



# Navigating Fair Lending Waters: Mitigating Risks for Community Banks

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## Agenda

- Introduction to Fair Lending
- Definition of Fair Lending
- Importance of Fair Lending
- Core Principles
- 2026 Update: Fair Lending + AI
- Laws & Regulations
- Best Practices
- Case Study



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# Introduction

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- Fair lending is equitable treatment of all consumers in credit-related transactions.
- Applies across marketing, application, underwriting, pricing, and servicing.
- Governed by laws and regulations designed to prevent discrimination



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# Expanded Definition

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- Fair lending **ensures that lenders make credit decisions based solely on objective financial criteria**, such as income, credit history & the ability to repay, rather than on personal factors such as:
  - Race or ethnicity
  - Religion
  - National origin
  - Gender or gender identity
  - Marital status
  - Age (provided the borrower is of legal age)
  - Sexual orientation
  - Disability



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# Importance of Fair Lending

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- **Promotes Economic Equality:** Fair lending ensures that all individuals, regardless of their background, have an equal opportunity to access credit. This fosters economic inclusivity, enabling underserved communities to build wealth, purchase homes, and start businesses.
- **Builds Consumer Trust:** Adherence to fair lending principles strengthens consumer confidence in financial institutions. Trust is crucial for building long-term relationships with customers and maintaining the institution's reputation.
- **Enhances Regulatory Compliance:** Financial institutions are required by law to comply with fair lending regulations. Non-compliance can result in severe penalties, including fines, lawsuits, and reputational damage. Proactively implementing fair lending practices mitigates these risks.



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# Importance of Fair Lending *(cont'd.)*

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- **Encourages Market Competition:** By eliminating discriminatory practices, fair lending promotes healthy competition in the financial sector. This leads to innovative products and competitive pricing, benefiting both consumers and lenders.
- **Fosters Economic Growth:** When credit is accessible to all, it drives overall economic growth. Increased homeownership, entrepreneurship, and consumer spending contribute to the stability and prosperity of the economy.



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# Core Principles

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The foundation of fair lending is built on principles that promote equality, transparency, and objectivity in credit transactions. These principles ensure that every individual and business has access to credit without facing discrimination or bias.

## 1. Equal Treatment

**Principle:** All applicants must be treated equitably, regardless of their personal characteristics or background.

**Implementation:** Lenders must apply consistent criteria when evaluating loan applications and refrain from using discriminatory factors such as race, religion, national origin, gender, or age.

## 2. Non-Discrimination

**Principle:** Lending decisions must be free from bias and discrimination.

**Implementation:** Lenders must comply with laws like the Equal Credit Opportunity Act (ECOA) and the Fair Housing Act (FHA) to ensure credit decisions are based solely on objective financial metrics such as creditworthiness, income, and debt-to-income ratio.



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# Core Principles *(cont'd.)*

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## 3. Transparency

**Principle:** Credit terms, conditions, and decisions must be clearly communicated to applicants.

**Implementation:** Lenders must provide clear and accurate disclosures about loan terms, fees, and interest rates, ensuring that applicants fully understand the products offered.

## 4. Fair Access

**Principle:** Credit products and services must be accessible to all, including underserved and historically disadvantaged communities.

**Implementation:** Financial institutions must ensure their products are marketed and available to diverse populations and avoid practices like redlining, which restrict access to credit based on geographic location.

## 5. Consistent Practices

**Principle:** Lending policies and procedures must be uniformly applied across all applicants.

**Implementation:** Lenders should use standardized underwriting guidelines and ensure that loan officers follow the same criteria for every application.



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## Core Principles *(cont'd.)*

### 6. Monitoring and Accountability

**Principle:** Financial institutions must regularly evaluate their lending practices to ensure compliance with fair lending laws.

**Implementation:** Lenders should perform internal audits, analyze lending patterns, and address disparities or potential discrimination in their practices.

### 7. Education and Training

**Principle:** Employees and stakeholders must be educated on fair lending principles and regulatory requirements.

**Implementation:** Institutions should provide regular training to ensure all staff understand fair lending laws, their implications, and the importance of unbiased decision-making.

### 8. Avoidance of Disparate Impact

**Principle:** Policies or practices that unintentionally result in discriminatory outcomes must be avoided.

**Implementation:** Lenders must evaluate whether their policies disproportionately affect certain groups, even if unintentionally, and revise such policies to ensure equity.



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## Laws & Regulations (Selected)

### 1. Equal Credit Opportunity Act (ECOA)

- **Enacted:** 1974
- **Regulator:** Consumer Financial Protection Bureau (CFPB)
- **Implemented Regulation:** Regulation B

### 2. Fair Housing Act (FHA)

- **Enacted:** 1968
- **Regulator:** Department of Housing and Urban Development (HUD)

### 3. Home Mortgage Disclosure Act (HMDA)

- **Enacted:** 1975
- **Regulator:** Consumer Financial Protection Bureau (CFPB)
- **Implemented Regulation:** Regulation C



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## Laws & Regulations *(cont'd.)*

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### 4. Community Reinvestment Act (CRA)

- **Enacted:** 1977
- **Regulator:** Federal Reserve Board, Office of the Comptroller of the Currency (OCC), and Federal Deposit Insurance Corporation (FDIC).

### 5. Truth in Lending Act (TILA)

- **Enacted:** 1968
- **Regulator:** Consumer Financial Protection Bureau (CFPB)
- **Implemented Regulation:** Regulation Z

### 6. Dodd-Frank Wall Street Reform and Consumer Protection Act

- **Enacted:** 2010
- **Regulator:** Consumer Financial Protection Bureau (CFPB)

### 7. Americans with Disabilities Act (ADA)

- **Enacted:** 1990
- **Regulator:** Department of Justice (DOJ)



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## FDIC (Federal Deposit Insurance Corporation)

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### Fair Lending Enforcement:

- The **FDIC** plays a crucial role in ensuring that banks comply with fair lending laws, including the **Equal Credit Opportunity Act (ECOA)**, **Home Mortgage Disclosure Act (HMDA)**, and the **Community Reinvestment Act (CRA)**. It examines institutions for discriminatory practices in lending and works to enforce regulations against practices such as redlining.

### Consumer Protection:

- The **FDIC** protects consumers from unfair, deceptive, and abusive practices by financial institutions. It promotes financial literacy and ensures that banks adhere to consumer protection laws, including those governing mortgage lending, credit cards, and savings accounts.



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## FDIC Regulations & Enforcement



**12 CFR Part 344 – Fair Lending:** This regulation covers the **FDIC's** policies regarding fair lending and ensures that the institutions it supervises do not engage in discriminatory practices in violation of ECOA.



**12 CFR Part 345 – Community Reinvestment Act (CRA):** Under this regulation, the FDIC assesses how well banks meet the credit needs of their communities, particularly low- and moderate-income neighborhoods. Banks are required to be evaluated regularly to determine their CRA performance.



**12 CFR Part 338 – Unsafe and Unsound Banking Practices:** This regulation outlines practices that could undermine the safety and soundness of a financial institution, including discriminatory or unfair lending.



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## OCC Regulations & Enforcement



**12 CFR Part 27 – Fair Lending:** This regulation governs the OCC's enforcement of fair lending laws. It prohibits discrimination by national banks and federal savings associations in their credit transactions and enforces adherence to ECOA.



**12 CFR Part 25 – Community Reinvestment Act (CRA):** The OCC evaluates how well national banks serve the credit needs of all communities in which they operate, including low- and moderate-income neighborhoods. It issues ratings based on banks' CRA performance, which can influence their ability to expand or merge.



**12 CFR Part 7 – Corporate Practices:** This regulation includes rules related to corporate governance and financial practices, including prohibitions on unfair and discriminatory practices.



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## Disparate Impact Landscape (2025–2026): What to Watch

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- OCC Bulletin 2025-16 removed references to disparate impact from OCC’s fair lending examination materials.
- HUD proposed rule (Jan 14, 2026) would remove HUD’s discriminatory effects regulations and leave interpretations to courts.
- Practical risk: private litigation and state examinations may still apply disparate impact theories.
- Recommendation: keep robust disparate impact-style monitoring for AI/alternative data, even if not required federally.

Sources: MBA materials (Sep 29, 2025) <https://www.mba.org/docs/default-source/conferences/2025/crm25/crm25-fairlendingandudaapcompliance.pdf>; Federal Re



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## Fair Lending Best Practices

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### 1. Develop and Maintain Clear Lending Policies

**Why:** Ensures consistency and prevents subjective decision-making.

**How:**

- Establish standardized underwriting guidelines that focus on objective creditworthiness factors.
- Clearly define procedures for evaluating applications and processing loans.
- Regularly review policies to align with current laws and market conditions.

### 2. Provide Ongoing Employee Training

**Why:** Empowers employees to understand and comply with fair lending laws.

**How:**

- Conduct regular training sessions on laws like ECOA, FHA, HMDA, and CRA.
- Educate staff on avoiding discriminatory practices, including disparate impact and disparate treatment.
- Use real-world scenarios to demonstrate fair and unfair practices.



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## Fair Lending Best Practices *(cont'd.)*

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### 3. Implement Consistent and Objective Underwriting

**Why:** Eliminates bias and ensures equitable treatment.

**How:**

- Use automated decision-making tools or scoring models that rely on objective criteria.
- Avoid subjective judgments that could unintentionally lead to discrimination.
- Apply uniform loan pricing and terms across all applicants.

### 4. Monitor and Analyze Lending Data

**Why:** Identifies patterns and potential disparities in lending practices.

**How:**

- Regularly review loan application and approval data for demographic trends.
- Perform periodic self-assessments to detect and address disparities.
- Use HMDA data to ensure compliance and identify areas needing improvement.



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## Fair Lending Best Practices *(cont'd.)*

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### 5. Avoid Disparate Treatment and Disparate Impact

**Why:** Prevents intentional and unintentional discrimination.

**How:**

- Ensure policies do not disproportionately exclude or harm certain groups.
- Regularly review lending practices to identify and address any disparate impacts.
- Seek legal or compliance advice when implementing new policies.

### 6. Maintain Transparent Communication

**Why:** Builds trust with customers and ensures informed decision-making.

**How:**

- Clearly explain loan terms, conditions, and application processes to all applicants.
- Provide applicants with timely updates and reasons for adverse actions (e.g., loan denials).
- Make disclosures about fees, rates, and other costs accessible and understandable.

### 7. Engage in Community Outreach

**Why:** Promotes inclusivity and expands access to credit in underserved areas.

**How:**

- Partner with community organizations to understand and address local credit needs.
- Offer financial literacy programs to educate potential borrowers.
- Develop special products for low- and moderate-income (LMI) borrowers.



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# Fair Lending Violations

Fair lending violations occur when financial institutions fail to comply with laws such as the Equal Credit Opportunity Act (ECOA), the Fair Housing Act (FHA), or other regulations that promote equitable access to credit. Below are examples of both intentional and unintentional violations that can arise in various aspects of lending operations.



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## Examples of Fair Lending Violations

### 1. Discriminatory Loan Pricing

- Charging higher interest rates, fees, or points to borrowers based on prohibited characteristics such as race, gender, or national origin, rather than creditworthiness.
  - **Example:** A lender imposes a higher interest rate on minority borrowers despite similar credit profiles compared to non-minority borrowers.

### 2. Redlining

- Refusing to provide loans or other financial services to individuals in specific geographic areas based on racial or ethnic composition rather than credit risk.
  - **Example:** A bank excludes predominantly minority neighborhoods from its lending areas or applies stricter criteria for approving loans in those neighborhoods.

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## Examples of Fair Lending Violations (cont'd.)

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### 3. Reverse Redlining

- Targeting minority or underserved communities with high-cost loans or predatory lending products.
  - **Example:** Offering subprime mortgages with exorbitant interest rates to residents of a minority-majority area, despite their eligibility for lower-cost loans.

### 4. Disparate Treatment

- Treating applicants differently based on protected characteristics, either explicitly or subtly.
  - **Example:** A loan officer discourages female applicants from applying for larger loans, assuming they may not qualify, while encouraging male applicants to proceed.



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## Examples of Fair Lending Violations (cont'd.)

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### 5. Disparate Impact

- Implementing neutral policies or practices that disproportionately harm a protected group, even if unintentional.
  - **Example:** A lender requires a minimum loan amount of \$200,000, which disproportionately excludes applicants from lower-income communities.

### 6. Steering

- Directing borrowers toward specific loan products based on discriminatory factors.
  - **Example:** Advising minority borrowers to choose adjustable-rate mortgages with higher costs instead of fixed-rate loans for which they qualify.



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## Examples of Fair Lending Violations (cont'd.)

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### 7. Failure to Provide Equal Assistance

- Offering unequal assistance or support to certain groups during the loan application process.
  - **Example:** Providing more detailed guidance and follow-up to non-minority applicants compared to minority applicants.

### 8. Discriminatory Advertising

- Using marketing materials or advertisements that exclude or discourage certain groups from applying for loans.
  - **Example:** A bank's marketing campaign showcases only white families in promotional materials, potentially signaling that minorities are not welcome.



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## Examples of Fair Lending Violations (cont'd.)

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### 9. Denying Credit Based on Unlawful Factors

- Rejecting loan applications due to personal characteristics unrelated to creditworthiness.
  - **Example:** Denying a loan to a pregnant woman based on the assumption that her income will decrease after childbirth.

### 10. Lack of Accessibility for Disabled Individuals

- Failing to accommodate individuals with disabilities as required by the Americans with Disabilities Act (ADA).
  - **Example:** Not providing application materials in accessible formats (e.g., large print or Braille) or refusing to make reasonable adjustments during the application process.



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## Consequences of Violations

- Fair lending violations can lead to severe penalties, including:
  - Financial fines and restitution to affected borrowers.
- Regulatory enforcement actions, such as consent orders or cease-and-desist orders.
- Civil lawsuits and class-action litigation.
- Reputational damage and loss of consumer trust.
- Restrictions on mergers, acquisitions, or expansions (especially under CRA violations).



## 10 Primary Questions for a Fair Lending Risk Evaluation

These questions cover critical aspects of fair lending risk assessment, they serve as your starting point. However, more questions should be asked before, during, and after the evaluation:

1. Are lending practices consistent with fair lending laws?
2. Are lending policies and procedures clearly documented and communicated?
3. Are there disparities in loan approval rates among different demographic groups?
4. Is statistical analysis used to detect any disparities in lending patterns based on race, ethnicity, gender, or other protected characteristics?

## 10 Primary Questions for a Fair Lending Risk Evaluation

5. Are comprehensive data sets collected on loan applications, approvals, denials, pricing, and terms?
6. How are loan products marketed and advertised?
7. What measures are in place to ensure compliance with fair lending regulations?
8. How are complaints and grievances handled?
9. How frequently is training provided, and how is its effectiveness monitored?
10. How are data insights used to improve lending practices and ensure fairness?



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## Key Fair Lending Reports

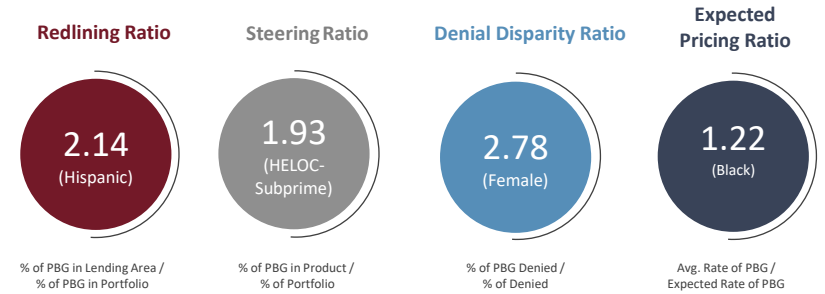
Description	Applications	Loans
*Marketing/Redlining	✓	✓
*Approval/Denial Rates	✓	
*Steering	✓	✓
*Pricing	✓	✓
Expected Acceptance Rates	✓	
Disposition	✓	
Volumes/Concentrations	✓	✓
Exception Tracking	✓	✓
Decisionmaker Analysis		✓
Mod/Default Tracking		



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# The 4 Key Fair Lending Ratios

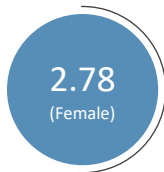


\*PBG is a Prohibited Basis Group such as Race, Gender, Age, Etc.



## Denial Disparity Ratio

### Denial Disparity Ratio



% of PBG Denied / % of Denied

Gender	All Application Count	Denied Application Count	Denial Ratio	Denial Disparity Ratio (by Total*)
Male	400	10	2.5%	0.28
Female	200	50	25%	2.78
Joint	300	30	10%	1.1
Unknown	50	0	0%	N/A
Not Reported	50	0	0%	N/A
TOTAL/OVERALL	1000	90	9.0%	1.0

\*PBG is a Prohibited Basis Group such as Race, Gender, Age, Etc.  
 \*The Denial Disparity Ratio can also be calculated by comparing to a control group (i.e. Male) instead of the total.



## Volumes/Concentrations

Race/Ethnicity	All Application Count	% of All Applications
Asian/Pacific Islander	50	5%
Black	200	20%
Hispanic	10	0%
White	500	50%
Not Reported	50	5%

-Show by: Race, Gender, and Age

-A low volume of applicants may be an indicator of Pre-screening, Redlining, and/or Policies with Disparate Impact



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## Approval/Denial Rates

Gender	All Application Count	Denied Application Count	Denial Ratio	Denial Disparity Ratio (by Total*)
Male	400	10	2.5%	0.28
Female	200	50	25%	2.78
Joint	300	30	10%	1.1
Unknown	50	0	0%	N/A
Not Reported	50	0	0%	N/A
TOTAL/OVERALL	1000	90	9.0%	1.0

-Show by: Race, Gender, and Age

-Significant variations in acceptance/denial ratios may be an indicator of disparate treatment

\*The Denial Disparity Ratio can also be calculated by comparing to a control group (i.e. Male) instead of the total.



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## What's New Since 2025 (Fair Lending + AI)

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- Regulators reiterate: there is no 'AI/advanced technology' exemption from federal consumer financial laws.
- Adverse action notices must give specific, accurate reasons—even when using complex/black-box models.
- Supervisory reviews increasingly focus on model governance, alternative data, and less discriminatory alternatives.
- Interagency AVM quality control standards include compliance with nondiscrimination laws.
- Federal posture on disparate impact is evolving; state scrutiny of algorithmic underwriting is rising.



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## AI/ML in Credit Decisions: Key Regulatory Expectations

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- ECOA/Reg B requires 'specific reasons' for adverse action; sample checklists can be insufficient for AI models.
- Models must support identifying and disclosing principal reasons—avoid vague or inaccurate explanations.
- CFPB examiners reported disparities from credit scoring models and directed enhanced testing and CMS controls.
- Evaluate less discriminatory alternative models when disparities are identified.



Sources: CFPB AI adverse action guidance (Sep 19, 2023) <https://www.consumerfinance.gov/about-us/newsroom/cfpb-issues-guidance-on-credit-denials-by-lenders-u>

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## AI Fair Lending Controls: Practical Checklist

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- Model inventory: purpose, product, decision points, data sources, ownership, vendors.
- Pre-deployment testing: prohibited-basis disparities, proxy checks, stability, and sensitivity.
- Adverse action mapping: ensure model outputs translate to specific, accurate principal reasons.
- Ongoing monitoring: drift, overrides, pricing/terms, complaint trends, periodic re-validation.
- Third-party oversight: documentation access, audit rights, performance/bias testing expectations.



Checklist synthesized from expectations highlighted in CFPB AI adverse action guidance and supervisory commentary (see previous slide sources).

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## AVMs & Appraisal Bias: Interagency Final Rule (Quality Controls)

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- Final rule requires policies, procedures, and control systems for AVMs used in mortgage collateral valuation.
- Quality control factors include confidence in estimates, data integrity protections, conflict-of-interest safeguards, and random sample testing.
- Agencies added explicit factor: comply with applicable nondiscrimination laws.
- Regulators expect institutions to 'own the risk' even when using third parties.



Source: Interagency AVM final rule summary (KPMG, updated July 2024) <https://kpmg.com/kpmg-us/content/dam/kpmg/pdf/2024/automated-valuation-models-avm>

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## Enforcement Spotlight: Redlining + Modern Initiatives

- DOJ launched the Combating Redlining Initiative in Oct 2021 and coordinates with federal banking regulators.
- DOJ reports 16 resolutions providing over \$153 million for redlined communities; over \$135 million dedicated to mortgage subsidies/assistance.
- Exams/investigations commonly review branch footprint, marketing, community outreach, and HMDA peer comparisons.
- Community banks: align risk assessment, CRA strategy, and monitoring cadence to document fair access.

Source: DOJ Fair Lending Enforcement page (updated Feb 11, 2025) <https://www.justice.gov/crt/fair-lending-enforcement>



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## State-Level Example: AI Underwriting Enforcement

- Massachusetts AG announced a \$2.5M settlement with Earnest Operations (Delaware-based student loan lender) tied to AI underwriting.
- Settlement alleged failure to mitigate disparate harms from algorithmic models.
- Required AI governance: written policies, risk assessments, testing, model inventories, documentation, and oversight team.
- One of the clearest state-level signals that **AI underwriting ≠ reduced fair lending risk**
- State AGs may move faster than federal agencies on AI bias issues

Source: DLA Piper summary (Aug 8, 2025) <https://www.dlapiper.com/en-us/insights/publications/ai-outlook/2025/state-action-targets-use-of-biased-ai-underwriting>



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## Earnest Settlement: What Went Wrong

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- Inadequate testing for prohibited basis disparities produced by AI underwriting outputs
- Insufficient documentation of model design, data inputs, and decision logic
- Lack of a formal governance framework overseeing AI model risk and fair lending compliance
- Inability to demonstrate effective mitigation once risks were identified

### Key Lesson

“Using AI without strong governance creates more fair lending risk, not less.”



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## Earnest Settlement: Required Remediation

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- Written AI governance policies and procedures
- Comprehensive AI model inventory and documented risk assessments
- Ongoing testing and monitoring for discriminatory outcomes
- Clear accountability and an oversight team responsible for AI models
- Enhanced documentation supporting adverse action explanations
- Regulatory Message

*Explainability, testing, and documentation are non negotiable—even for complex models*



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## Florida Fair Access to Banking Law (HB 989 – Effective July 1, 2024)

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- Florida law requires lending decisions to be based on quantitative, impartial, risk based standards
- Explicitly prohibits reliance on “social credit scores” or non risk based factors
- Directly relevant to AI and alternative data underwriting models

## Florida Redlining Enforcement Is Real

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- DOJ secured a \$9 million redlining settlement with Ameris Bank in Jacksonville
- Focus areas included:
  - o Branch placement
  - o Marketing and outreach
  - o Lending penetration in majority minority neighborhoods
- Reinforces that outcomes still matter, regardless of tools used

*Ameris avoided providing mortgage services and discouraging credit applications in predominantly Black and Hispanic neighborhoods. The bank's lending was concentrated in mostly white areas, while other lenders approved loans at three times the rate Ameris did*

## What This Means for Florida Community Banks Using AI

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- AI underwriting must be defensible as impartial and risk based
- Fair lending testing should be aligned with:
  - o AI model governance
  - o CRA strategy
  - o Florida Office of Financial Regulation (OFR) examinations
- Documentation is your best defense

### Practical takeaway

*If you can't clearly explain why the model made the decision, neither can you defend it.*



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## Questions?



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# Contact Information

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