

A version of this article appeared in **Compliance Action**, Volume 20, Number 14

This article has been edited to provide further clarity

To Order a Subscription to **Compliance Action**, call (888) 229-8872 x87 or visit

<https://www.bankersonline.com/bankerstore/>

Enforcement Corner

Hudson City Savings Bank, F.S.B.

**Stephen E. Sudhoff, President, Jefferson Cook
Associates, Ltd.**

On September 24, 2015, the CFPB and the DOJ filed a Complaint against Hudson City Savings Bank, F.S.B. (“Hudson City”) alleging violations of the Equal Credit Opportunity Act (ECOA) and the Fair Housing Act (FHA). Hudson City was accused of **redlining**, specifically, discouraging Black and Hispanic customers from applying for mortgages. Hudson City was accused of structuring its business so as to avoid the credit needs of majority-black-and-Hispanic neighborhoods in its residential mortgage lending. At the same time, a Consent Order was submitted to the U.S. District Court for the District of New Jersey. There is quite a bit of detail in the Complaint regarding how Hudson City structured its business in this manner, and in the Consent Order as to how Hudson City would change its practices, but we’ve extracted some key points.

- 1) The Complaint contained a ***map plotting Hudson City's mortgage application-generating activity***, as well as the maps of Hudson City’s CRA assessment area. These maps provided a compelling visual representation of the data which led to the redlining charge. Hudson City’s activity and assessment area around New York City, for example, formed a semicircle around the boroughs east of the Hudson River. In the view of the DOJ, the map demonstrated the behavior.
- 2) Paragraph 13 of the Complaint states that, for the purpose of the Complaint, a “majority-Black-and-Hispanic neighborhood or area as a census tract in which more than 50 percent of the residents are identified in the U.S. Census as either ‘Black or African American’ or ‘Hispanic or Latino’” (emphasis

added). Hudson City's record of mortgage lending to properties in these tracts is the basis for the redlining complaint. Note that ***the focus is on tracts with either majority Black or majority Hispanic.***

- 3) The Complaint alleges that the ***relatively low level of mortgage applications*** generated from either Black or Hispanic customers within the tracts which are majority-Black-and-Hispanic is evidence of discrimination. The Complaint mentions, for example, that from 2011 to 2013, 3.7 percent of the mortgage applications generated by brokers were from majority-Black-and-Hispanic census tracts, and of those applications, only 18.2 percent were from Black or Hispanic applicants. The Complaint further alleges that even among the ten brokers which Hudson City identified as serving the "African American community" or the "Spanish Community," only 3.5 percent of the applications were generated from majority-Black-and-Hispanic census tracts, and of those applications, only 14.3 percent were from Black or Hispanic applicants.
- 4) The Complaint focuses on Hudson City's mortgage application activity through certain MSAs (New York, Camden, and Bridgeport). The analysis includes the bank's application pattern throughout the entirety of each MSA even though Hudson City's branches were located only in certain parts of these MSAs, and were particularly concentrated in census tracts which were not majority-Black-or-Hispanic. During a period when Hudson City expanded its branch network, few branches were opened in majority-Black-and-Hispanic census tracts. In this analysis, there is a striking similarity to the requirement of CRA that the assessment area include entire political entities. In this case, however, while Hudson City chose assessment areas which encompassed complete political subdivisions (counties), the exclusion of certain other contiguous subdivisions (for example, Hudson City excluded specific counties which were part of New York City) which, with the included subdivisions, comprised a larger division (i.e., the entire MSA), was used by the CFPB as evidence of redlining. ***This case sends a very clear message that a lender's activity in the entire MSA potentially matters, not just in those parts of an MSA in which branches are located.***
- 5) The CRA influence continues. The Complaint also has an entire section (paragraphs 33-47) which focuses on the Assessment Areas defined within Hudson City's CRA plan. DOJ has used an analysis of assessment areas in previous fair lending cases and now the Bureau is on board. Note, of course, that neither DOJ nor the CFPB have regulatory responsibility for CRA. DOJ and the CFPB noted that the ***Assessment Area definitions largely excluded majority-Black-and-Hispanic areas within each MSA in which each Assessment Area was located.*** This was cited as evidence of redlining.
- 6) Hudson City marketed largely within its branch footprint and through newspapers. ***There was no effort to reach out affirmatively to minority consumers.*** Mortgage closings could only occur at selected branches far away from majority-Black-and-Hispanic census tracts. Nor was there any effort to market in languages spoken by minorities in the bank's market areas. The Consent Order contains specific requirements for Hudson City to advertise (whether by print media, radio, or point-of-distribution materials) in Spanish. The Consent Order also contains requirements for Hudson City, in each Affected MSA, to advertise on at least two African-American-oriented radio stations and/or Hispanic-oriented radio stations in either Spanish or both English and Spanish.

- 7) Hudson City generated 80 percent of its mortgage applications through a broker network. However, its broker network, like its branch network, was located outside of majority-Black-and-Hispanic census tracts. The broker network generated only 3.7 percent of its applications from majority-Black-and-Hispanic census tracts, and of those applications, only 18.2 percent were made by Black or Hispanic applicants. Of the ten brokers which Hudson City identified as serving Black and Hispanic areas, only 3.5 percent of applications were from majority-Black-and-Hispanic census tracts, and only 14.3 percent were made by Black or Hispanic applicants. As with its marketing materials, ***there appeared to be no affirmative effort to reach minorities through brokers.***
- 8) The Complaint spends significant time ***comparing Hudson City's application-generating activities to those of peers***, and generally finds that peers significantly outperformed in majority-Black-and-Hispanic census tracts. The Complaint also reports peer comparisons for "***high-Black-and-Hispanic***" census tracts, which are defined as having more than eighty percent of residents which are either Black or Hispanic. The Complaint does not specify who the peers were, nor does the Consent Order contain a challenge by Hudson City to the peers identified by the CFPB. Again, this is a classic CRA technique but used this time in the fair lending analysis. Peer comparison is important because when a peer is lending actively to a minority community, that lending constitutes proof that there are good loans to be made.
- 9) The Complaint notes a number of items with respect to ***personnel diversity***. For example, none of Hudson City's retail loan officers were Black or Hispanic or could speak Spanish. The Consent Order, however, does not create a requirement that Hudson City hire retail loan officers who are either Black or Hispanic. Hudson City is required to open branches in majority-Black-and-Hispanic areas and must offer mortgages in these branches, however, and this made lead to greater ethnic and racial diversity among its loan officers.
- 10) ***Human resources*** within the compliance function was also an issue. Hudson City had only a single compliance officer in 2009 and 2010. Note that in 2007, Hudson City had over \$35 billion in assets. In 2011 Hudson City hired a Chief Compliance Officer and created 12 other compliance positions, but failed to fill six of those positions in 2011. In March 2013, Hudson City lost its Chief Compliance Officer and most of its compliance staff, and did not refill those positions. One can imagine the reaction of an exam team when faced with this basic lack of personnel.
- 11) The Complaint notes that "Hudson City's fair lending policy consisted only of a statement asserting that it is an equal opportunity lender. The Bank employed ***no written policies or procedures*** to monitor for compliance with its fair lending obligations." Furthermore, Hudson City did not monitor its brokers for redlining, despite a recommendation by the CFPB in 2010 that it at least monitor its top ten brokers for redlining. It isn't just examiners that love policies and procedures. Here, DOJ and the CFPB use the lack of policies and procedures addressing fair lending as part of a mosaic to allege discrimination. There was no documented means for Hudson City to determine whether it was in fact discriminating; there was no allowance for a risk control self-assessment, for instance, to

review actual lending practices or to compare its performance versus its peers. The Complaint does not mention whether Hudson City's Board received periodic reports about potential redlining risk, but given the lack of written policies and procedures surrounding fair lending, one is lead to conclude that these reviews did not occur, at least not on a regular basis.

- 12) In the Consent Order, we find that "Hudson City believed that it was satisfying its obligations to meet the credit needs of majority-Black-and-Hispanic neighborhoods by purchasing from other lenders FHA-guaranteed mortgages that were secured by residential properties in majority Black-and-Hispanic neighborhoods." This activity would presumably provide important liquidity to the mortgage market in these census tracts, but ***we don't know the extent to which Hudson City was retaining these loans on its own books or for how long.***

The Complaint can be found at <http://www.justice.gov/opa/file/777861/download> and the Consent Order can be found at <http://www.justice.gov/opa/file/777866/download>. The maps accompanying the Complaint can be found at http://files.consumerfinance.gov/f/201509_cfpb_hudson-city-affected-areas-maps.pdf

Key Takeaways:

- Make a map of your activity. A picture is worth a thousand words and will provide a great starting point for your own analysis.
- Compliance Officers should look not only to lending practices in tracts with specific racial or ethnic characteristics, but to the totality of tracts with combinations of those characteristics.
- Furthermore, Compliance Officers should not restrict themselves to only looking at combinations of majority-Black-or-Hispanic census tracts, but should look at other racial combinations as well, e.g., Asian and Hispanic, particularly if the lender has a market area which includes immigrant populations.
- Fair Lending analysis should also look beyond majority-minority areas, into supermajority-minority areas – even up to eighty percent minority – to give a more complete story of lending activity and to find possible evidence of redlining.
- Compliance Officers should monitor fair lending compliance not only by analyzing the tracts in which applications are taken, but also the characteristics of the applicants from those specific tracts.
- A lender's CRA assessment area, by itself, not only does not provide a defense against redlining, but may even be used as evidence of redlining. The fair lending analysis performed by the agencies may include "trade areas" or other areas indicated by the lender's publicly-available materials, e.g., a Form 10-K.
- Compliance Officers should monitor not just the language of marketing materials, but, for fair lending purposes, to what geographical areas marketing is focused.
- Compliance officers should monitor production from their broker networks for evidence of fair lending violations.

- Compliance officers should carefully identify their institution's peers, and then compare themselves against their peers, using publicly-available HMDA data.
- Compliance officers should be aware of the skills of their loan officers in communicating with Black and Hispanic (potential) customers.
- CEOs and Board members should take note of mass departures of compliance personnel.
- Policies and procedures matter. Compliance Officers must have polices in place and also demonstrate procedures to monitor for redlining.