

Robinson+Cole

Finance — Regulatory Update



October 2015

### *Fair Lending and Redlining--*

## Regulatory Issue Comes Full Circle

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A recent joint CFPB DOJ action against Hudson City Savings Bank raises concerns that lenders may now face increased scrutiny regarding their fair lending practices and potential redlining claims.

TILA, RESPA, ECOA, CRA, and HMDA are among the alphabet soup of federal regulations that lenders have had to cope with for decades. In the wake of the financial crisis, ATR (ability to repay) and TRID (truth-in-lending/RESPA integrated disclosures) have taken center stage on the regulatory scene. Now equal credit and fair lending issues are grabbing the spotlight once again as the CFPB and DOJ filed an unprecedented proposed [consent order](#) against Hudson City on September 24, 2015, alleging violations of the Equal Credit Opportunity Act and Fair Housing Act.

The proposed nearly \$33 million settlement stems from allegations that Hudson City's policies and procedures constituted "redlining of majority-Black-and-Hispanic areas of the NY/NJ, Camden, and Bridgeport" metropolitan areas. The [initial complaint's](#) accusations and the terms of the consent order suggest that financial institutions must be mindful of underserved minorities in their expansion efforts and should be careful to maintain robust compliance processes focused on anti-redlining strategies.

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### **BRANCH EXPANSION AND MARKETING EFFORTS**

The CFPB and DOJ alleged that Hudson City concentrated its branches in areas outside of majority-Black-and-Hispanic areas to avoid lending to residents in those areas. As evidence, the complaint notes that Hudson City opened or acquired 54 branches between 2004 and 2010, and 50 of these (92.6 percent) were located outside majority-Black-and-Hispanic areas. Hudson City also focused marketing initiatives on counties with low proportions of majority-Black-and-Hispanic neighborhoods and excluded most of the majority-Black-and-Hispanic neighborhoods from its Community Reinvestment Act (CRA) assessment areas, thereby discouraging lending in those excluded neighborhoods.

To remedy these alleged shortcomings, the consent order directs Hudson City to open or acquire two new full-service branches located within majority-Black-and-Hispanic neighborhoods and requires the bank to spend a minimum of \$200,000 per year targeting potential borrowers in these neighborhoods. The consent order also mandates that Hudson City revise its CRA assessment areas to include specific counties with a high proportion of majority-Black-and-Hispanic neighborhoods.

## COMPLIANCE EFFORTS

The CFPB and DOJ also alleged that Hudson City “failed to exercise adequate oversight or hire sufficient staff to ensure compliance with its fair lending obligations,” noting that the bank did not have any written policies or procedures to ensure compliance with fair lending obligations. The bank employed only one compliance officer in 2009 and 2010 and failed to promptly fill positions after expanding its compliance department in 2011. The CFPB recommended in 2012 that, at a minimum, Hudson City monitor its top 10 brokers for fair lending compliance, but the bank failed to do so.

The consent order requires Hudson City to submit a written compliance plan with steps to revise lending policies while implementing written procedures to address redlining risk. In addition to training all covered employees in fair lending practices, Hudson City must also appoint a designated Fair Lending Officer and employ a formal process for ongoing statistical monitoring of redlining risk.

### WHAT DOES THIS MEAN TO YOU?

The implications of this action are far from settled, but the immediate message for lenders is clear—increased attention needs to be focused on fair lending compliance, with particular consideration to serving the credit needs of minority neighborhoods.

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If you have any questions, please contact [Norman H. Roos](#), Chair of Robinson+Cole’s [Finance + Public Finance Group](#).

\*Scott Baird, who recently joined Robinson+Cole as a recent graduate from the University of Virginia School of Law, contributed to this update. His admission to the Connecticut Bar is pending.

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