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Hudson City Savings Bank: Redlining, Mortgage Applications, and Purchased Loans

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We covered the high points of the Hudson City case in Volume 19, Issue number 14. Here we delve a bit more deeply into the Complaint and Consent Order.

The Complaint

The CFPB and the DOJ cited three factors which impacted the number of applications which Hudson City received from majority-Black-and-Hispanic census tracts; first, the locations of its branches and mortgage brokers; second, its CRA assessment area; and finally, its lack of marketing to majority-black-and-Hispanic neighborhoods. The Complaint states that these practices "discouraged prospective applicants in majority-Black-and-Hispanic neighborhoods and resulted in relatively few mortgage loan applications from majority-Black-and-Hispanic neighborhoods."

Applications vs. Lending

The Complaint then states "Analysis of Hudson City's mortgage **applications** in these MSAs as compared to its peers showed disparities in **lending** to majority-Black-and-Hispanic neighborhoods between Hudson City and its peers" (emphasis added). The Complaint then cites various data regarding mortgage loan **applications** (which we have analyzed as well and discuss below). We are not the first to note that taking **applications** is not the same as **lending**. An application may indeed result in an origination ("lending"), but an approval might be rejected by the customer, or the application might be withdrawn by the customer, or the application might be disapproved, or the file might be closed for incompleteness.

There is another way that lending occurs, and that is through purchasing loans. The Consent Order states “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.”

Hudson City issued a press release the same day on which the Complaint and the Consent Order were released and stated the following: *“…Hudson City disagrees with the statistical analysis of loans relied upon by the DOJ and CFPB as the principal basis for its claims as well as the agencies’ conclusions from their Investigations….Indeed, due to its unique structure as a portfolio lender thrift institution and its origination product limitations, Hudson City historically relied heavily on purchases of loans from other originators to minority borrowers in the very census tracts that form the basis of the allegations, and kept such loans on its balance sheet in order to fulfill its Community Reinvestment Act and fair lending responsibilities. In the Bank’s view, providing additional liquidity to originators active in these areas through loan purchases is critical to meeting the credit needs of these communities.”*

What Do The Numbers Show?

Hudson City’s bold statement naturally leads to the question of whether the disparities in applications were also reflected in disparities in lending activity, when purchased loan activity is included.

The Complaint contains much data regarding applications, but very little data regarding actual lending, which we’ll define as purchased loans plus originated applications which either were not sold or were sold to an affiliate. The CFPB citied “statistically significant” disparities in the ratio of peer activity to Hudson City’s across minority census tracts, so we’ll analyze the same ratio, for applications as well as for funded loans. Since we do not know who the CFPB defined as Hudson City’s peers, we’ll look at all institutions within each respective MSA – New York / New Jersey; Camden, NJ; and Bridgeport, CT. We’ll also analyze all majority (or high – greater than 80 percent)-minority census tracts, rather than just those than are majority (or high)-Black-and-Hispanic.

The table below summarizes the results. We compare the data in the Complaint to data taken from the HMDA LAR files. Each number in the table is a ratio of activity; so, for example, in column A, for the Camden MSA, the Complaint stated that the ratio of applications in majority Black-and-Hispanic census tracts for Hudson City’s peers, as a percentage of peers’ total applications, was 10 times that of Hudson City for the same metric. In column B, where we include all Majority-Minority tracts for all institutions, we obtain a ratio of 10.2X, so we’re comfortable that we’re looking at only slightly different data.

	Ratio of **Applications**: Peers / HCSB				Ratio of **Lending**: Peers / HCSB	
	A	B	C	D	E	F
Data Source	Peers (per the Complaint)	All Other Institutions (per HMDA LARs)	Peers (per the Complaint)	All Other Institutions (per HMDA LARs)	All Other Institutions (per HMDA LARs)	All Other Institutions (per HMDA LARs)
Type of Census Tract	Majority Black-and-Hispanic Tracts	Majority-Minority Tracts	High (80%) Black-and-Hispanic Tracts	High (80%) Minority Tracts	Majority-Minority Tracts	High (80%) Minority Tracts
MSA:						
NY/NJ	3	2.3	4.5	4.2	1.8	2.4
Camden	10	10.2	31	35.5	2.4	2.5
Bridgeport	4.5	4.8	8.5	9.5	2.4	3.1

Columns E and F demonstrate Hudson City's contention; if actual lending, rather than just applications, is taken into account, Hudson City's activity is far closer to that of peers. For the Camden MSA, for example, the activity of Hudson City's peers in High Minority census tracts goes from a ratio of 35.5X for applications to a ratio of 2.5X for lending activity. This result is consistent when comparing column E to columns A & B as well as when comparing column F to columns C & D. There are still disparities in lending, however, as lending across all other institutions was more than twice as much as Hudson City's.

From the underlying data, however, we noted that Hudson City's purchased loan activity in both Majority-Minority tracts as well as High Minority tracts fell precipitously in 2012 and 2013. Our own back-of-the envelope calculation is that, if Hudson City had the same level of purchased loan activity in Majority- and High-Minority tracts in 2012 and 2013 as it did in 2009-2011, Hudson City's ratio of lending activity compared to peers (columns E & F) would have been much closer to one, possibly strengthening Hudson City's argument that what counts is lending activity, not applications.

CRA Analysis

Banks have historically used purchased loan activity as a means of meeting CRA lending obligations. But meeting a CRA lending obligation does not put you in the clear on fair lending, when the fair lending issue regards applications, rather than actual lending activity.

Do Applications Matter?

Of course! Generally, Regulation B's protections apply only to persons who have requested or received an extension of credit. In keeping with the purpose of the Act—to promote the availability of credit on a nondiscriminatory basis—§ 1002.4(b) covers acts or practices directed at prospective applicants that could discourage a reasonable person, on a prohibited basis, from applying for credit. The process for getting applications – branch and broker locations, CRA Assessment area, and marketing -- is really the basis for the Hudson City case.

Do Purchased Loans Matter?

Certainly not, when it comes to determining whether a bank is discouraging applications on a prohibited basis. What we are hearing since this case was settled is that facts and circumstances may matter more where actual lending activity is concerned.

What Else Matters?

This case demonstrates that a lending institution's argument that its overall process leads to a nondiscriminatory lending outcome does not bear much weight with at least one regulator. Every single step of the process needs to be free from discrimination – from applications to approval to pricing.

Take-Aways;

1) Don't just monitor your overall lending outcome for discrimination, but monitor each step in the process. This case was based solely on the analysis of applications!
2) Applications matter for fair lending purposes, but it is not fully clear how purchased loan activity matters for fair lending.
3) Each year of activity counts – don't open an opportunity for a regulator to cherry-pick specific years of activity in order to prove a violation. Have a consistent program year-by-year, and monitor your program.