Violating Your Way to an Outstanding CRA Rating

The Treatment of Race Discrimination Law Violations in the Community Reinvestment Act Examinations and Ratings

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Background

A series of Federal laws in the 1960s and 1970s was supposed to arm the bank regulatory agencies with the legal resources to overcome a long history of racial discrimination. It has not worked. This review indicates that in the past 30 years, the Federal bank regulators failed to find 85% of the cases where banks discriminated against both individual borrowers and/or entire minority communities. The banking agencies failed to find 91% of the redlining cases where banks cut minority areas out of their service areas, failed to make loans to minorities who were in their service areas, or reduced or failed to locate branches in the minority areas in their service areas. In almost all of these redlining cases, maps made this discrimination vividly clear by showing the service areas, the location of bank branches, or the location of loans compared to the racial composition of the areas. Yet even in these mapping cases, the regulatory agencies failed to find the discrimination the same 91% of the time. This paper reviews these cases and shows how the regulatory agencies not only failed to find the discrimination but, in some cases, seemed to work hard not to call it discrimination when it was identified.

In the aftermath of the subprime mortgage meltdown that led to the Great Recession, banks were assessed over $36 billion in fines and payouts by the prudential regulators, 50 states attorney generals, the Department of Justice, and HUD in the National Mortgage Settlement, the Foreclosure Review Payouts, and the False Claims Act violations. Millions of loans were subject to these settlements. There is no doubt that the regulatory agencies were aware that the subprime and HUD-FHA lending involved was exceptionally concentrated in minority markets.[1] Joint reports by Treasury and HUD in 2000 documented the extreme racial disparities for subprime lending in detail while HUD-FHA lending has been concentrated in minority markets for decades. None of the prudential regulatory agencies, however, opened investigations into the disparate racial impacts of the related fraud and abuses. Given the massive disproportionate harm that these loans imposed on minority individuals and minority communities, one might conclude that the failure to consider the racial impacts in the National Mortgage Settlement, the Foreclosure Review Payouts, and the False Claims Act violations represents the greatest failure to hold banks accountable for illegal discrimination.

Throughout the entire history of our country, racial groups have suffered from discrimination in the banking and lending industries. Much of this has been officially sanctioned by the Federal Government. During the 1930's, the Federal Home Owners' Loan Corporation created maps that rated some areas as too risky ("Hazardous") for home lending, a practice known as redlining. Race was a critical factor in defining the redlined areas. The Fair Housing Act of 1968 was the first Federal law to directly prohibit discrimination in home lending. The Fair Housing Act placed an affirmative obligation on the Federal banking agencies to incorporate the law into their operations.[i] The Equal Credit Opportunity Act of 1974 prohibited discrimination in all aspects of lending. Nonetheless, redlining continued. The Community Reinvestment Act of 1977 was passed to put an end to the banking industry's participation in redlining. This effort has failed largely due to the failure of the Federal bank regulators to enforce the fair lending laws and penalize banks that engage in discrimination. This paper traces

[1] Federal Housing Administration loans are generally referred to simply as FHA loans. In order to avoid any confusion with the use of "FHA" for the Fair Housing Act, we use the term "HUD-FHA" loans in this paper to indicate Federal Housing Administration loans.

the abject failure of the banking agencies to enforce the fair lending laws and hold banks accountable for discrimination by giving them failing grades in the CRA examination process.

This paper analyzes the results of a survey of judgments, verdicts, settlements, conciliation agreements, and consent orders related to civil rights and consumer laws involving banks covered by the Community Reinvestment Act. As opposed to simple complaints, these cases indicate that the charges merit serious consideration and a response in the CRA examination process. These cases are compared to the CRA public performance evaluations given to the banks during the time of the violations. The purpose is to provide examples of how such evidence of discrimination and illegal practices are treated by the prudential regulatory agencies in their CRA examinations and ratings. The current CRA regulations prohibit banks from any illegal discrimination in defining their assessment areas(s).[ii] Secondly, before assigning the final CRA rating in an examination, the prudential regulatory agencies are required to consider evidence of discrimination, as well as other illegal, unfair, and deceptive practices that would result in a reduction in the rating.[iii]

The laws that are the primary focus of this analysis are the Fair Housing Act (FHA) and the Equal Credit Opportunity Act (ECOA). In the cases of redlining and mortgage discrimination, the great majority of the cases are violations of both the FHA and ECOA. It is also important to note that most redlining cases include claims of discrimination in the provision of banking services (such as branch locations), the marketing of services, and disparities in the treatment of minority applicants. In considering the treatment of these violations, the analysis focuses on instances where violations of the FHA and ECOA have resulted in judgments, verdicts, settlements, conciliation agreements, and consent orders but where the violations were **not** identified by the prudential regulatory agencies during the relevant examination period.

Executive Summary

It may be that some fair housing and discrimination practices are not easy to uncover. But what the cases from this survey show is that in every case, some agency, state or local government body, or organization did discover these violations of the fair housing, fair lending, and consumer protection laws while the prudential regulatory agencies charged with holding the banks accountable for such violations did not find them on their own. Many of these violations were discovered and challenged by local organizations and municipalities with far fewer enforcement resources than those available to the financial regulatory agencies.

The failure of the prudential regulatory agencies to find and sanction banks for racial discrimination is not only spread across decades of examinations but is concentrated more heavily in the period after the CRA regulations were revised in 1995 and after the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.

What is most disturbing is, that in so many of the cases in the survey, the prudential regulatory agencies:

- Did not consider stark evidence of racial redlining presented to them by the Department of Justice (DOJ), as well as municipalities and private parties;

- Typically ignored cases that were not brought by federal enforcement agencies;

- Blatantly ignored the most obvious fair lending implications and disparate racial impacts of fraud and abuses in millions of mortgage underwriting and servicing violations even as these banks were forced to pay tens of billions of dollars in fines and restitution for the offenses;

- Often made retroactive changes to account for violations, exempting the violations from subsequent examinations and making it hard to determine how and when violations were considered; and,

- Worked hard to avoid finding racial discrimination when they did recognize a case by misrepresenting the issue as a failure to serve low- and moderate-income markets rather than racial minorities and communities.

The Data

The data supporting these comments are based on an initial search for redlining and race discrimination lending cases from the U.S. Department of Justice, the U.S. Department of Housing and Urban Development (HUD), the Consumer Financial Protection Bureau, states attorneys general, city governments, private attorneys representing parties such as fair housing organizations and other civic and community-based organizations, as well as the prudential regulatory agencies themselves. The cases begin with the DOJ settlement with Decatur Federal Savings in 1992 and continue to the current year. Throughout this analysis, the term "race" is used to include both race and ethnicity. The survey did not include cases where a single customer or event was the basis of the claim unless the case related to a general bank policy or practice.

The initial survey also included cases of violations of other consumer laws that the prudential regulators are instructed to consider in assigning the final CRA rating. These include many instances where the violations were identified as the result of consumer compliance examinations or complaints filed with the Consumer Financial Protection Bureau (CFPB). In 2010, the Dodd-Frank Act transferred the responsibility for conducting consumer compliance examinations for institutions with assets over $10 billion to the CFPB. This includes ECOA but does not include the Fair Housing Act. Therefore, **the prudential regulatory agencies maintain the responsibility for examining all their regulated banks for compliance with the Fair Housing Act**, including those with assets over $10 billion. Moreover, the prudential regulators also maintain the responsibility to examine all the regulated banks with assets of $10 billion or less for compliance with all consumer laws.

The survey identified 105 claims of fair lending and consumer protection violations that resulted in judgments, verdicts, settlements, conciliation agreements, and consent orders. The cases ranged across the period from the discrimination suit against Decatur Federal Savings and loan in 1992 to the present, across the different regulatory agencies, and across the different issues involved, and across the different formats for the complaints and outcomes. Surely, there are cases of violations that have been missed in this survey and we welcome the reviews of cases that were not found in the survey. Nonetheless, we consider the survey reasonable in providing a sample of the kinds of cases that should be considered by the prudential regulatory agencies in their consideration of discrimination and other illegal activities that could result in a reduction in an institution's CRA rating.

A review of the full 105 cases in the survey determined that there were 85 cases (81%) where the violations were **not** identified and considered in the CRA evaluation during the exam period where they occurred. The analysis begins with a review of the complaints, settlements, verdicts, court rulings, and conciliation and consent orders so that we may define the nature of the issues, the scope of the issues, and the time period during which they occurred.

Given the vague statements in many CRA public performance evaluations about exactly what violations were considered, beginning with documents related to the violations is an essential part of the analysis. Indeed, reviewing only the performance evaluations would not provide a reasonable basis for conclusions about how violations were treated. The documents related to the violations are compared to the public performance evaluations for the subject institutions that cover the time period when the violations occurred.

To validate that the violations were not considered during the examination period, the CRA exams after the relevant time periods – and in some cases before the time period - were also reviewed. Reviewing evaluations made after the time period of the violations is important because there are many times when the regulatory agencies did indicate the consideration of the violations after the examination period when they occurred. Indeed, it was not unusual for the regulatory agencies to retroactively lower a previous CRA rating as a result of information about violations that was dated after the relevant examination period when those violations occurred.

Summary of Redlining and Mortgage Discrimination Cases

The table below summarizes the redlining and mortgage discrimination violations defined in the cases overall with details on the Fair Housing Act mortgage discrimination cases from the survey.

As noted above, the regulators missed finding 81% of the 105 violations of fair lending and consumer laws (85 of the 105 cases). The regulators did an even worse job of finding fair lending violations related to the FHA or ECOA as indicated in the table below. Based on the cases in the survey, more than half of all types of violations (60 cases or 57%) were related to discrimination against classes protected under the Fair Housing Act and ECOA as opposed to other consumer laws. Of these 60 fair lending cases, 51 (or 85%) were not discovered or cited by the regulator during the CRA examination period when the violations occurred. Of the 51 cases that were not discovered by the regulators during the exam period, 47 were for mortgage discrimination. That is, 85% of all the mortgage cases were not discovered by the regulators during their regular CRA exams.

But their worst performance was for full-fledged redlining cases, the activity that the CRA was particularly designed to root out. The regulators missed 91% of the redlining cases (21 of the 23 cases). These were cases where the discrimination was based on excluding minority areas from the bank's assessment area, failing to locate branches in minority areas even when they were in the assessment area, and/or failing make loans in minority areas that were either included in their assessment areas or that were arbitrarily excluded. There were 22 redlining cases where the charges against the banks included maps of assessment areas, branches and/or loans, making it exceptionally easy to define the discrimination patterns. Still, the regulators also missed 91% of these cases (20 of the 22 cases).

While the 40 cases of mortgage discrimination cover a 30-year period from 1992 to the present, 85% of these cases occurred **after** the implementation of the 1995 revised CRA regulations (34 of 40 cases). Indeed, 63% of mortgage discrimination cases that were not identified by the regulatory agencies occurred **after** the passage of the Dodd-Frank reform legislation in 2010 (25 of 40 cases). This raises a serious question as to whether the prudential regulatory agencies have actually become worse at identifying and enforcing violations of mortgage discrimination in the CRA process.

Summary of the CRA Review of Settlements, Judgments, Verdicts, Consent, and Conciliation Orders against Banks from the 1992 Dacatur Federal Case to the Present

Group or Subgroup of Cases		Percent of All Types of Cases	Subgroup of Such Cases Not Found by Regulators During the Examas a Percent of All Such Subgroup Cases
Total cases where violations of the FHA, ECOA, and other laws occurred	105		
Subgroup of cases where violations of the FHA, ECOA, and other laws were **not** identified and taken account by the regulator in the exam that covered the violation period	85	81%	
Subgroup of cases where discrimination for violations of either the FHA or ECOA occurred	60	57%	71%
Subgroup of cases where discrimination from violations of the either the FHA or ECOA occurred and were **not** identified and taken account by the regulator in the exam that covered the violation period	51		85%
Subgroup of all cases for FHA or ECOA mortgage discrimination violations*	47		
Subgroup of FHA and ECOA mortgage racial discrimination cases **not** identified and taken into account by the regulator in the exam that covered the violation period**	40		85%
FHA racial cases after 1995 CRA regulations	34		
Percent of the 40 mortgage discrimination cases			85%
FHA racial cases after 2010 Dodd-Frank	25		
Percent of the 40 mortgage discrimination cases			63%
Cases after 2010 for the FDIC	9		
Cases after 2010 for the OCC	12		
Cases after 2010 for the Fed	3		
Cases after 2010 for the OTS***	1		
Subgroup of all FHA cases that are redlining cases based on assessment area, branches, and/or lending (22 of which used maps)	23		
Subgroup of FHA redlining cases based on with assessment area, branches, and/or lending and **not** identified and taken into account by the regulator in the exam that covered the violation period	21		91%
Subgroup of FHA redlining cases **with maps** that were **not** identified by the regulator in the exam that covered the violation period	20		91%
Subgroup of the 21 redlining cases **with maps not** found by the regulator that occurred after Dodd-Frank in 2010	16		76%
Map cases after 2010 for the FDIC	9		
Map cases after 2010 for the OCC	4		
Map cases after 2010 for the Fed	3		

* This includes 2 cases related to disability status and 1 case related to familial status.

** Essentially all the FHA mortgage discrimination cases also involved ECOA claims as well.

*** This case was begun by the OTS before regulation for Federal savings institutions was transferred to the OCC.

Redlining Cases and Examples

Some may argue that the identification of discrimination may be a difficult task despite decades of experience by the regulators using the required, and extensive, fair lending examination process. There is, however, one form of identifying discrimination that hardly requires a sophisticated approach. This is the identification of assessment areas that clearly and systematically exclude minority neighborhoods. Such exclusions are specifically prohibited by the CRA regulations and represent the boldest form of redlining – the precise activity that the CRA was created to eliminate. Simply comparing the geographic areas defined as a bank's assessment area(s) and comparing that to the distribution of minority populations provides a clear and obvious basis for identifying redlining in that it illegally excludes minority areas. Other redlining cases compare lending and/or branch location data to expose clear differences between the majority-white areas and the majority-minority areas within a bank's assessment area(s). Redlining cases typically demonstrate severe and obvious disparities in lending patterns.

Half of the racial discrimination cases in mortgage lending (19 of 38) produced maps to support claims of redlining. As the table above indicates, 18 of these 19 cases were for the time period after the implementation of the 1995 regulations that had strengthened the language prohibiting the elimination of minority areas from a bank's assessment area(s). Moreover, 16 of these cases (84%) occurred after 2010. All of the regulatory agencies were involved in failing to detect or consider these cases.

Examples show both redlining in terms of how assessment areas excluded minority communities and also how even when such areas were included, they were treated differently from white areas. Typically, these maps show the differences in banking facilities. In other cases, the maps show differences in applications and lending data either within the subject bank or by comparing the subject bank to the patterns for comparable institutions.

The examples below begin with three case reviews that include the maps and references to both the DOJ discrimination cases and the regulator's CRA evaluation. This is followed by short summaries from additional examples across the time period and agencies.

Old Kent Bank

Old Kent Bank represents a classic case of geographic redlining that was overlooked by its CRA regulator. In its 1999 CRA examination the Federal Reserve Bank of Chicago gave Old Kent Bank a Satisfactory rating. The exam covered the period from 1997 to 1999. At page 16, the exam concluded:

> *The bank is in compliance with the substantive provisions of antidiscrimination laws and regulations, including the Equal Credit Opportunity Act (ECOA) and Fair Housing Act. No substantive violations were noted. The bank is also in compliance with the technical requirements of the Community Reinvestment Act (CRA). The public file and CRA notices were reviewed and deemed to be in compliance.*

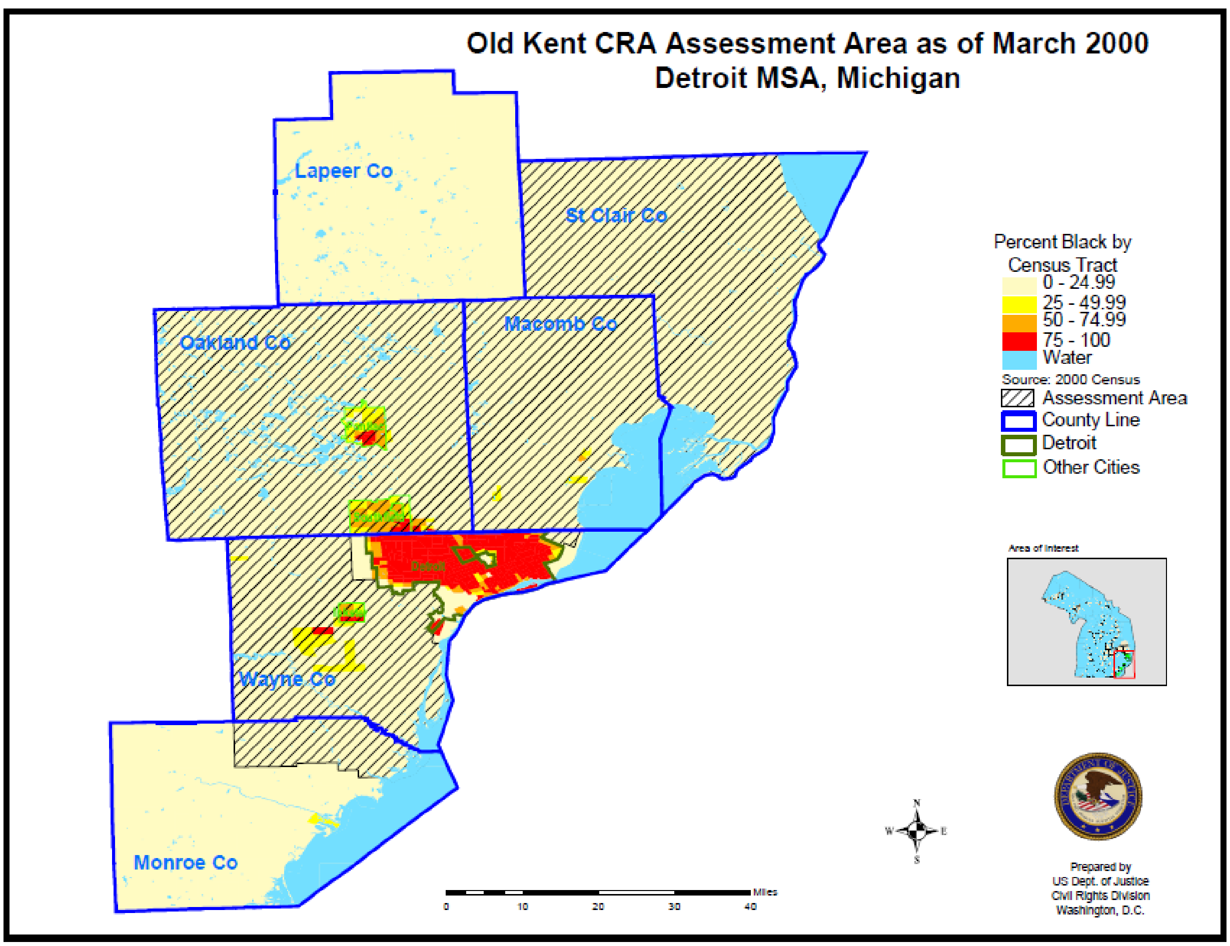
In 2004, the Department of Justice filed a racial discrimination complaint against Old Kent. The complaint covered the time period from 1996 to 2000, including the entire time period of the Fed's CRA exam. At paragraph 17, the complaint stated that:

> *As of January 1996, Old Kent Bank operated at least 18 branches in the Detroit MSA. Not a single one of these branches was located in the City of Detroit. As of March 2000, Old Kent Bank had expanded its business presence in the Detroit MSA to include a branch network of at least 53 branches, located in every county of the Detroit MSA. Virtually all of Old Kent Bank's branches were located in predominantly white suburbs. As of March 2000, Old Kent Bank still did not have a single branch in the City of Detroit, where the population is more than 81% African American.*

At paragraph 23, the complaint stated that:

> *Instead of defining its assessment area in accordance with Regulation BB, Old Kent Bank circumscribed its lending area in the Detroit MSA to exclude most of the majority African American neighborhoods by excluding the City of Detroit.*

The complaint included the following map that indicated how the assessment area surrounded, but excluded, the City of Detroit:



Centier Bank

Centier Bank in northern Indiana offers one of the most extraordinary examples of how a regulatory agency contorted, misrepresented, and ignored overwhelming evidence in order to avoid admitting that it eventually reduced a bank's CRA rating due to discrimination. The regulator wrestled against the facts across three CRA evaluations in order to claim that the Needs to Improve it eventually assigned to the bank was related to lack of service in low- and moderate-income areas and not to race.

In its 1999 CRA examination, the Federal Deposit Insurance Corporation gave Centier Bank a Satisfactory rating. The exam covered the period from the end of 1996 through the first three months of 1999. The public report states that this is the first exam covered by the CRA regulations that were revised in 1995. After a summary of the adequacy of Centier's lending, service and investments tests, the report states:

> *No violations of the substantive provisions of the antidiscrimination laws and regulations (including the Equal Credit Opportunity Act and the Fair Housing Act) were identified. The bank has policies, procedures, and training programs in place to deter discriminatory or other illegal credit practices.*

Again, in its 2002 CRA examination, the Federal Deposit Insurance Corporation gave Centier Bank a Satisfactory rating. The exam covered the period from April of 1999 through June of 2002. (The public report was not released until April of 2003.) At page 2, the exam concluded:

> *There were no substantive violations found with regard to the provisions of antidiscrimination legislation, including the Equal Credit Opportunity Act and Fair Housing Act. The bank has policies and procedures in place to deter discriminatory or other illegal credit practices from occurring at the institution.*

At page 6 the CRA exam stated:

> *Centier Bank's assessment area conforms to the CRA regulatory requirement.*

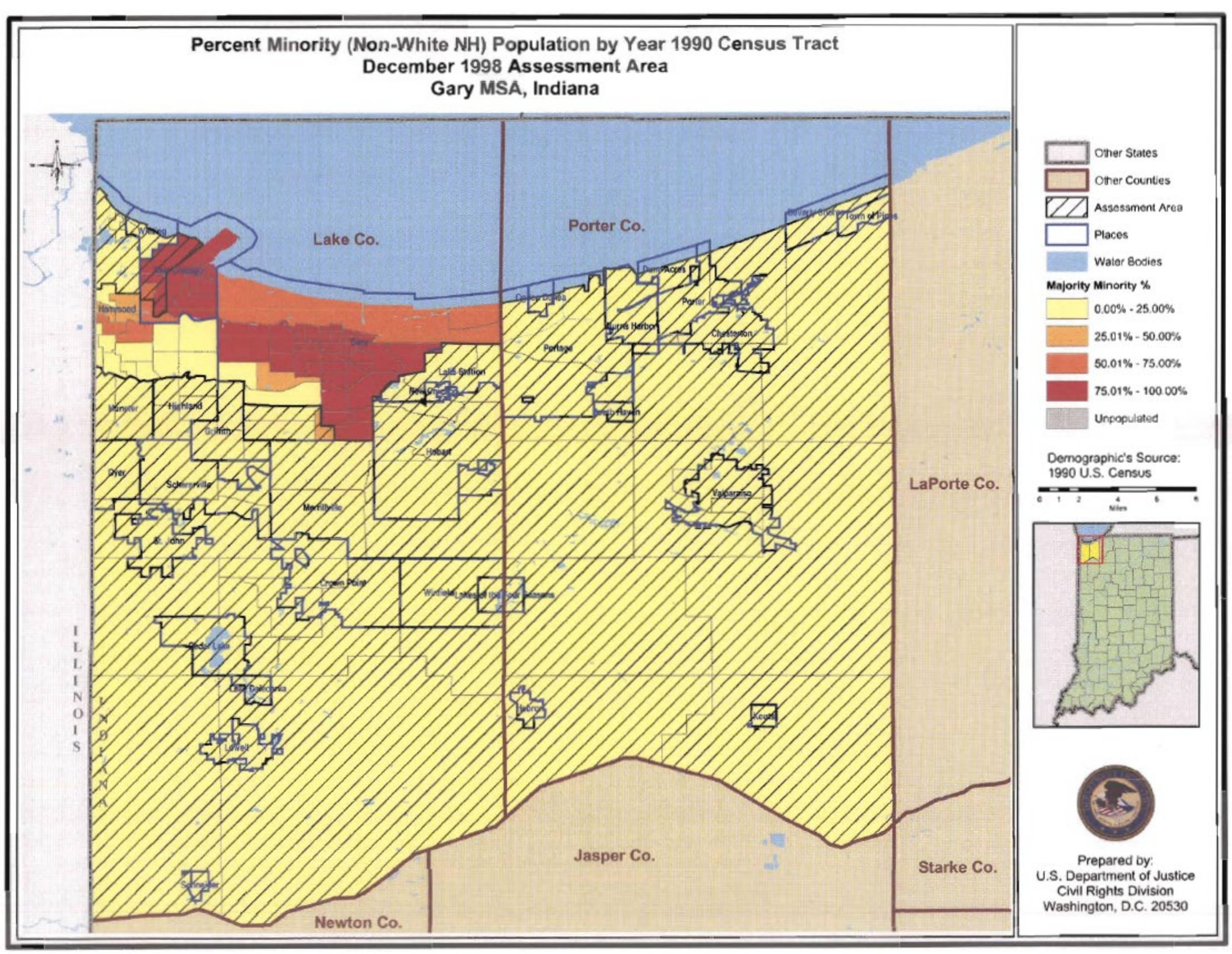
In 2006, however, the Department of Justice filed a race discrimination complaint against Centier Bank which operated in the Gary Indiana Primary Metropolitan Statistical Area (PMSA). The claim period covered 2000 to 2004. The entire complaint was based on race discrimination. In fact, the word "income" does not appear in the complaint in any form. At page 8, the complaint noted that "According to the 2000 Census, nearly 90% of the Gary PMSA's African-American residents lived in the cities of Gary, Hammond, and East Chicago." Then at page 18, the complaint stated:

Instead of defining its assessment area in accordance with Reg BB, Centier long circumscribed its lending area in the Gary PMSA to exclude most majority-minority neighborhoods, including having two geographically separate assessment areas for many years. Until late 1999, Centier's CRA assessment area included only three majority-minority census tracts from Gary, East Chicago, and Hammond, despite the fact that a large number of minority tracts were adjacent to the non-minority tracts included in the assessment area.

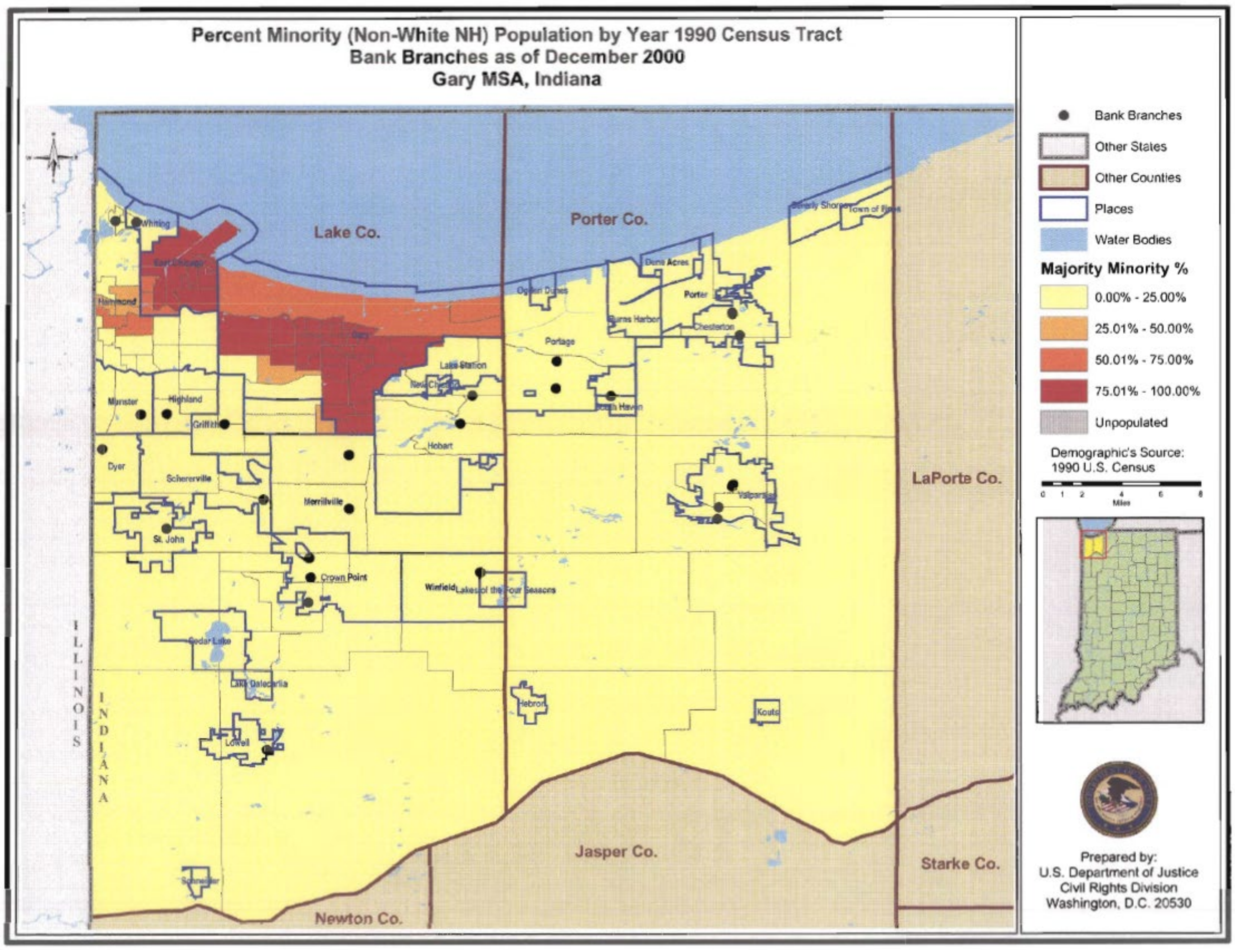
At page 12, the complaint summarized the lending and branching patterns by stating:

Centier has engaged in a race- and national origin-based pattern of locating or acquiring branch offices and determining what services to provide at each. It has located or acquired branch offices and chosen to provide varying levels of banking and lending services at them in a manner designed to serve fully the banking and credit needs of the residents of and small businesses located in majority white census tracts, but not those of residents of or businesses located in majority-minority census tracts.

The complaint included the following map that indicated how the assessment area surrounded Gary, Hammond and East Chicago but excluded almost all the areas of minority concentrations in these cities:



The complaint documents the lack of lending in minority areas in Gary, East Chicago and Hammond at the time of the FDIC's examination. It also provided by providing the following map of the Centier's branch locations:



The complaint stated that in 1999:

> *… the FDIC informed the Bank that its assessment area violated the CRA and its regulations. Not until then, and until Centier's Chairman had asked the FDIC whether the inclusion of Gary, East Chicago, and Hammond in its assessment area would require the opening of branches there, did Centier expand its assessment area to include all of Lake County.*

Nonetheless, as shown above, in the CRA examination that covered this period, the FDIC told the public that there were no indications of discriminatory activities. In fact, in the 1999 rating, with regard to the assessment area defined at that time in 1998 the CRA report stated:

> *The assessment area as defined by the bank did not meet regulatory requirements. This evaluation is based on an assessment area which includes all of Lake County and 14*

census tracts in Porter County. Both Lake County and Porter County are located in the Gary Indiana, Metropolitan Statistical Area #2960 (MSA).

While the assessment area should have contained all of both counties (as the FDIC later required), the CRA report claims that the omitted census tracts were in Porter County, which is white, while the DOJ map clearly indicates that the omitted census tracts were in Lake County and were all areas of minority concentration in Gary, Hammond, and East Chicago. In misrepresenting the excluded areas, the FDIC was able to avoid addressing a clear illegal racial redlining pattern at that time. The FDIC continued to claim there was no pattern of discrimination in the 2003 CRA rating.

Only in the 2007 CRA public examination did the FDIC finally assign Centier with a Needs to Improve rating. But even then, its public evaluation claimed this was due to its failure to adequately serve low- and moderate-income areas. There is no mention of race in connection to this rating. In summarizing the reasons for the Needs to Improve rating, the exam states at page 2:

The geographic distribution of residential loans reflects poor penetration throughout the assessment areas, especially the low- and moderate-income census tracts in the Gary, Indiana, Metropolitan Division (MD). … The institution exhibits a poor record in responding to the credit needs of highly economically disadvantaged geographies and low-income persons and small businesses.

At page 39, with respect to the identification of "Fair Lending or Other Illegal Credit Practices", the 2007 examination reads:

The concurrent compliance examination [2007] conducted by FDIC examiners did not identify any violations of the substantive provisions of the anti-discriminatory laws and regulations. The bank does not appear to engage in any unfair or deceptive practices.

In reference to the DOJ lawsuit, this section of the exam continues:

However, the bank is under a voluntary Department of Justice consent order (Order) that requires the institution to have policies, procedures, training programs, internal assessment efforts, or other practices in place to prevent discriminatory or other illegal credit practices. This same Order requires management to take corrective action particularly with respect to increasing the bank's lending in low- and moderate income census tracts. The bank appeared to be in compliance with the provisions of the Order at the time this evaluation was performed. Refer to page 5 for further information regarding the provisions of the Order. The institution's poor lending performance within the low- and moderate income census tracts in the Gary, Indiana Metropolitan Division was given substantial weight when assigning the current CRA rating of "Needs to Improve".

While this clearly relates to the DOJ redlining lawsuit, the word "income" does not appear in any context in the complaint. This statement misrepresents the settlement order by claiming that it "requires management to take corrective action particularly with respect to increasing the bank’s lending in low- and moderate income census tracts”. There is nonthing in the consent order related to “low- and moderate-income census tracts”. Moreover, all banks are supposed to have “practices in place to prevent discriminatory or other illegal credit practices” as part of normal management activity.

Nonetheless, there was no way at this point to ignore the DOJ discrimination suit. The FDIC resolved this by reporting the suit and settlement in language that emphasizes that there is no admission of wrongdoing by the bank as indicated at page 5 of the 2007 report in a section not related to the reasons for assigning the Needs to Improve rating, it states:

> *On October 16, 2006, the Bank entered into a Consent Decree Agreement with the U.S. Government (the Government) with respect to certain allegations made by the Government that the Bank had violated the Fair Housing Act (FHA) and the Equal Credit Opportunity Act (ECOA) in predominately minority census tracts located in the Gary, Indiana, metropolitan division. The Government and the Bank agreed that the Consent Decree Agreement was not an admission or finding of any violation of the FHA or the ECOA by the Bank.*

Of course, virtually all settlements allow the defendant to avoid a direct admission of the charges, but in this context, such a statement serves to question the integrity of the claims. Essentially, the FDIC public evaluation reports the racial aspects of the DOJ suit in a manner that downplays any evidence that the bank engaged in illegal discrimination. It misrepresents the reasons for assigning the Needs to Improve rating to failing to properly service low- and moderate-income areas only. This is a clear indication of the unwillingness of the regulatory agency to accept that discrimination takes place even in the face of overwhelming evidence.

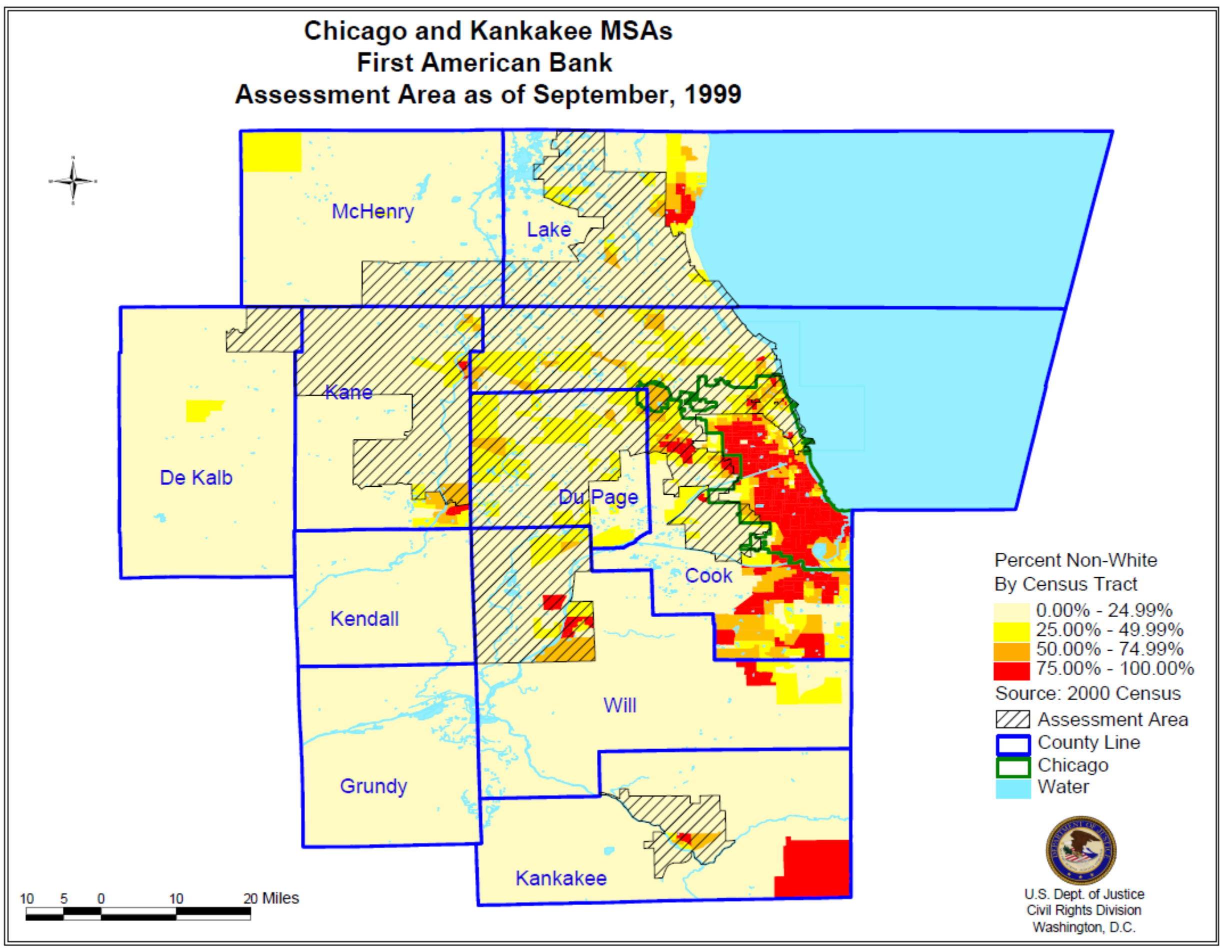
First American Bank

The case of First American Bank is an example of a bank that was being held accountable by its CRA regulator and then changed its charter and received a mare accepting treatment of its discriminatory activities. In 2004, the Department of Justice filed a redlining and discrimination complaint against First American Bank in the Chicago metropolitan area. The suit was initiated by the Federal Reserve Board, which regulated the bank during its 2001 to 2002 CRA examination. Paragraph 6 of the complaint reads:

> *Beginning in January 2001, the Federal Reserve Board conducted an examination of the lending practices of First American Bank to evaluate its compliance with the Fair Housing Act, the Equal Credit Opportunity Act, and the Community Reinvestment Act. Based on information gathered in its examination, the Board determined that it had reason to believe that First American was engaged in a pattern or practice of discrimination on the bases of race and national origin by redlining majority minority census tracts - defined as those with non-white populations of 50% or greater - in the Chicago and Kankakee, Illinois, metropolitan areas. The Board determined that the Bank was engaged in practices which prevented or discouraged the residents of those census tracts from obtaining equal access to residential, consumer, and small business credit because of the race, color, or national origin of the majority of the tracts' residents. The*

Board also lowered First American's CRA rating to "Substantial Noncompliance", the lowest possible. Of the 312 lending institutions the Board rated for CRA compliance between July 1, 2001, and June 30, 2002, First American was the only lender to receive that rating; the Board rated 40 lenders as "Outstanding", 270 "Satisfactory", and 1 "Needs to Improve".

As a result of its investigation, the DOJ charged that the bank had engaged in discrimination in the definition of its assessment area and in its mortgage lending, small business lending, marketing, the location of its branches, the location of its ATMs, and the location of its mortgage broker offices. DOJ produced the following map of the bank's assessment area in 1999:



The complaint provided detailed data on First American's mortgage and small business lending, indicating how only a small percentage of its loans were in minority census tracts even though these census tracts comprised slightly more than one-third of all the census tracts in the Chicago metropolitan area. The complaint concluded with the following statement:

The discriminatory policies and practices of the defendant were, and are, intentional and willful, and have been implemented with reckless disregard for the rights of residents of minority neighborhoods.

Meanwhile, in 2003, First American converted to a non-member state bank so that it was then regulated by the FDIC. While DOJ filed the discrimination suit in 2004, the FDIC conducted a new CRA review and assigned First American a Satisfactory rating for its CRA examination which covered 2002 and 2003. At page 8, the evaluation references the Federal Reserve Board's 2001 Cease and Desist order as "**based on alleged substantive fair lending violations** identified by the Federal Reserve Bank". (emphasis added)

At page 4-5 of the 2004 evaluation the FDIC states:

There were no substantive violations found with regard to the provisions of antidiscrimination legislation, including the Equal Credit Opportunity and Fair Housing. The bank has policies and procedures in place to deter discriminatory or other illegal credit practices from occurring at the institution.

In its 2007 CRA examination, the FDIC again assigned First American a Satisfactory rating. The report indicates that it found no violations of discrimination or other laws. It did however, mention the DOJ suit and settlement which were filed at the beginning of the evaluation period. At page 6 the evaluation states:

First American Bank was assigned a CRA rating of "Satisfactory" at the prior Community Reinvestment Act evaluation, performed by the Federal Deposit Insurance Corporation as of March 1, 2004. On July 13, 2004, the bank stipulated to a Consent Order ("Order") with the Department of Justice (DOJ) to improve its lending practices in minority census tracts. Provisions of the Order include the opening of four branches in minority census tracts, specific dollar expenditures for marketing and consumer education, and interest rate subsidies. The Order, which has a five year term, was precipitated by a prior Cease and Desist Order resulting from a 2001 Federal Reserve Bank examination, which was terminated in April 2004.

The final sentence attests to the persistence of the discrimination. Moreover, the 2007 report indicates that while the bank had opened 11 new branches in recent years while it was under the Federal Reserve Cease and Desist Order and the DOJ settlement, only one was even in a moderate-income area (at page 127) with no mention of any branches in predominantly minority census tracts in spite of the requirement in the DOJ settlement to open such branches. Surely this raises questions as to the bank's compliance with the DOJ order.

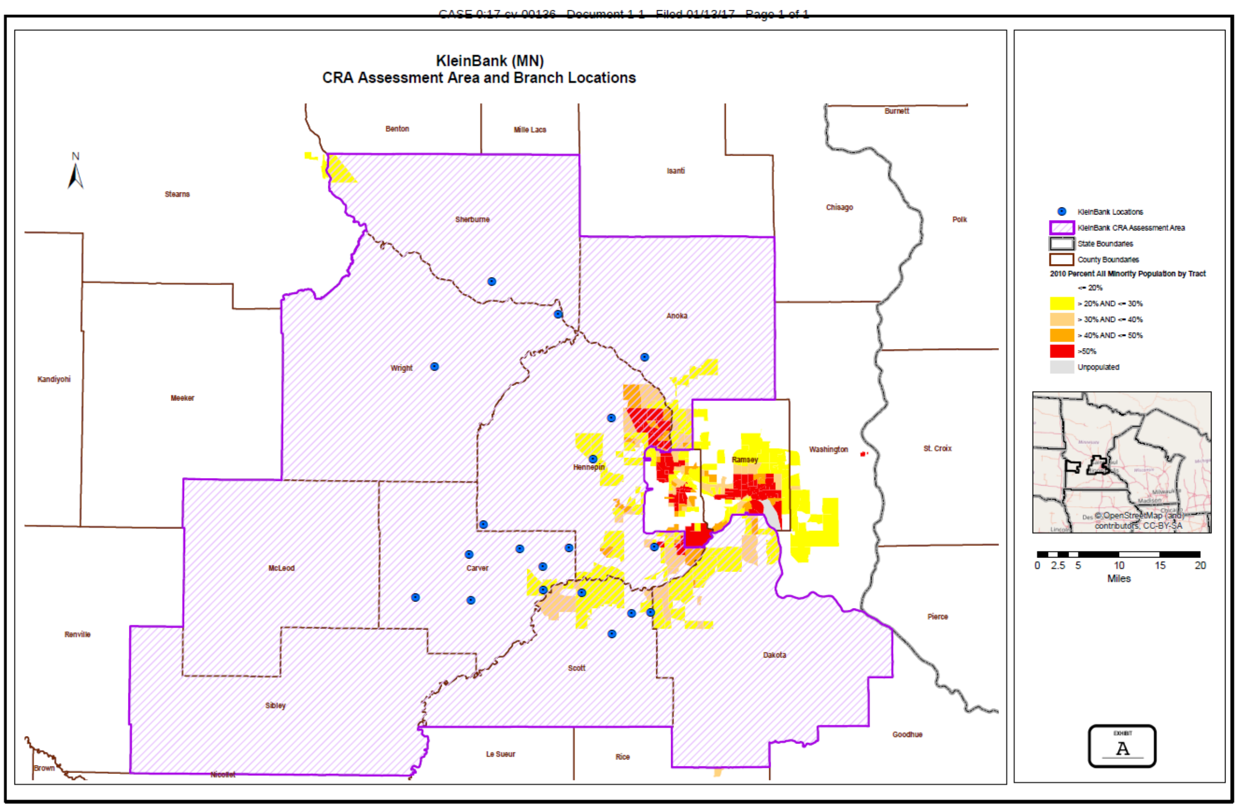
Nonetheless, the FDIC never reduced the bank's rating either in the 2004 report or in the 2007 report. Indeed, the 2007 report awarded First American with a High Satisfactory in both the lending and service tests. However, the report indicates (at page 14) that the bank's level of penetration for home purchase and home improvement loans in low- and moderate-income census tracts decreased from 2005 to 2006. Essentially, First American moved to a regulator that had little intention of holding it accountable for fair lending.

Klein Bank and Old National Bank

The cases of Klein Bank and Old National Bank provide an example of how the combined failure of different CRA regulators cascade into a pool of mergers and acquisitions. In 2013 the FDIC assigned a Satisfactory CRA rating to Klein Bank in Minnesota. The examination covered a period from 2010 to 2012. At page 52 the report indicated that the FDIC had found "no evidence of discriminatory or other illegal credit practices". In 2015 the FDIC assigned another Satisfactory CRA rating to Klein Bank. This review covered the period from 2013 to 2015. At page 14 of the evaluation the FDIC stated:

> *Examiners did not identify any evidence of discriminatory or other illegal credit practices. As such, this consideration did not affect the institution's overall CRA rating.*

In 2017, DOJ filed a redlining and lending discrimination case against Klein Bank based on data from 2010 to 2015. This is the period covered by the two FDIC CRA evaluations. The DOJ provided the following map of Klein Bank's assessment area and bank branches:



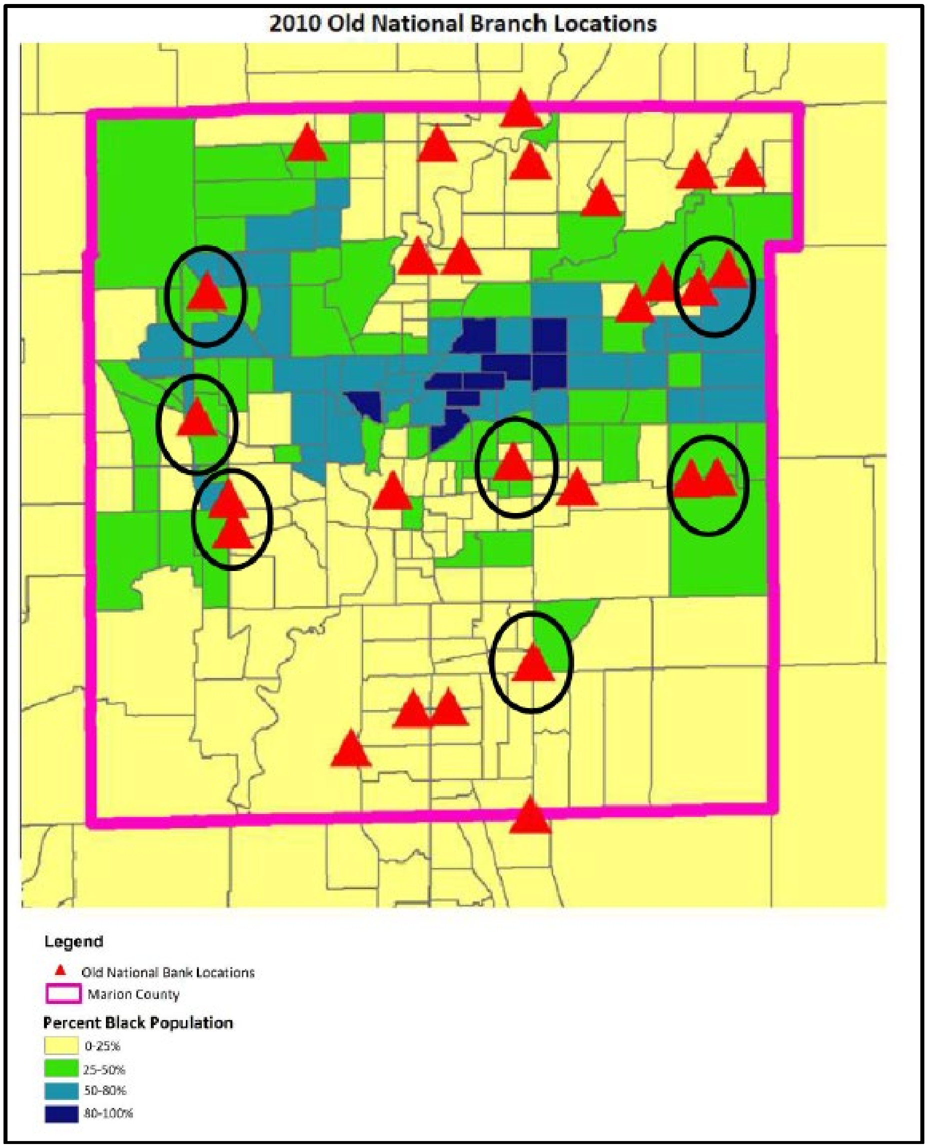
Minneapolis and St. Paul are the largest cities in the State of Minnesota. The assessment area excluded all of Ramsey County, which includes the City of St. Paul. The guidance for defining an assessment area is that it should contain entire counties. But the assessment area literally cut the City of Minneapolis out of Hennepin County. By excluding Minneapolis from Hennepin County, Klein Bank arbitrarily eliminated almost half of the Black and Hispanic population of the county. The DOJ case also indicated how the minority areas of Minneapolis and St. Paul as well as the minority areas within the assessment area had exceptionally low levels of lending. None of Klein Bank's branches were in either Minneapolis or St. Paul or in any minority census tract. A settlement agreement in 2018 required the bank to expand its assessment area and to open a branch bank in a minority community in Hennepin County as well as engage in fair lending training and engage in outreach and advertising targeted to minority markets.

In 2019 the OCC assigned a Satisfactory rating to Old National Bank, a regional bank out of Indiana. The exam period covered 2016 to 2018. The OCC found no evidence of discrimination. It gave Old National a High Satisfactory rating on its lending.

In 2021 the Fair Housing Center of Central Indiana filed a discrimination lawsuit against Old National Bank. The suit reviewed the bank's mortgage lending in 2019 and 2020 as well as the location of its branches from 2010 to 2020 related to its presence in Marion County. Marian County is in the center of the Indianapolis MSA and incorporates the City of Indianapolis.

The complaint noted that Old National made over 2,250 mortgage loans during the time period, but only 37 of these were to Blacks in the entire Indianapolis market, and only 23 were to Blacks in Marion County where over 90% of all the Blacks in the bank's assessment area live. Comparing Old National to peer lenders, the suit stated that while the peer lenders made 14.73% of their mortgage loans to Blacks in Marion County, Old National made only 3.86% its mortgage loans to Blacks in Marion County. As the complaint indicated, this is a nearly 4 to 1 racial disparity. It also attests to the ability of lenders to find sound lending opportunities in the Black communities in Marion County.

The complaint reviewed the pattern of opening and closing branches between 2010 and 2020. The map below indicates the location of Old National branches in 2010. The ovals indicate the branches that were closed between 2010 and 2020 in Marion County. All of the closed branches were in or adjacent to areas that were at least 25% or more Black.



The suit also indicated that the fair housing center engaged in testing and found that Black testers were quoted less advantageous terms than the white testers even though all were equally qualified.

The discrimination claims of the Fair Housing Center date to well before the suit. Prior to this case and about a month after the Klein Bank settlement, Old National had announced its intention to acquire Klein Bank. The Fair Housing Center of Central Indiana had commented on the application and made substantially the same case that it later made in its lawsuit challenging the record of Old National. The approval of the acquisition by the Federal Reserve Board did include some responses to the Fair Housing Center's challenge.

At page 11 of the Federal Reserve stated:

In response to the commenters' allegations, Old National asserts that approval of the proposed transaction is warranted based on Old National Bank's CRA performance evaluation. Old National notes that HMDA data do not take into consideration other critical inputs, such as borrower creditworthiness, collateral value, credit scores, and other factors relevant to credit decisions. Old National also asserts that HMDA data do not reflect the range of Old National Bank's lending activities and efforts within the communities it serves. Old National represents that it is committed to providing reasonable access to its delivery systems throughout its assessment areas and does not anticipate any branch closures as a result of this transaction.

Such a response from the bank simply relies on the rating it got from the OCC that failed to address the racial disparities in lending and gave the bank a High Satisfactory score in the lending test. The remainder of the response is simply a set of standard public relations statements that provide no factual or substantive response to the Fair Housing Center's challenge related to the tiny number of loans made to Blacks in the largest Black housing market in Indiana. Nonetheless it seemed adequate to satisfy the Federal Reserve.

At page 13 the Federal Reserve stated:

Examiners found that Old National Bank's geographic distribution of loans was good, the geographic distribution of home mortgage loans was adequate, and the geographic distribution of small loans to businesses was excellent. Examiners noted that, overall, the distribution of loans by income level of the borrower and of home mortgage loans by income level of the borrower was good.

In this response, the Federal Reserve considers the loan distribution good even though it appears to avoid almost completely minority census tracts. This response totally ignores the racial foundation of the challenge and, as is commonly the case with the regulators, changes the focus to income levels.

Lastly, at page 14 the Federal Reserve stated:

Examiners concluded that the bank's record of opening and closing branches had adversely affected the accessibility of its delivery systems, particularly in LMI geographies or to LMI individuals. Examiners nevertheless found that the services offered and hours of operation were comparable among locations regardless of income level of the geography and that Old National Bank had made adequate use of alternative delivery systems through telephone and on-line banking, electronic bill pay, and mobile banking options.

This response borders on the bizarre. First, this admits that the pattern of closing branches had an adverse effect on the areas where the branches were removed. Then, however, it completely ignores the racial basis of the challenge and focuses on the income levels of the patterns which were not what the challenge was about. The comment that the offices that remained open all had the same hours of operation and services is a complete non sequitur as this has nothing to do with the impact on the places where offices no longer existed. The final statement about the adequacy of alternative delivery systems is essentially a claim that actual physical offices are of no real consequence or value.

Overall, this passes for a serious review of a substantive racial challenge to the practices of Old National and provides a basis for allowing it to acquire a bank that had already failed to serve minority areas fairly. Perhaps more worrisome is that it also provides the basis for allowing Old National to continue to acquire other financial institutions and expand its influence in the lending and banking markets.

Indeed, at the time of the Fair Housing Center's discrimination lawsuit, Old National Bancorp (which owned Old National Bank) was seeking to acquire First Midwest Bancorp (an Illinois corporation that owned First Midwest Bank). The notice of this application was published on June 25, 2021. Within two months (on August 19, 2021), the OCC approved the merger of the two banks. What remained was for the Federal Reserve to approve the merger of the parent bank holding companies. The Fair Housing Center seized the opportunity to recast its discrimination claims against Old National in the form of a fair housing lawsuit in Federal court. The case was filed initially on October 6, 2021 (ten days before the Federal Reserve approved Old National's acquisition of Klein Bank), with an amended complaint in November from which the citations above are taken.

With the tens of billions of dollars at issue in the acquisition, Old National settled the suit on December 16, 2021, and agreed to locate new branches in predominantly Black census tracts in Indianapolis and to increase its lending in Black census tracts, among other activities.

On January 27, 2022, the Federal Reserve approved of the acquisition. The new institution has more than $45 billion in assets. The acquisition of First Midwest greatly expanded the operations of Old National, especially in Illinois. The new institution is the sixth largest bank system headquartered in the Midwest.

In concluding that Old National complied with the CRA requirements to meet the convenience and needs of its communities, the Federal Reserve relied heavily on the OCC's 2019 overall Satisfactory rating and its High Satisfactory rating in the lending test and the Outstanding rating in the Investment test. This was based largely on full scope reviews in Evansville, Indiana and Louisville, Kentucky, but not Indianapolis where the Fair Housing Center cited discrimination issues.

Where the Fair Housing Center had demonstrated the pattern of closing branches in and adjacent to minority areas, the Federal Reserve provided no comments on this issue and simply cited the High Satisfactory rating that the OCC had given to Old National based largely on the review in Evansville and Louisville.

The approval responded to the fair housing discrimination claims in lending with the previous generic comments that the HMDA data do not represent all the factors that determine loan eligibility. While that is true, it begs the question of the huge disparities in the lending for Old National compared to its peers in Marion County. Why, one would ask, would the minorities applying to Old National be so likely to be unqualified compared to those applying to other lenders in the same market?

Notably, this is a case study where **all three of the prudential regulators participated in a process that failed to provide accountability for discrimination in lending**. The FDIC had failed to hold Klein bank accountable for its obvious redlining. The OCC had failed to identify the clear racial disparities in the lending and branch closings of Old National. The Federal Reserve Board waived aside and ignored the significance of the challenge to the merger and approved the acquisition of Klein Bank by Old National. This set up the cycle allowing the same review process to permit Old National to vastly increase its Midwest market in acquiring First Midwest without ever having been held accountable for discrimination by any prudential regulator. It is the failure of the regulators to engage in serious fair lending enforcement that forces groups like the Fair Housing Center to move to the Federal courts.

OneWest Bank

The CRA evaluations and ratings assigned to OneWest Bank by the OCC represents a unique issue that combines the regulatory aversion to finding race discrimination in the banks with a personal conflict of interest between both the Comptroller of the Currency and the Secretary of the Treasury of the United States. A short history of the bank provides context.

OneWest Bank was created in 2009 with the purchase of the remains IndyMac Federal Bank from the FDIC and the conversion of the institution to a national bank. Steven Mnuchin was the head of the investment group (IMB Holdco) that bought the IndyMac assets and founded OneWest. The chairman and CEO of the newly created bank was Joseph Otting.

During Mnuchin and Otting's tenure at the bank, OneWest's activities became the focus of concern from organizations in California to members of Congress. Those concerns were related to both the consumer banking operations, which were concentrated in Southern California, and to the national role the bank's subsidiary (Financial Freedom) played in the origination and foreclosure of reverse mortgage loans (loans designed for seniors to live on from regular withdrawals of funds from the equity in their homes). Over this time, the California Reinvestment Coalition (CRC, which has 300 members) began collecting data about the branch locations, marketing, loan servicing, and loan origination patterns of OneWest and Financial Freedom.

In 2014, CIT Group applied to purchase IMB Holdco and merge OneWest into CIT Bank, which operated out of Salt Lake City. The California Reinvestment Coalition along with many other organizations challenged the acquisition based on concerns about race discrimination in lending, failure to locate branches in minority communities, robbing people of their homes (especially in the reverse mortgage operations that constituted wrongful foreclosure), and violating servicing obligations. The Federal Reserve Board and the Comptroller of the Currency, which both had to approve the acquisition, held a joint public meeting at the Los Angeles office of the San Francisco Federal Reserve on February 26, 2015. Hundreds of comments for and against the acquisition were submitted both orally and in writing.

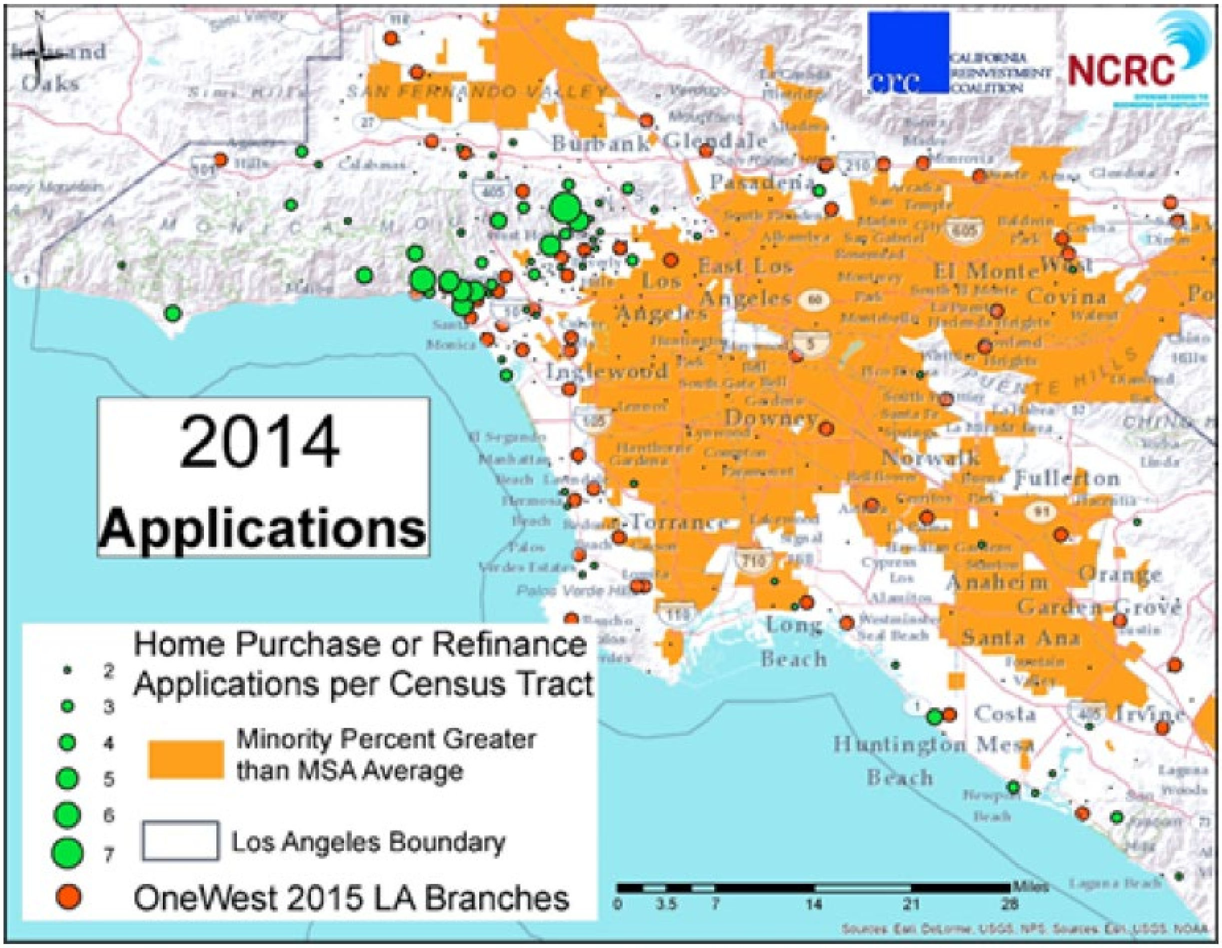
Both the OCC and the Federal Reserve approved the acquisition. In setting aside, the seriousness of the challenges, the Federal Reserve stated:

> *An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation by the institution's primary federal supervisor of the institution's overall record of lending in its communities.* (at pages 17-18 of the order approving the acquisition on July 19, 2015)

The Federal Reserve and the Comptroller both relied upon the Comptroller's own CRA exam from February 6, 2012. The examination covered the period from March 2009 to September 2011 and assigned OneWest a Satisfactory rating. This evaluation was well over three years old and the bulk of the criticisms submitted related to later years. The Federal Reserve noted that the Comptroller had given the bank a High Satisfactory rating on the lending test and that the "examiners found that the bank's geographic distribution of home mortgage loans, home refinance lending, and home purchase lending was excellent". The Federal Reserve indicated that the Comptroller had indicated that the bank's distribution of branches within its assessment area was good. The examination found no discrimination or violations of consumer laws. This indicates how difficult it is to challenge a bank's record against the regulator's rating.

OneWest was sold to the CIT Group in 2017 for $3.4 billion. Mnuchin received profits from the sale as well as an appointment to the CIT Group board of directors. OneWest became CIT Bank, the full service bank of that holding company. At that point Otting served as President of CIT Bank and co-president of CIT Group.

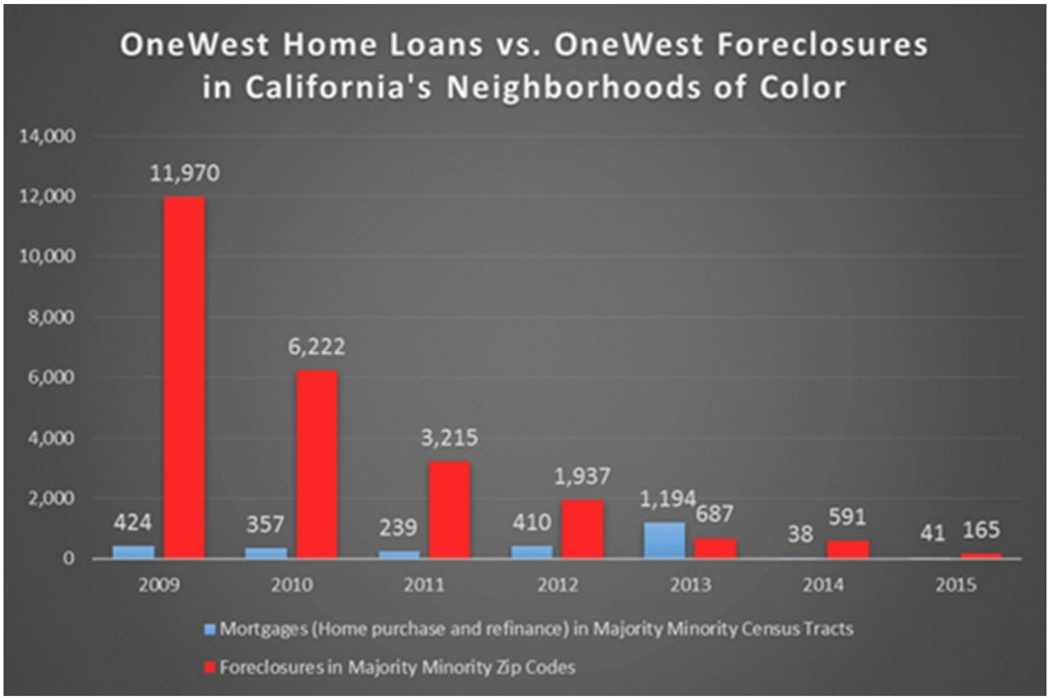
On November 16, 2016, CRC and the Fair Housing Advocates of Northern California (FHANC) filed a Fair Housing Act (FHA) complaint with HUD. The complaint expanded on the challenge against the acquisition of OneWest. The complaint alleged that OneWest violated the Fair Housing Act through redlining practices in failing to locate branches in communities of color and extending very few or no mortgage loans to borrowers of color. It also alleged OneWest maintained REO homes (properties it owned as a result of its foreclosures) in predominantly white neighborhoods better than in neighborhoods of color. The complaint was supported by charts and maps such as the one below that indicates the locations of mortgages and bank branches in the nine-county Los Angeles Consolidated Statistical Area (CSA):



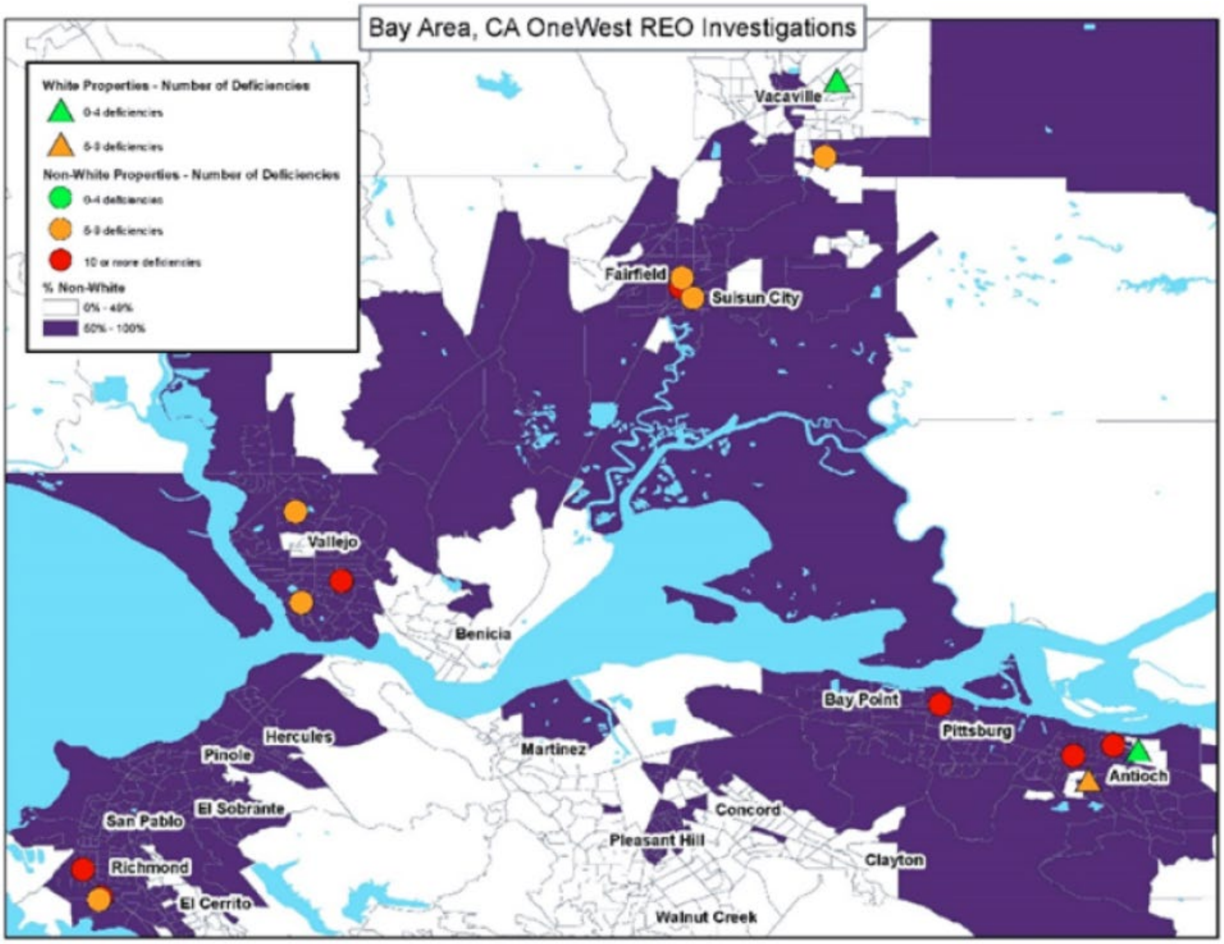
The supporting data indicated that in the Los Angeles CSA, almost two-thirds of the population lived in predominantly minority census tracts. Still, there were no branches in predominantly Black census tracts and only one in predominantly Asian census tracts. The table below indicates the distribution of mortgage loans in 2015 within census tracts of different racial and ethnic compositions:

Los Angeles CSA	**Percent of total population in Los Angeles CSA**	**Percent of OneWest mortgages originated to these borrowers in 2015**	**Industry average of mortgages originated to these borrowers in 2015**
African American	6.2%	1.7%	3.6%
Asian Americans	12.1%	8.4%	11.4%
Latinos	43.3%	8.4%	22.4%
Whites	35.3%	82.4%	67.8%
50 to 100% Minority Census Tracts	64.7%	29.4%	52.9%

CRC charged that OneWest (later CIT Bank) almost always made many times more foreclosures than loans in California's minority census tracts, as shown in the graph below:



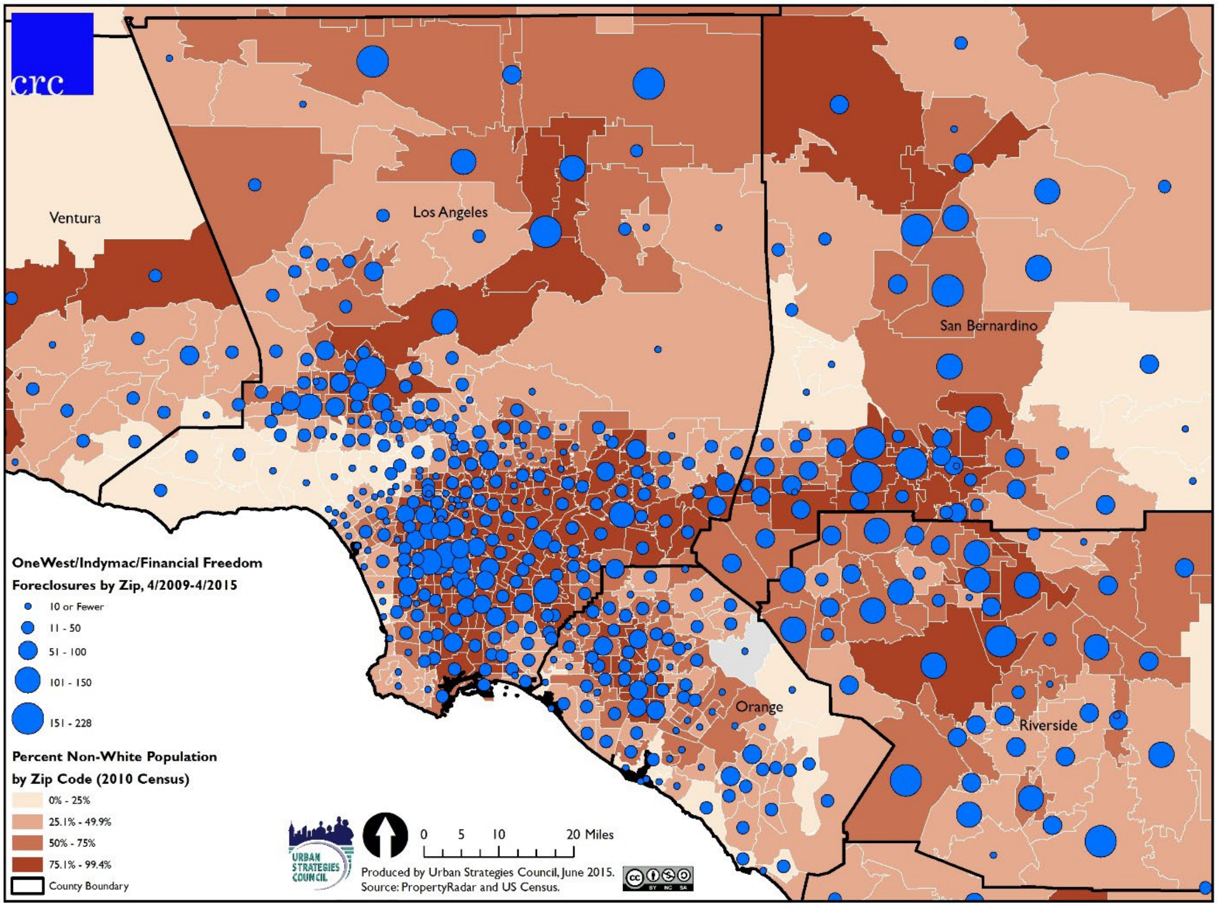
The HUD complaint also charged that OneWest did not maintain the REO properties in minority areas. FHANC surveyed homes in OneWest's REO inventory in the Bay Area and documented problems with proper maintenance or efforts to market the properties. The survey recorded such problems as broken or boarded windows, missing or unsecured doors, wood rot, holes in the structures, missing for sale signs, etc. The survey indicated that all of the properties in white census tracts were well-maintained while all of the properties in minority areas had at least 5 serious deficiencies, as shown in the map below:



On November 29, 2016, just 13 days after CRC filed its complaint, President Trump nominated Steven Mnuchin to be Secretary of the Treasury. He was confirmed in February of 2017. In November of 2017, Joseph Otting was made Comptroller of the Currency.

CRC continued to secure data on the reverse mortgage foreclosures of Financial Freedom. Based on the data that it eventually secured on HECM loans (reverse mortgages insured by HUD that accounted for about 95% of Financial Freedom's portfolio) CRC was able to estimate that Financial Freedom accounted for about 17% of the reverse mortgage market but about 39% of all the reverse mortgage foreclosures. CRC data were used to develop the map below of the foreclosures in the Los Angeles area related to the racial composition of the ZIP codes where they were located:

Indymac, OneWest, & Financial Freedom Foreclosures with Non-White Population, by Zip Code



Critics had claimed that Financial Freedom was responsible for a "disproportionately high" foreclosure rate on reverse mortgages from April 2009 through April 2016 and nicknamed Mnuchin the "foreclosure king." In May of 2017, CIT sold Financial Freedom after an $89 million settlement with DOJ for false claims related to its origination and servicing of reverse mortgage loans from 2011 to 2016.

In July of 2019, HUD entered a conciliation agreement between CRC and OneWest (CIT Group) for over $100 million in new mortgage loans, special programs, and marketing activities. In addition, the agreement included locating a new branch in a minority census tract in the Los Angeles assessment area. This settled CRC's complaint from 2017.

In a rating dated August of 2018 (but released after the CRC-CIT Group agreement in July of 2019), the OCC assigned a new Satisfactory rating to OneWest (now CIT Bank). The examination was done under the Secretary of the Treasury who had been the CEO of the investment group that created OneWest and under the Comptroller of the Currency who had been the CEO of OneWest Bank (and later CIT Bank). Under the section for consideration of evidence of discrimination or violations of law, the assessment made no mention of the DOJ settlement. The section did mention the HUD agreement. It read:

> *On February 14, 2017, a complaint was filed with HUD asserting that CIT Group, Inc., and CIT, as successor to OneWest Bank, had engaged in discriminatory residential housing lending practices from 2011 until 2017 in violation of the Fair Housing Act (FHA). The matter was settled on July 26, 2019, when HUD approved a Conciliation between CIT and the complainant that resolved the allegations. CIT denied violating the FHA or engaging in any discrimination on a prohibited basis, and made various commitments in the Conciliation Agreement to expand efforts and opportunities to serve the banking and credit needs of majority-minority and low- and moderate-income neighborhoods in its AA.* (Assessment Area)
>
> *The CRA performance rating was not lowered as a result of the above-mentioned complaint and settlement. We considered the nature, extent, and strength of the allegations; the extent to which the institution had policies and procedures in place to prevent the alleged practices; and the extent to which the institution has taken or has committed to take action, including voluntary corrective action resulting from self-assessment; and other relevant information.* (at page 10)

Both the HUD agreement and the DOJ settlement for Financial Freedom were consistent with the challenge that had originally been filed with the Federal Reserve in opposition to the acquisition of OneWest by CIT Group. Ultimately, however, it was the owner of OneWest and the head of the bank who "considered the nature, extent, and strength of the allegations" and decided that the DOJ suit could be ignored and the HUD case was insufficient to reduce the bank's CRA rating.

<u>Summaries of Additional Redlining Cases</u>

In the summaries below, the CRA exam dates reflect the period in which the violations occurred even when the resulting settlements and consent orders have a later filing. These cases typically involve additional charges related to discrimination in underwriting and the location of facilities. In some cases, the mapping focuses on the lack of banking facilities and/or the levels of lending in minority areas of an existing assessment area compared to the predominantly white areas.

- In 1990 the OTS assigned a Satisfactory CRA rating to Chevy Chase Federal Savings Bank in the Washington, D.C. metropolitan area during the period when a DOJ complaint indicated that it had removed the District of Columbia from the metropolitan assessment area. (Settled in 1994.)

- In 2002 the OTS assigned a Satisfactory CRA rating to Mid America Federal Savings Bank in the Chicago region during the period when a DOJ lawsuit charged the bank with redlining and lending discrimination. The DOJ maps indicated an assessment area that essentially covered the white suburbs west of Chicago. The lending map indicated that its lending expanded well beyond these western suburban areas and into additional white areas well north and to the northwest of Chicago outside of the assessment area. Meanwhile, the assessment area eliminated the City of Chicago and the southern suburbs which contain almost all of the minority census tracts in the Chicago Primary Statistical

Metropolitan Area. (The OCC rating noted that the rating was lowered from Outstanding to Satisfactory because the examiner "could not conclude at this time that no violations of the substantive provisions of the antidiscrimination laws and regulations occurred", pointing out that the bank did not agree that such violations existed. The OTS did not release the public evaluation until April of 2003, eight months after the review, with a cover letter informing the bank that it was required to release the report to the public. (Settled in 2002.)

- In 2005 the FDIC assigned a Satisfactory CRA rating to Community State Bank in Michigan during the time the DOJ lawsuit, and map, indicated that the bank's assessment area excluded minority census tracts from its Saginaw metropolitan area. The FDIC CRA report indicated that "a comprehensive fair lending review was performed" and that it "did not identify any acts, policies, or practices that result in substantive violations of the antidiscrimination laws and regulations". (Settled in 2013.)

- In 2007 the Fed assigned a Satisfactory CRA rating to Midwest BankCentre in the St. Louis MSA during the core period when the DOJ charged the bank with redlining and discrimination by excluding from its assessment area the northern part of the City of St. Louis and the adjacent northeastern part of St. Louis County. This formed a horseshoe area around the City of St. Louis and eliminated 47 of the 60 minority census tracts in the City. (Settled in 2013.) The 2009 CRA rating was lowered to Needs to Improve based on the DOJ finding from a referral from the Fed in 2009. That referral, however, began with the complaint from the Metropolitan St. Louis Equal Housing Opportunity Council and not from an initial concern from the Fed itself.

- In 2009 the FDIC assigned a Satisfactory CRA rating to Eagle Bank & Trust during the time the DOJ lawsuit indicated that the bank engaged in redlining by eliminating the minority census tracts in the northern part of St. Louis and the northeastern part of St. Louis County from its St. Louis metropolitan area assessment. While the FDIC did not find any discrimination, the Metropolitan St. Louis Equal Housing Opportunity Council did identify a pattern of discrimination and it referred its concerns to the DOJ which began the investigation which led to the lawsuit. (Settled in 2015.)

- In 2011 the FDIC assigned an Outstanding CRA rating to Santander Bank during the period when a discrimination suit by the City of Providence charged that since the purchase of the bank by Banco Santander in 2009, it had redlined minority communities in Providence. The case was made by data and maps indicating the disparate level of lending in minority areas before and after the purchase and by comparing these changes to the levels from comparable other lenders. (Settled in 2014.)

- In 2011 the OTS assigned a Satisfactory CRA rating to Hudson City Savings indicating that it had conducted a fair lending exam in 2009 and that it had found no violations. This was during the period when the DOJ-CFPB discrimination suit indicated that while its New York City MSA assessment area surrounded New York City, it contained a hole in the middle where it excluded the Bronx, Queens, and Brooklyn (The Boroughs with the largest minority populations). Additional maps indicated the lack of facilities and mortgage offices in these areas in addition to the lack of significant lending. (Settled in 2015.)

- In 2013 the FDIC assigned a Satisfactory CRA rating to BancorpSouth Bank during the period when the DOJ and CFPB found redlining and other violations that indicated an assessment area for the Memphis MSA that formed a horseshoe around, but excluded, the minority census tracts in the City of Memphis. At page 17, the FDIC noted that the CRA evaluation did not include a fair lending examination. Nonetheless, the FDIC stated that the bank served its assessment area well with its mortgage lending (an assessment area that the lawsuit demonstrated excluded minority census tracts). (Settled in 2016.)

- In 2013 the OCC assigned a Satisfactory CRA rating to Evans Bank during the time a discrimination lawsuit filed by the Attorney General of New York indicated redlining in that African-America census tracts in Buffalo were eliminated from the bank's assessment area. (Settled in 2014.)

- In 2013 the FDIC assigned a Satisfactory CRA rating to Union Savings Bank during the core period when the DOJ complaint indicated that it avoided placing branches in the minority census tracts areas in its Dayton, Cincinnati, and Columbus (OH) and Indianapolis (IN) assessment areas. (The 2017 rating was lowered to Needs to Improve after the DOJ settlement, but the rating indicated that a major factor was the general poor distribution of loans in its assessment areas). (Settled in 2017.)

- In 2014 the OCC assigned an Outstanding CRA rating to Guardian Federal Savings Bank during the period when a DOJ complaint indicated that it had failed to locate a single branch in the predominantly minority census tracts in its Cincinnati assessment area. The investigation that ensued indicated that Guardian had made little effort to market in minority areas and had made a significantly lower level of loans in minority areas than comparable institutions. (While the OCC's 2018 CRA rating assigned Guardian a Needs to Improve rating, that rating specifically stated that, "the CRA performance rating was not lowered as a result of these (DOJ) findings" (at page 6). (Settled in 2017.)

- In 2015 the OCC assigned a Satisfactory CRA rating to First Merchants National Bank in Indiana. In 2018, after it changed its charter to a state bank, the FDIC also assigned First Merchants a Satisfactory CRA rating. During the period covered by these ratings a DOJ complaint indicated that the bank defined an Indianapolis MSA assessment area that formed a horseshoe around Marion County but excluded the entire county. Marion County contains the City of Indianapolis and all of the minority census tracts in the Indianapolis MSA. (Settled in 2019.)

- In 2017 the FDIC assigned an Outstanding CRA rating to Liberty Bank in Connecticut during the period when the Connecticut Fair Housing Center charged the bank with redlining and loan discrimination when it excluded the City of Hartford from its assessment area and made few loans in any minority census tract in its entire assessment area. (The charges included the period from 2010 to 2016. None of the OCC CRA evaluations in 2014, 2017, or 2021 found any evidence of discrimination. The case was settled in 2019.)

Other Mortgage Discrimination Cases

The survey identified 17 additional racial discrimination mortgage lawsuits where the violations were not identified by the regulatory agency during the period when they occurred. While the prudential regulators did not find evidence of discrimination, others did. Most of these violations were found by DOJ while others were found by municipalities, fair housing groups, and private plaintiffs.

Some of these cases might also be categorized as redlining cases, but they are listed here because they did not relate to the designation of assessment area(s) or did not map the lending or branch locations related to minority concentrations. The cases are summarized below in order by the relevant date of the CRA examination:

- Prior to 1992, the OTS had assigned passing CRA ratings to Decatur Federal Savings and Loan Association in Atlanta. A DOJ discrimination suit filed in 1992 found that Decatur Federal had discriminated against minorities in the Atlanta market since 1979 when the suit states, "Decatur Federal circumscribed its CRA lending area in Fulton County to exclude most of the predominantly black neighborhoods of the City of Atlanta and South Fulton County". This eliminated "over 76% of the black population of Fulton County". The suit also charged Decatur with specific discriminatory treatment of individual Black mortgage applicants. The case was initiated as a result of the Pulitzer Prize winning articles "The Color of Money" in the *Atlanta Journal Constitution* in 1988. (Settled in 1992.)

- Prior to 1994, the FDIC had assigned a passing CRA rating to Blackpipe State Bank in South Dakota. A DOJ lawsuit found that Blackpipe had denied loans on Native American reservations subject to tribal court jurisdictions and had imposed more onerous terms on loans to individual Native Americas. (Settled in 1994.)

- In 1994 the OCC assigned Satisfactory and Outstanding CRA ratings to two Northern Trust banks in the Chicago area. In 1995, DOJ field a discrimination suit against these banks for favoring white applicants over minority applicants in the period from 1992 to 1995. (Settled in 1995.)

- In 1995 the OTS assigned an Outstanding rating to Albank while a DOJ discrimination suit cited Fair Housing Act violations dating from 1980 with a written policy not to accept applications from areas in Connecticut and New York that were areas with significant concentrations of minorities. (Settled in 1997.)

- In 1995 the OCC assigned an Outstanding CRA rating to the First National Bank of Dona Ana County in New Mexico during the time when a DOJ suit charged the bank with discrimination in mobile housing lending against Hispanics. (Settled in 1997.)

- In 1999 the OTS originally assigned an Outstanding CRA rating to Flagstar Bank in Michigan. During this time period, there was a trial in a case of several plaintiffs who claimed to be the victims of racial discrimination. The jury found in favor of two plaintiffs in 1999. While this case involves only two named plaintiffs, it is included because the evidence at trial also included testing by the fair housing organization in Detroit and an analysis of HMDA data that indicated significant differences in the rejection rates for Blacks. Moreover, while the OTS found no violations in its evaluation, a copy of the confidential internal CRA examination provided to Flagstar produced at the trial indicated that the OTS cited the bank for a discriminatory practice in its appraisal analysis. The OTS maintained the Outstanding rating until Flagstar's appeal of the verdict was rejected in 2000, at which time the OTS retroactively lowered the rating to Satisfactory.

- In 2004 the OTS assigned an Outstanding CRA rating to Flagstar Bank during a period when a Federal court in Indianapolis had ruled against Flagstar in a mortgage discrimination case. The case related to a formal policy that paid loan officers less for a mortgage loan to a minority than for a loan to a non-minority. This increased the cost of loans for non-minorities while simultaneously discouraging loan officers from making loans to minorities – creating a unique case where both minority and non-minority applicants suffered discrimination. Flagstar defend the policy by claiming that even though it was a formal policy, it had not always been applied. The court ruled in favor of the plaintiffs calling Flagstar's position a "Keystone cops" defense. The court order was filed on August 11, 2003, during the CRA examination period where the bank was given an Outstanding rating.

- In 2007 the OCC assigned an Outstanding CRA rating to Chevy Chase Bank in the Washington, DC, market while a DOJ lawsuit found that Chevy Chase had overcharged Black and Hispanic borrowers on their loans. (Settled in 2013.)

- In 2007 and again in 2010 the FDIC assigned Emigrant Savings Bank a Satisfactory CRA rating while a discrimination lawsuit filed by Brooklyn Legal Services on behalf of individual victims in 2011 charged the bank with predatory lending targeting minorities in Brooklyn between 1999 and 2008. The plaintiffs prevailed in a jury verdict in 2016.

- In 2008 the OCC assigned a Satisfactory CRA rating to National City Bank (one of the largest mortgage lenders in the nation) during a time period (2002 to 2008) when a DOJ/CFPB discrimination suit claimed that the bank charged higher rates for loans to Blacks and Hispanics. (Settled in 2014 with relief for over 140,000 victims.)

- In 2008 the OCC assigned Wells Fargo an Outstanding CRA rating and found no discrimination of violations of consumer laws. The exam covered the years 2004 to 2007. A discrimination suit filed by the City of Baltimore in 2008 cited research on the extreme concentration of subprime loans and foreclosures in minority communities in Baltimore. The suit traced racial discrimination in the marketing and underwriting of subprime loans and the resulting foreclosures during the period from 2000 to 2007. (Settled in 2012.)

- In 2008 the OCC assigned Wells Fargo an Outstanding CRA rating and found no discrimination or violations of consumer laws. At the end of 2009, the City of Memphis and Shelby County filed a racial discrimination suit against Wells Fargo. The complaint cited extensive research indicating that subprime loans and consequently high foreclosure rates were disproportionately concentrated in minority communities. This pattern was linked to Wells Fargo beginning with the statements of former employees that Wells Fargo intentionally targeted minorities and minority markets to steer the applicants into subprime loans in a "reverse redlining" scheme that resulted in massive levels of foreclosure in minority areas of Memphis. The complaint documented lending and foreclosure patterns from 2000 to 2008. (Settled in 2012.)

- In 2010 the OCC assigned a Satisfactory CRA rating to JPMorgan Chase during a period (2006 to 2009) when the DOJ charged the bank with a practice of allowing brokers to charge more in fees to minorities than to non-minorities. (Settled in 2017.) The report "identified several matters which negatively impacted the bank's CRA rating". The report includes the consideration of the results of several fair lending exams but defines no specific issue or violations. Moreover, the DOJ investigation and charges were not the result of a referral from the OCC.

- In 2010 the Fed assigned a Satisfactory CRA rating to SunTrust during the review period from 2007 to 2010. A DOJ suit in 2012 charged that SunTrust Mortgage charged higher rates to Hispanics and Blacks through its more than 200 retail offices and through its national network of brokers between 2005 to 2008. (Settled in 2012.) While the complaint indicates that the DOJ investigation resulted from a referral from the Federal Reserve in 2009, the CRA examination for this period indicates no evidence of violations and gave SunTrust a High Satisfactory rating for lending.

- In a 2012 CRA rating the OCC assigned a Needs to Improve CRA rating to Wells Fargo. In 2012 the National Fair Housing Alliance and 13 of its member organizations across the country filed a complaint with HUD charging Wells Fargo with failing to maintain its foreclosed properties (Real Estate Owned – or REO) in minority areas while it maintained such properties at a higher level in white areas. HUD negotiated a conciliation agreement in 2013. In its 2012 CRA rating, the OCC lists this case as one of the illegal or discriminatory issues taken into consideration in the rating. One cannot estimate the weight given to this case in assigning the Needs to Improve rating from the OCC in 2012. Partly this is because it was only one of many discrimination and consumer law violations listed that were taken into consideration. Secondly, many of these violations were defined by settlements and consent agreements made after the CRA review period and related to activities that occurred before and after the review period.

  Note: DOJ filed a race discrimination suit against Wells Fargo in 2012 based on a referral resulting from a fair lending exam by the OCC in 2009. This examination and referral, however, took place after the suits filed by Baltimore, Memphis, and Shelby County in 2008. Therefore, the discrimination is not considered to have been identified by the OCC in its CRA and fair lending process but as a result of the prior litigation. Subsequent litigation by local governments, such as the cases filed by the City of Philadelphia, the City of Oakland (CA), and Prince George's County (MD) are also not considered in this review.

- In 2015 the Fed assigned a Satisfactory rating to Alpine Bank of Northern Illinois while a HUD complaint from Hope Fair Housing Center charged that the bank did not place branches in any areas of significant minority concentrations and that it discriminated in its treatment of mortgage loan testers. (Settled in 2017.)

The Elephants in the Room

Most blatantly, there is a family of elephants in the room that all of the agencies ignored in terms of race discrimination – that includes the National Mortgage Settlement, the Interagency Review of Foreclosure Policies and Practices and the consequent Independent Foreclosure Review Payouts, and the separate cases of fines and payments related to violations of the False Claims Act. These claims relate to illegal and sometimes fraudulent practices in originating or servicing loans. Together, these violations amount to over $31.7 billion in payments related to millions of mortgages generally during the heyday of the subprime markets and abuses in FHA lending.

The National Mortgage Settlement (NMS) in March of 2012 assessed $25 billion in fines and restitution funds against five banks for fraud and violations of servicing requirements in foreclosures on mortgage loans. The case involved millions of loans. The lawsuits were brought on behalf of the related prudential regulators, 50 states and the District of Columbia, HUD, and the Department of Justice. The five banks were Ally (formerly GMAC), Bank of America, Citibank, JPMorgan Chase, and Wells Fargo. The suits were based on the treatment of loans from 2008 to 2011 as well as abuses in loans under the Servicemembers' Civil Relief Act from 2006 to 2011 and additional claims of violations of the False Claims Act on FHA loans. The Department of Justice press release states this is the largest federal-state settlement in history.

In April of 2011, prior to the National Mortgage Settlement, the Federal Reserve System, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision announced the "Interagency Review of Foreclosure Policies and Practices". The report identified issues of robo-signing, mismanagement, lack of recordkeeping, lax oversight, etc. on the part of 14 servicers that accounted for 68% of the servicing market in 2010 based on a sample of loans from 2009-2010. The Consent Orders required an Independent Foreclosure Review of loans serviced from 2009-2010 and the development of sound servicing management plans.

The report indicates that the foreclosure abuses have an impact on local communities noting that "This outcome acts as an impediment for communities working to stabilize local neighborhoods and housing markets". The report added that "Moreover, local property values may be adversely affected if foreclosed homes remain vacant for extended periods, particularly if such homes are not properly maintained." (at page 6).

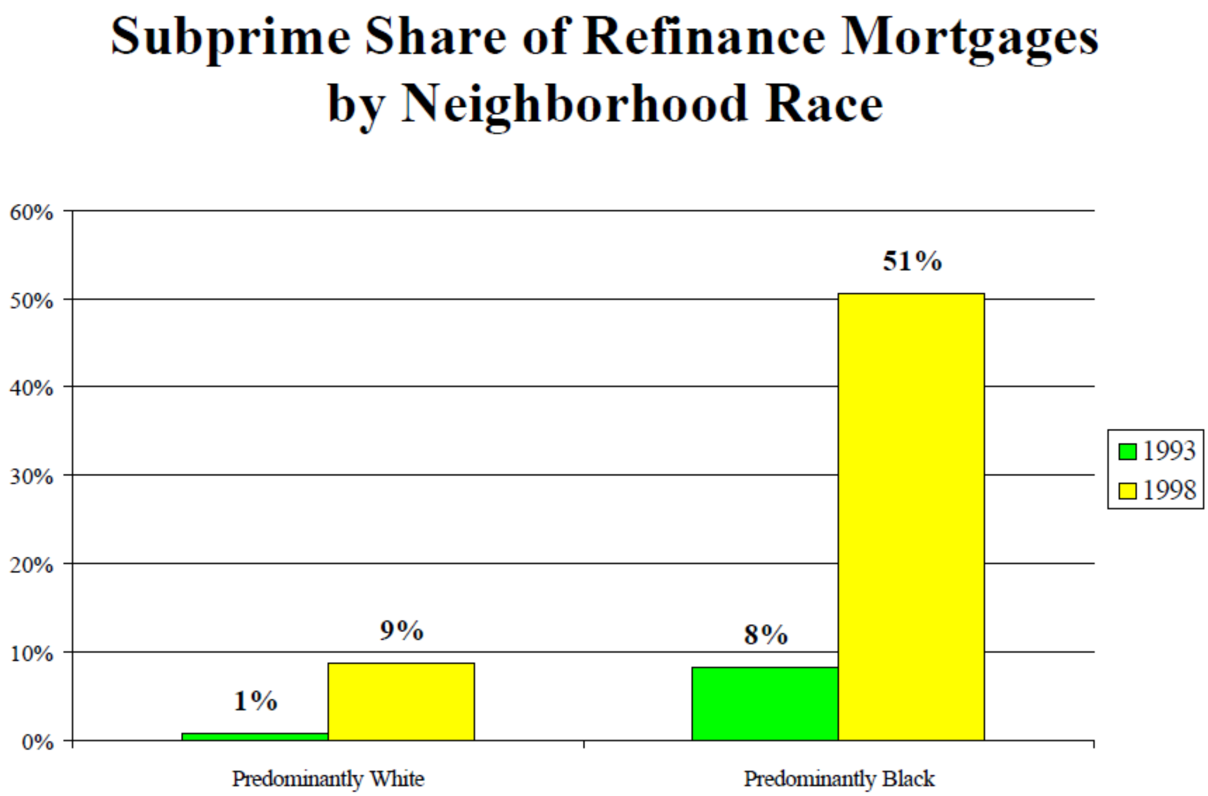
As a result of the Independent Foreclosure Review, in February of 2013, the Federal Reserve and the Comptroller of the Currency announced amendments to the original consent. The press release ("Amendments to Consent Orders Memorialize $9.3 Billion Foreclosure Agreement") stated that, "Borrowers covered by the amendments include 4.2 million people whose homes were in any stage of the foreclosure process in 2009 or 2010 and whose mortgages were serviced by one of the companies listed above."

Among the banks required to make payouts to the "Qualified Settlement Fund" and "Foreclosure Prevention" were Bank of America, Citibank, JPMorgan Chase, HSBC, PNC, SunTrust, U.S. Bank, and Wells Fargo. This was in addition to National Mortgage Settlement.

Also, in addition to the National Mortgage Settlement and the payouts for the violations identified in the Independent Foreclosure Review, several banks were also charged and fined individually for violations of the False Claims Act between 2012 and 2016. Predominantly, these related to lenders that falsely certified that loans met the underwriting requirements of the FHA. In other words, they involved some fraud in underwriting these loans. These banks included Citibank, Deutsche Bank, Fifth Third, First Tennessee, Flagstar, JPMorgan Chase, SunTrust, U.S. Bank, and Wells Fargo.

In as much as both the subprime loans and FHA loans were disproportionately concentrated in minority markets, these massive cases of fraud and abuse should have indicated a need to investigate the fair housing issues in the origination and servicing of these loans. While there are many studies that indicate the racial disparities in subprime lending and the concentration of foreclosures in minority areas, it is the joint Treasury/HUD reports of these disparities in the context of subprime markets that certainly should have been understood within the government regulatory agencies as a flag for possible race discrimination. In 2000, the HUD-Treasury National Predatory Lending Task Force published an analysis of the issues related to abusive subprime lending, titled ***Curbing Predatory Lending***. There was a special chapter on "Subprime Lending in Low-Income and Minority Neighborhoods" that defined the racial disparities related to subprime loans. The Task Force produced five metropolitan studies that documented the racial disparities in subprime lending and the foreclosures. These were each titled "The Unequal Burden" and they covered the Atlanta, Baltimore, Chicago, Los Angeles and New York metropolitan areas. An executive report that summarized the studies was called ***Unequal Burden: Income and Racial Disparities in Subprime Lending***. It contained the following two graphs showing the disparities in subprime lending by race:

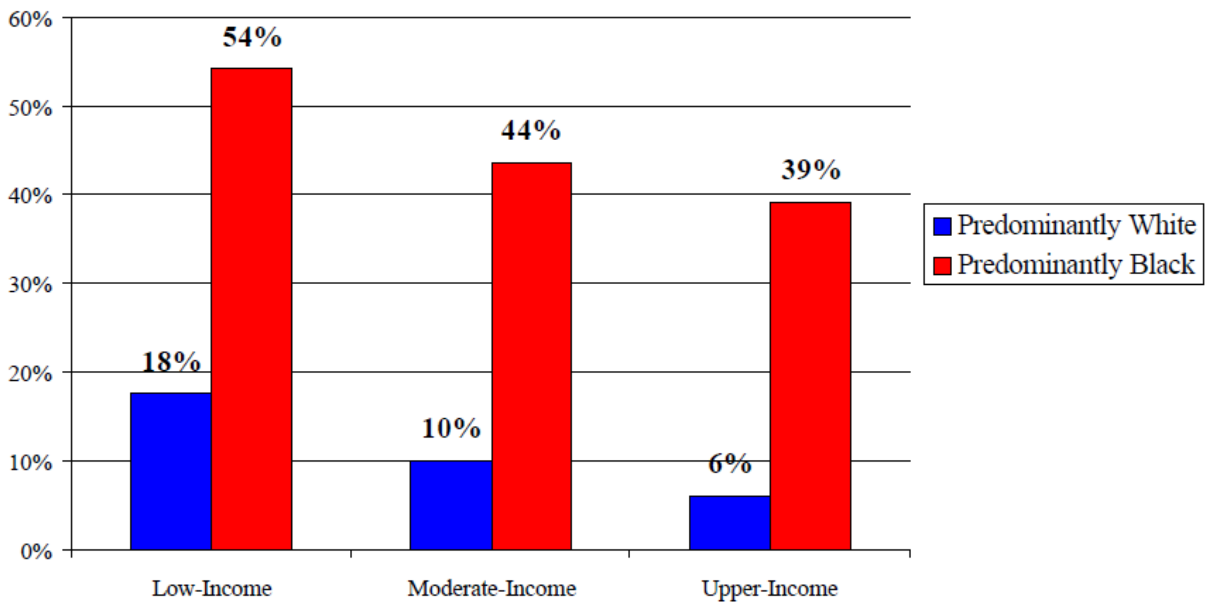
Figure 2



Note: Predominantly White: At least 85% White; Predominantly Black: At least 75% Black.

Figure 4

Subprime Share of 1998 Refinance Mortgages by Neighborhood Race and Income



Note: Predominantly White: At least 85% White; Predominantly Black: At least 75% Black.
Low-Income: Not More than 80%; Moderate-Income: 80-120%; Upper-Income: More than 120%

There can be no doubt that these violations impacted the assessment areas of the banks subject to these fines and restitution payments. These violations should have been considered in terms of racial disparities in the fair lending exams and CRA ratings. The fact that none of the regulatory agencies considered the discriminatory impact of these violations in their CRA or fair lending examinations is a serious issue to address in future CRA regulations.

The charges under the False Claims Act apply largely to HUD-FHA lending. The disparities in HUD-FHA lending have been well-known for decades and had been reported in the annual reviews of the HMDA data by the Federal Reserve. Again, the regulatory agencies failed completely to consider the potential racial disparities resulting from the fraudulent underwriting of HUD-FHA loans that violated the False Claims Act.

Below is the table of claims and payments for these violations in mortgage origination and servicing:

Individual Bank Payments for the $36.7 Billion Total for 23 Cases of Mortgage Fraud and Servicing Violations from the National Mortgage Settlement (2012), Agency Independent Foreclosure Review Payouts (2013), and Separate False Claims Act Violations (2012-2016)

National Mortgage Settlement			
	Ally Bank		$510,000,000
	Bank of America		$11,820,000,000
	Citibank		$2,205,000,000
	JPMorgan Chase		$5,290,000,000
	Wells Fargo		$5,350,000,000
		Total	$25,175,000,000
Foreclosure Review Payouts			
	Bank of America		$2,706,578,478
	Citibank		$793,492,866
	JPMorgan Chase		$1,958,450,341
	HSBC		$249,901,413
	PNC		$180,536,382
	SunTrust		$162,645,462
	U.S. Bank		$208,156,501
	Wells Fargo		$1,991,141,181
		Total	$8,250,902,624
Separate False Claims Act Payments			
	Citibank		158,300,000
	JPMorgan Chase		614,000,000
	Flagstar		132,800,000
	Wells Fargo		1,200,000,000
	Deutsche Bank		202,300,000
	Regions Bank		52,400,000
	Fifth Third		84,911,000
	First Tennessee		212,500,000
	US Bank		200,000,000
	SunTrust		418,000,000
		Total	3,275,211,000
Grand Total			$36,701,113,624

Retroactive Changes in the CRA Rating

Retroactive reductions are reductions in the CRA ratings that are made after the exam period. Retroactive changes are not always related to violations that took place in the past or current period; they sometimes relate to violations that occurred after the exam period. Reductions made after the regular exam period make it hard to know what was and was not taken into account. In their most perverse form, they allow agencies to assign illegal activities to a prior exam period and then give a higher rating to the bank in the current exam period.

In 2006, the OCC assigned an Outstanding CRA rating to Bank of America. In 2009 the OCC again assigned an Outstanding CRA rating to Bank of America. In 2004 the OCC assigned an Outstanding CRA rating to Wells Fargo. Again in 2009 the OCC assigned an Outstanding CRA rating to Wells Fargo. None of these examinations found any evidence of discrimination or violations of consumer laws.

In November of 2010, National People's Action and fifteen community-based organizations spanning the country from Massachusetts to California filed a "preemptive challenge" titled a "Formal Protest of the 'Outstanding' Ratings Assigned to Bank of America, N.A. and Wells Fargo, N.A. Constituting a Formal Request for a Reassessment Assigning a Failing Community Reinvestment Act Rating and Constituting a Challenge to all Present and Future Banking Applications Covered by the Provisions of the Community Reinvestment Act". The challenge contained a litany of claims related to discrimination and other activities during the period when the Comptroller had assigned the Outstanding ratings.

The response they got from the Comptroller was that once the ratings had been assigned they could not be changed. The groups were simply instructed to wait until the banks filed another application and comment again. But it is not true that a CRA rating cannot be changed after the examination has been completed.

In December of 2011, the OCC assigned a Satisfactory CRA rating to Bank of America. The evaluation period ran from April of 2009 to December 31, 2011. That is, the OCC was examining Bank of America when the preemptive challenge was filed. The evaluation stated that the examination included contacts with "a wide variety of community organizations" but none of the groups that participated in the challenge were interviewed. The challenge was not mentioned in the evaluation.

More to the point, in consideration evidence of discrimination and violations of consumer laws, the rating identified several issues, including some where the violations were based on settlements well after the exam period. For example, the examination states:

> *On September 13, 2012, BANA agreed to settle the U.S. Department of Justice (DOJ) allegations of discrimination against recipients of disability income. ... These alleged practices occurred between May 1, 2007, and April 30, 2012.* (at page 9)

> *In April 2014, the bank agreed to a settlement with the CFPB relating to alleged unfair or deceptive acts or practices in the marketing and servicing of add-on credit products, such as credit protection plans.* (at page 14)

The evaluation states that, "As a result of these findings, the CRA Performance Evaluation rating was lowered from Outstanding to Satisfactory." (at page 15)

This, however, is not an isolated case. The survey included several ratings that had been retroactively adjusted based on cases that had been settled after the examination period and even cases where the violations continued after the examination period. The most egregious of these retroactive cases is the OCC examination for Wells Fargo in 2012. The examination period ran from November of 2009 to November of 2012. In assigning the CRA rating to Wells Fargo, the exam stated:

> *The bank's overall CRA Performance Evaluation rating was lowered from "Outstanding" to "Needs to Improve" as a result of the extent and egregious nature of the evidence of discriminatory and illegal credit practices, as described in the Fair Lending and Other Illegal Credit Practices section of this document.*

At pages 14-15, the exam cited 11 cases of violations ranging from racial discrimination in mortgage lending to opening illegal customer accounts. Examples of violations that extended beyond the examination period include:

> *Evidence of unfair or deceptive acts or practices, in violation of section 5 of the FTC Act, in connection with debt cancellation products sold to the Bank's consumer credit cardholders from 2006 to 2013.*

> *Evidence of unfair and deceptive practices, in violation of the CFPA, in the servicing of private student loans by WFB's Education Financial Services (EFS) division* (with a violation period that went into 2015).

> *Evidence of noncompliance with the SCRA* (Servicemembers' Civil Relief Act)*. ... The consent order with DOJ resolved allegations that WFB violated the SCRA by repossessing 413 motor vehicles owned by SCRA-protected servicemembers without first obtaining court orders from at least January 1, 2008 through July 1, 2015.*

> *Evidence of unfair and abusive practices, in violation of the Consumer Financial Protection Act (CFPA), by Bank employees when they, without customers' authorizations, opened deposit accounts and transferred funds into them from authorized accounts, applied for credit card accounts, issued and activated debit cards, and created email addresses to enroll consumers in online-banking services.* (through part of 2016)

> *Evidence of noncompliance with Section 8(a) of the Real Estate Settlement Procedures Act (RESPA).* (from 2008 through 2013)

In spite of a collection of cases that made Wells Fargo the poster child for violations, the examination assigned Outstanding ratings to the Lending Test and Investment Test and a High Satisfactory to the Service Test. This attests to the fact that the OCC did not consider the violations to have any impact on the three fundamental CRA examination tests.

In addition to retroactively assigning such violations to the 2012 exam period, the OCC did not release the exam until 2017. When the OCC examined Wells Fargo again in 2019, it assigned the bank an Outstanding rating. At page 7, the report noted that the 2012 "overall rating was lowered two rating levels from "Outstanding" to "Needs to Improve" due to numerous evidence of discriminatory or other illegal credit practices (DOICPs)". The report listed the DOICPs and added that, "The above DOICPs which we considered in the 2012 CRA PE (Public Evaluation) were not again considered in the current PE since no additional violations were discovered since the prior evaluation". This allowed the OCC to simply ignore violations that occurred after the period of the 2012 report and wave its magic regulatory wand to give Wells Fargo back its Outstanding rating.

A Note on Whose Cases Constitute Evidence of Discrimination

One pattern which emerged was that in considering what constitutes evidence of discrimination settlements, even court decisions from cases outside of the Federal agencies are hardly ever considered. That is, cases by the prudential regulators, cases from DOJ, HUD, and the CFPB are generally considered, but cases of discrimination filed by state and municipal governments (such as the Baltimore and Memphis cases against Wells Fargo), and cases filed by private parties, such as those redlining cases filed by fair housing groups, are not mentioned in the consideration of evidence of discrimination.

Recommendations

The review indicates that without the direct requirement to include the consideration of race in all aspects of the CRA examination, the current process is a failure. The only way to overcome this failure is to include the consideration of race in the delineation of the assessment area(s); in each CRA test; in the creation and evaluation of Strategic Plans; as well as in the final consideration before assigning the rating. Maps with the overlay of the assessment area(s) and race should be included in the public section of the evaluation. The public section of the evaluation should also include tables that show the distribution of HMDA lending by race. Any adjustments made to the CRA rating after the examination period should be published in a separate report and not folded into the prior examination retroactively.

The prudential regulatory agencies should require each regulated institution to provide the documents for all pending and settled litigation claiming violations of the Fair Housing Act, the Equal Credit Opportunity Act, and related consumer protection acts. Finally, the public evaluations should respond to all such litigation, settlements, conciliation agreements, and consent orders in detail with relevant dates of the violations and outcomes so that the public has a clear record of what was considered and how it was treated.

Endnotes

[i] Section 808(d) of the Fair Housing Act stated that:

> *…all executive departments and agencies shall administer their programs and activities relating to housing and urban development in a manner affirmatively to further the purposes of this subchapter and shall cooperate with the Secretary to further such purposes.*

In 1988, Congress amended the Fair Housing Act and inserted in Section 808(d) the parenthetical phrase *"(including any Federal agency having regulatory or supervisory authority over financial institutions)"*. This was redundant, but Congress obviously wanted to make sure that the regulators understood this obligation.

In his first Executive Order after taking office in 1994, President Clinton cited this section of the Fair Housing Act and made clear what this obligation was by stating:

> *As used in this order, the phrase programs and activities shall include programs and activities operated, administered, or undertaken by the Federal Government; grants; loans; contracts; insurance; guarantees; and Federal supervision or exercise of regulatory responsibility (including regulatory or supervisory authority over financial institutions).*

For a detailed review of the Fair Housing Act obligations and examination process linked to the Community Reinvestment Act see Calvin Bradford, "*The CRA Prohibits Racial Discrimination: The Existing Legal Authority Related to the Affirmative Obligation of the Prudential Regulatory Agencies to Incorporate Race into the CRA Examination Process*", December 2022.

[ii] When the regulations were revised in 1995, the section on the delineation of the assessment area allowed some flexibility in the geographic definition of the "community" but it made the civil rights intent of eliminating geographic redlining very clear in stating:

> *§228.41(e) Limitations on the delineation of an assessment area. Each bank's assessment area(s):*
> *(1) Must consist only of whole geographies;*
> ***(2) May not reflect illegal discrimination;***
> *(3) May not arbitrarily exclude low- or moderate-income geographies, taking into account the bank's size and financial condition.* (emphasis added)

[iii] Instead of specific assessment factors related to discrimination, the current regulations indicate that after the CRA rating has been assigned from the three tests, the regulator will consider the "effect of evidence of discriminatory or other illegal credit practices". The version of this section from the regulations for the Federal Reserve Board at §228.28(c) states:

> *(1) The Board's evaluation of a bank's CRA performance is adversely affected by evidence of discriminatory or other illegal credit practices in any geography by the bank or in any assessment area by any affiliate whose loans have been considered as part of the bank's lending performance. In connection with any type of lending activity described in Sec. 228.22(a), evidence of discriminatory or other credit practices that violate an applicable law, rule, or regulation includes, but is not limited to:*
>
> > *(i) Discrimination against applicants on a prohibited basis in violation, for example, of the Equal Credit Opportunity Act or the Fair Housing Act;*
> > *(ii) Violations of the Home Ownership and Equity Protection Act;*
> > *(iii) Violations of section 5 of the Federal Trade Commission Act;*
> > *(iv) Violations of section 8 of the Real Estate Settlement Procedures Act; and*
> > *(v) Violations of the Truth in Lending Act provisions regarding a consumer's right of rescission.*

After the implementation of the Dodd-Frank Act, the prudential regulators also considered violations of the Consumer Financial Protection Act.