, one critical piece of which includes information the Bureau obtains through its examinations vis-à-vis the quality of an institution's fair lending CMS. This is a key factor in the fair lending prioritization process. While

* Jonathan Foxx is the President & Managing Director of Lenders Compliance Group, Inc.

© 2014 Lenders Compliance Group, Inc. All Rights Reserved. © 2014 NMP Media Corp. All Rights Reserved. This article is copyrighted material and provided to you as a courtesy for your personal use only. You may upload this article to a public server, online service, network, or bulletin board without prior written permission from the article's author. You may use this article in print or online media as long as you properly acknowledge the author and source. Reproduction or storage of this article is subject to the U.S. Copyright Act of 1976, Title 17 U.S.C.

LENDERS COMPLIANCE GROUP of companies are the first mortgage risk management firms in the United States that provide professional guidance and support to financial institutions in all areas of residential mortgage compliance, including the following: Mortgage Acts & Practices • Legal and Regulatory Compliance • Forensic Mortgage Audits • HUD Exam Readiness • Licensing Compliance • HMDA/CRA • Information Technology & Security • Portfolio Risk Management • Quality Control Audits • Prefunding Audits • Retail, Wholesale, and Correspondent Platforms • Broker and TPO Compliance • Investor and Servicer Compliance • Loss Mitigation Strategies • Marketing Compliance • Due Diligence • Credit Risk Management • Loan Analytics Audits • Compliance Audits • Banking Exam Readiness • GSE Applications • Ginnie Mae Applications • Training & Education • CFPB Exam Readiness • Anti-Money Laundering Program Compliance • TPO Approvals • Vendor Compliance. Information contained herein is not intended to be and is not a source of legal advice.

Lenders Compliance Group, Inc. | 167 West Hudson Street – Suite 200 | Long Beach | NY | 11561

[Lenders Compliance Group](#) | [Brokers Compliance Group](#) | [Servicers Compliance Group](#)

Phone: (516) 442-3456. Website: www.LendersComplianceGroup.com

the appropriate scope of an institution's fair lending CMS will vary based on its size, complexity, and risk profile,¹³ common features of a well-developed CMS include:

- An up-to-date fair lending policy statement;
- Regular fair lending training for all employees involved with any aspect of the institution's credit transactions, as well as all officers and board members;
- Ongoing monitoring for compliance with fair lending policies and procedures, and appropriate corrective action if necessary;
- Ongoing monitoring for compliance with other policies and procedures that are intended to reduce fair lending risk (such as controls on loan originator discretion), and appropriate corrective action if necessary;
- Review of lending policies for potential fair lending violations, including potential disparate impact;
- Depending on the size and complexity of the financial institution, regular statistical analysis, as appropriate, of loan-level data for potential disparities on a prohibited basis in pricing, underwriting, or other aspects of the credit transaction, to include both mortgage and non-mortgage products such as credit cards, auto lending, and student lending;
- Regular assessment of the marketing of loan products; and,
- Meaningful oversight of fair lending compliance by management and where appropriate, the financial institution's board of directors.

Here is the Bureau's rudimentary, but incisive point: "The key consideration is that the lower the quality of an institution's fair lending CMS, the higher the institution's fair lending risk."¹⁴

* Jonathan Foxx is the President & Managing Director of Lenders Compliance Group, Inc.

© 2014 Lenders Compliance Group, Inc. All Rights Reserved. © 2014 NMP Media Corp. All Rights Reserved. This article is copyrighted material and provided to you as a courtesy for your personal use only. You may upload this article to a public server, online service, network, or bulletin board without prior written permission from the article's author. You may use this article in print or online media as long as you properly acknowledge the author and source. Reproduction or storage of this article is subject to the U.S. Copyright Act of 1976, Title 17 U.S.C.

LENDERS COMPLIANCE GROUP of companies are the first mortgage risk management firms in the United States that provide professional guidance and support to financial institutions in all areas of residential mortgage compliance, including the following: Mortgage Acts & Practices • Legal and Regulatory Compliance • Forensic Mortgage Audits • HUD Exam Readiness • Licensing Compliance • HMDA/CRA • Information Technology & Security • Portfolio Risk Management • Quality Control Audits • Prefunding Audits • Retail, Wholesale, and Correspondent Platforms • Broker and TPO Compliance • Investor and Servicer Compliance • Loss Mitigation Strategies • Marketing Compliance • Due Diligence • Credit Risk Management • Loan Analytics Audits • Compliance Audits • Banking Exam Readiness • GSE Applications • Ginnie Mae Applications • Training & Education • CFPB Exam Readiness • Anti-Money Laundering Program Compliance • TPO Approvals • Vendor Compliance. Information contained herein is not intended to be and is not a source of legal advice.

Lenders Compliance Group, Inc. | 167 West Hudson Street – Suite 200 | Long Beach | NY | 11561

[Lenders Compliance Group](#) | [Brokers Compliance Group](#) | [Servicers Compliance Group](#)

Phone: (516) 442-3456. Website: www.LendersComplianceGroup.com

HMDA AND ECOA – NEW RULES

I have discussed above the importance of data analysis and the quantitative approach; indeed, the Bureau's fair lending prioritization process is driven by quantitative data analyses that evaluate developments and trends at the institutional and market levels. The quintessential example, in the housing finance marketplace, is the Home Mortgage Disclosure Act (HMDA) data, which allow regulators to assess a specific institution's risk as well as risk across the market in order to identify those institutions or segments that appear to present heightened fair lending risk to consumers.

The Dodd-Frank Act expanded the scope of the data that lenders are required to collect and submit under Regulation C, the implementing regulation of HMDA. Specifically, Section 1094 of Dodd-Frank amended HMDA to require the collection and submission of additional data fields, including:

- The age of the applicant or borrower
- Rate spread (for all loans)
- Collateral value
- Credit score
- Non-fully amortizing payment features
- Total points and fees
- Prepayment penalty term
- The period after which a rate may change
- Loan term
- Origination channel
- As appropriate, identifiers for loan originators, loans, and parcels
- “[S]uch other information as the Bureau may require”¹⁵

At the time the Report was issued, the CFPB's efforts to implement these changes were in the

* Jonathan Foxx is the President & Managing Director of Lenders Compliance Group, Inc.

© 2014 Lenders Compliance Group, Inc. All Rights Reserved. © 2014 NMP Media Corp. All Rights Reserved. This article is copyrighted material and provided to you as a courtesy for your personal use only. You may upload this article to a public server, online service, network, or bulletin board without prior written permission from the article's author. You may use this article in print or online media as long as you properly acknowledge the author and source. Reproduction or storage of this article is subject to the U.S. Copyright Act of 1976, Title 17 U.S.C.

LENDERS COMPLIANCE GROUP of companies are the first mortgage risk management firms in the United States that provide professional guidance and support to financial institutions in all areas of residential mortgage compliance, including the following: Mortgage Acts & Practices • Legal and Regulatory Compliance • Forensic Mortgage Audits • HUD Exam Readiness • Licensing Compliance • HMDA/CRA • Information Technology & Security • Portfolio Risk Management • Quality Control Audits • Prefunding Audits • Retail, Wholesale, and Correspondent Platforms • Broker and TPO Compliance • Investor and Servicer Compliance • Loss Mitigation Strategies • Marketing Compliance • Due Diligence • Credit Risk Management • Loan Analytics Audits • Compliance Audits • Banking Exam Readiness • GSE Applications • Ginnie Mae Applications • Training & Education • CFPB Exam Readiness • Anti-Money Laundering Program Compliance • TPO Approvals • Vendor Compliance. Information contained herein is not intended to be and is not a source of legal advice.

Lenders Compliance Group, Inc. | 167 West Hudson Street – Suite 200 | Long Beach | NY | 11561

[Lenders Compliance Group](#) | [Brokers Compliance Group](#) | [Servicers Compliance Group](#)

Phone: (516) 442-3456. Website: www.LendersComplianceGroup.com

pre-rulemaking stage. However, the Bureau is going to continue to research, consider, and evaluate what changes it may propose to Regulation C.

Section 1071 of the Dodd-Frank Act amended Equal Credit Opportunity Act (ECOA) to require financial institutions to collect and report to the CFPB data on lending to small, minority-owned and women-owned businesses, in order to “facilitate the enforcement of fair lending laws and enable communities, governmental entities, and creditors to identify business and community development needs and opportunities of women owned, minority-owned, and small businesses.”¹⁶ The Dodd-Frank Act also directed the Bureau to prescribe rules and guidance as necessary to “carry out, enforce, and compile” data pursuant to that section.

So, in April 2011, the CFPB issued guidance stating that the data collection and submission obligations arising under these ECOA amendments do not arise until the CFPB actually promulgates implementing regulations.¹⁷

Nevertheless, the CFPB has begun to explore the issues that its rulemaking will need to address. In particular, the Bureau is looking to how the Bureau might work with other agencies to, in part, “gain insight into existing small business data collection efforts and possible ways to cooperate in future efforts.”¹⁸

REVIEWS, REVIEWS, AND MORE REVIEWS

Brief synopses of the types of reviews conducted by the Bureau are in order. Recall the three types of fair lending supervisory reviews: (1) ECOA Baseline Reviews, (2) ECOA Targeted Reviews, and (3) HMDA Data Integrity Reviews. Each of these has specific characteristics and goals. Let’s explore each of them.

ECOA BASELINE REVIEWS

ECOA Baseline Reviews facilitate the identification of ECOA and Regulation B violations and impact the Bureau’s fair lending prioritization decisions. When an ECOA Baseline Review is

* Jonathan Foxx is the President & Managing Director of Lenders Compliance Group, Inc.

© 2014 Lenders Compliance Group, Inc. All Rights Reserved. © 2014 NMP Media Corp. All Rights Reserved. This article is copyrighted material and provided to you as a courtesy for your personal use only. You may upload this article to a public server, online service, network, or bulletin board without prior written permission from the article’s author. You may use this article in print or online media as long as you properly acknowledge the author and source. Reproduction or storage of this article is subject to the U.S. Copyright Act of 1976, Title 17 U.S.C.

LENDERS COMPLIANCE GROUP of companies are the first mortgage risk management firms in the United States that provide professional guidance and support to financial institutions in all areas of residential mortgage compliance, including the following: Mortgage Acts & Practices • Legal and Regulatory Compliance • Forensic Mortgage Audits • HUD Exam Readiness • Licensing Compliance • HMDA/CRA • Information Technology & Security • Portfolio Risk Management • Quality Control Audits • Prefunding Audits • Retail, Wholesale, and Correspondent Platforms • Broker and TPO Compliance • Investor and Servicer Compliance • Loss Mitigation Strategies • Marketing Compliance • Due Diligence • Credit Risk Management • Loan Analytics Audits • Compliance Audits • Banking Exam Readiness • GSE Applications • Ginnie Mae Applications • Training & Education • CFPB Exam Readiness • Anti-Money Laundering Program Compliance • TPO Approvals • Vendor Compliance. Information contained herein is not intended to be and is not a source of legal advice.

Lenders Compliance Group, Inc. | 167 West Hudson Street – Suite 200 | Long Beach | NY | 11561

[Lenders Compliance Group](#) | [Brokers Compliance Group](#) | [Servicers Compliance Group](#)

Phone: (516) 442-3456. Website: www.LendersComplianceGroup.com

scheduled, examiners work with the Office of Fair Lending and with CFPB regional management to determine the appropriate scope of the review, depending on the nature of the institution's business model and the level of known fair lending risk at the institution.

On July 19, 2013, the Bureau issued a set of ECOA Baseline Review Modules, which are used by CFPB examination teams when conducting ECOA Baseline Reviews.¹⁹ These modules are used to assess fair lending risks particular to three specific product lines – mortgage lending, mortgage servicing, and auto lending – but can generally be utilized to evaluate fair lending risk at any supervised institution and in any product line.

When using the modules to conduct an ECOA Baseline Review, Bureau examiners review an institution's fair lending supervisory history, including any history of fair lending risks or violations previously identified by the CFPB or any other federal or state regulator.

Then they collect and evaluate information about an entity's fair lending compliance program, including board of director and management participation, policies and procedures, training materials, internal controls and monitoring and corrective action. In addition to responses obtained pursuant to information requests, the examiners may also review other sources of information, including any publicly available information about the entity as well as information obtained through interviews with institution staff or supervisory meetings with an institution.

The ECOA Baseline Review may produce administrative actions, since the review definitely can detect violations of ECOA. Targeted reviews may follow in the wake of adverse findings.

ECOA TARGETED REVIEWS

If the Bureau's risk-based prioritization process reveals that a particular institution's business model, policies, or procedures present fair lending risks that warrant an in-depth review, the Bureau may conduct an ECOA Targeted Review of that institution. Generally, these reviews focus on a specific line of business, such as mortgages, credit cards, or auto finance. ECOA Targeted Reviews typically include statistical analyses and, in some cases, loan file reviews in order to evaluate an institution's compliance with ECOA and Regulation B within the specific business line

* Jonathan Foxx is the President & Managing Director of Lenders Compliance Group, Inc.

© 2014 Lenders Compliance Group, Inc. All Rights Reserved. © 2014 NMP Media Corp. All Rights Reserved. This article is copyrighted material and provided to you as a courtesy for your personal use only. You may upload this article to a public server, online service, network, or bulletin board without prior written permission from the article's author. You may use this article in print or online media as long as you properly acknowledge the author and source. Reproduction or storage of this article is subject to the U.S. Copyright Act of 1976, Title 17 U.S.C.

LENDERS COMPLIANCE GROUP of companies are the first mortgage risk management firms in the United States that provide professional guidance and support to financial institutions in all areas of residential mortgage compliance, including the following: Mortgage Acts & Practices • Legal and Regulatory Compliance • Forensic Mortgage Audits • HUD Exam Readiness • Licensing Compliance • HMDA/CRA • Information Technology & Security • Portfolio Risk Management • Quality Control Audits • Prefunding Audits • Retail, Wholesale, and Correspondent Platforms • Broker and TPO Compliance • Investor and Servicer Compliance • Loss Mitigation Strategies • Marketing Compliance • Due Diligence • Credit Risk Management • Loan Analytics Audits • Compliance Audits • Banking Exam Readiness • GSE Applications • Ginnie Mae Applications • Training & Education • CFPB Exam Readiness • Anti-Money Laundering Program Compliance • TPO Approvals • Vendor Compliance. Information contained herein is not intended to be and is not a source of legal advice.

Lenders Compliance Group, Inc. | 167 West Hudson Street – Suite 200 | Long Beach | NY | 11561

[Lenders Compliance Group](#) | [Brokers Compliance Group](#) | [Servicers Compliance Group](#)

Phone: (516) 442-3456. Website: www.LendersComplianceGroup.com

selected.²⁰

Statistics play a significant role in the ECOA Targeted Review, because the CFPB uses data analysis and testing to detect and assess disparities in an institution's treatment of applicants and borrowers, by analyzing whether similarly-situated applicants and borrowers were treated differently because of a prohibited basis. If, during an ECOA Targeted Review, the Office of Fair Lending preliminarily determines that similarly-situated borrowers and applicants were treated differently or received different outcomes because of a prohibited basis, the Bureau will send a letter stating its preliminary findings and request the institution to provide additional information for consideration as the CFPB deliberates whether the institution has violated the ECOA.

HMDA DATA INTEGRITY REVIEWS

Permit me to admonish you as strongly as possible: accurate HMDA data is critical to understanding fair lending risk at both the institutional level and across the home mortgage market. A CFPB examination team will call for the HMDA-LAR and carefully review its data. If there are data integrity concerns, the examiners will immediately have a problem with all manner of other aspects of the fair lending review, since they cannot rely on the HMDA data to conduct the review adequately.

The CFPB's HMDA Data Integrity Reviews evaluate the accuracy of institutions' HMDA data and assess whether institutions have adequate HMDA compliance management. Obviously, if there are substantive data integrity findings, the Bureau may determine not only that the examination has been unduly hampered but also that management is responsible for having caused the data integrity concerns. If management discovers that it had data integrity problems with the HMDA-LAR and did not correct them, perhaps through a refiling (if necessary), the Bureau will factor that lack of appropriate action into its overall findings.

The Bureau has conducted HMDA reviews at dozens of mortgage lenders, both bank and nonbank. Through these reviews, it detected some violations of HMDA. It also found that many lenders had instituted and maintained strong CMS procedures and had no violations of HMDA.

* Jonathan Foxx is the President & Managing Director of Lenders Compliance Group, Inc.

© 2014 Lenders Compliance Group, Inc. All Rights Reserved. © 2014 NMP Media Corp. All Rights Reserved. This article is copyrighted material and provided to you as a courtesy for your personal use only. You may upload this article to a public server, online service, network, or bulletin board without prior written permission from the article's author. You may use this article in print or online media as long as you properly acknowledge the author and source. Reproduction or storage of this article is subject to the U.S. Copyright Act of 1976, Title 17 U.S.C.

LENDERS COMPLIANCE GROUP of companies are the first mortgage risk management firms in the United States that provide professional guidance and support to financial institutions in all areas of residential mortgage compliance, including the following: Mortgage Acts & Practices • Legal and Regulatory Compliance • Forensic Mortgage Audits • HUD Exam Readiness • Licensing Compliance • HMDA/CRA • Information Technology & Security • Portfolio Risk Management • Quality Control Audits • Prefunding Audits • Retail, Wholesale, and Correspondent Platforms • Broker and TPO Compliance • Investor and Servicer Compliance • Loss Mitigation Strategies • Marketing Compliance • Due Diligence • Credit Risk Management • Loan Analytics Audits • Compliance Audits • Banking Exam Readiness • GSE Applications • Ginnie Mae Applications • Training & Education • CFPB Exam Readiness • Anti-Money Laundering Program Compliance • TPO Approvals • Vendor Compliance. Information contained herein is not intended to be and is not a source of legal advice.

Lenders Compliance Group, Inc. | 167 West Hudson Street – Suite 200 | Long Beach | NY | 11561

[Lenders Compliance Group](#) | [Brokers Compliance Group](#) | [Servicers Compliance Group](#)

Phone: (516) 442-3456. Website: www.LendersComplianceGroup.com

To prepare for this type of review, the Bureau published its HMDA Resubmission Schedule and Guidelines, in early October 2013, which provides instruction and additional detail on the HMDA Data Integrity review process.

ENFORCEMENT

The Bureau has several tools at its disposal, as it has openly stated, to “promote fair, equitable, and nondiscriminatory access to credit,”²¹ including its authority under ECOA, HMDA, and the Dodd-Frank Act to bring public enforcement actions.²² For instance, as part of its enforcement authority, the CFPB may conduct investigations²³ and issue civil investigative demands.²⁴

Furthermore, the CFPB may conduct administrative hearings²⁵ or, through its independent litigating authority, commence a civil action in a federal or state court.²⁶ In any such action, the CFPB may seek appropriate legal and equitable relief, such as restitution, payment of damages or other monetary relief, limits on the activities or functions of the person, and civil money penalties.²⁷ When appropriate, the CFPB also refers “patterns or practices” of lending discrimination to the Department of Justice (DOJ).²⁸

¹ Fair Lending Report of the Consumer Financial Protection Bureau, issued April 30, 2014.

<http://www.consumerfinance.gov/reports/fair-lending-report/>

² Idem, page 2

³ Op. cit. 1, page 4

⁴ Op. cit. 1, page 8

⁵ 12 U.S.C. § 5493(c)(2)(D); 15 U.S.C. § 1691f; 12 U.S.C. § 2807

⁶ § 1013(c)(1)–(c)(2)(A), 124 Stat. at 1970

⁷ § 1013(c)(2)(B)–(C), 124 Stat. at 1970

⁸ *Lending Discrimination*, CFPB Bulletin 2012-04 (Fair Lending), April 18, 2012,

⁹ Op. cit. 1, page 6

¹⁰ Op. cit. 1, page 9

¹¹ *Memorandum of Understanding between The Consumer Financial Protection Bureau and The United States Department of Justice Regarding Fair Lending Coordination* (December 6, 2012).

http://files.consumerfinance.gov/f/201212_cfpb_doj-fair-lending-mou.pdf

¹² Op. cit. 1, page 13

¹³ Further information may be obtained from: Consumer Financial Protection Bureau, *Equal Credit Opportunity Act*

* Jonathan Foxx is the President & Managing Director of Lenders Compliance Group, Inc.

© 2014 Lenders Compliance Group, Inc. All Rights Reserved. © 2014 NMP Media Corp. All Rights Reserved. This article is copyrighted material and provided to you as a courtesy for your personal use only. You may upload this article to a public server, online service, network, or bulletin board without prior written permission from the article’s author. You may use this article in print or online media as long as you properly acknowledge the author and source. Reproduction or storage of this article is subject to the U.S. Copyright Act of 1976, Title 17 U.S.C.

LENDERS COMPLIANCE GROUP of companies are the first mortgage risk management firms in the United States that provide professional guidance and support to financial institutions in all areas of residential mortgage compliance, including the following: Mortgage Acts & Practices • Legal and Regulatory Compliance • Forensic Mortgage Audits • HUD Exam Readiness • Licensing Compliance • HMDA/CRA • Information Technology & Security • Portfolio Risk Management • Quality Control Audits • Prefunding Audits • Retail, Wholesale, and Correspondent Platforms • Broker and TPO Compliance • Investor and Servicer Compliance • Loss Mitigation Strategies • Marketing Compliance • Due Diligence • Credit Risk Management • Loan Analytics Audits • Compliance Audits • Banking Exam Readiness • GSE Applications • Ginnie Mae Applications • Training & Education • CFPB Exam Readiness • Anti-Money Laundering Program Compliance • TPO Approvals • Vendor Compliance. Information contained herein is not intended to be and is not a source of legal advice.

Baseline Review Modules (July 19, 2013), http://files.consumerfinance.gov/f/201307_cfpb_ecoa_baseline-review-module-fair-lending.pdf; Consumer Financial Protection Bureau, *Supervision and Examination Manual* (October 31, 2012), http://files.consumerfinance.gov/f/201210_cfpb_supervision-and-examination-manual-v2.pdf; Consumer Financial Protection Bureau, *Supervisory Highlights: Fall 2012* (October 31, 2012), http://files.consumerfinance.gov/f/201210_cfpb_supervisory-highlights-fall-2012.pdf

¹⁴ Op. cit. 1, p 14

¹⁵ 12 U.S.C. § 2803(b)

¹⁶ Dodd-Frank Act, § 1071(a)

¹⁷ Letter from Leonard Kennedy, CFPB General Counsel, to Chief Executive Officers of Financial Institutions under Section 1071 of the Dodd-Frank Act (April 11, 2011), <http://files.consumerfinance.gov/f/2011/04/GCletter-re-1071.pdf>

¹⁸ Op. cit. 1, p 16

¹⁹ Consumer Financial Protection Bureau, *ECOA Baseline Review Modules* (July 19, 2013), http://www.consumerfinance.gov/f/201307_cfpb_ecoa_baseline-review-module-fair-lending.pdf

²⁰ Op. cit. 1, p 20

²¹ Op. cit. 1, p 20

²² 15 U.S.C. § 1691c(a)(9); 12 U.S.C. § 2804(b)(1)(B), (d); §§ 5563–5564

²³ 12 U.S.C. § 5562

²⁴ Idem, § 5562(c)

²⁵ Op. cit. 20, § 5563

²⁶ Op. cit. 20, § 5564

²⁷ Op. cit. 20, § 5565

²⁸ Op. cit. 9. Also see 15 U.S.C. § 1691e(g)

* Jonathan Foxx is the President & Managing Director of Lenders Compliance Group, Inc.

© 2014 Lenders Compliance Group, Inc. All Rights Reserved. © 2014 NMP Media Corp. All Rights Reserved. This article is copyrighted material and provided to you as a courtesy for your personal use only. You may upload this article to a public server, online service, network, or bulletin board without prior written permission from the article's author. You may use this article in print or online media as long as you properly acknowledge the author and source. Reproduction or storage of this article is subject to the U.S. Copyright Act of 1976, Title 17 U.S.C.

LENDERS COMPLIANCE GROUP of companies are the first mortgage risk management firms in the United States that provide professional guidance and support to financial institutions in all areas of residential mortgage compliance, including the following: Mortgage Acts & Practices • Legal and Regulatory Compliance • Forensic Mortgage Audits • HUD Exam Readiness • Licensing Compliance • HMDA/CRA • Information Technology & Security • Portfolio Risk Management • Quality Control Audits • Prefunding Audits • Retail, Wholesale, and Correspondent Platforms • Broker and TPO Compliance • Investor and Servicer Compliance • Loss Mitigation Strategies • Marketing Compliance • Due Diligence • Credit Risk Management • Loan Analytics Audits • Compliance Audits • Banking Exam Readiness • GSE Applications • Ginnie Mae Applications • Training & Education • CFPB Exam Readiness • Anti-Money Laundering Program Compliance • TPO Approvals • Vendor Compliance. Information contained herein is not intended to be and is not a source of legal advice.

Lenders Compliance Group, Inc. | 167 West Hudson Street – Suite 200 | Long Beach | NY | 11561

[Lenders Compliance Group](#) | [Brokers Compliance Group](#) | [Servicers Compliance Group](#)

Phone: (516) 442-3456. Website: www.LendersComplianceGroup.com