Fair Lending: *"If It Ain't Fair, It Ain't Right"*

FDIC Division of Depositor and Consumer Protection

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Agenda Topics

- Fair Lending Overview and Highlights

- Regulation B Adverse Action Notices

- Redlining

- Appraisal Bias

Fair Lending Overview:
Applicable Laws and Regulations

Equal Credit Opportunity Act (ECOA, Regulation B)

- Applies to all credit types - commercial and consumer

- Includes technical requirements for notifications for non-originated applications AND right to receive appraisal notices

- Prohibited Bases: Race or color; religion; national origin; sex; marital status; age; receipt of income from public assistance programs; good faith exercise of any right under the Consumer Credit Protection Act

Fair Housing Act (FHAct)

- Applies to "residential real-estate related transactions" only

- Prohibited Bases: Race or color; national origin; religion; sex; familial status; handicap

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Fair Lending Overview:
Categories of Lending Discrimination

Overt Evidence of Disparate Treatment

- Open discrimination on a prohibited basis *even if bank does not act on that preference*

Fair Lending Overview:
Types of Lending Discrimination

Comparative Evidence of Disparate Treatment

- Inconsistent application of a policy or practice resulting in a difference of treatment of credit applicants based on one or more prohibited base

- *Does not require showing that the treatment was motivated by prejudice or conscious intention*

Fair Lending Overview:
Types of Lending Discrimination

Evidence of Disparate Impact

- An equally-applied neutral policy or practice that disproportionally excludes or burdens persons on a prohibited base

- Can be justified by 'business necessity', such as cost and profitability, <u>unless</u> an alternative policy or practice could serve the same purpose with a less discriminatory affect

- *Evidence of intent is not required*

Regulation B:
Adverse Action Notices

- Designed to provide transparency

- Statement of reasons must be specific and indicate the principal reason for taking adverse action

- Regulation B adverse action errors involving content typically relate to the statement of specific reasons for the action taken

- A creditor will not be in compliance by disclosing reasons that are overly broad, vague, or otherwise fail to inform the applicant of the specific and principal reasons

- CFPB Circulars 2022-03 and 2023-03

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Redlining/Reverse Redlining

Redlining is the unequal access to credit or unequal terms of credit because of the prohibited characteristics of the residents of the area the applicant resides, will reside, or where the residential property to be mortgaged is located

Reverse Redlining is the targeting of borrowers or geographic areas with less advantageous products or services based on prohibited characteristics

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Redlining Reviews:
Risk Identification

- Determine institution's assessment area (AA) and reasonably expected market area (REMA)

- Utilize census data to identify majority-minority census tracts (MMCTs)
  - Homogenous versus Plurality

Redlining Reviews:
Analysis

- Map loan applications/originations and run redlining reports

  - Identify areas with low penetration or statistically significant differences in penetration between minority and non-minority areas

- Drill down to determine root cause(s) of any statistically significant differences

  - Marketing, branching, staffing, application channels

- Consider mitigating factors

  - Strength of CMS, performance context of REMA

- Conduct comparative file review

Pattern or practice ECOA Violation → Referral to Dept. of Justice

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Redlining Reviews:
DOJ Actions

- Civil Money Penalties

- Formal Consent Orders
  - Provisions may include requirements relating to:
    - Allocating of funds for loan subsidies
    - Restructuring/additional investment in physical locations and staffing
    - Increased investment into outreach and marketing efforts
    - Partnerships with community groups
    - Various CMS/Oversight-related improvements

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United States v. City National Bank
## Los Angeles County, California

Unlawful redlining in the provision of mortgage loans and other mortgage services in majority-Black and Hispanic neighborhoods in Los Angeles County, California, from 2017 to 2020

Based on:

- Branch structure

- Application and origination dispersion

- Lead generation structure - unmonitored methods of application generation via 'relationship managers'

- Inadequate policies, procedures, and oversight

- Inaction of management despite internal Risk Assessments identifying high levels of redlining risk

- Lack of training, resources and/or incentives for relevant staff to attempt to compensate for increased redlining risk

DOJ Complaint - City National Bank

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City National Bank Branch Locations
Los Angeles Metropolitan District (Los Angeles County)
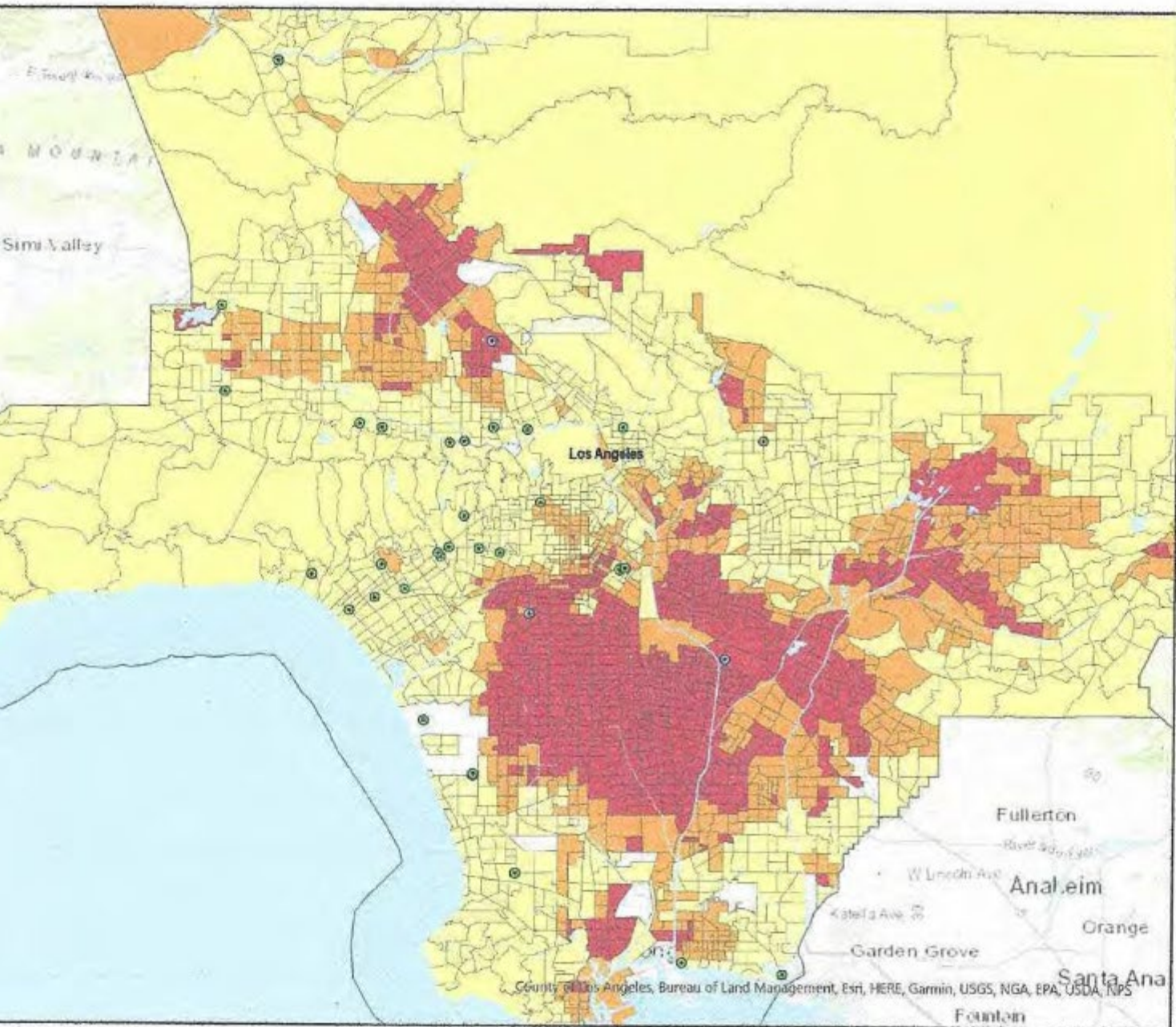
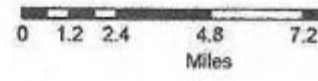City National Bank Branches
- ⊛ Bank Branch
- ⊛ Bank Branch Located in Majority-Black

Layer
Black and Hispanic Population b
- 0% - 50%
- 50.1% - 80%
- 80.1% - 100%

(2015 ACS 5 Year Data)

0   1.2   2.4   4.8   7.2
Miles

Simi Valley

MOUNTAI

Los Angeles

Fullerton

W Lincoln Ave

Anaheim

Katella Ave

Orange

Garden Grove

Santa Ana

County of Los Angeles, Bureau of Land Management, Esri, HERE, Garmin, USGS, NGA, EPA, USDA, NPS

Fountain

Prepared by:
U.S. Department of Justi
Civil Rights Division
Washington, D.C. 2053

Date: 9/6/22
EXHIB

City National Bank Applications 2017-2020
Los Angeles Metropolitan District (Los Angeles County)
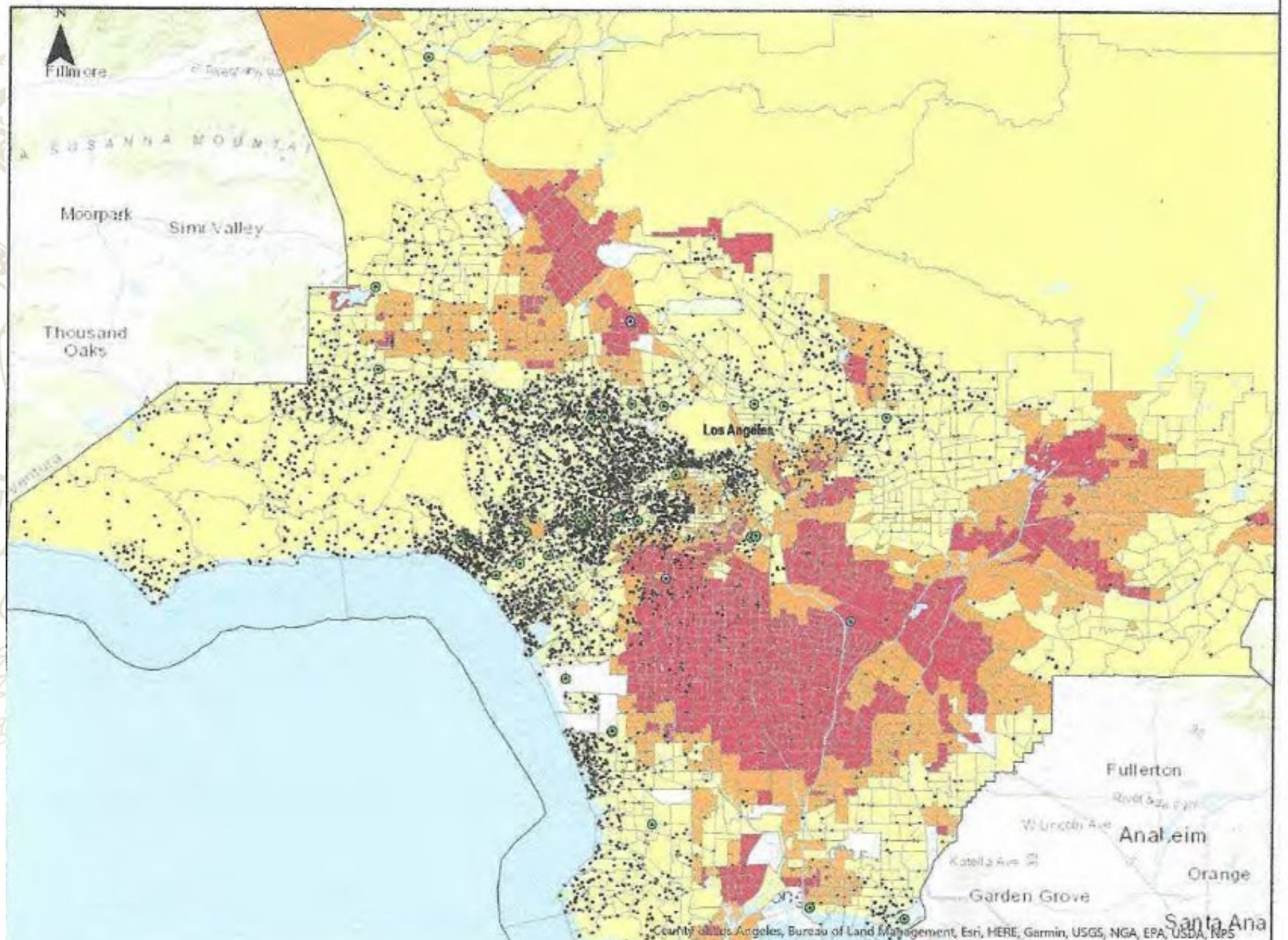
United States v. City National Bank:
Consent Order Terms

- Invest at least $29.5 million in a loan subsidy fund for residents of the excluded neighborhoods

- Invest $750,000 for development of community partnerships to provide services that increase access to residential mortgage credit in the excluded neighborhoods

- Invest $500,000 in advertising and outreach to the excluded neighborhoods

- Invest $500,000 for consumer financial education

- Establish at least one new full-service branch serving the excluded neighborhoods

- Complete a Community Credit Needs Assessment

- Designate a full-time Community Lending Manager

Recent DOJ Redlining Cases:
Common Themes

- Lack of application and/or origination activity in minority communities

- Branch structure excludes or avoids majority-minority communities

- Delineation of CRA AA and/or REMA does not correspond to actual lending footprint and/or excludes minority communities

Recent DOJ Redlining Cases:
Common Themes, *continued*

- Staffing levels and expertise is disproportionately decreased at locations serving minority populations

- Excluding or engaging in only limited marketing and/or outreach to minority communities

- Locations and service areas of third parties

[DOJ Recent Cases](#)

Real Estate Appraisal Bias

- Independent, fair and objective home appraisals and valuations are a critical element of homebuying and lending processes

- Deficiencies in real estate valuations, including those due to discrimination or bias, can lead to consumer harm

- FDIC resources
  - Understanding Appraisals and Why They Matter
  - FDIC Tips on Appraisal Bias and Valuation

Appraisal Bias:
Property Appraisal and Valuation Equity Action Plan

- Bias in home valuations has limited the ability of Black and Latino families to benefit fully from financial returns of homeownership

- Interagency Task Force on Property Appraisal and Valuation Equity to address inequalities in home appraisals established June 2021

- [Property appraisal and Valuation Equity (PAVE) Action Plan](#) released in March 2022

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PAVE Action Plan:
Federal Agency Commitment Categories

1. Strengthen guardrails against unlawful discrimination in all stages of residential valuation;

2. Enhance fair housing/fair lending enforcement and drive accountability in the industry;

3. Build a well-trained, accessible, and diverse appraiser workforce

4. Empower consumers to take action;

5. Give researchers and enforcement agencies better data to study and monitor valuation bias

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PAVE Action Plan:
FDIC Commitments

- Ensure that appraisers and institutions' use of appraisals are directly included in supervisory FHA and ECOA compliance requirements, and are considered in every review of relevant existing and future policies and guidance

- Issue guidance regarding Reconsideration of Value

- Align investigative protocols with respect to allegations of racial in ethnic bias in the valuation process
- Devise and implement changes to how examinations of mortgage lenders are conducted, develop exam aides and appropriate exam manual changes, and train staff

PAVE Action Plan:
FDIC Commitments, *continued*

- Update the frequently asked questions topics on the FDIC website to address appraisal-related issues

- Pursue development of a shared federal database of historical appraisal data to foster federal research and enforcement
- Participate in interagency efforts to support research and development of future policy and enforcement priorities

Appraisal Bias/Discrimination:
Consumer Compliance Examination Guidance

[FFIEC Statement on Examination Principles Related to Valuation Discrimination and Bias in Residential Lending](#)

- Communicates principles for the examination of supervised institutions' residential property appraisal and evaluation practices

- Directs examiners assess CMS and risk management practices
  - Board and senior management oversight
  - Consumer compliance program

How do PAVE and the FFIEC Statement impact your institution?

Appraisal Bias/Discrimination:
Reconsideration of Value (ROV)

- Requested to reassess the analysis of an initial appraisal or other valuation
  - Provides consumers a way to notify institutions of potentially deficient valuations if they suspect their appraisal/valuation was influenced by racial or ethnic bias and request a different valuation

- July 2024 Interagency Guidance ([FIL-41-2024](FIL-41-2024))
  - Details the risks of deficient residential real estate valuations
  - Highlights how institutions can create/enhance ROV processes
  - Provides examples of policies, procedures, control systems and complaint resolution processes
  - Presents actions that institutions may take to resolve valuation deficiencies
  - Use of third-parties does not relieve institutions from oversight responsibilities

Appraisal Bias/Discrimination:
Automated Valuation Models (AVMs)

- Computerized models used to estimate collateral values in mortgage lending

- [AVM Rule finalized](#) by the agencies on July 17, 2024
  - Objectives:
    - Ensure a high level of confidence in the AVM estimate
    - Protect against manipulation of data
    - Seek to avoid conflicts of interest
    - Require random sample testing and reviews
    - Comply with applicable non-discrimination laws

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Questions?

Resources

- https://www.fdic.gov/resources/bankers/fair-lending/
- https://www.banking.senate.gov/imo/media/doc/Review%20-%20Use%20of%20Educational%20Data.pdf