With respect to the collection of information, the CFTC invites comments on:

• Whether the proposed collection of information is necessary for the proper performance of the functions of the CFTC, including whether the information will have a practical use;
• The accuracy of the CFTC's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
• Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
• Ways to minimize the burden of collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.,* permitting electronic submission of responses.

You should submit only information that you wish to make available publicly. If you wish the CFTC to consider information that you believe is exempt from disclosure under the Freedom of Information Act (''FOIA''), a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the CFTC's regulations.[1]

The CFTC reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *https://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the Information Collection Request will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under FOIA.

Burden Statement: CFTC Regulation 45.7 results in information collection requirements within the meaning of the PRA. With respect to the ongoing reporting and recordkeeping burdens associated with swaps, the CFTC believes that SDs, MSPs, SEFs, DCMs, DCOs, SDRs, and non-SD/MSP counterparties incur an annual time-burden of 1,093 hours. This time-burden represents a proportion of the burden respondents incur to operate and maintain their swap data recordkeeping and reporting systems.

In addition, the Commission estimates that regulation 45.7 will create costs for entities required to retrieve and transmit UPIs to update their systems to retrieve and transmit UPIs. The Commission estimates that SDRs, SEFs, DCMs, and reporting counterparties required to retrieve and transmit UPIs will incur a one-time initial burden of one hour per entity to modify their systems to adopt the required changes, for a total estimated hours burden of 1,732 hours. The associated labor cost per entity is estimated to be $93.31 for a total cost across entities of $161,620.

Respondents/Affected Entities: Swap Dealers, Major Swap Participants, SEFs, DCMs, DCOs, and other counterparties to a swap transaction (*i.e.,* end-user, non-SD/non-MSP counterparties).

Estimated number of respondents: 1,732.

Estimated average burden hours per respondent: 1.6 hours.

Estimated total annual burden hours on ÷respondents: 2,825 hours.

Frequency of collection: Ongoing.

There are no capital costs or operating and maintenance costs associated with this collection.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: June 30, 2023.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2023–14250 Filed 7–5–23; 8:45 am]

BILLING CODE 6351–01–P

[1] 17 CFR 145.9.

BUREAU OF CONSUMER FINANCIAL PROTECTION

Fair Lending Report of the Consumer Financial Protection Bureau, June 2023

AGENCY: Consumer Financial Protection Bureau.

ACTION: Fair Lending Report of the Consumer Financial Protection Bureau.

SUMMARY: The Consumer Financial Protection Bureau (CFPB) is issuing its eleventh Fair Lending Report of the Consumer Financial Protection Bureau (Fair Lending Report) to Congress. The CFPB is committed to ensuring fair, equitable, and nondiscriminatory access to credit for both individuals and communities. This report describes our fair lending activities in supervision and enforcement; guidance and rulemaking; interagency coordination; and outreach and education for calendar year 2022.

DATES: The CFPB released the 2022 Fair Lending Report on its website on June 28, 2023.

FOR FURTHER INFORMATION CONTACT: Bobby Conner, Senior Policy Counsel, Fair Lending, at 1–855–411–2372. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

1. Fair Lending Enforcement and Supervision

1.1. Risk-Based Prioritization

Because Congress charged the CFPB with the responsibility of overseeing many lenders and products, the CFPB has long used a risk-based approach to prioritizing supervisory examinations and enforcement activity. This approach helps ensure that the CFPB focuses on areas that present substantial risk of credit discrimination for consumers and small businesses.[1]

As part of the prioritization process, the CFPB identifies emerging developments and trends by monitoring key consumer financial markets. If this field and market intelligence identifies fair lending risks in a particular market, that information is used to determine the type and extent of assets applied to address those risks.

The prioritization process incorporates a number of additional factors, including tips and leads from industry whistleblowers, advocacy groups, and government agencies; supervisory and enforcement history; consumer complaints; and results from analysis of Home Mortgage Disclosure Act (HMDA) and other data.

As a result of its annual risk-based prioritization process, in 2022 the CFPB focused much of its fair lending supervision efforts on mortgage origination and pricing, small business lending (including agricultural lending), policies and procedures regarding geographic and other exclusions in underwriting, and on the use of automated systems and models, sometimes marketed as artificial intelligence and machine learning models.

As in previous years, the CFPB's 2022 mortgage origination work continued to focus on redlining (intentional discrimination against applicants and prospective applicants living or seeking credit in minority neighborhoods, including by discouragement); assessing potential discrimination in underwriting and pricing processes; assessing whether lenders are illegally steering applicants on a prohibited basis; and HMDA data integrity and validation reviews (both as standalone exams and in preparation for subsequent Equal Credit Opportunity Act (ECOA) exams).

[1] For additional information regarding the CFPB's risk-based approach in prioritizing supervisory examinations, *see* section 2.2.3, Risk-Based Approach to Examinations, *Supervisory Highlights* Summer 2013, *available at https://files.consumerfinance.gov/f/201308_cfpb_supervisory-highlights_august.pdf.*

The CFPB's small business lending work assessed whether there were disparities in application, underwriting, and pricing processes, and whether there were weaknesses in fair lending-related compliance management systems.

Across multiple markets, the CFPB assessed whether lenders complied with the adverse action notice requirements of ECOA and Regulation B and evaluated whether lenders maintain policies and procedures that exclude property on the basis of geography in underwriting decisions and to ensure those policies and procedures do not unlawfully exclude certain types of income.

The CFPB continued to expand its evaluation of automated systems and models, sometimes marketed as artificial intelligence and machine learning models, as used by institutions, including in evaluating applicants for credit.

1.2. Fair Lending Enforcement

Congress authorized the CFPB to bring actions to enforce the requirements of eighteen enumerated statutes, including ECOA, HMDA, and the Consumer Financial Protection Act of 2010 (CFPA), which prohibits unfair, deceptive, and abusive acts or practices (UDAAPs). The CFPB engages in research, conducts investigations, files administrative complaints, holds hearings, and adjudicates claims through the CFPB's administrative enforcement process. The CFPB also uses its independent litigation authority to file cases in Federal court alleging violations of fair lending laws under the CFPB's jurisdiction. Like other Federal regulators, the CFPB is required to refer matters to the Department of Justice (DOJ) when it has reason to believe that a creditor has engaged in a pattern or practice of lending discrimination.[2]

1.2.1. Public Enforcement Actions

In 2022, the CFPB announced one fair lending-related enforcement action, Trident Mortgage Company, LP (Trident).[3] On July 27, 2022, the CFPB, together with the DOJ, filed a complaint and proposed consent order in the United States District Court for the Eastern District of Pennsylvania to resolve the agencies' allegations against Trident. The court entered the order on September 14, 2022. Trident is incorporated in Delaware and had locations in Delaware, New Jersey, and Pennsylvania at the time of the alleged conduct. Before the complaint was filed, Trident ceased originating mortgages. The States of Delaware, New Jersey, and Pennsylvania entered into concurrent agreements with Trident. The CFPB and DOJ's joint complaint alleged that Trident engaged in unlawful discrimination on the basis of race, color, and national origin against applicants and prospective applicants, including by redlining majority-minority neighborhoods in the Philadelphia-Camden-Wilmington Metropolitan Statistical Area (Philadelphia MSA) and engaged in acts and practices directed at prospective applicants that would discourage prospective applicants from applying for credit in violation of ECOA, Regulation B, and the CFPA. DOJ also alleged that Trident's conduct violated the Fair Housing Act (FHA). As part of remediation, the order requires Trident to invest $18.4 million in a loan subsidy program under which Trident will contract with a lender to increase the credit extended in majority-minority neighborhoods in the Philadelphia MSA and make loans under the loan subsidy fund. That lender must also maintain at least four licensed branch locations in majority-minority neighborhoods in the Philadelphia MSA. Trident must also fund targeted advertising to generate applications for credit from qualified consumers in majority-minority neighborhoods in the Philadelphia MSA and take other remedial steps to serve the credit needs of majority-minority neighborhoods in the Philadelphia MSA. Trident must also pay a civil money penalty of $4 million. This settlement is the first Federal government resolution involving illegal lending discrimination by a nonbank mortgage lender.

1.2.2. ECOA Referrals to Department of Justice

The CFPB must refer to DOJ a matter when it has reason to believe that a creditor has engaged in a pattern or practice of lending discrimination in violation of ECOA.[4] The CFPB may refer other potential ECOA violations to DOJ as well.[5] In 2022, the CFPB referred five matters to DOJ about discrimination pursuant to section 706(g) of ECOA. The referrals included four matters involving discrimination on the basis of race and national origin in mortgage lending (redlining) and one matter involving discrimination in underwriting mortgage loans on the basis of receipt of public assistance income.

1.2.3. Implementing Enforcement Orders

When an enforcement action is resolved through a public enforcement order, the CFPB (together with other government entities, when relevant) takes steps to ensure that the respondent or defendant complies with the requirements of the order. Depending on the specific requirements of individual public enforcement orders, the CFPB may take steps to ensure that borrowers who are eligible for compensation receive remuneration and that the defendant has complied with the injunctive provisions of the order, including implementing a comprehensive fair lending compliance management system.

1.2.4. Pending Fair Lending Enforcement Investigations

In 2022, the CFPB had a number of ongoing and newly opened fair lending investigations of institutions. The CFPB investigated or is actively investigating potential discrimination in several markets, including student lending, payday lending, credit cards, small business lending, and mortgage lending, including the unlawful practices of redlining and discriminatory targeting, as well as discrimination in home valuation and mortgage pricing exceptions. In 2022, the CFPB also investigated issues with HMDA reporting. The CFPB is looking into potential discriminatory conduct, including under ECOA and the statutory prohibition on unfair acts or practices targeted at vulnerable populations and leading to bias in automated systems and models.

1.3. Fair Lending Supervision

The CFPB's Supervision program assesses compliance with Federal consumer financial protection laws and regulations at banks and nonbanks over which the CFPB has supervisory authority. As a result of the CFPB's efforts to fulfill its fair lending mission during 2022, the CFPB initiated 32 fair lending examinations or targeted reviews, which represents a 146 percent increase in fair lending examinations/targeted reviews since 2020.

For supervisory communications issued by Supervision during 2022, the most frequently identified issues related to the CFPB's review of mortgage origination underwriting policies and guidelines, particularly those that

[2] *See* 15 U.S.C. 1691e(g).

[3] Consumer Fin. Prot. Bureau, *CFPB, DOJ Order Trident Mortgage Company to Pay More Than $22 Million for Deliberate Discrimination Against Minority Families* (July 27, 2022), *https://www.consumerfinance.gov/about-us/newsroom/cfpb-doj-order-trident-mortgage-company-to-pay-more-than-22-million-for-deliberate-discrimination-against-minority-families/.*

[4] 15 U.S.C. 1691e(g).

[5] *Id.*

exclude lending for properties in certain locations or geographies.

In 2022, the CFPB issued several fair lending-related Matters Requiring Attention and entered Memoranda of Understanding directing entities to take corrective actions that the CFPB will monitor through follow-up supervisory actions. Examiners encouraged lenders to enhance oversight and identification of fair lending risk and to implement policies, procedures, and controls designed to effectively manage HMDA activities, including regarding integrity of data collection. The CFPB also directed mortgage lenders to correct violations relating to redlining, including by providing consumer remediation designed to spur lending in the redlined areas.

During 2022, informed by the Director's priority to address risks of consumer harm from advanced and emerging technologies in consumer finance, the CFPB focused additional resources on advanced data science and analytics during exam events to identify fair lending risks and violations in models.

1.4. Annual Performance Plan Metrics

Consistent with a recommendation from the Government Accountability Office (GAO)[6] the CFPB re-introduced several measures and performance goals specific to its fair lending supervision and enforcement, specifically the number of fair lending supervision events opened during the fiscal year and the percentage of all fair lending enforcement cases concluded by the CFPB that were successfully resolved through litigation, a settlement, issuance of a default judgment, or other means. The CFPB will again report progress for all supervisory and enforcement events relating to fair lending laws within the CFPB's jurisdiction in subsequent years in the CFPB's Annual Performance Plan.

2. Rulemaking and Guidance

2.1. Rulemaking

During 2022, the CFPB continued to make progress on the small business lending data collection rulemaking required by Congress under section 1071 of the Dodd-Frank Act and participated in an interagency rulemaking to implement quality control standards for automated valuation models (AVMs). Under HMDA (Regulation C), the CFPB also issued a final rule amending the official commentary regarding the asset-size exemption threshold and a technical amendment regarding the coverage threshold for closed-end mortgage loans.

The CFPB publishes an agenda of its planned rulemaking activity biannually, which is available at: *https://www.consumerfinance.gov/rules-policy/regulatory-agenda.*

2.1.1. Small Business Lending Data Collection Rulemaking

In the Dodd-Frank Act, Congress directed the CFPB to adopt regulations governing the collection of small business lending data. Section 1071 amended ECOA to require financial institutions to compile, maintain, and submit to the CFPB certain data on applications for credit for women-owned, minority-owned, and small businesses.

Congress enacted section 1071 for the purpose of facilitating enforcement of fair lending laws and enabling communities, governmental entities, and creditors to identify business and community development needs and opportunities for women-owned, minority-owned, and small businesses.

The CFPB previously issued a proposed rule amending Regulation B to implement changes to ECOA made by section 1071.[7] The comment period for this proposed rule closed on January 6, 2022. Consistent with section 1071, the CFPB proposed to require covered financial institutions to collect and to report to the CFPB data on applications for credit for small businesses, including those that are owned by women or minorities. The proposal also addressed the CFPB's approach to privacy interests and the publication of small business lending data, shielding certain demographic data from underwriters and other persons, recordkeeping requirements, enforcement provisions, and the proposed rule's effective and compliance dates.[8]

More information is available at: *https://www.consumerfinance.gov/1071-rule/,* a page compiling key materials related to the CFPB's small business lending rulemaking.

2.1.2. Automated Valuation Models Rulemaking

The CFPB determined that the AVM rulemaking should follow the process set forth in the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) to obtain input from small business that are likely to be impacted by the proposed regulation. In 2021, the CFPB began the SBREFA process to consult with representatives of small entities likely to be affected directly by the proposed AVM rulemaking. On February 23, 2022, the CFPB published the *Outline of Proposals and Alternatives Under Consideration for the Small Business Advisory Review Panel for Automated Valuation Model Rulemaking.*[9] To address potential fair lending risk in models, the proposal noted that the CFPB would consider proposing a requirement that covered institutions establish policies, practices, procedures, and control systems to ensure that their AVMs comply with applicable nondiscrimination laws.

The CFPB is participating in this interagency rulemaking with the Federal Reserve Board (FRB), Office of the Comptroller of the Currency (OCC), Federal Deposit Insurance Corporation (FDIC), National Credit Union Administration (NCUA), and Federal Housing Finance Agency (FHFA) (collectively, the Agencies) to develop regulations to implement the amendments made by the Dodd-Frank Act to the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) concerning AVMs. The FIRREA amendments require implementing regulations for quality control standards for AVMs. These standards are designed to ensure a high level of confidence in the estimates produced by the valuation models, protect against the manipulation of data, seek to avoid conflicts of interest, require random sample testing and reviews, and account for any other such factor that the Agencies determine to be appropriate. The Agencies have continued to work to develop a proposed rule to implement the Dodd-Frank Act's AVM amendments to FIRREA.[10]

2.1.3. HMDA (Regulation C) Adjustment to Asset-Size Exemption Threshold

On December 27, 2022, the CFPB issued a final rule amending the official

[6] Govt. Accountability Office, *CFPB Needs to Assess the Impact of Recent Changes to Its Fair Lending Activities* (May 2021), *https://www.gao.gov/assets/gao-21-393.pdf.*

[7] The proposal was published in the **Federal Register** on October 8, 2021. *See* 86 FR 56356.

[8] Additional activity has occurred since the close of this reporting period. On March 30, 2023, the CFPB released its final rule implementing section 1071. *See https://www.consumerfinance.gov/rules-policy/final-rules/small-business-lending-under-the-equal-credit-opportunity-act-regulation-b/.*

[9] CFPB, Small Business Advisory Review Panel for Automated Valuation Model (AVM) Rulemaking: Outline of Proposals and Alternatives under Consideration (Feb. 23, 2022), *https://files.consumerfinance.gov/f/documents/_avm_outline-proposals_2022-02.pdf.*

[10] Additional activity has occurred since the close of this reporting period. On June 1, 2023, the Agencies released a proposed AVM rule. *See https://www.consumerfinance.gov/about-us/newsroom/agencies-request-comment-on-quality-control-standards-for-automated-valuation-models-proposed-rule/.*

commentary that interprets the requirements of Regulation C to reflect the asset-size exemption threshold for banks, savings associations, and credit unions based on the annual percentage change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers.[11]

2.1.4. HMDA (Regulation C); Judicial Vacatur of Coverage Threshold for Closed-End Mortgage Loans

On December 21, 2022, the CFPB issued a technical amendment to Regulation C to reflect the closed-end mortgage loan reporting threshold of 25 mortgage loans.[12]

In April 2020, the CFPB issued a final rule (2020 HMDA Final Rule) to amend Regulation C that increased the closed-end mortgage loan reporting threshold from 25 loans to 100 loans. On September 23, 2022, the United States District Court for the District of Columbia vacated the 2020 HMDA Final Rule as to the increased loan volume reporting threshold for closed-end mortgage loans. As a result of the September 23, 2022, court order, the threshold for reporting data about closed-end mortgage loans is the 25-loan threshold established by the 2015 HMDA Rule. This technical amendment updates the Code of Federal Regulations to reflect the effective closed-end loan reporting threshold. For more information regarding this and other litigation matters, please see section 4 of this report.

2.2. Guidance

The CFPB issues guidance to its various stakeholders in many forms, including *Consumer Financial Protection Circulars* (*Circulars*), advisory opinions, interpretive rules, statements, bulletins, publications such as *Supervisory Highlights,* and other resources to aid in compliance.

2.2.1. Consumer Financial Protection Circular 2022–03: Adverse Action Notification Requirements in Connection With Credit Decisions Based on Complex Algorithms

On May 26, 2022, the CFPB released a *Circular* to remind the public, including those responsible for enforcing Federal consumer financial protection law, of creditors' adverse action notice requirements under ECOA.[13] The *Circular* affirmed that Federal anti-discrimination law requires companies to explain to applicants the specific reasons for denying an application for credit or taking other adverse actions, even if the creditor is relying on credit models using complex algorithms. The *Circular* makes clear that Federal consumer financial protection laws, including adverse action requirements, should be enforced regardless of the technology used by creditors, and that creditors cannot justify noncompliance with ECOA based on the mere fact that the technology they use to evaluate credit applications is too complicated, too opaque in its decision-making, or too new.

2.2.2. Advisory Opinion Regarding ECOA and Regulation B and Revocations or Unfavorable Changes to the Terms of Existing Credit Arrangements

On May 9, 2022, the CFPB issued an advisory opinion affirming that ECOA bars lenders from discriminating against applicants after they have received a loan, not just during the application process.[14] The advisory opinion and accompanying analysis clarify that ECOA protects borrowers from discrimination in all aspects of a credit transaction. The advisory opinion is consistent with a legal brief filed in 2021 by the CFPB, the Federal Trade Commission (FTC), the FRB, and DOJ.[15] Among other things, the advisory opinion affirms that ECOA and Regulation B protect applicants who have received credit and are existing account holders, not just those in the process of applying for credit. In addition, the advisory opinion explains that creditors must provide adverse action notices to applicants against whom they take adverse action, and that certain adverse actions—such as revoking existing credit or changing the terms of an existing credit arrangement—are only actions that can be taken against applicants who have already received credit.

2.2.3. Interpretive Rule on the Limited Applicability of CFPA's ''Time or Space'' Exception With Respect to Digital Marketing Providers

On August 10, 2022, the CFPB issued an interpretive rule clarifying when digital marketing providers for financial firms must comply with Federal consumer financial protection law.[16] Section 1002 of the CFPA defines the term ''service provider'' and sets forth two exceptions to that definition. Under one of those exceptions, a person is not a service provider solely by virtue of such person offering or providing to a covered person time or space for an advertisement for a consumer financial product or service through print, newspaper, or electronic media. As explained in the interpretive rule, digital marketers that are involved in the identification or selection of prospective customers or the selection or placement of content to affect consumer behavior do not fall under this narrow exception and thus are typically service providers for purposes of the law. Digital marketers acting as service providers can be held liable by the CFPB or other law enforcers for committing unfair, deceptive, or abusive acts or practices as well as other consumer financial protection violations. The interpretive rule explains that digital marketers provide material services to financial firms and that the CFPB, along with other consumer protection enforcers, can sue digital marketers to stop violations of consumer financial protection law.

2.2.4. Supervisory Highlights

The CFPB's *Supervisory Highlights* reports provide guidance and general information about the CFPB's supervisory activities at banks and nonbanks without identifying specific entities. These reports communicate the CFPB's key examination findings and operational changes to the CFPB's supervision program. *Supervisory Highlights* is also a convenient and easily accessible resource for information on the CFPB's recent guidance documents. In 2022, the CFPB

[11] CFPB, *Home Mortgage Disclosure (Regulation C) Adjustment to Asset-Size Exemption Threshold* (Dec. 27, 2022), *https://files.consumerfinance.gov/f/documents/cfpb_hmda_annual-adjustments_2022-12.pdf.*

[12] CFPB, *Home Mortgage Disclosure (Regulation C); Judicial Vacatur of Coverage Threshold for Closed-End Mortgage Loans* (Dec. 9, 2022), *https://files.consumerfinance.gov/f/documents/cfpb_judicial-vacatur-_technical-amendment_2022-12.pdf.*

[13] CFPB, Consumer Financial Protection Circular 2022–03, Adverse action notification requirements in connection with credit decisions based on complex algorithms (May 26, 2022), *https://www.consumerfinance.gov/compliance/circulars/circular-2022-03-adverse-action-notification-requirements-in-connection-with-credit-decisions-based-on-complex-algorithms/.*

[14] CFPB, *Equal Credit Opportunity (Regulation B); Revocations or Unfavorable Changes to the Terms of Existing Credit Arrangements* (May 5, 2022), *https://files.consumerfinance.gov/f/documents/cfpb_revoking-terms-of-existing-credit-arrangement_advisory-opinion_2022-05.pdf.*

[15] *Fralish* v. *Bank of America, N.A.,* Brief amicus curiae of Consumer Fin. Prot. Bureau, Dept. of Justice, Bd. Of Governors of the Fed. Reserve System, and Fed. Trad Comm'n (Dec. 16, 2021), *https://files.consumerfinance.gov/f/documents/cfpb_fralish-v-bank-of-america_amicus-brief_2021-12.pdf.*

[16] CFPB, Interpretive rule on the Limited Applicability of Consumer Financial Protection Act's ''Time or Space'' Exception with Respect to Digital Marketing Providers (Aug. 10, 2022), *https://files.consumerfinance.gov/f/documents/cfpb_time-or-space_interpretive-rule_signed_2022-08.pdf.*

published three issues of *Supervisory Highlights.*[17]

On May 2, 2022, the CFPB released the 26th edition of *Supervisory Highlights.*[18] The findings included in this report cover examinations completed between July 2021 and December 2021 in the areas of auto servicing, consumer reporting, credit card account management, debt collection, deposits, mortgage origination, prepaid accounts, remittances, and student loan servicing.[19] This report also discussed the publication of the CFPB's updated exam manual for evaluating UDAAPs, explaining that the updates cover discriminatory practices that may also be ''unfair'' under the CFPA.

A special edition of *Supervisory Highlights, Issue 27, Student Loan Servicing Special Edition, Fall 2022,* was released on September 29, 2022.[20] This report focused on specific supervisory findings unique to the student loan market.

The CFPB released the 28th edition of *Supervisory Highlights* on November 16, 2022, covering examinations completed between January 2021 and June 2021.[21] This report included the fair lending enforcement matter, *Trident,* which the CFPB's supervisory activities supported. For more information on the *Trident* matter, please see section 1.2.1 above.

All issues of *Supervisory Highlights* are available at: *https://www.consumerfinance.gov/compliance/supervisory-highlights/.*

2.2.5. HMDA Guidance and Resources

Given the importance of accurately reported HMDA data to the CFPB's fair lending mission, the CFPB maintains a comprehensive suite of resources on its public website to help filers fulfill their reporting requirements under HMDA and Regulation C and to allow others to evaluate and study mortgage lending. These resources include: an Executive Summary of HMDA rule changes; [22] Small Entity Compliance Guide; [23] Key Dates Timeline; [24] Institutional and Transactional Coverage Charts; [25] Reportable HMDA Data Chart; [26] sample data collection form; [27] FAQs,[28] a new Beginners Guide to Accessing and Using HMDA Data,[29] and downloadable webinars,[30] which provide an overview of the HMDA rule. In 2022, the CFPB published a summary of the 2021 data on mortgage lending.[31] The CFPB also provides on its website an interactive version of Regulation C that is easier to access and navigate than the printed version of Regulation C.[32]

Together with the Federal Financial Institutions Examination Council (FFIEC),[33] the CFPB also routinely updates its HMDA resources throughout the year to ensure HMDA reporters have the most up-to-date information. For example, in September 2022, the CFPB released the 2023 Filing Instructions Guide [34] and the 2023 Supplemental Guide for Quarterly Filers.[35] Together with the FFIEC, in February 2022, the CFPB also published the 2022 edition of the HMDA Getting it Right Guide.[36] The CFPB also works with the FFIEC to publish data submission resources for HMDA filers and vendors on its Resources for HMDA Filers website, *https://ffiec.cfpb.gov.*

In addition, HMDA reporters can ask questions about HMDA and Regulation C, including how to submit HMDA data, by emailing the CFPB's HMDA Help at *HMDAHelp@cfpb.gov.* The CFPB also offers financial institutions, service providers, and others informal staff guidance on specific questions about the statutes and rules the CFPB implements, including ECOA and Regulation B and HMDA and Regulation C, through its Regulation Inquiries platform at *www.reginquiries.consumerfinance.gov.*

3. Stakeholder Engagement

The CFPB engages with external stakeholders, including consumer advocates, civil rights organizations, industry, academia, and other government agencies. This engagement comes in varied forms, including broadcasting the CFPB's work and policy priorities through CFPB channels like blogs, press releases, or speeches; and reaching out directly to advocates and consumers through website updates and social media. The CFPB also regularly issues reports analyzing data and market conditions. To further an all-of-government approach to fair lending enforcement, the CFPB also participates in interagency groups. All of these engagements are critical to informing the CFPB's work and broadcasting the CFPB's priorities and recent work to its stakeholders.

3.1. Promoting and Broadcasting the Fair Lending and Access to Credit Mission

3.1.1. CFPB Blog Posts, Press Releases, and Other Communications

The CFPB regularly uses blog posts, statements, press releases, guides, brochures, social media, and other tools to timely and effectively communicate

[17] Issue 26, Spring 2022; Issue 27, *Supervisory Highlights Student Loan Servicing Special Edition,* Fall 2022; Issue 28, Fall 2022.

[18] CFPB, *Issue 26, Spring 2022* (May 2, 2022), *https://files.consumerfinance.gov/f/documents/cfpb_supervisory-highlights_issue-26_2022-04.pdf/.*

[19] *Id.*

[20] CFPB, *Issue 27, Student Loan Servicing Special Edition, Fall 2022* (Sept. 29, 2022), *https://files.consumerfinance.gov/f/documents/cfpb_student-loan-servicing-supervisory-highlights-special-edition_report_2022-09.pdf.*

[21] Consumer Fin. Prot. Bureau, *Issue 28, Fall 2022* (Nov. 16, 2022), *https://files.consumerfinance.gov/f/documents/cfpb_supervisory-highlights_issue-28_2022-11.pdf.*

[22] CFPB, *Executive Summary of the 2020 Home Mortgage Disclosure Act (Regulation C) Final Rule* (Apr. 16, 2020), *https://files.consumerfinance.gov/f/documents/cfpb_rule-executive-summary_hmda-2020.pdf.*

[23] CFPB, *Home Mortgage Disclosure (Regulation C) Small Entity Compliance Guide* (Feb. 2023), *https://files.consumerfinance.gov/f/documents/cfpb_hmda_small-entity-compliance-guide_2023-02.pdf.*

[24] CFPB, *HMDA Rule Key Dates Timeline, January 1, 2020 to December 31, 2022, https://files.consumerfinance.gov/f/documents/cfpb_hmda-key-dates-timeline-2020-2022.pdf.*

[25] CFPB, *HMDA Institutional Coverage Chart, https://files.consumerfinance.gov/f/documents/cfpb_hmda-institutional-coverage_2023.pdf;* Consumer Fin. Prot. Bureau, *HMDA Transactional Coverage Chart, https://files.consumerfinance.gov/f/documents/cfpb_hmda-transactional-coverage_2023.pdf.*

[26] CFPB, *Reportable HMDA Data: A Regulatory and Reporting Overview Reference Chart for HMDA Data Collected in 2023,https://files.consumerfinance.gov/f/documents/cfpb_reportable-hmda-data_regulatory-and-reporting-overview-reference-chart_2023-02.pdf.*

[27] CFPB, *Sample Data Collection Form, https://files.consumerfinance.gov/f/documents/201708_cfpb_hmda-sample-data-collection-form.pdf.*

[28] CFPB, *Home Mortgage Disclosure Act FAQs, https://www.consumerfinance.gov/compliance/compliance-resources/mortgage-resources/hmda-reporting-requirements/home-mortgage-disclosure-act-faqs/.*

[29] CFPB, *A Beginner's Guide to Accessing and Using Home Mortgage Disclosure Act Data* (June 13, 2022), *https://files.consumerfinance.gov/f/documents/cfpb_beginners-guide-accessing-using-hmda-data_guide_2022-06.pdf.*

[30] CFPB, *HMDA Webinars, https://www.consumerfinance.gov/compliance/compliance-resources/mortgage-resources/hmda-reporting-requirements/webinars/.*

[31] CFPB, *Summary of 2021 Data on Mortgage Lending* (June 16, 2022), *https://www.consumerfinance.gov/data-research/hmda/summary-of-2021-data-on-mortgage-lending/.*

[32] *See Interactive Bureau Regulations, Regulation C, https://www.consumerfinance.gov/rules-policy/regulations/1003/.*

[33] Collectively, the Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), the Office of the Comptroller of the Currency (OCC), and the CFPB comprise the Federal Financial Institutions Examination Council (FFIEC). The State Liaison Committee was added to FFIEC in 2006 as a voting member. Federal Fin. Instit. Examination Council, *http://www.ffiec.gov* (last visited May 15, 2023).

[34] CFPB, *Filing instructions guide for HMDA data collected in 2023* (Sept. 2, 2022), *https://s3.amazonaws.com/cfpb-hmda-public/prod/help/2023-hmda-fig.pdf.*

[35] CFPB, *Supplemental Guide for Quarterly Filers for 2023* (Sept. 2, 2022), *https://s3.amazonaws.com/cfpb-hmda-public/prod/help/supplemental-guide-for-quarterly-filers-for-2023.pdf.*

[36] Federal Fin. Instit. Examination Council, *A Guide to HMDA Reporting, Getting it Right!* (Feb. 28, 2022), *https://www.ffiec.gov/hmda/pdf/2022Guide.pdf.*

with stakeholders. These tools are targeted to individuals, advocates, civil rights organizations, government agencies, tribal entities, small business owners, financial institutions, and other stakeholders to promote and broadcast news and information about emerging fair lending issues, areas of concern, CFPB initiatives, and more.

In 2022, the CFPB published 12 blog posts related to fair lending topics including: examination findings that some financial companies are unlawfully considering religion when making decisions on financial products; [37] a joint letter sent to The Appraisal Foundation regarding appraisal discrimination; [38] a new initiative to focus on financial issues facing rural communities; [39] announcing efforts to further crack down on discrimination in the financial sector; [40] announcing the publication of the 2021 Fair Lending Annual Report to Congress; [41] providing Spanish-speaking customers with Spanish-language disclosures; [42] announcing the publication of the *Beginner's Guide to Accessing and Using Home Mortgage Disclosure Act Data;* [43] identifying and addressing the financial needs of immigrants; [44] the *Interagency Statement on Special Purpose Credit Programs Under ECOA and Regulation B;* [45] challenging inaccurate appraisals through the reconsideration of value process; [46] research about higher interest rates leading to higher debt burdens for mortgage borrowers; [47] and changes relating to HMDA's closed-end loan reporting threshold.[48]

In 2022, the CFPB also issued 16 press releases related to fair lending and access to credit issues, including the announcement of: the publication of the CFPB's *Justice-Involved Individuals and the Consumer Financial Marketplace Report;* [49] the publication of the SBREFA outline for the AVM rulemaking; [50] the updated UDAAP exam guidance; [51] Director Chopra's statement on the Interagency Task Force on Property Appraisal and Valuation Equity (PAVE) taskforce's report; [52] the availability of 2021 HMDA data; [53] a report on financial challenges facing rural communities; [54] the issuance of an advisory opinion on the coverage of fair lending laws; [55] the publication of a report on mortgage servicing metrics; [56] the issuance of a CFPB Circular related to adverse action notice requirements under ECOA; [57] the availability of the 2021 HMDA data; [58] the *Trident* enforcement action; [59] issuance of an interpretive rule laying out when digital marketing providers for financial firms must comply with Federal consumer financial protection law; [60] a report detailing family finances and debt in rural Appalachia; [61] the CFPB's Annual Report of Mortgage Market Activity; [62] the CFPB's effort to spur opportunities for homeowners in the mortgage market; [63] and publication of data from the National Survey of Mortgage Originations.[64]

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[37] Lorelei Salas, *It's illegal to penalize borrowers for being religious* (Jan. 14, 2022), *https://www.consumerfinance.gov/about-us/blog/its-illegal-penalize-borrowers-being-religious/.*

[38] Patrice Alexander Ficklin, *Appraisal discrimination is illegal under federal law* (Feb. 4, 2022), *https://www.consumerfinance.gov/about-us/blog/appraisal-discrimination-illegal-under-federal-law/.*

[39] Shawn Sebastian, *New effort focused on financial issues facing rural communities* (Mar. 10, 2022), *https://www.consumerfinance.gov/about-us/blog/new-effort-focused-on-financial-issues-facing-rural-communities/.*

[40] Eric Halperin, Lorelei Salas, *Cracking down on discrimination in the financial sector* (Mar. 16, 2022), *https://www.consumerfinance.gov/about-us/blog/cracking-down-on-discrimination-in-the-financial-sector/.*

[41] Rohit Chopra, *The CFPB's 2021 Fair Lending Annual Report to Congress* (May 6, 2022), *https://www.consumerfinance.gov/about-us/blog/the-cfpbs-2021-fair-lending-annual-report-to-congress/.*

[42] CFPB, *Support Spanish-speaking customers with Spanish-language disclosures* (May 11, 2022), *https://www.consumerfinance.gov/about-us/blog/support-spanish-speaking-customers-with-spanish-language-disclosures/.*

[43] Hallie Ryan, *CFPB publishes Beginner's Guide to Accessing and Using Home Mortgage Disclosure Act Data* (June 13, 2022), *https://www.consumerfinance.gov/about-us/blog/cfpb-publishes-beginners-guide-to-accessing-and-using-home-mortgage-disclosure-act-data/.*

[44] Sonia Lin, *Identifying and addressing the financial needs of immigrants* (June 27, 2022), *https://www.consumerfinance.gov/about-us/blog/identifying-and-addressing-the-financial-needs-of-immigrants/.*

[45] Tim Lambert, *Using special purpose credit programs to serve unmet credit needs* (July 19, 2022), *https://www.consumerfinance.gov/about-us/blog/using-special-purpose-credit-programs-to-serve-unmet-credit-needs/.*

[46] Patrice Alexander Ficklin, Makalia Griffith, and Tim Lambert, *Mortgage Borrowers Can Challenge Inaccurate Appraisals Through the Reconsideration of Value Process* (Oct. 6, 2022), *https://www.consumerfinance.gov/about-us/blog/mortgage-borrowers-can-challenge-inaccurate-appraisals-through-the-reconsideration-of-value-process/.*

[47] Feng Liu, *Office of Research blog: Higher interest rates leading to higher debt burdens for mortgage borrowers* (Nov. 30, 2022), *https://www.consumerfinance.gov/about-us/blog/higher-interest-rates-leading-to-higher-debt-burdens-for-mortgage-borrowers/.*

[48] Woody Anglade, Patrice Alexander Ficklin, and Timothy Lambert, *Changes to HMDA's closed-end loan reporting threshold* (Dec. 6, 2022), *https://www.consumerfinance.gov/about-us/blog/changes-to-hmda-closed-end-loan-reporting-threshold/.*

[49] CFPB, *CFPB Report Shows Criminal Justice Financial Ecosystem Exploits Families at Every Stage* (Jan. 31, 2022), *https://www.consumerfinance.gov/about-us/newsroom/cfpb-report-shows-criminal-justice-financial-ecosystem-exploits-families-at-every-stage/.*

[50] CFPB, *Consumer Financial Protection Bureau Outlines Options To Prevent Algorithmic Bias In Home Valuations* (Feb. 23, 2022), *https://www.consumerfinance.gov/about-us/newsroom/cfpb-outlines-options-to-prevent-algorithmic-bias-in-home-valuations/.*

[51] CFPB, *CFPB Targets Unfair Discrimination in Consumer Finance* (Mar. 16, 2022), *https://www.consumerfinance.gov/about-us/newsroom/cfpb-targets-unfair-discrimination-in-consumer-finance/.*

[52] CFPB, *CFPB Director Chopra Statement on Appraisal Task Force Report* (Mar. 23, 2022), *https://www.consumerfinance.gov/about-us/newsroom/cfpb-director-chopra-statement-on-appraisal-task-force-report/.*

[53] CFPB, *2021 HMDA Data on Mortgage Lending Now Available* (Mar. 24, 2022), *https://www.consumerfinance.gov/about-us/newsroom/2021-hmda-data-on-mortgage-lending-now-available/.*

[54] CFPB, *CFPB Releases Report on Financial Challenges Facing Rural Communities* (Apr. 19, 2022), *https://www.consumerfinance.gov/about-us/newsroom/cfpb-releases-report-on-financial-challenges-facing-rural-communities/.*

[55] CFPB, *CFPB Issues Advisory Opinion on Coverage of Fair Lending Laws* (May 9, 2022), *https://www.consumerfinance.gov/about-us/newsroom/cfpb-issues-advisory-opinion-on-coverage-of-fair-lending-laws/.*

[56] CFPB, *CFPB Releases Report on Mortgage Servicing Metrics* (May 16, 2022), *https://www.consumerfinance.gov/about-us/newsroom/cfpb-releases-report-on-mortgage-servicing-metrics/.*

[57] CFPB, *CFPB Acts to Protect the Public from Black-Box Credit Models Using Complex Algorithms* (May 26, 2022), *https://www.consumerfinance.gov/about-us/newsroom/cfpb-acts-to-protect-the-public-from-black-box-credit-models-using-complex-algorithms/.*

[58] CFPB, *FFIEC Announces Availability of 2021 Data on Mortgage Lending* (June 16, 2022), *https://www.consumerfinance.gov/about-us/newsroom/ffiec-announces-availability-of-2021-data-on-mortgage-lending/.*

[59] CFPB, *CFPB, DOJ Order Trident Mortgage Company to Pay More Than $22 Million for Deliberate Discrimination Against Minority Families* (July 27, 2022), *https://www.consumerfinance.gov/about-us/newsroom/cfpb-doj-order-trident-mortgage-company-to-pay-more-than-22-million-for-deliberate-discrimination-against-minority-families/.*

[60] CFPB, *CFPB Warns that Digital Marketing Providers Must Comply with Federal Consumer Finance Protections* (Aug. 10, 2022), *https://www.consumerfinance.gov/about-us/newsroom/cfpb-warns-that-digital-marketing-providers-must-comply-with-federal-consumer-finance-protections/.*

[61] CFPB, *CFPB Report Details Family Finances and Debt in Rural Appalachia* (Sept. 1, 2022), *https://www.consumerfinance.gov/about-us/newsroom/cfpb-report-details-family-finances-and-debt-in-rural-appalachia/.*

[62] CFPB, CFPB Annual Report of 2021 Mortgage Market Activity Reveals an End to the Refinancing Boom and an Increase in Home Purchase Loans (Sept. 19, 2022), *https://www.consumerfinance.gov/about-us/newsroom/cfpb-annual-report-2021-mortgage-market-activity-end-to-refinancing-boom/.*

[63] CFPB, *CFPB Launches Effort to Spur New Opportunities for Homeowners in the Mortgage Market* (Sept. 22, 2022), *https://www.consumerfinance.gov/about-us/newsroom/cfpb-launches-effort-to-spur-new-opportunities-for-homeowners-in-the-mortgage-market/.*

[64] CFPB, *CFPB and FHFA Publish Updated Data from the National Survey of Mortgage Originations for Public Use* (Dec. 13, 2022), *https://www.consumerfinance.gov/about-us/newsroom/cfpb-fhfa-publication-of-loan-level-data-for-public-use-collected-through-the-nsmo/.*

3.1.2. CFPB Engagements With Stakeholders

The CFPB often engages directly with stakeholders to inform the CFPB's policy decisions and message the CFPB's priorities and recent work. In 2022, CFPB staff participated in 124 stakeholder engagements related to fair lending and access to credit issues. Through speeches, presentations, podcasts, roundtables, webinars, and other smaller discussions on fair lending topics, the CFPB strives to keep abreast of economic and market realities that impact the lives of individuals, small businesses, and communities the CFPB is charged with protecting.

Throughout 2022, numerous other engagements centered around traditional and digital redlining, to include appraisal bias issues; algorithmic bias issues; special purpose credit programs; the rulemaking governing small business lending data collection and reporting under section 1071 of the Dodd-Frank Act; HMDA; agricultural and rural lending; student lending; and credit reporting.

3.2. Seeking Information: Request for Information

On September 27, 2022, the CFPB issued a Request for Information (RFI) seeking insights on ways to improve mortgage refinances for homeowners who would benefit from refinancing, including Black and Hispanic borrowers. When interest rates decline, many borrowers benefit from the lower rates by refinancing their loans. Mortgage refinancing can be harder to access for borrowers with smaller loan balances. Black and Hispanic borrowers, who on average have smaller loans, have not participated in recent refinance booms at the same rate as white borrowers. The RFI sought innovative and timely ideas to address persistent market failures and to help borrowers access beneficial refinancing along with short- and long-term loss mitigation assistance. The comment period for this RFI closed on November 28, 2022.

3.3. Data and Reports

3.3.1. Justice Involved Individuals and the Consumer Financial Marketplace

On January 31, 2022, the CFPB released a report reviewing the financial issues facing people and families who come in contact with the criminal justice system.[65] The report describes an ecosystem rife with burdensome fees, lack of choice, and barriers to credit access, where families are increasingly being forced to shoulder the costs. It walks through the financial challenges families encounter at every stage of the criminal justice process, and the ways in which providers—often for-profit private companies—are leveraging a lack of consumer choice and the companies' market dominance to impose hefty fees at families' expense. The report also describes the barriers people face when reentering society from the criminal justice system, including some barriers to obtaining consumer and small business credit that may raise fair lending concerns. The burdens of the criminal justice system—and its financial impacts—fall most heavily on people of color, women, and people with lower incomes of all races and ethnicities. Surveys have repeatedly found women, and specifically Black women, disproportionately shoulder the costs of staying in touch with loved ones in prison and paying court-related debt for family members, sometimes spending up to a third of their income on such costs and even forgoing basic necessities for themselves.

3.3.2. Medical Debt Burden in the United States

Medical debt is the most common collection tradeline reported on consumer credit records. Unfortunately, as a result of inequities in wealth, occupation, income, insurance coverage, and access to care, people of color are more likely to have medical debt in collections. People also report being contacted by debt collectors about medical debt more than any other type of debt. While medical debt has long played an outsized role on credit reports, concerns about medical debt collections and reporting are particularly elevated due to the COVID–19 pandemic. Many people have incurred pandemic-related medical debt. Black, Hispanic, and Native American communities have experienced higher rates of COVID–19 infection, in part because Black, Hispanic, and Native American people are more likely to be essential workers. Frontline workers may be particularly likely to have pandemic-related medical debt since they have more exposure to the virus but are less likely to have health insurance than the general population.

On March 1, 2022, the CFPB released a report summarizing key areas of concern in medical debt collections and reporting.[66] One such key finding was that medical debt affects households unevenly, as past-due medical debt is more prevalent among Black and Hispanic individuals than white and Asian individuals. Medical debt can have a compounding impact in reducing future access to credit, housing, and employment for populations who already face financial exclusion, including communities of color, low-income individuals, and uninsured or underinsured individuals.

3.3.3. Special Issue Brief: New Data on the Characteristics of Mortgage Borrowers During the COVID–19 Pandemic

On March 23, 2022, the CFPB released a report regarding the mortgage characteristics and demographics of borrowers who remained in COVID–19-related forbearance in January 2022.[67] Utilizing data from the National Mortgage Database, this report followed up on a previous report in May of 2021 that analyzed the characteristics of mortgage borrowers during the COVID–19 pandemic based on the account status of borrowers reported through March 2021. The 2022 report found that borrowers had a forbearance rate of 1.3 percent, compared to 4.7 percent in the March 2021 sample used in the previous May 2021 report. Although the overall forbearance rate decreased, the 2022 report also found, among other findings, that Black and Hispanic borrowers remained significantly more likely to be in forbearance compared to white borrowers. Specifically, Black and Hispanic borrowers were 2.8 times and 1.6 times more likely to end up in forbearance, respectively, than white borrowers.

3.3.4. Availability of 2021 HMDA Data

The HMDA data are the most comprehensive publicly available information on mortgage market activity. The data are used by consumer groups, regulators, industry, and others to assess potential fair lending risks and for other purposes.

On March 24, 2022, the CFPB announced the availability of the 2021 HMDA modified loan application register data on the FFIEC's HMDA Platform for approximately 4,300 HMDA filers.[68] These published data

[65] CFPB, *Justice Involved Individuals and the Consumer Financial Marketplace* (Jan. 31, 2022), *https://files.consumerfinance.gov/f/documents/cfpb_jic_report_2022-01.pdf.*

[66] CFPB, *Medical Debt Burden in the United States* (Mar. 1, 2022), *https://files.consumerfinance.gov/f/documents/cfpb_medical-debt-burden-in-the-united-states_report_2022-03.pdf.*

[67] CFPB, *New Data on the Characteristics of Mortgage Borrowers During the COVID–19 Pandemic* (Mar. 23, 2022), *https://files.consumerfinance.gov/f/documents/cfpb_characteristics-of-mortgage-borrowers-during-covid-19-pandemic_report_2022-03.pdf.*

[68] CFPB, *2021 HMDA Data on Mortgage Lending Now Available* (Mar. 24, 2022), *https://*

Continued

contain loan-level information filed by financial institutions, modified to protect privacy.

On June 16, 2022, the FFIEC announced the availability of additional data on 2021 mortgage lending transactions at 4,338 financial institutions reported under HMDA.[69] These data include a total of 48 data points providing information about the applicants, the property securing the loan or proposed to secure the loan in the case of non-originated applications, the transaction, and identifiers.

3.3.5. Data Spotlight: Challenges in Rural Banking Access

As part of the CFPB's renewed focus on the specific challenges of rural consumers and small businesses, on April 19, 2022, the CFPB released a report highlighting the consumer finance challenges faced by rural communities.[70] This report is a starting point for a CFPB initiative that will include devoted engagement with rural communities across the country, research into challenges faced by rural communities, and actions to protect rural consumers and small businesses from predatory bad actors and repeat offenders in consumer and small business financial markets.

3.3.6. Mortgage Servicing COVID–19 Pandemic Response Metrics: New Observations From Data Reported by Servicers for May–December 2021

On May 16, 2022, the CFPB published a report providing observations of data obtained from 16 large mortgage servicers to identify areas of risk in the servicers' COVID–19 pandemic responses.[71] This report followed a previous 2021 response metrics report, and addresses similar topics including call center data, COVID–19 hardship forbearance exits, delinquency, and borrower profiles for the period May through December 2021. As described in the report, some borrowers were impacted more than others. While the data on language preference was limited, among the servicers who provided language preference data, the percentage of borrowers in delinquency and who had a non-English language preference increased during the reviewed period. Conversely, the percentage of borrowers in delinquency and who identified English as their preferred language decreased.

3.3.7. Consumer Finances in Rural Appalachia

On September 1, 2022, the CFPB issued a report detailing consumer finances and debt in rural Appalachia.[72] The report found that inhabitants of Appalachia face higher debt burdens and worse credit conditions compared to people in most other parts of rural America. In particular, medical debt collections are a much more prevalent issue among inhabitants of rural Appalachia, and consumers with medical debt collections often experience difficulties in making ends meet on other financial obligations.

3.3.8. Data Point: 2021 Mortgage Market Activity and Trends

On September 19, 2022, the CFPB released its annual report on residential mortgage lending activity and trends for 2021.[73] The report shows a shift from refinance loans in 2020 to home purchase loans in 2021, with a greater share of home purchase loans going to Asian, Black, and Hispanic white borrowers relative to the share of home purchase loans for non-Hispanic white borrowers. The top 25 closed-end lenders by loan volume held nearly half of the market share of residential mortgage lending—a trend that has risen each year since 2018. Other key findings of the report include that an increase in mortgage originations was driven by home purchase loans as refinance loans fell; the number of mortgage lending institutions reporting HMDA data dropped in 2021; and that Asian, Black, and Hispanic white borrowers' home purchase loan shares increased from 2020 to 2021. The report also found that Black and Hispanic white borrowers, overall, continued to qualify for lower median loan amounts, had lower median credit scores, and had higher denial rates compared to non-Hispanic white and Asian borrowers. Additionally, Black and Hispanic white borrowers paid higher median interest rates and higher total loan costs overall.

3.3.9. Updated Data From National Survey of Mortgage Originations

On December 13, 2022, the CFPB and the FHFA published updated loan-level data for public use collected through the National Survey of Mortgage Originations. The data provide insights into borrowers' experiences obtaining residential mortgages.[74]

3.1. Interagency Engagement

Seeking to address current and emerging fair lending risks, the CFPB regularly coordinates with other Federal, State, tribal, county, municipal, and international government entities, policymakers, and the organizations that represent them. Through numerous interagency organizations and taskforces, the CFPB coordinated its 2022 fair lending regulatory, supervisory, and enforcement activities to promote consistent, efficient, and effective enforcement of Federal fair lending laws.

The CFPB, along with the Department of Housing and Urban Development (HUD), FTC, FDIC, FRB, NCUA, OCC, DOJ, and FHFA, constitute the Interagency Task Force on Fair Lending. This Task Force meets regularly to discuss fair lending enforcement efforts, share current methods of conducting supervisory and enforcement fair lending activities, and coordinate fair lending policies. In 2022, the FDIC was the Chair of this Task Force.[75]

On February 22, 2022, the CFPB, along with HUD, FRB, DOJ, OCC, FDIC, NCUA, and FHFA, released an *Interagency Statement on Special Purpose Credit Programs Under ECOA and Regulation B.* The statement encourages lenders to explore opportunities available to them to increase credit access through special purpose credit programs to better serve historically disadvantaged individuals and communities.[76]

www.consumerfinance.gov/about-us/newsroom/2021-hmda-data-on-mortgage-lending-now-available/.

[69] CFPB, *FFIEC Announces Availability of 2021 Data on Mortgage Lending* (June 16, 2022), *https://www.consumerfinance.gov/about-us/newsroom/ffiec-announces-availability-of-2021-data-on-mortgage-lending/.*

[70] CFPB, *Data Spotlight: Challenges in Rural Banking Access* (Apr. 19, 2022), *https://files.consumerfinance.gov/f/documents/cfpb_data-spotlight_challenges-in-rural-banking_2022-04.pdf.*

[71] CFPB, *Mortgage Servicing COVID–19 Pandemic Response Metrics: New Observations from Data Reported by Sixteen Servicers for May–December 2021* (May 16, 2022), *https://files.consumerfinance.gov/f/documents/cfpb_mortgage-servicing-covid-19-pandemic-response-metrics_report_2022-05.pdf.*

[72] Matthew Liu, Cooper Luce, Michael Orevba, Shawn Sebastian, and Cortnie Shupe, *Consumer Finances in Rural Appalachia* (Sept. 1, 2022), *https://files.consumerfinance.gov/f/documents/cfpb_consumer-finances-in-rural-appalachia_report_2022-09.pdf.*

[73] CFPB, *Data Point: 2021 Mortgage Market Activity and Trends* (Sept. 19, 2022), *https://files.consumerfinance.gov/f/documents/cfpb_data-point-mortgage-market-activity-trends_report_2022-09.pdf.*

[74] CFPB, *CFPB and FHFA Publish Updated Data from the National Survey of Mortgage Originations for Public Use* (Dec. 13, 2022), *https://www.consumerfinance.gov/about-us/newsroom/cfpb-fhfa-publication-of-loan-level-data-for-public-use-collected-through-the-nsmo/.*

[75] Additional activity has occurred since the close of this reporting period. In 2023, the NCUA became the Chair of the Interagency Taskforce on Fair Lending.

[76] Bd. of Governors of the Fed. Reserve Sys., Fed. Deposit Ins. Corp., Nat'l Credit Union Admin., Office of the Comptroller of the Currency, Consumer Fin. Prot. Bureau, the Dep't of Hous. and Urban Dev., the Dep't of Justice, and the Fed. Hous. Fin. Agency, *Interagency Statement on Special Purpose Credit Programs Under the Equal Credit Opportunity Act and Regulation B* (Feb. 22, 2022),

Through the FFIEC, the CFPB has robust engagements with other partner agencies that focus on fair lending issues. For example, throughout the reporting period, the CFPB has chaired the HMDA/Community Reinvestment Act (CRA) Data Collection Subcommittee, a subcommittee of the FFIEC Task Force on Consumer Compliance. This subcommittee oversees FFIEC projects and programs involving HMDA data collection and dissemination, the preparation of the annual FFIEC budget for processing services, and the development and implementation of other related HMDA processing projects as directed by this Task Force.

The CFPB also participates in the Interagency Working Group on Fair Lending Enforcement, a standing working group of Federal agencies—with the DOJ, HUD, and FTC—that meets regularly to discuss issues relating to fair lending enforcement. The agencies use these meetings to also discuss fair lending developments and trends, methodologies for evaluating fair lending risks and violations, and coordination of fair lending enforcement efforts.

The CFPB, the other FFIEC Federal agencies, HUD, and FHFA are the FFIEC's Appraisal Subcommittee (ASC) member agencies. The ASC's functions include providing Federal oversight of State appraiser and appraisal management company regulatory programs, and a monitoring framework for The Appraisal Foundation.[77] The ASC has taken steps to promote fairness and equity in valuations, including by being a member of the PAVE Task Force.

The CFPB engaged with other agencies on issues of bias in home appraisals through the PAVE Task Force. The PAVE Task Force is chaired by HUD Secretary Marcia Fudge and Assistant to the President for Domestic Policy and Director of the Domestic Policy Council, Ambassador Susan Rice.[78] This Task Force also includes cabinet-level leaders from executive departments and additional members from independent agencies, including the CFPB. On March 23, 2022, the PAVE Task Force issued a report, *Action Plan to Advance Property Appraisal and Valuation Equity: Closing the Racial Wealth Gap by Addressing Mis-valuations for Families and Communities of Color*.[79] The report outlines the historical role of racism in the valuation of property, examines the various forms of bias that can appear in residential property valuation practices, and describes how government and industry stakeholders will advance equity through concrete actions and recommendations. Aside from its involvement in PAVE, the CFPB is also actively working with its interagency partners on issues of bias in home appraisals.

In February 2022, senior staff from the CFPB, along with HUD, FRB, DOJ, OCC, FDIC, NCUA, and FHFA submitted a letter to the Appraisal Standards Board regarding proposed changes to the 2023 Edition of the Uniform Standards of Professional Appraisal Practice.[80]

As required by section 1022 of the Dodd-Frank Act, the CFPB also consults with other agencies as part of its rulemaking process. For example, in 2022, while developing its small business lending data collection final rule, the CFPB consulted or offered to consult with the FRB, FDIC, NCUA, OCC, HUD, DOJ, FTC, the Department of Agriculture, the Department of the Treasury, the Economic Development Administration, the Farm Credit Administration (FCA), the Financial Crimes Enforcement Network, and the Small Business Administration (SBA) including, among other things, on consistency with any prudential, market, or systemic objectives administered by such agencies.

In addition to the established interagency organizations, CFPB personnel meet regularly with agency personnel, including with DOJ, HUD, FTC, FHFA, State Attorneys General, and the prudential regulators to coordinate and discuss the CFPB's fair lending work.

4. Amicus Program and Other Litigation

The CFPB files *amicus,* or ''friend-of-the-court,'' briefs in significant court cases concerning Federal consumer financial protection laws, including cases involving ECOA. These briefs provide courts with the CFPB's views and help ensure that consumer financial protection statutes are correctly and consistently interpreted. In 2022, no fair lending-related amicus briefs were filed. Information regarding the CFPB's amicus program, including a description of the amicus briefs it has filed, is available on the CFPB's website.[81]

In September of 2022, the CFPB was sued in the U.S. District Court for the Eastern District of Texas by the U.S. Chamber of Commerce, *et al.,* challenging the CFPB's update to the UDAAP section of its examination manual relating to the CFPA's prohibition on unfair practices. Litigation is currently ongoing.

In August 2020, the CFPB was sued in the U.S. District Court for the District of Columbia by the National Community Reinvestment Coalition, *et al.,* over the CFPB's final rule amending Regulation C to raise the loan-volume coverage thresholds for financial institutions reporting data under the 2020 HMDA Final Rule. On September 23, 2022, the District Court vacated the 2020 HMDA Final Rule's closed-end loan reporting threshold but upheld the rule's open-end reporting threshold. The decision means that the threshold for reporting data on closed-end mortgage loans is 25 loans in each of the two preceding calendar years, which is the threshold established by the 2015 HMDA Final Rule, rather than the 100-loan threshold set by the 2020 HMDA Final Rule.

In 2019, the CFPB was sued in the U.S. District Court for the Northern District of California by the California Reinvestment Coalition, *et al.,* regarding the CFPB's obligation to issue rules implementing section 1071. In February 2020, the court approved a stipulated settlement agreement. Among other things, the settlement agreement also provides a process for setting appropriate deadlines for the issuance of a proposed and final rule implementing section 1071. Following the timely issuance of a notice of proposed rulemaking, the comment period for the rulemaking closed on January 6, 2022.[82] For a more

https://files.consumerfinance.gov/f/documents/cfpb_spcp_interagency-statement_2022-02.pdf.

[77] During the reporting period, the CFPB Deputy Director Zixta Martinez served as Vice Chairperson of the ASC beginning on April 1, 2022, and Regional Director John Schroeder served as Vice Chairperson of the ASC through February 16, 2022.

[78] Since the close of this reporting period, Ambassador Susan Rice left her position as Assistant to the President for Domestic Policy and Director of the Domestic Policy Council. It was announced on May 5, 2023, that Neera Tanden would replace Ambassador Rice as Assistant to the President for Domestic Policy and Director of the Domestic Policy Council. Ms. Tanden now also serves as co-chair of the PAVE Task Force.

[79] Interagency Task Force on Property Appraisal and Valuation Equity (PAVE), *Action Plan to Advance Property Appraisal and Valuation Equity* (Mar. 2022), *https://pave.hud.gov/actionplan.*

[80] Patrice Alexander Ficklin, Consumer Fin. Prot. Bureau; Amy Frisk, Dep't of Hous. and Urban Dev.; Arthur Lindo, Bd. of Governors of the Fed. Reserve Sys.; Sameena Shina Majeed, Dep't of Justice; Donna Murphy, Office of the Comptroller of the Currency; Mark Pearce, Fed. Deposit Ins. Corp.; Timothy Segerson, Nat'l Credit Union Admin.; James Wylie, Fed. Hous. Fin. Agency, *Letter to Michelle Czekalski Bradley* (Feb. 4, 2022), *https://files.consumerfinance.gov/f/documents/cfpb_appraisal-discrimination_federal-interagency_comment_letter_2022-02.pdf.*

[81] *See generally, https://www.consumerfinance.gov/policy-compliance/amicus/.*

[82] Additional activity has occurred since the close of this reporting period. On March 30, 2023, the CFPB released its final rule implementing section 1071. *See https://www.consumerfinance.gov/rules-*

Continued

comprehensive update on 1071 activity, see section 2.1.1 of this report.

5. Interagency Reporting on ECOA and HMDA

The CFPB is statutorily required to file a report to Congress annually describing the administration of its functions under ECOA, summarizing public enforcement actions taken by other agencies with administrative enforcement responsibilities under ECOA, and providing an assessment of the extent to which compliance with ECOA has been achieved.[83] In addition, the CFPB's annual HMDA reporting requirement calls for the CFPB, in consultation with HUD, to report annually on the utility of HMDA's requirement that covered lenders itemize certain mortgage loan data.[84]

5.1. Reporting on ECOA Enforcement

The enforcement and compliance efforts and assessments made by the eleven agencies assigned enforcement authority under section 704 of ECOA are discussed in this section, as reported by the agencies.

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policy/final-rules/small-business-lending-under-the-equal-credit-opportunity-act-regulation-b/.

[83] 15 U.S.C. 1691f.

[84] 12 U.S.C. 2807.

TABLE 1: FFIEC AGENCIES WITH ADMINISTRATIVE ENFORCEMENT OF ECOA[85]

FFIEC AGENCIES				
Bureau of Consumer Financial Protection (CFPB)	Federal Deposit Insurance Corporation (FDIC)	Federal Reserve Board (FRB)	National Credit Union Administrati on (NCUA)	Office of the Comptroller of the Currency (OCC)

TABLE 2: NON-FFIEC AGENCIES WITH ADMINISTRATIVE ENFORCEMENT OF ECOA

NON-FFIEC AGENCIES		
Agricultural Marketing Service (AMS) of the U.S. Department of Agriculture (USDA)[86]	Department of Transportation (DOT)	Farm Credit Administration (FCA)
Federal Trade Commission (FTC)	Securities and Exchange Commission (SEC)	Small Business Administration (SBA)[87]

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5.1.1. Public Enforcement Actions

In 2022, of the Federal agencies with ECOA enforcement authority, the CFPB, together with DOJ, brought one public enforcement action for violations of ECOA and the FTC brought two enforcement actions for violations of ECOA.

On July 27, 2022, the CFPB, together with DOJ, brought a public enforcement action in Federal district court in the Eastern District of Pennsylvania against Trident Mortgage Company for unlawful discrimination against individuals and families living in majority-minority neighborhoods in the greater Philadelphia area. For more information on the Trident enforcement action, see section 1.2.1 of this report.

[85] Collectively, the Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), the Office of the Comptroller of the Currency (OCC), and the Bureau of Consumer Financial Protection (Bureau) comprise the Federal Financial Institutions Examination Council (FFIEC). The State Liaison Committee was added to FFIEC in 2006 as a voting member. Federeal Financial Institutions Examination Council, *http://www.ffiec.gov* (last visited Mar. 30, 2021).

[86] The Grain Inspection, Packers and Stockyards Administration (GIPSA) was eliminated as a stand-alone agency within USDA in 2017. The functions previously performed by GIPSA have been incorporated into the Agricultural Marketing Service (AMS), and ECOA reporting comes from the Packers and Stockyards Division, Fair Trade Practices Program, AMS.

[87] 15 U.S.C. 1691c.

The FTC also brought enforcement actions for violations of ECOA. In 2022, the FTC and the State of Illinois brought an enforcement action against Napleton, a large multistate auto group based in Illinois, alleging, among other things, that defendants violated the ECOA and Regulation B by discriminating against Black consumers, charging them more in financing for interest rate markups, and illegal junk fees for unwanted ''add-ons'' that they sneaked onto customers' bills.[88] According to the FTC's complaint, among other things, defendants would often wait until the end of the hours-long negotiation process to slip junk fees for add-on products and services into consumers' purchase contracts, which can run as long as 60 pages. Defendants agreed to pay $10 million to settle all the charges, a record setting monetary judgment for an FTC auto lending case.[89] Defendants are also required to establish a fair lending program that will, among other components, cap the amount of any additional interest markup they charge consumers.

Also in 2022, the FTC brought an action in Federal court against Maryland-based Passport Automotive Group, alleging that defendants violated the ECOA and Regulation B, and also violated the FTC Act, by engaging in unfair practices, by discriminating against Black and Latino consumers, charging them higher financing costs and illegal junk fees.[90] In its complaint, the FTC alleges, among other things, that Passport regularly advertised certified, reconditioned, or inspected cars at specific prices, but then added extra certification, reconditioning, or inspection fees that it falsely claimed consumers are required to pay, charging Black and Latino consumers more for the fees and imposing the fees more often. The FTC also alleges that Passport charged Black and Latino consumers hundreds of dollars more in financing costs for interest rate markups than White consumers. Among other things, Defendants agreed to pay more than $3.3 million to settle the FTC's lawsuit, which will be used to refund consumers harmed by Passport's conduct; the order also requires Defendants to establish a fair lending program to ensure against discrimination going forward, including requiring each Passport dealership to either charge no financing markup or charge the same markup rate to all consumers.[91]

5.1.2. Number of Institutions Cited for ECOA/Regulation B Violations

In 2022, the Agencies and the CFPB collectively reported citing 174 institutions with violations of ECOA and/or Regulation B.

5.1.3. Violations Cited During ECOA Examinations

Among institutions examined for compliance with ECOA and Regulation B, the FFIEC agencies reported that the most frequently cited violations were as follows:

TABLE 5—REGULATION B VIOLATIONS CITED BY FFIEC AGENCIES, 2022

Regulation B violations: 2022	FFIEC Agencies reporting
12 CFR 1002.4, 1002.7(d)(1): Discrimination—Discrimination on a prohibited basis in a credit transaction; improperly requiring the signature of the applicant's spouse or other person.	NCUA,[92] FRB,[93] OCC,[94] CFPB.[95]
12 CFR 1002.5(b), 12 CFR 1002.5(c), 12 CFR 1002.5(d): Inquiring about protected class—Inquiring about the race, color, religion, national origin, or sex of an applicant or any other person in connection with a credit transaction, except as permitted in § 1002.5(b)(1) and (b)(2), or § 1002.8 in the case of a special purpose credit program; requesting any information concerning an applicant's spouse or former spouse, except as permitted in § 1002.5(c)(2); requesting the marital status of a person applying for individual, unsecured credit, except as permitted in § 1002.5(d)(1) (for credit other than individual, unsecured, a creditor may inquire about the applicant's marital status, but must only use the terms "married," "unmarried," and "separated"); inquiring as to whether income stated in an application is derived from alimony, child support, or separate maintenance payments, except as permitted in § 1002.5(d)(2); or requesting information about birth control practices, intentions concerning the bearing or rearing of children, or capability to bear children, except as permitted in § 1002.5(d)(3).	FDIC.
12 CFR 1002.6 (b)(2): Specific rules concerning use of information—Improperly evaluating age, receipt of public assistance in a credit transaction.	NCUA.
12 CFR 1002.9(a)(1)(i), (a)(2), (b)(1); (b)(2); (c): Adverse Action—Failure to provide notice to the applicant 30 days after receiving a completed application concerning the creditor's approval of, counteroffer to, or adverse action on the application; failure to provide appropriate notice to the applicant 30 days after taking adverse action on an incomplete application; failure to provide sufficient information in an adverse action notification, including the specific reasons for the action taken.	FDIC,[96] NCUA,[97] OCC,[98] FRB,[99] CFPB.[100]
12 CFR 1002.12(b)(1): Record Retention—Failure to retain records of the original application or a copy thereof for 25 months after the data a creditor notifies an applicant of action taken on an application or of incompleteness.	OCC.
12 CFR 1002.14 (a)(1), (a)(2), (a)(3), (a)(4): Appraisals and Valuations—Failure to provide appraisals and other valuations.	FDIC,[101] OCC,[102] FRB.[103]

Among institutions examined for compliance with ECOA and Regulation

[88] *FTC* v. *North American Automotive Services, Inc.*, No. 22–cv–01690 (N.D. Ill., filed Mar. 31, 2022), *available at https://www.ftc.gov/legal-library/browse/cases-proceedings/2023195-napleton-auto.* Chair Khan and Commissioner Slaughter issued a concurring statement. *See Joint Statement of Chair Lina M. Khan and Commissioner Rebecca Kelly Slaughter in the Matter of Napleton Automotive Group* (Mar. 31, 2022), *available at https://www.ftc.gov/news-events/news/speeches/joint-statement-chair-lina-m-khan-commissioner-rebecca-kelly-slaughter-matter-napleton-automotive.*

[89] *FTC* v. *North Amer. Auto. Servs., Inc.,* No. 22–cv–01690 (N.D. Ill. Mar. 31, 2022) (stipulated order for permanent injunction, monetary judgment, and other relief), *available at https://www.ftc.gov/system/files/ftc_gov/pdf/6-1%20Stipulated%20Order.pdf.*

[90] *FTC* v. *Passport Auto. Grp., Inc.,* No. 8:22–cv–02670–GLS (D. Md., filed Oct. 18, 2022), *https://www.ftc.gov/system/files/ftc_gov/pdf/Complaint%20Passport%20Auto%20Group%2C%20Inc.%2C%20et%20al..pdf.* This is the second FTC action against Passport in recent years. *See https://www.ftc.gov/news-events/news/press-releases/2018/10/washington-dc-area-car-dealerships-marketing-firm-settle-deceptive-advertising-charges.*

[91] *FTC* v. *Passport Auto. Grp., Inc.,* No. 8:22–cv–02670 (D. Md. Oct. 18, 2022) (stipulated order for permanent injunction, monetary judgment, and other relief), *available at https://www.ftc.gov/system/files/ftc_gov/pdf/Order%20As%20Filed.pdf.*

[92] 12 CFR 1002.4(a).

[93] 12 CFR 1002.7(d)(1).

[94] 12 CFR 1002.7(d)(1).

[95] 12 CFR 1002.4(a); 12 CFR 1002.4(b).

[96] 12 CFR 1002.9(a)(2); (b)(2).

[97] 12 CFR 1002.9(a)(1); (a)(2);(b)(2).

B, the Non-FFIEC agencies reported that the most frequently cited violations were as follows:

the most frequently cited violations were as follows:

TABLE 6—REGULATION B VIOLATIONS CITED BY NON-FFIEC AGENCIES ENFORCING ECOA, 2022

Regulation B violations: 2022	Non-FFIEC Agencies reporting
12 CFR 1002.9(a)(1)(i): Adverse Action—Failure to provide notice to the applicant 30 days after receiving a completed application concerning the creditor's approval of, counteroffer to, or adverse action on the application; failure to provide sufficient information in an adverse action notification, including the specific reasons for the action taken; failure to provide ECOA notice.	FCA.

The AMS, SEC, and the SBA reported that they received no complaints based on ECOA or Regulation B in 2022. The FTC is an enforcement agency and does not conduct compliance examinations.

5.1.4. Referrals to the Department of Justice

The Agencies assigned enforcement authority under section 704 of ECOA must refer a matter to DOJ when there is reason to believe that a creditor has engaged in a pattern or practice of lending discrimination in violation of ECOA.[104] They also may refer other potential ECOA violations to DOJ.[105] In 2022, four agencies (FDIC, NCUA, FRB, and CFPB) collectively made 23 such referrals to DOJ involving discrimination in violation of ECOA. This is an increase of 91 percent in such referrals from 12 in 2020. A brief description of those matters follows.

In 2022, the FDIC referred 12 fair lending matters to DOJ. The referrals included: two matters involving discrimination on the basis of national origin in auto loan pricing; one matter involving discrimination on the basis of sex in auto loan pricing; two matters involving discrimination on the basis of race in mortgage lending (redlining); one matter involving discrimination in underwriting consumer loans on the basis of marital status; two matters involving discrimination in underwriting credit cards on the basis of age; two matters involving discrimination in underwriting unsecured consumer loans on the basis of exercising rights under the Consumer Credit Protection Act; one matter involving discrimination in underwriting unsecured consumer loans on the basis of receipt of public assistance income; and one matter involving discrimination in pricing/underwriting of consumer loans on the basis of marital status.

As reported in section 1.2.2 above, in 2022, the CFPB referred five fair lending matters to DOJ. The referrals included four matters involving discrimination on the basis of race and national origin in mortgage lending (redlining) and one matter involving discrimination in underwriting mortgage loans on the basis of receipt of public assistance income.

In 2022, the NCUA referred five matters to DOJ. The referrals all involved discrimination in underwriting consumer loans on the basis of age, and one referral also involved discrimination in underwriting consumer loans on the basis of marital status.

The FRB referred one matter to DOJ during the reporting period, which involved discouragement of applicants or prospective applicants in mortgage lending on the basis of marital status.[106]

5.2. Reporting on HMDA

The CFPB's annual HMDA reporting requirement calls for the CFPB, in consultation with HUD, to report annually on the utility of HMDA's requirement that covered lenders itemize loan data in order to disclose the number and dollar amount of certain mortgage loans and applications, grouped according to various characteristics.[107] The CFPB, in consultation with HUD, finds that itemization and tabulation of these data furthers the purposes of HMDA.

6. Looking Forward: the Future of Fair Lending

The ubiquity of advanced technologies throughout the consumer financial services marketplace calls for vigilance against discrimination using all of the CFPB's available tools. Advanced algorithmic technologies, as well as old technology now marketed as artificial intelligence, are now often used throughout the entire life cycle of financial services products. Beginning with the sophisticated digital marketing that targets individual consumers, continuing to the fraud screens and underwriting models that determine who gets offered credit and at what price, and finally to the chatbots and behavioral analytics that increasingly govern consumers' experience post-origination, consumers increasingly cannot avoid these technologies. The CFPB has been increasing its expertise in data science and analytics to ensure that we can identify fair lending violations at each stage of the credit lifecycle and hold creditors and service providers accountable for fully complying with fair lending and other Federal consumer financial laws, regardless of the technology they choose to use.

The CFPB is keenly focused on the risks that these technologies present to individual consumers, small businesses, communities, and the market as a whole. Big tech platforms, with their vast consumer surveillance and data harvesting infrastructure, have the potential to undermine fairness and competition. Some of these platforms are collecting and monetizing highly sensitive consumer data, including the types of data that are not appropriate to use in the context of a credit decision. Indeed, vast troves of sensitive data available about consumers that institutions using more traditional methods would never have used in a credit decisioning context are now fueling highly complex, black box algorithms. As affirmed by our *Circular, Adverse Action Notification Requirements in Connection with Credit Decisions Based on Complex Algorithms,* creditors must follow the law and provide statements of specific reasons to applicants against whom adverse action is taken, regardless of the technology they use.

[98] 12 CFR 1002.9(a)(1)(i); (a)(2); (b)(1); (b)(2).

[99] 12 CFR 1002.9(a)(1)(i); (b)(2).

[100] 12 CFR 1002.9(a)(2).

[101] 12 CFR 1002.14(a)(1)–(4).

[102] 12 CFR 1002.14(a)(1); (a)(2).

[103] 12 CFR 1002.14(a)(2).

[104] 15 U.S.C. 1691e(g).

[105] *Id.*

[106] This referral also involved discrimination on the basis of familial status in violation of the Fair Housing Act.

[107] 12 U.S.C. 2807.

These risks, combined with digital marketing techniques that allow firms to target consumers with surgical precision and to leverage dark patterns, can have the potential to create an unfair marketplace that harms consumers and law-abiding institutions. As described in our interpretative rule, *Limited Applicability of Consumer Financial Protection Act's "Time or Space" Exception to Digital Marketers,* digital marketers acting as service providers can be held liable by the CFPB or other law enforcers for committing unfair, deceptive, or abusive acts or practices as well as other consumer financial protection violations.

The CFPB will remain vigilant against these risks and encourages innovation that follows the law, promotes competitive markets, and delivers long-term benefits to consumers and small businesses in the form of sustainable financial products and services. For example, the CFPB is considering as part of its personal financial data rights rulemaking to implement section 1033 of the Dodd-Frank Act, options that would allow consumers to more easily walk away from companies offering bad products and poor service and move towards companies competing for their business with alternate or innovative products and services. Technology should be used to complement responsible banking, rather than to undermine it.

The CFPB's work in 2022 underscored that financial service providers are expected to play by the same rules no matter what technology they use. In 2023, the CFPB will continue to guard against violations throughout the entire credit lifecycle. We will continue to develop our ability to leverage advanced data analytics to identify and remedy violations. Though some technologies may be billed as new, the risks of predation and exclusion that they may pose are not. The CFPB was founded in the wake of the 2008 financial crisis, when products initially billed as new and innovative resulted in catastrophic harm to consumers and communities across the country. The CFPB will continue to heed the lessons learned from that crisis. Product benefits based on atypical use cases should be questioned and tested to protect consumers and small businesses from future harm cloaked in vague promises of innovation and inclusion. The CFPB will continue to dedicate and develop resources to dive deeply into how financial institutions are using, understanding, testing, and improving these technologies through the entirety of the credit lifecycle.

Appendix A: Defined Terms

Term	Definition
AMS	Agricultural Marketing Service of the U.S. Department of Agriculture.
ASC	FFIEC's Appraisal Subcommittee.
AVM	Automated Valuation Models.
CFPA	Consumer Financial Protection Act of 2010.
CFPB	Consumer Financial Protection Bureau.
CRA	Community Reinvestment Act.
Dodd-Frank Act	Dodd-Frank Wall Street Reform and Consumer Protection Act.
DOJ	U.S. Department of Justice.
DOT	U.S. Department of Transportation.
ECOA	Equal Credit Opportunity Act.
FCA	Farm Credit Administration.
FDIC	Federal Deposit Insurance Corporation.
FHA	Fair Housing Act.
FHFA	Federal Housing Finance Agency.
Federal Reserve Board or FRB	Board of Governors of the Federal Reserve System.
FFIEC	Federal Financial Institutions Examination Council—the FFIEC member agencies are the Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), the Office of the Comptroller of the Currency (OCC), and the Consumer Financial Protection Bureau (CFPB). The State Liaison Committee was added to FFIEC in 2006 as a voting member.
FIRREA	Financial Institutions Reform, Recovery, and Enforcement Act of 1989.
FTC	Federal Trade Commission.
GIPSA	Grain Inspection, Packers and Stockyards Administration of the U.S. Department of Agriculture.
GAO	Government Accountability Office.
HMDA	Home Mortgage Disclosure Act.
HUD	U.S. Department of Housing and Urban Development.
MSA	Metropolitan Statistical Area.
NCUA	National Credit Union Administration.
OCC	Office of the Comptroller of the Currency.
PAVE	Property Appraisal and Valuation Equity.
RFI	Request for Information.
SBA	Small Business Administration.
SBREFA	Small Business Regulatory Enforcement Fairness Act of 1996.
SEC	Securities and Exchange Commission.
UDAAP	Unfair, Deceptive, or Abusive Acts or Practices.
USDA	U.S. Department of Agriculture.

Signing Authority

The Director of the Bureau, Rohit Chopra, having reviewed and approved this document, is delegating the authority to electronically sign this document to Laura Galban, a Bureau Federal Register Liaison, for purposes of publication in the **Federal Register**.

Laura Galban,

Federal Register Liaison, Bureau of Consumer Financial Protection.

[FR Doc. 2023–14197 Filed 7–5–23; 8:45 am]

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DEPARTMENT OF DEFENSE

Department of the Army, Army Corps of Engineers

Notice of Intent To Prepare an Environmental Impact Statement for the Yazoo Backwater Area Water Management Project

AGENCY: U.S. Army Corps of Engineers, Department of the Army, DoD.

ACTION: Notice of intent to prepare a draft environmental impact statement for the Yazoo Backwater Area water management project, Sharkey, Yazoo, Washington, and Issaquena, and Humphrey Counties, Mississippi.

SUMMARY: The U.S. Army Corps of Engineers (USACE), Vicksburg District, is announcing its intent to prepare an Environmental Impact Statement (EIS) for the authorized Yazoo Basin, Yazoo Backwater, Mississippi, Project (Project). The EIS will analyze a new water management solution for the Project. The EIS will also examine measures to avoid, minimize, and mitigate environmental impacts associated with the Proposed Action which is the USACE Preferred Alternative. The EIS process does not foreclose the authorities of other State and Federal agencies to assist those Yazoo Backwater Area communities in risk management, emergency response, and community resilience. State and Federal agencies, with applicable authorities, would be continually engaged as necessary throughout the process.

DATES: All comments and suggestions must be submitted by August 7, 2023.

ADDRESSES: To ensure the Corps has sufficient time to consider public input in the preparation of the Draft EIS, scoping comments should be submitted by email at *YazooBackwater@usace.army.mil* or by surface mail to Mike Renacker at U.S. Army Corps of Engineer, Vicksburg District, ATTN: CEMVK–PPMD, 4155 East Clay Street, Room 248, Vicksburg, MS 39183.

FOR FURTHER INFORMATION CONTACT: Stacey M. Jensen, in writing at the Office of the Assistant Secretary of the Army (Civil Works), 108 Army Pentagon, Washington, DC 20318–0108; by telephone at 703–695–6791; and by email at *YazooBackwater@usace.army.mil.*

SUPPLEMENTARY INFORMATION:

1. *Project Background and Authorization.* After the devastating Mississippi River Flood of 1927, Congress passed the 1928 Flood Control Act (FCA) which authorized the Mississippi River & Tributaries (MR&T) project. The Mississippi River Levees (MRL) project, which was authorized by the 1928 FCA, as amended, is a component of the MR&T project and prevents inundation of the alluvial valley of the lower Mississippi River (LMR) which begins at Cape Girardeau, Missouri, and gently slopes to the Gulf of Mexico. The Mississippi River levees protect major cities and towns, developed industrial areas, valuable farmlands, and wildlife habitats against the Project Design Flood (PDF) by confining flow to the leveed channel except where it enters backwater areas or is diverted purposely into floodway areas. Backwater areas and floodways were both integral features designed into the overall MRL project.

Backwater areas are the necessary result of gaps left in the main-stem Mississippi River levee system at the mouths of major tributaries that empty into the river. During large flood events, floodwaters from the Mississippi River back into the gaps and/or block discharges from the tributary systems from exiting the backwater areas. The MR&T project is augmented by four backwater areas. The St. Francis River Backwater Area and the White River Backwater Area in the northern section of the LMR, the Yazoo River Backwater Area in the middle section of the LMR, and Red River Backwater Area in the southern section of the LMR. These backwater areas typically operate through the use of backwater levees which tie into the MRL system, water control structures, pumps, and sometimes connecting channels. The St. Francis River, White River, and Red River backwater areas each have operational pump stations; the Huxtable pump station was built in 1977, Graham-Burke pump station was built in 1964, and Tensas-Cocodrie pump station was built in 1986, respectively.

Floodways are intended to safely divert excess floodwaters past critical reaches in the levee system to prevent the PDF from exceeding levee design elevations. The original MR&T project provided for five floodways which were the Birds Point-New Madrid floodway in the northern section of the LMR, the Boeuf/Eudora floodway in the middle section of the LMR, and the West Atchafalaya, Morganza, and Bonnet Carre floodways in the southern section of the LMR. The Boeuf/Eudora floodway, which would have diverted water from the middle section of the LMR, from the mouth of the Arkansas River to Old River, during a PDF, was the only authorized floodway that was never implemented and was eventually removed as an authorized component of the MR&T project. The Boeuf/Eudora floodway would have removed approximately 700,000 cubic feet per second (cfs) of floodwater flow from the Mississippi River during the PDF. Without the Boeuf/Eudora floodway, it became necessary to confine the PDF between higher and stronger levees along the Mississippi River. Prior to the 1941 FCA and in an attempt to reduce the necessity of the Boeuf/Eudora Floodway, the cutoff and channel realignment component of the MR&T was initiated in 1932 for the middle section of the LMR. The cutoff and channel realignment component was intended to eventually increase the carrying capacity of the channel and lower flood stages. Legal action was initiated in 1929 from landowners over the use of the Boeuf/Eudora floodway. By 1941, with the legal conflicts still unresolved, the Mississippi River Commission re-examined the MR&T project but made no formal recommendation on the floodway issue. The 1941 FCA formally abandoned all components of the Boeuf/Eudora floodway and authorized an increase in the height of the Mississippi River levees, a plan developed by the Mississippi River Commission to provide flood protection to the Yazoo Backwater Area.

The Project was authorized by the FCA of 1941 (Public Law (Pub. L.) 77–228) and amended by the FCA of 1965 (Pub. L. 89–298). Section 103 of the Water Resources Development Act (WRDA) of 1986 established cost sharing for flood control projects, or separable elements thereof, on which construction was initiated after April 30, 1986. This provision would have required a local cost share to implement the Project. WRDA of 1996 later amended section 103 of WRDA 1986 to define physical construction as the date of the award of a construction contract, which restored full Federal responsibility for the Project. The FCA of 1941 authorized flood protection to the Yazoo Backwater Area through a combination of levees, associated drainage channels, water control structures, and a pump station. By 1942 the cutoff and channel realignment program was completed, and flood stages were lowered on the Mississippi River at Vicksburg. However, more recent hydrologic studies have revealed that these benefits have largely been