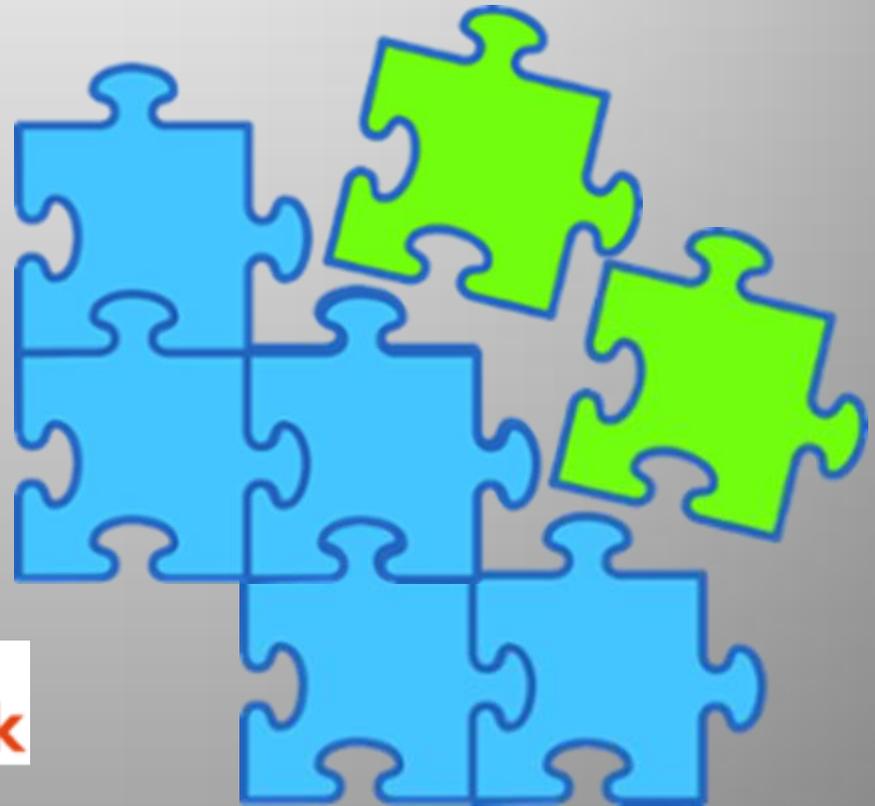


# Fair Lending 101:

**Pricing is Only One Piece of the Puzzle**



**“Officers don't have any discretion in our loan pricing, so we don't have any Fair Lending risk.”**

- Fair Lending pitfalls can be found at every step of the credit process
- Regulators may evaluate F/L Risk through loan data and practices (or even in a conversation)
- Search for evidence of discrimination in every stage, from marketing to servicing

# Fair Lending Risk at Every Stage of Credit Transaction



Many institutions focus on pricing risk when dealing with Fair Lending compliance and then find themselves at a disadvantage with the regulators during an examination.

# Compliance Management Program

(sometimes referred to as a CMP or CMS)

- **Systems:** Software - Policies - Procedures - Practices
- **Monitoring:** Data analysis, identify potential disparities in the loan process.
- **Assessments:** Way to reconnect with the current status of Fair Lending.
- **Response:** Timely, Targeted, and Tested.
- **Training:** General and role-specific. Attendance record.
- **Accountability:** All employees must understand that compliance is a team sport.

**Compliance is everyone's responsibility, regulators expect this approach**

Regulators assess Compliance Culture **specifically** in their review of F/L:

A demonstrable dedication and **strong culture of compliance** is important to the regulators. Usually, this will become evident naturally as they review your CMS and discussion with staff.

# Evidence of Discrimination

**There are three types of discrimination that the regulators will assess:**

- 1. overt evidence of discrimination
- 2. comparative evidence of disparate treatment, and
- 3. disparate impact.

**Overt evidence:** Evidenced in conversation or actions by officers or staff. Express or implicit indication that they engage in discrimination on a prohibited basis in any aspect of a credit transaction. **This is assessed qualitatively, through interviews and discussions with your team.**

**Comparative evidence of Disparate Treatment:** evident on data analysis when a lender treats a credit applicant differently on the basis of one of the prohibited factors. Evidence of intent to discriminate is not required.

**Disparate Impact:** Data analysis shows how a neutral policy or practice, is equally applied to all credit applicants, however, the policy or practice disproportionately excludes or burdens prohibited basis groups as the (unintended) consequence.



# Redlining Risk



- [Redlining](#)

“The practice (or the Risk ) of denying creditworthy applicants a loan for housing in a certain neighborhood or area even though the applicant may otherwise be eligible for the loan.”

- Redlining is currently a major regulatory priority as evidenced by a [recent \\$2.8M redlining settlement](#) and other [headlines](#).

# Marketing Risk

- To identify marketing risk, ask the following question: “Is there a proportion of prohibited basis applicants that is significantly lower than that group’s representation, in the total population of the market area?”
- Lending data can easily answer this question. For example, if your market is 30 percent Hispanic, and only 10 percent of your application are, you may have marketing risk.

# Steering Risk

- Institutions need to make sure that they aren't steering certain applicants to certain products based on a prohibited basis characteristic.
  - That can even happen unintentionally --
- Consider whether policies and practices are clear, objective and consistently applied standards when offering product choices to applicants. Data analysis can reveal potential steering and product mix disparities quickly.

# Underwriting Risk



- To evaluate ask yourself if there is any subjective underwriting criteria. Removing discretion from the process will reduce risk, but many lenders still assess in terms of the 4 Cs:

Cash, Collateral, Credit and Character and then make a decision early in the process.

Make sure that you can explain any subjective elements in the underwriting process.

# Pricing Risk

- Are there disparities in pricing by prohibited basis characteristics?

Consider the pricing of products and the price an individual applicant receives. If disparities exist, you may have evidence of disparate treatment or impact, which will draw regulatory attention.

- Discretion is one of those areas that typically requires more attention to ensure that similarly situated individuals are being treated similarly.
- Even if a rate table is implemented, most lenders tend to deviate slightly.

**Discretion or Exceptions** are not illegal and both can even be very important to an institution's success however, the two items (exceptions and discretion) tend to draw additional regulatory attention.

**Be prepared to explain any disparities in pricing.**

# Servicing & Loss Mitigation Risk

- Discretion in servicing and loss mitigation actions will increase Fair Lending risk.
- Non existing standards for loss mitigation
- Borrowers in difficult circumstances
- Execution of collateral as a source of “**repayment**”

**Analyzing your data can provide insight that no other method can. With that insight, you can work to monitor and manage your Fair Lending risk proactively, before the regulators arrive.**

# Best Practices

- With respect to data and fair lending risk, banks should:
- Ensure that loan data is accurate and current
- Analyze data to determine whether elevated fair lending risk is present
- To the extent that elevated fair lending risk is present, ensure that explanations for this risk are clearly documented and appropriately analyzed

# Best Practices (continued)

**For example, banks should:**

- Document policies and procedures designed to mitigate elevated redlining risk
- Document pricing and underwriting criteria (including exceptions)
- Retain data that may explain gross disparities
- Conduct further analysis of areas of elevated fair lending risk to determine whether the issues are fully attributable to legitimate factors

# THANK YOU

Please complete the test here included and click on submit at the bottom.

Results will be sent to you and the administrator via e-mail.

