United States Government Accountability Office

Report to Congressional Requesters

June 2022

FAIR LENDING

Opportunities Exist to Enhance OCC's Oversight of Banks' Lending Practices

Accessible Version

GAO-22-104717

GAO Highlights

Highlights of GAO-22-104717, a report to congressional requesters

June 2022

FAIR LENDING

Opportunities Exist to Enhance OCC's Oversight of Banks' Lending Practices

Why GAO Did This Study

The Fair Housing Act and the Equal Credit Opportunity Act prohibit discrimination in access to most forms of credit transactions based on race, national origin, and other characteristics.

GAO was asked to review OCC's oversight of fair lending laws. This report examines (1) how OCC identifies and addresses any deficient fair lending practices at supervised banks and refers potential violations to DOJ, (2) the extent to which OCC examiners followed policies and procedures in selected fair lending examinations, and (3) how changes to examination selection processes have affected oversight.

GAO reviewed OCC data and documents related to its fair lending oversight activities, such as policies and procedures, and files from a nongeneralizable sample of 15 fair lending examinations. GAO also interviewed staff from OCC, DOJ, other agencies, and advocacy groups.

What GAO Recommends

GAO recommends that OCC (1) take into account new types of analysis when it updates redlining examination procedures and (2) establish time frames for carrying out its plan to centrally track information on smaller bank fair lending examination screening, selection, and outcomes and analyze the information on an ongoing basis to help balance examination effectiveness and efficiency given available resources. OCC generally agreed with GAO's two recommendations and described

View GAO-22-104717. For more information, contact Michael E. Clements at (202) 512-8678 or clementsm@gao.gov.

What GAO Found

The Office of the Comptroller of the Currency's (OCC) activities to oversee banks' compliance with fair lending laws include the following:

- assessments of banks' risk of violating fair lending laws in every examination cycle for all of OCC's supervised banks that engage in retail lending (OCC supervised over 1,000 such banks in 2020);
- annual fair lending examinations of some banks, chosen based on risk assessments and statistical analysis of lending data (63 in 2020);
- supervisory action to correct deficient bank practices or address uncorrected deficiencies or violations of fair lending laws; and
- referral of certain fair lending matters to the Department of Justice (DOJ).

In 2021, OCC began considering enforcement action in every referred matter. Before 2021, OCC generally did not consider taking enforcement action if DOJ pursued one, or OCC waited to consider enforcement action until DOJ returned the matter to OCC when DOJ did not pursue one itself.

GAO's review of 10 examinations of potential discrimination in loan underwriting or pricing found that OCC examiners generally followed policies and procedures consistently. However, in reviewing five examinations of potential redlining, GAO found that examiner guidance did not account for new statistical methods used to analyze redlining, and examiners followed some procedures inconsistently. Examiners for three examinations did not find the banks' responses disputing the statistical findings satisfactory and concluded that the banks potentially engaged in redlining. Examiners for two examinations considered the banks' responses. They also conducted additional analyses to support or contradict interpreting identified disparities to be the result of intentional discrimination. They concluded the banks did not engage in redlining. The guidance lacks specificity in some procedures in light of new statistical analyses. Since examiners' conclusions are the basis for supervisory action, updated and clearer guidance could help ensure the consistency of redlining examinations and enforcement of fair lending laws.

OCC has made major changes to its annual process for screening retail lending activities at midsize and community banks, which significantly decreased the number of annual fair lending examinations since 2018. These changes likely contributed to a decrease in informal supervisory actions in 2018–2020. OCC staff said they make periodic process changes to conduct more targeted examinations and better manage resources. For example, the revised screening process is intended to identify lending activities with elevated fair lending risk, and examiners are to select all of these activities for examination, as resources allow—a change from the previous practice of selecting generally one activity per bank. However, OCC has not assessed the impact of conducting fewer examinations on its ability to detect deficient practices at smaller banks. Staff said they plan to centralize some information to facilitate such an assessment, but OCC has not established time frames for implementing this plan. Going forward, centralized data linking the screening, selection, and examination outcomes would allow OCC to better evaluate the trade-offs between efficient resource allocation and the effectiveness of its fair lending examinations.

Contents

Abbreviations

Analysis Division	Compliance Risk Analysis Division
CFPB	Consumer Financial Protection Bureau
DOJ	Department of Justice
ECOA	Equal Credit Opportunity Act
FFIEC	Federal Financial Institutions Examination Council
FHA	Fair Housing Act
HMDA	Home Mortgage Disclosure Act
MMSRC	Major Matters Supervision Review Committee
MRA	matters requiring attention
OCC	Office of the Comptroller of the Currency
Policy Division	Compliance Risk Policy Division

U.S. GOVERNMENT ACCOUNTABILITY OFFICE

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June 21, 2022

The Honorable Joyce Beatty
Chair
Subcommittee on Diversity and Inclusion
Committee on Financial Services
House of Representatives

The Honorable Emanuel Cleaver, II
Chair
Subcommittee on Housing, Community Development, and Insurance
Committee on Financial Services
House of Representatives

The Honorable Gregory W. Meeks
House of Representatives

As significant racial wealth disparities in the United States persist, so do concerns about fair access to credit—an important means for helping ensure equitable financial opportunity.[1] The Office of the Comptroller of the Currency (OCC) supervises over 1,100 national banks, federal savings associations, and federal branches and agencies of foreign banks (which we refer to collectively as banks). Part of OCC's mission is to ensure that its supervised banks provide fair access to financial services, treat customers fairly, and comply with applicable laws and regulations, including fair lending laws such as the Fair Housing Act (FHA) and, for banks with $10 billion or less in assets, the Equal Credit Opportunity Act (ECOA). Together, these laws prohibit discrimination in access to most forms of credit transactions, including consumer, business, and mortgage loans, based on characteristics such as race, national origin, sex, and religion.

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[1]GAO, *Financial Services: Fair Lending, Access, and Retirement Security*, GAO-21-399T (Washington, D.C.: Feb. 24, 2021). For example, in 2019, the typical White family had eight times the wealth of the typical Black family and five times the wealth of the typical Hispanic family. See Neil Bhutta et al., "Disparities in Wealth by Race and Ethnicity in the 2019 Survey of Consumer Finances," FEDS Notes, Board of Governors of the Federal Reserve System (Sept. 28, 2020), accessed June 21, 2021, https://www.federalreserve.gov/econres/notes/feds-notes/disparities-in-wealth-by-race-and-ethnicity-in-the-2019-survey-of-consumer-finances-20200928.htm.

You asked us to review OCC's fair lending oversight activities. This report examines (1) how OCC identifies and addresses any deficient fair lending risk management practices at supervised banks and refers potential fair lending violations to the Department of Justice (DOJ), (2) the extent to which OCC examiners followed policies and procedures in selected fair lending examinations, and (3) how examination selection processes have changed and the effects of the changes on OCC's fair lending oversight activities.

To address our first objective, we analyzed OCC data on the number and nature of fair lending-related deficiencies and violations that occurred in 2012–2020. To assess the reliability of the data, we reviewed information from OCC to understand the data systems the agency uses to collect the data, how the agency uses the data, and any known data limitations. We determined these data to be sufficiently reliable for describing OCC's supervision and enforcement activities. We reviewed OCC's fair lending examination guidance documents, such as examiner handbooks and policy and procedure manuals, and interviewed OCC staff to discuss how OCC identifies and addresses deficiencies in banks' fair lending risk management practices and violations of fair lending laws. Additionally, we reviewed OCC workpapers on all fair lending matters that OCC referred to DOJ in 2012–2020. Lastly, we reviewed relevant reports from DOJ and interviewed OCC and DOJ staff to understand how OCC refers matters to DOJ and how DOJ processes the matters.

To address our second objective, we reviewed workpapers from a nongeneralizable sample of 15 fair lending examinations OCC conducted in 2018–2020. We selected our sample to ensure that we could review staff's examination activities and decision-making processes for examinations that resulted in different possible outcomes.[2] Additionally, we reviewed OCC's fair lending examination guidance documents and interviewed OCC staff to assess the extent to which staff followed the agency's policies and procedures related to fair lending oversight, such as processes for documenting, evaluating, communicating, and resolving potential violations of fair lending laws. We also assessed the extent to

[2]Possible outcomes of fair lending examinations include matters requiring attention, enforcement actions, or referrals to DOJ, and some examinations do not result in any supervisory action by OCC.

which OCC's oversight activities were consistent with federal internal control standards.[3]

To address our third objective, we reviewed and analyzed the annual lists OCC used to select banks for fair lending examination in 2017–2020, and we reviewed OCC's annual guidance for supervisory offices' use of these lists. We also interviewed OCC staff to understand changes OCC made to its fair lending oversight processes in 2012–2020, such as its updated methods for producing these annual lists and making decisions on annual fair lending examination activity. We assessed the extent to which OCC's changes to the process were consistent with federal internal control standards. Lastly, to address all three objectives, we reviewed relevant federal laws and regulations, including FHA, ECOA, and their implementing regulations, as well as prior GAO reports related to federal banking regulators' supervision. See appendix I for more detailed information about our scope and methodology.

We conducted this performance audit from January 2021 to June 2022 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

Fair Lending Laws and Home Mortgage Disclosure Act Data

Both ECOA and FHA prohibit discrimination in lending based on similar characteristics, though FHA has a narrower focus on home mortgage-related credit transactions:

- ECOA prohibits creditors, including depository institutions, from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, or age (provided the

[3]GAO, *Standards for Internal Control for the Federal Government*, GAO-14-704G (Washington, D.C.: Sept. 10, 2014).

applicant has the capacity to contract); because an applicant receives income from a public assistance program; or because an applicant exercises rights in good faith under the Consumer Credit Protection Act.[4]

- FHA prohibits discrimination in residential real estate-related transactions, including home mortgage loans, home improvement loans, and other home credit transactions because of race, color, religion, sex, national origin, familial status, or disability.[5]

Consequently, lenders cannot discriminate against borrowers on any prohibited basis per ECOA in relation to nonmortgage credit transactions—for example when offering auto loans, personal loans, or credit cards. Lenders cannot discriminate against borrowers on any prohibited basis per both ECOA and FHA in relation to mortgage credit transactions.

In addition, the Home Mortgage Disclosure Act (HMDA) requires certain lenders, including certain OCC-supervised banks, to collect, maintain, report, and publicly disclose loan-level information on mortgage applications and originations or purchases of loans, and lenders must report the ethnicity, race, gender, and age of borrowers, among other data points.[6] These data requirements provide important information to help regulators and others identify possible discriminatory lending patterns and enforce ECOA and FHA. HMDA data are the only publicly available source of nationwide loan-level data on the supply and demand for mortgage credit. Nonmortgage lending activities lack a comparable

[4]For purposes of this report, depository institutions include institutions chartered as commercial banks, thrifts, or credit unions.

[5]FHA also prohibits discrimination in renting a home, seeking housing assistance, or engaging in other housing-related activities.

[6]Generally, banks that offer mortgage credit but do not have a branch serving a metropolitan area or have low lending volumes or low assets are exempt from HMDA reporting requirements. While the specific requirements for low lending volumes have changed over the years, starting in July 2020, banks that issued fewer than 100 qualified closed-end mortgages in each of the prior 2 years and fewer than 200 qualified open-end lines of credit in each of the prior 2 years were exempt from HMDA reporting requirements. Closed-end mortgages include fixed-rate 30-year mortgages used to purchase a dwelling. Open-end lines of credit include home equity lines of credit. For recent changes to HMDA reporting requirements see GAO, *Home Mortgage Disclosure Act: Reporting Exemptions Had a Minimal Impact on Data Availability, but Additional Information Would Enhance Oversight*, GAO-21-350 (Washington, D.C.: May 17, 2021).

data set because lenders are generally not permitted to collect data correlated with demographic characteristics for nonmortgage loans.[7]

Federal Regulatory Oversight of Fair Lending Laws

Federal banking regulators oversee banks' compliance with FHA, but oversight of banks' compliance with ECOA is split between the regulators and the Consumer Financial Protection Bureau (CFPB), as discussed below. The federal banking regulators—the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the National Credit Union Administration, and OCC—are the prudential regulators for depository institutions. As the primary federal regulators for their supervised institutions, they are responsible for ensuring that supervised institutions manage financial and other risks in a safe and sound manner.

Banking regulators, including OCC, also have consumer financial protection responsibilities. Each banking regulator oversees supervised institutions' compliance with FHA, and each also oversees compliance with ECOA for supervised institutions with $10 billion or less in total assets. CFPB has ECOA oversight responsibilities for all depository institutions with over $10 billion in total assets.[8] As of September 30, 2021, OCC oversaw compliance with FHA for all its supervised banks and oversaw compliance with ECOA for all but the 72 largest supervised

[7]The Dodd-Frank Wall Street Reform and Consumer Protection Act amended ECOA to require financial institutions to collect data about credit applications from small businesses, including those owned by women and minorities. Pub. L. No. 111-203, § 1071(a), 124 Stat. 1376, 2056 (2010) (codified at 15 U.S.C. § 1691c-2). On September 1, 2021, the Consumer Financial Protection Bureau published a proposed rule that would implement this section. Small Business Lending Data Collection Under the Equal Credit Opportunity Act (Regulation B), 86 Fed. Reg. 56356 (Oct. 8, 2021). As of January 2022, Congress had not mandated any additional data collection for nonmortgage loans other than small business loans.

[8]The Dodd–Frank Wall Street Reform and Consumer Protection Act created CFPB and gave it supervisory and primary enforcement responsibility over "Federal consumer financial laws," including ECOA, for banks with over $10 billion in total assets and their affiliates. 12 U.S.C. §§ 5481(12), 5481(14), 5515. Other Federal consumer financial laws include the Home Mortgage Disclosure Act, the Truth in Lending Act, the Fair Debt Collection Practices Act, and much of the Fair Credit Reporting Act.

banks and their affiliates. These 72 large banks and affiliates accounted for about 96 percent of total assets under OCC supervision.[9]

OCC Oversight of Fair Lending Laws

OCC's fair lending supervisory and enforcement program includes fair lending risk assessments of banks; HMDA data screening and analysis; fair lending examinations based on risk assessments and HMDA data screening and analysis; referrals or notifications to DOJ or the Department of Housing and Urban Development when required or warranted; and corrective or enforcement action when warranted.[10]

Federal statute requires OCC to conduct a full-scope examination of each supervised bank at least once every 12 to 18 months, a period known as the supervisory cycle.[11] In accordance with OCC policy, full-scope examinations include an assessment of fair lending risk—the risk of violating fair lending laws—for each supervised bank that engages in retail lending. Fair lending risk assessments evaluate fair lending risk management systems and the quantity and quality of fair lending risk in OCC-supervised banks of all sizes, considering their products, services, and lending practices.

OCC also conducts separate fair lending examinations for some of these banks each year. Fair lending examinations generally assess potential lending disparities in a particular, defined aspect of a bank's credit-related activities identified as posing fair lending risk. The examinations help OCC staff determine whether the bank may have discriminated against borrowers on a specific prohibited basis (i.e., based on race, national origin, or any other characteristic under FHA or ECOA). OCC's fair lending examinations generally evaluate potential lending disparities on a

[9]As of September 30, 2021, OCC supervised 1,118 institutions with $14.9 trillion in combined total assets.

[10]According to OCC staff, examiners develop a supervisory strategy for every supervised bank covering three supervisory cycles. As part of each bank's supervisory strategy, examiners plan to conduct fair lending risk assessments and other fair lending oversight activities, if applicable, for each bank that engages in retail lending. See app. II for more details on the planning process.

[11]12 U.S.C. § 1820(d).

prohibited basis in loan underwriting; loan pricing, terms, and conditions; or redlining (see fig. 1).[12]

Figure 1: OCC's Key Fair Lending Oversight Activities

	Oversight activity	Frequency	Scope
Fair lending risk assessments	 OCC-supervised banks that offer retail loans or credit receive a fair lending risk assessment. OCC supervised 1,094 such banks in 2020.	Conducted every supervisory cycle (generally every 18 months for banks with less than $3 billion in total assets and annually for larger banks).	Examiners review information about the nature, scope, and volume of lending-related activities, quality of risk management systems, and previous OCC fair lending risk assessment findings. They also consider any issues identified by the bank or other regulators and whether there have been recent changes in products, systems, or processes that may affect fair lending risk.
Fair lending examinations	 Selected OCC-supervised banks receive a fair lending examination based on OCC's annual screening process. OCC conducted 63 examinations in 2020.[a]	Screening and selection conducted annually.	Examiners look into specific potential lending disparities in violation of fair lending laws, including potential redlining, potential underwriting discrimination, or potential discrimination in loan pricing, terms, and conditions.

Source: GAO analysis of Office of the Comptroller of the Currency (OCC) information. | GAO-22-104717

[a]OCC screens and analyzes banks' mortgage lending data annually to identify potential lending disparities. OCC then selects examinations to conduct based on these analyses and other information, including results from fair lending risk assessments.

Various staff in several OCC offices conduct and support ECOA and FHA compliance oversight, according to OCC staff:

- **Examination staff.** Examiners in Large Bank Supervision and Midsize and Community Bank Supervision (which we refer to as supervisory offices) conduct fair lending risk assessments and fair lending examinations. Examiners also evaluate potential violations of ECOA and FHA.
- **Economists and compliance risk specialists.** Economists and other staff in the Compliance Risk Analysis Division (Analysis Division) analyze banks' HMDA data to detect statistical disparities indicative of fair lending risk that are used to identify banks for fair

[12]Redlining is defined as unequal access to credit on a prohibited basis (e.g., due to the predominant race or national origin) of residents of the area in which the potential borrower resides or will reside or in which the property is located.

lending examination. The Analysis Division also supports fair lending examinations with additional statistical analysis, if needed.

- **Bank supervision policy specialists.** Policy specialists in the Compliance Risk Policy Division (Policy Division) formulate fair lending-related policies, guidance, and examination procedures, working with other federal agencies with fair lending jurisdiction, as appropriate. Policy staff also develop and support the dissemination of fair lending training and knowledge sharing programs for examiners and bankers.
- **Lead experts.** Staff from the Systemic Risk Identification Support and Specialty Supervision office support examination teams by providing fair lending technical expertise. Technical expertise is also provided by lead experts in each district within community bank supervision.
- **OCC legal staff.** Staff in the Chief Counsel's office, including enforcement and compliance legal staff, collaborate with other units as they consider findings that could constitute violations of ECOA, FHA, and their implementing regulations. They also support other units in the development of OCC policy and guidance.

In its supervisory role, OCC is authorized to take supervisory and administrative enforcement actions against banks that do not comply with laws and regulations, including ECOA and FHA.[13] At the conclusion of an examination, OCC notifies the bank of any findings in a supervisory letter or report of examination and describes actions the bank must take to address any deficiencies identified in fair lending-related practices or violations of ECOA and FHA. Under appropriate circumstances, OCC refers potential fair lending violations to DOJ or the Department of Housing and Urban Development. Other actions OCC may take upon finding fair lending deficiencies or violations include the following:

- **Matters requiring attention (MRA)** are generally used to address deficiencies in a bank's fair lending-related practices that deviate from sound governance, internal controls, and risk management principles.
- **Informal bank enforcement actions** are generally used to address previously identified deficiencies that are not corrected by bank

[13]OCC has authority to enforce fair lending laws through administrative proceedings rather than through the federal court system, although final findings are subject to review in the federal courts of appeals. OCC uses enforcement actions to require a bank's board of directors and management to take timely actions to correct deficient practices or violations. As mentioned above, for banks with more than $10 billion in total assets, CFPB has primary enforcement authority under ECOA.

management in a timely manner or that could have a negative future impact on a bank’s ability to comply with fair lending laws.

- **Formal enforcement actions** are generally used to address the most severe supervisory concerns, including significant deficiencies or violations of law. They consist of consent orders, cease and desist orders, or placement of a bank into conservatorship or receivership, among other actions. OCC discloses these actions to the public.

OCC Referrals for DOJ Enforcement

OCC is required to refer to DOJ or notify DOJ of matters that constitute a possible pattern or practice of discrimination in violation of ECOA or FHA. Specifically, ECOA requires banking regulators, including OCC, to refer matters to DOJ of potential fair lending violations in any case where OCC possesses reason to believe that a creditor engaged in a pattern or practice of discrimination. Similarly, Executive Order No. 12892 requires OCC to forward information to DOJ when such information indicates a possible pattern or practice of discrimination in violation of FHA.[14]

DOJ’s enforcement authority under ECOA and FHA includes authority for the Attorney General to bring civil actions against banks based on a pattern or practice of discriminatory conduct. DOJ may enforce ECOA and FHA on its own initiative or upon referral from another agency, including OCC.

Types of Lending Discrimination

OCC’s fair lending examiner handbook discusses three types of lending discrimination and includes guidance for examiners on how to identify and address each type:[15]

- **Overt disparate treatment** occurs when a lender openly treats applicants differently on a prohibited basis, such as when a policy explicitly limits access to credit based on an applicant’s age, source of income, or marital status. A bank policy that refuses credit to applicants based strictly on their age is an example of overt disparate

[14]Per Executive Order No. 12892, OCC is also required to notify the Department of Housing and Urban Development of information suggesting a violation of FHA.

[15]Office of the Comptroller of the Currency, *Fair Lending Comptroller’s Handbook* (Washington, D.C: January 2010).

treatment in violation of ECOA. According to OCC examiner guidance, overt disparate treatment is relatively uncommon.

- **Comparative disparate treatment** occurs when a lender treats applicants differently on a prohibited basis in the absence of an explicit policy and without a credible nondiscriminatory reason. To determine whether a bank engaged in comparative disparate treatment, OCC would identify evidence that the bank appeared to treat similar applicants differently on a prohibited basis, such as race or national origin, and then request an explanation from the bank for the difference in treatment. Based on such evidence, OCC may conclude that the bank considered a legitimate difference between the applicants that justified treating them differently. Conversely, OCC may conclude that the bank may have violated the applicable fair lending laws if the bank does not provide a legitimate nondiscriminatory reason for the disparity.
- **Disparate impact** occurs when a lender applies a policy or practice equally to all applicants or borrowers, but the policy or practice has a disproportionate adverse effect on members of protected groups and is not justified by business necessity. If OCC determines that a policy or practice has a disproportionate adverse effect, it evaluates the justification for the policy or practice in question and, if applicable, whether there is an alternative policy that could accomplish the same objective with a less disproportionate adverse effect.[16]

[16]As of March 2022, the status of which party is responsible for proving there is or is not a violation, known as the burden-shifting requirements for disparate impact, was in flux because of ongoing litigation. In February 2013, the Department of Housing and Urban Development issued a final rule creating the first formal regulations on disparate impact for FHA, including formalizing a burden-shifting test for determining whether a given practice has an unjustified discriminatory effect, leading to liability under FHA. *See* Implementation of the Fair Housing Act's Discriminatory Effects Standard, 78 Fed. Reg. 11460 (Feb. 15, 2013). In September 2020, the agency issued another final rule that revised the burden-shifting test for determining whether a given practice has an unjustified discriminatory effect, but the rule had not taken effect as of March 2022 because of ongoing litigation. *See* Implementation of the Fair Housing Act's Disparate Impact Standard, 85 Fed. Reg. 60288 (Sept. 24, 2020), and Massachusetts Fair Hous. Ctr. & Housing Works, Inc. v. HUD, 496 F. Supp. 3d 600 (D. Mass. 2020). In June 2021, the agency issued a proposed rule to return the prior burden-shifting test from the 2013 rule. *See* Reinstatement of the Department of Housing and Urban Development's Discriminatory Effects Standard, 86 Fed. Reg. 33590 (June 25, 2021).

OCC Assesses Banks' Fair Lending Risk, Conducts Examinations, and Refers Certain Fair Lending Matters to DOJ

OCC Staff Conduct Fair Lending Risk Assessments to Understand Banks' Risk Profiles and Assess Risk Management Practices

OCC policy requires that during each supervisory cycle, examiners perform a fair lending risk assessment for each OCC-supervised bank that engages in retail lending. During fair lending risk assessments, examiners review a variety of information to understand the fair lending risks in a bank's lending activities and the controls to mitigate them, as noted in figure 1 above. In addition, the risk assessments determine whether there are sources of elevated fair lending risk across the various loan products offered by each bank.

OCC Fair Lending Assessment Tool

The Office of the Comptroller of the Currency's (OCC) fair lending risk assessment tool is used by its examiners in their review of banks' retail and small business lending products, services, and practices to help identify elevated fair lending risk. Examiners are required to enter data into the tool and to populate defined narrative fields, such as descriptions of fair lending issues. They also assign standardized ratings to characterize the quantity of fair lending risk, the quality of fair lending risk management practices, and the direction of fair lending risk. Data from the tool are uploaded to a database that provides examiners, lead experts, policy staff, and senior supervisors with information on trends in fair lending risk across OCC-supervised banks, according to OCC staff.

When OCC first implemented the tool, examiners were required to use it for all supervised banks with total assets between $500 million and $10 billion. According to OCC staff, the tool is now used for all midsize banks, most community banks, and a growing proportion of large banks, and OCC expects it will be used for all supervised banks in fiscal year 2023.

Source: GAO analysis of OCC information. | GAO-22-104717

OCC staff stated that the assessments provide baseline information on the quantity and quality of fair lending risk in OCC-supervised banks, which helps inform the type and scope of any additional fair lending supervisory activities. Based on the risk assessments, examiners may initiate fair lending examinations or other appropriate supervisory activities to ensure compliance with fair lending laws and regulations. In 2014, OCC developed and implemented a fair lending risk assessment tool to standardize the collection and evaluation of relevant information at all supervised banks with total assets between $500 million and $10 billion. The use of this tool has expanded at other banks since 2014, according to OCC staff (see sidebar).

OCC relies on the fair lending risk assessments to identify fair lending risk for supervised banks' lending activities not covered by HMDA data. This includes lending activities by non-HMDA reporting supervised banks as well as nonmortgage lending activities for all supervised banks (as previously discussed, lenders are not permitted to collect data correlated with demographic characteristics for nonmortgage lending activity).

OCC's Fair Lending Risk Assessments and Examinations Help Staff Identify and Address Deficient Practices

As discussed in more detail later, OCC also conducts annual screening and analysis of HMDA data to identify certain banks for fair lending examinations.[17] The statistical analyses of HMDA data identify specific potential lending disparities in mortgage lending on a prohibited basis. Examiners analyze the potential disparities during examinations by, among other things, reviewing banks' lending policies and procedures, loan files, and related fair lending risk management programs, internal controls, or risk management policies and practices.

When examiners identify deficiencies, OCC typically issues MRAs directing bank boards and management to address the deficiencies within a specific time frame. MRAs are an important tool to support forward-looking supervision by ensuring that a bank takes early action to correct deficiencies.[18] Our analysis of all 192 fair lending-related MRAs OCC issued in 2012–2020 showed that MRAs generally addressed four types of deficiencies:

- **Inadequate risk assessment or self-evaluation.** OCC issued MRAs when banks did not assess their fair lending risk annually or fully, or when their self-testing scope and methodology were not comprehensive, such as when a bank failed to identify loan volume disparities between areas with a larger share of minority residents relative to other areas—an indicator of potential redlining.
- **Poorly structured fair lending program.** OCC found that some banks had established insufficient policies, procedures, and guidance, such as when a bank provided inadequate guidance to loan officers for calculating or documenting reasons for increasing, reducing, or waiving fees to borrowers.

[17]For banks that are not required to report HMDA data, OCC uses the fair lending risk assessments to identify possible fair lending risk and determine whether additional fair lending supervisory activity is appropriate.

[18]Forward-looking supervision seeks to identify and mitigate emerging risks before they affect the financial condition of an institution. Our prior work identified a need for federal banking regulators to take timely action to address identified supervisory concerns and adopt a forward-looking approach to identify emerging risks. See GAO, *Bank Regulation: Lessons Learned and a Framework for Monitoring Emerging Risks and Regulatory Response*, GAO-15-365 (Washington, D.C.: June 25, 2015).

- **Insufficient risk management.** OCC also issued MRAs to address risk management deficiencies such as insufficient documentation, monitoring, or training. For instance, a bank may not have followed its policy of providing annual fair lending training to all loan staff.
- **Errors and inconsistencies.** Some MRAs required banks to address specific errors or inconsistencies, such as data quality issues in a bank's HMDA data.

If banks do not address MRAs in a timely fashion, OCC may escalate them to formal or informal enforcement actions. Eleven of the 14 fair lending-related enforcement actions OCC issued in 2012–2020 addressed deficient practices. For example, one enforcement action resulted from a bank's failure to address various concerns over a 2-year period, such as not including nonmortgage loans in its self-evaluation and not providing adequate staffing and training for its fair lending office. The remaining three addressed violations of fair lending laws.[19]

OCC Recently Changed Its Policy to Consider Enforcement Action in All Matters Referred to DOJ

OCC's Referral Process

Our review of OCC referrals to DOJ and a nongeneralizable sample of 15 fair lending examinations conducted in 2018–2020 showed, and interviews with OCC staff confirmed, that if examiners concluded that there was evidence of potential discrimination, they sent their analysis to OCC legal staff for review. OCC legal staff considered whether a referral to DOJ was warranted. OCC does not need to establish conclusive proof of a pattern or practice of discrimination to refer a matter to DOJ, but it should refer the matter if it has reasonable belief that a bank engaged in such a pattern or practice.[20] If OCC legal staff made a preliminary

[19]In 2012–2020, OCC issued three formal enforcement actions in response to violations of fair lending laws, including findings of pricing discrimination and underwriting discrimination. See Consent Order 2019-009, available at https://www.occ.gov/static/enforcement-actions/ea2019-009.pdf; Consent Order 2016-020, available at https://www.occ.gov/static/enforcement-actions/ea2016-020.pdf; and Consent Order 2013-025, available at https://www.occ.gov/static/enforcement-actions/ea2013-025.pdf.

[20]15 U.S.C. § 1691e(g). Also see Department of Justice, *Identifying Lender Practices That May Form the Basis of a Pattern or Practice Referral to the Department of Justice* (Washington, D.C.: 1996).

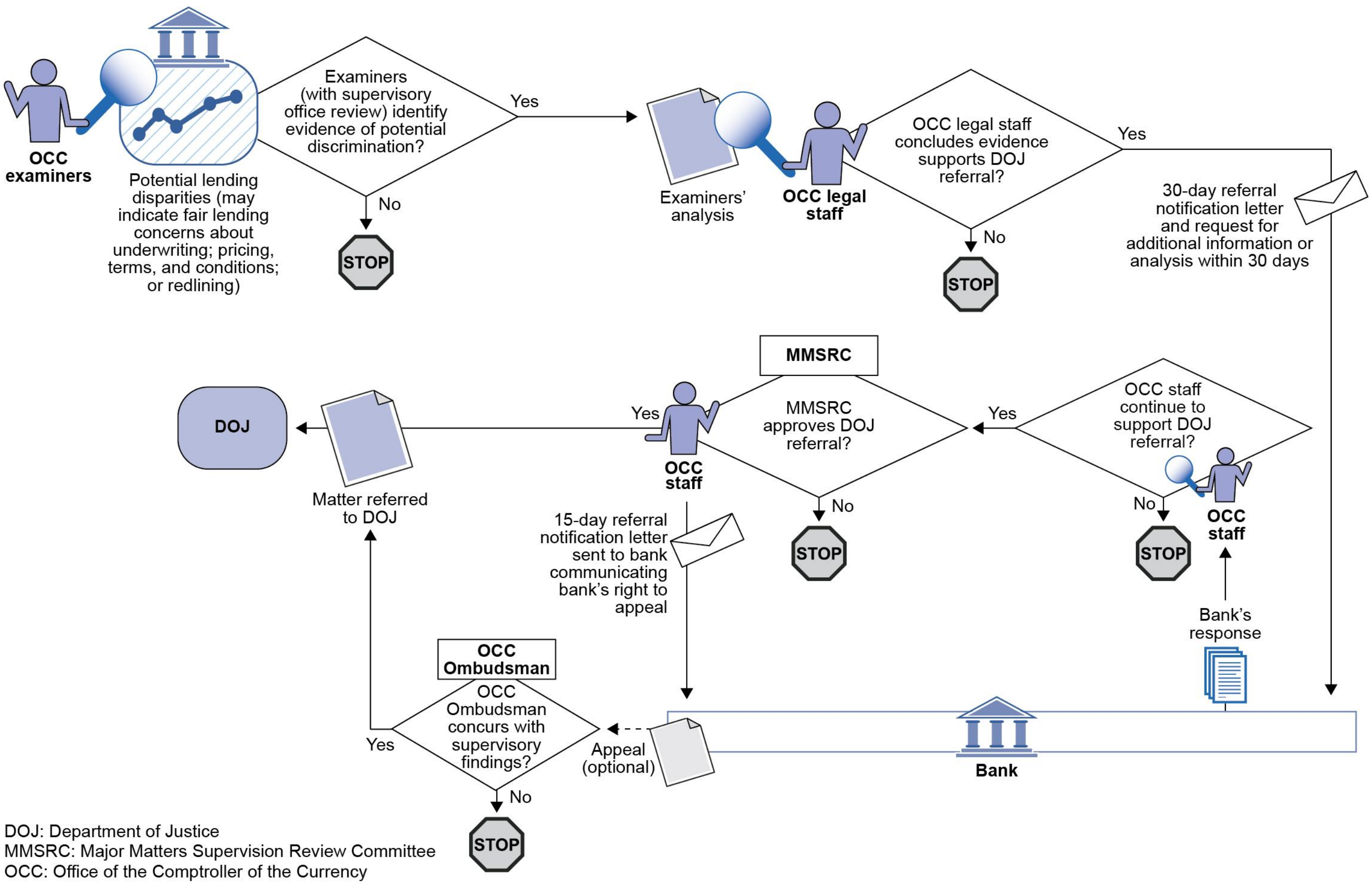
determination that a referral was supported, OCC sent a letter to the bank soliciting additional information to be submitted to OCC within 30 days (30-day letter).[21] If supervision and legal staff continued to believe that a referral should be made after reviewing the information submitted by the bank, they presented the matter to OCC's Major Matters Supervisory Review Committee, where senior staff must approve the recommendation to refer the matter to DOJ.[22] If they did so, the bank received another letter informing it of the ability to appeal to OCC's Ombudsman within 15 days (15-day letter).[23] Lastly, if the Ombudsman upheld the supervisory office's findings, OCC proceeded with the referral (see fig. 2).

[21]For midsize and community banks, a standing supervisory review committee generally considers the recommendation. If it concurs with the recommendation, OCC sends the 30-day letter to the bank.

[22]According to OCC, the Major Matters Supervisory Review Committee was established in 2012 to enhance the review process for enforcement cases of heightened sensitivity by including systematic review by senior OCC staff. The committee is chaired by OCC's Senior Deputy Comptroller for Bank Supervision Policy, and includes the Senior Deputy Comptrollers for Midsize and Community Bank and Large Bank Supervision, as well as the Senior Deputy Comptroller and Chief Counsel.

[23]OCC's Office of Enterprise Governance and Ombudsman serves as an independent arbiter for OCC's supervised banks and their customers by operating apart from the OCC bank supervision function and by reporting directly to the Comptroller of the Currency. The office resolves bank supervisory disputes through the Bank Appeals Program.

Figure 2: OCC's Process for Referring a Fair Lending Matter to the Department of Justice



DOJ: Department of Justice
MMSRC: Major Matters Supervision Review Committee
OCC: Office of the Comptroller of the Currency

Source: GAO analysis of OCC information. | GAO-22-104717

Note: The MMSRC, composed of OCC senior staff, considers supervisory and legal offices' joint recommendations on whether to refer potential fair lending violations to DOJ for investigation, cite fair lending violations, and pursue administrative enforcement actions. For midsize and community banks, a standing supervisory review committee generally considers a recommendation to send a 30-day letter and to proceed with a referral before the matter is ultimately considered by the Major Matters Supervisory Review Committee.

As part of its internal practices, within 60 days of receiving a referral, DOJ determines whether to open an investigation or return the matter to the banking regulator, according to DOJ staff. If DOJ decides to conduct its own investigation, it may pursue enforcement in the form of civil action by filing a complaint in federal court.[24]

Recent Policy Changes

In 2021, OCC changed its policy for considering enforcement actions in matters it refers to DOJ. According to OCC staff, OCC's informal policy during our review period (2012–2020) was to not consider an enforcement action if DOJ pursued civil action. The change allowed OCC to consider enforcement action in all referred cases, independent of DOJ's actions. In addition, OCC staff stated that beginning in 2013, OCC's policy was generally to wait until DOJ notified OCC that it had decided not to pursue civil action and returned the matter to OCC before considering whether to cite a fair lending violation and pursue its own enforcement action.[25]

In 2021, the Acting Comptroller asked OCC staff to review OCC's fair lending examination processes and to make recommendations regarding changes to be considered, including to the DOJ referral process, according to OCC staff. They said that this review prompted OCC to begin considering whether an enforcement action is warranted in every fair lending matter referred to DOJ going forward, including when DOJ settles with an OCC-supervised bank or brings a separate civil action. Lastly, OCC staff told us that they would coordinate closely with DOJ on any contemplated enforcement action.

Since the change in policy occurred, and as of March 31, 2022, DOJ has taken action against banks in two matters referred by OCC.[26] In both cases, OCC took independent but concurrent enforcement action against

[24]According to DOJ officials, DOJ settles most fair lending complaints with lenders under consent orders.

[25]In 2012–2020, OCC referred eight fair lending matters to DOJ. OCC referred five matters for which violations were cited or the matter was closed before 2021 (before the policy change). DOJ did not file civil actions against OCC banks in any of the five matters, and OCC considered whether to take enforcement action after DOJ processed the matters.

[26]After the policy change, DOJ returned an additional matter to OCC after it decided not to investigate it. OCC closed the matter in 2021 by citing a fair lending violation without an enforcement action, in part because the bank took sufficient action.

the banks, in accordance with the new policy.[27] The new policy—along with coordination with DOJ—clarified that OCC may fully use its enforcement authority as it considers the merits of each case that it believes constitutes a possible pattern or practice of discrimination in violation of ECOA or FHA.

Examiners Generally Followed OCC's Procedures, but Guidance for Redlining Examinations Is Outdated and Unclear

OCC's fair lending examinations generally evaluate potential lending disparities on a prohibited basis in one of the following areas: loan underwriting; loan pricing, terms, and conditions; or redlining.[28] Our review of 10 underwriting and pricing fair lending examinations showed that examiners generally followed OCC policies and procedures and used consistent processes and analytical methods for assessing the evidence. However, in reviewing five examinations of potential redlining, we found that the 2010 examiner guidance was not updated to account for new statistical methods introduced in 2018 to analyze redlining, and

[27]DOJ and OCC concurrently announced coordinated enforcement actions to address allegations of redlining by Cadence Bank N.A. on August 30, 2021, and Trustmark National Bank on October 22, 2021. DOJ settled the complaints with the banks, and OCC issued formal enforcement actions. See Office of the Comptroller of the Currency, "Acting Comptroller of the Currency Issues Statement on Civil Money Penalty Against Cadence Bank, N.A. For Violations of the Fair Housing Act," news release no. 2021-87, August 30, 2021, https://www.occ.gov/news-issuances/news-releases/2021/nr-occ-2021-87.html; Department of Justice, "Justice Department and Office of the Comptroller of the Currency Announce Actions to Resolve Lending Discrimination Claims Against Cadence Bank," press release no. 21-810, August 30, 2021, https://www.justice.gov/opa/pr/justice-department-and-office-comptroller-currency-announce-actions-resolve-lending; Office of the Comptroller of the Currency, "OCC Assesses $4 Million Civil Money Penalty Against Trustmark National Bank For Violations of the Fair Housing Act," news release no. 2021-109, October 22, 2021, https://www.occ.gov/news-issuances/news-releases/2021/nr-occ-2021-109.html; and Department of Justice, "Justice Department Announces New Initiative to Combat Redlining," October 22, 2021, https://www.justice.gov/usao-wdtn/pr/justice-department-announces-new-initiative-combat-redlining.

[28]According to OCC staff, other areas of potential lending disparities that OCC may examine include steering and discrimination in appraisals. Steering occurs when a bank steers or directs consumers to certain loan products or credit choices on a prohibited basis. Discrimination in appraisals occurs when a bank uses appraisals that are biased on a prohibited basis.

examiners followed some procedures inconsistently. This could lead to inconsistent enforcement of fair lending laws. Lastly, we found that documentation of the examination team's decision-making process was generally clear.

Examiners Were Generally Consistent in How They Assessed Evidence in Underwriting and Pricing Examinations That We Reviewed

OCC typically identifies potential lending disparities for examination in one of the following areas: underwriting; pricing, terms, and conditions; or redlining. Economists in OCC's Analysis Division conduct statistical analyses of HMDA data to identify these potential lending disparities on a prohibited basis.[29] Potential disparities identified through statistical analysis of HMDA data alone are not proof of discrimination. OCC fair lending examination guidance directs examiners to conduct certain activities to gather and assess evidence to determine whether the bank may have engaged in discriminatory practices (disparate treatment or disparate impact). We analyzed OCC's fair lending examination guidance, other related guidance, and 10 judgmentally selected fair lending examinations conducted in 2018–2020 that evaluated potential lending disparities in loan underwriting (underwriting examinations) and loan pricing, terms, and conditions (pricing examinations).[30] Our analysis showed that examiners generally followed OCC policies and procedures and used consistent processes and analytical methods to gather and assess the evidence as they concluded whether the bank potentially discriminated in violation of fair lending laws.

[29]OCC may become aware of potential lending disparities through other avenues, including consumer or advocacy group complaints or a bank's own fair lending monitoring processes, as well as through fair lending risk assessments.

[30]We analyzed examination guidance in OCC's fair lending examination handbook and OCC's internal guidance for selecting fair lending examinations; see Office of the Comptroller of the Currency, *Comptroller's Handbook: Fair Lending* (Washington , D.C.: January 2010). We also analyzed 15 judgmentally selected fair lending examinations conducted in 2018–2020. Ten of the examinations looked into potential lending disparities in underwriting and pricing, terms, and conditions; five examinations looked into potential redlining. See app. I for more information on our examination selection methodology.

Discrimination in Loan Underwriting

Discrimination in loan underwriting may occur when a bank's credit-decision standards are applied differently on a prohibited basis, such as based on race or national origin. An underwriting examination generally looks into statistically significant differences in bank approval or denial rates of a specific loan product for an experimental group relative to a control group in a certain year, where the groups differ by race, national origin, sex, or other characteristic outlined under fair lending laws.[31] For example, examiners could analyze a bank's high mortgage denial rates for Black applicants compared to non-Hispanic White applicants in a given year. Table 1 describes the analyses typically undertaken by OCC economists in the Analysis Division and examiners in the supervisory offices to identify and examine potential underwriting disparities.

Table 1: Selected OCC Staff's Analytical Activities to Identify and Examine Potential Loan Underwriting Disparities

Potential lending disparity	Economist analytical activities[a]	Examiner analytical activities
Disparities in credit approvals or denials for members of an experimental group relative to a control group, where the groups differ by race, national origin, sex, or other characteristic outlined under fair lending laws.	• Analyze loan application outcomes to identify statistically significant differences in denial rates for experimental and control groups. • Identify comparative loan application files for experimental and control groups for review by examiners.	• Review underwriting policies and procedures to determine whether standards varied among experimental and control groups. • Interview underwriters and compliance officers. • Compare denied experimental group applications and approved control group applications to determine whether additional factors not available for analysis through Home Mortgage Disclosure Act (HMDA) data explain the groups' different outcomes. • Provide the bank with information about what differences appear to exist, and then request and review the bank's explanation for the differences.

Source: GAO analysis of information from the Office of the Comptroller of the Currency (OCC). | GAO-22-104717

Note: A potential lending disparity examined by OCC generally refers to a disparity based on one of the applicant characteristics outlined under the Equal Credit Opportunity Act or the Fair Housing Act, such as race or national origin. OCC's examiner handbook uses the term "prohibited basis group" instead of the term "experimental group."

[a]Economists conduct statistical analyses of HMDA data to identify potential lending disparities on a prohibited basis; they do not participate in the review of all potential lending disparities, according to OCC staff. OCC staff said that when economists are involved, they conduct additional statistical analysis using additional bank data and may also identify comparative files for review by examiners.

Our review of six underwriting examinations conducted in 2018–2020 found that examiners generally followed OCC policies and procedures described in table 1, using consistent processes and analytical methods to assess the information obtained in these examinations. In all cases that

[31]OCC's examiner handbook uses the term "prohibited basis group" instead of the term "experimental group."

we reviewed, the comparative file reviews of experimental and control group loan applications allowed examiners to clearly identify evident nondiscriminatory reasons for the bank's actions from the loan documentation. That is, in all six cases, examiners reported that applicants were denied credit for individual, credit-related reasons, such as recent delinquencies and bankruptcies, high loan-to-value ratios, high debt-to-income ratios, or low credit scores. Consequently, examiners did not document findings of potential discrimination after conducting examination activities.

Discrimination in Pricing or Terms of Credit

Pricing discrimination may occur when a bank's standards for setting pricing or other terms and conditions of a loan, such as interest rates, discounts, or fees, are applied differently on a prohibited basis. A pricing examination generally looks into statistically significant differences in a bank's credit terms and conditions for an experimental group relative to a control group in a certain year, where the groups differ by race, national origin, sex, or other characteristic outlined under fair lending laws. For example, examiners could analyze a pattern of higher mortgage loan prices charged to Hispanic borrowers compared to non-Hispanic White borrowers in a given year. Table 2 describes the analyses typically undertaken by OCC economists in the Analysis Division and examiners in the supervisory offices to identify and examine potential pricing disparities.

Table 2: Selected OCC Staff's Analytical Activities to Identify and Examine Potential Pricing Lending Disparities

Potential lending disparity	Economist analytical activities[a]	Examiner analytical activities
Disparities in loan terms and conditions for members of an experimental group relative to a control group for a specific product type, where the groups differ by race, national origin, sex, or other characteristic outlined under fair lending laws.	• Analyze Home Mortgage Disclosure Act (HMDA) data to identify statistically significant average differences in the frequency or amount of pricing disparities between members of an experimental and a control group. • Identify sets of experimental-group and control-group applicants for comparative file review when statistical modeling is involved.	• Review procedures for training loan officers and for calculating, monitoring, and reporting pricing exceptions. • Select and compare approved experimental- and control-group applicants to determine whether there are factors that explain differences in loan terms and conditions for applicants with similar credit profiles. • Review statistical analysis or loan files to determine whether members of experimental groups received less favorable loan terms and conditions. • Review loan officers' and brokers' compensation plans to determine if there is an incentive to charge higher prices. • Obtain and review the bank's explanation for apparent differences in treatment between experimental group and control group applicants.

Source: GAO analysis of information from the Office of the Comptroller of the Currency (OCC). | GAO-22-104717

Note: A potential lending disparity examined by OCC generally refers to a disparity based on one of the applicant characteristics outlined under the Equal Credit Opportunity Act or the Fair Housing Act, such as race or national origin. OCC's examiner handbook uses the term "prohibited basis group" instead of the term "experimental group."

[a]Economists conduct statistical analyses of HMDA data to identify potential lending disparities on a prohibited basis; they do not participate in the review of all potential lending disparities, according to OCC staff. OCC staff said that when economists are involved, they conduct additional statistical analysis using additional bank data and may also identify comparative files for review by examiners.

Our review of four pricing examinations conducted in 2018–2020 found that examiners generally followed OCC policies and procedures described in table 2, using consistent processes and analytical methods to assess the information obtained in these examinations. In all four pricing examinations that we reviewed, examiners found that bank loan officer discretion in setting credit terms for borrowers or in promoting discounts or special programs to borrowers accounted for the statistical disparities on a prohibited basis. In all cases, examiners either initially considered citing a potential fair lending violation before the respective supervision office determined evidence of discrimination was not sufficient, or concluded that there was enough evidence to cite a fair lending pricing violation.

Examiner Guidance for Analyzing Evidence of Redlining Is Outdated, and Examiners Followed Some Procedures Inconsistently

Redlining is defined as providing unequal access to credit or unequal terms of credit because of the predominant race, national origin, or other applicable characteristic of residents of the area in which the potential borrower resides or will reside or in which the property is located.[32] A redlining examination generally looks into statistical differences in a bank's lending activity in a high-minority geographic location and low-minority geographic location over a certain period of time. For example, examiners could look into why a bank exhibits a lower level of mortgage applications or originations in a high-minority census tract compared to a low-minority census tract over several years. Table 3 describes the analyses typically undertaken by economists in the Analysis Division and examiners in the supervisory offices to identify and examine potential redlining disparities.

[32]Office of the Comptroller of the Currency*, Fair Lending Comptroller's Handbook*. Neither ECOA nor FHA specifically uses the term "redlining."

Table 3: Selected OCC Staff's Analytical Activities to Identify and Examine Potential Redlining Disparities

Potential lending disparity	Economist analytical activities	Examiner analytical activities
Lower level of lending activity in areas where a majority of residents are members of an experimental group relative to areas where the majority of residents are members of a control group, where the groups differ by race, national origin, sex, or other characteristic outlined under fair lending laws.	• Analyze Home Mortgage Disclosure Act data to identify statistically significant differences in lending activity (applications or originations) in specific geographic areas. • Compile peer bank groups and compare loan activity of peer banks operating in the same areas. • Create maps of the geographic areas detailing minority population, mortgage activity, assessment areas, and branches, among other things.[a] • Analyze responses from the bank and determine to what extent the responses mitigate or exacerbate the risk.	• Compare how much access to credit peer banks provide to different geographical areas. • Provide the bank with information about what differences appear to exist, and then request and review the bank's explanation for differences in lending activity and determine to what extent the responses mitigate or exacerbate the risk. • Assess indicators that a bank omits an area from its outreach efforts, such as analyzing maps of bank branches and loan applications and reviewing marketing practices.

Source: GAO analysis of information from the Office of the Comptroller of the Currency (OCC). | GAO-22-104717

Note: A potential lending disparity examined by OCC generally refers to a disparity based on one of the applicant characteristics outlined under the Equal Credit Opportunity Act or the Fair Housing Act, such as race or national origin. OCC's examiner handbook uses the term "prohibited basis group" instead of the term "experimental group."

[a]Assessment areas generally refer to the geographies in which the bank has its main office, its branches, and its deposit-taking automated teller machines, as well as the surrounding geographies in which the bank has originated or purchased a substantial portion of its loans. Banks designate geographic assessment areas for purposes of Community Reinvestment Act evaluations.

Our analysis of five redlining examinations showed that examiners generally conducted the activities described in table 3.[33] However, we found that some activities were not consistent with the procedures outlined in the 2010 fair lending examination handbook. This is because the methods used to identify redlining have evolved, but OCC has not updated the guidance to reflect the changes. We found that examiners excluded certain procedures in the guidance consistently. But we also found that examiners inconsistently followed procedures as they analyzed the evidence to support their conclusions on whether the banks had potentially engaged in redlining.

Current Methods Indicate 2010 Redlining Examiner Guidance Is Outdated

OCC's methods for identifying and analyzing potential redlining have evolved significantly since 2010, when the handbook was issued. Key

[33]See app. I for more information on our examination sample.

developments in OCC's methods for identifying and analyzing redlining have rendered some of the activities outlined in the 2010 guidance unnecessary for examiners. For example, the 2010 guidance directs OCC examiners to identify a bank's potentially redlined areas and compare the bank's performance to that of its peers in these areas. More recently, however, OCC economists began conducting peer analysis using HMDA data to help identify potential redlining activity for examination. This analysis provided a starting point for all examiners.[34] According to OCC staff, OCC economists assist in a limited number of examinations each year by providing more in-depth peer analysis and extensive mapping supporting the analysis. When this occurs, examiners no longer need to conduct a separate peer analysis.

Also, our review found that examiners from the five examinations were consistent in omitting outdated procedures from the 2010 guidance. For example, OCC examiners did not conduct interviews of third parties (such as mortgage brokers or housing counselors) during redlining examinations to determine if the bank avoided high-minority areas. This analysis is now supported by maps created by OCC economists that show bank branches, Community Reinvestment Act assessment areas, and location of minority populations (see table 3).

Inconsistent Examiner Application of Existing Guidance Indicates It Is Unclear

However, we found that examiners followed procedures in the 2010 guidance inconsistently as they analyzed the evidence to support their conclusions on whether the banks had potentially engaged in redlining. In all five examinations that we reviewed, examiners analyzed similar information, including statistical peer analyses showing persistent underperformance, branch locations, marketing materials, and the banks' responses to the statistical and other examination findings. Similarly, in all five examinations, examiners found bank practices that could have

[34]As discussed in more detail later in this report, for redlining examinations conducted in 2017 and earlier, OCC flagged potential redlining activities that showed statistically significant underperformance of the bank in majority-minority areas compared to other areas in the current year alone. However, for examinations conducted in 2018–2020, OCC identified redlining activities based on persistent disparities in the bank's lending activity in majority-minority areas relative to other areas and performance compared to peer lenders in the current year.

contributed to the statistical disparities identified through the HMDA data analysis.

In three of the five examinations, examiners did not find the banks' responses disputing these findings satisfactory.[35] Consequently, they concluded that the banks potentially engaged in redlining. In these cases, it was sufficient for examiners to reach a conclusion of potential redlining based on a lack of a satisfactory explanation from the bank for the statistical disparities and underperformance in relation to peer banks.[36] In the other two examinations, examiners also considered the banks' responses, but before arriving at a conclusion on whether the bank engaged in potential redlining, examiners also conducted additional analysis and considered other factors to support or contradict interpreting identified disparities to be the result of intentional discrimination.[37] In both examinations, examiners concluded that the bank did not engage in redlining.

In light of the availability of new statistical analysis and methods for analyzing potential redlining since 2010, it is unclear under what conditions examiners should obtain other types of information that may support or contradict a finding that the difference in treatment indicates potential redlining. In addition, the 2010 handbook does not account for statistical methods developed since it was issued; therefore, it lacks specificity on how examiners should build on OCC economists' statistical analyses and conclusions when conducting such an evaluation. For example, examiners in a redlining review now have statistical evidence from OCC economists showing persistent statistical disparities in a bank's loan activity that support a conclusion that the bank has potentially engaged in redlining. They then request and analyze the bank's

[35]For example, examiners did not find that one bank's explanations for its marketing and other policies were adequate.

[36]The guidance states that discriminatory intent can be inferred "merely from the lack of a legitimate explanation for clearly less-favorable treatment of particular racial or national origin groups."

[37]The guidance directs examiners to "obtain and evaluate other information that may support or contradict interpreting identified disparities to be the result of intentional illegal discrimination." For example, the examiners conducted file reviews of loan applications in suspected redlined areas, or they conducted additional statistical analyses of potential disparities in major markets located in different geographic areas with the assistance of OCC economists. Examiners also considered bank actions to address potential disparities. They evaluated this information to see whether it supported or contradicted discriminatory intent on the part of the bank.

explanation for the statistical disparities. However, the guidance does not specify the additional evidence or information examiners must identify that may help support or contradict such a conclusion.

OCC staff said they are in the process of revising and updating the agency's fair lending examination handbook. These changes include expanded procedures for redlining examinations, clarified and expanded risk factors for redlining, key points that have historically raised concerns, and information from public redlining cases concluded since the interagency fair lending examination procedures were published in 2009.[38] Staff also said they recently conducted presentations for examiners on how to evaluate findings of potential discrimination, including redlining, and they are planning additional fair lending trainings for early 2022.

However, the information we obtained from OCC staff did not include specific plans to clarify how examiners should build upon OCC economists' analyses and findings to determine whether a bank potentially engaged in redlining. The information also did not include specific plans to update or clarify whether examiners need to conduct any additional analysis to determine whether the evidence helps to support or contradict an interpretation that the identified disparities are the result of intentional discrimination. Federal internal control standards state that management should design control activities to achieve objectives, and management is to evaluate the level of precision needed to meet the objectives and promote consistency. The standards also state that management should implement these control activities through policies, which are documented in the appropriate level of detail to facilitate implementation.[39]

[38]As part of the Federal Financial Institutions Examination Council (FFIEC), the federal banking regulators issued joint fair lending examination guidance in 2009. See Federal Financial Institutions Examination Council, *Interagency Fair Lending Examination Procedures* (Washington, D.C.: August 2009). FFIEC is a formal interagency body empowered to prescribe uniform principles, standards, and report forms for the federal examination of financial institutions by the federal banking regulators and CFPB, among other agencies, and to make recommendations to promote uniformity in the supervision of financial institutions. According to the interagency guidance document, the guidance was intended to be a basic and flexible framework to be used in the majority of fair lending examinations conducted by the FFIEC agencies. The guidance can be augmented by each agency as necessary to ensure its effective implementation.

[39]GAO-14-704G.

Outdated and unclear examination guidance could lead examiners to conduct inconsistent analyses of potential redlining violations. Since examiners' conclusions are the basis for any consideration of OCC referrals to DOJ or enforcement actions, this ambiguity could create inconsistent opportunities for legal review of potential fair lending violations. Clearer procedures on how to analyze redlining issues could help ensure the consistency of OCC's redlining examinations and its enforcement of fair lending laws.

Staff Documented and Supported Examination Results

We found that OCC's final results in the 15 fair lending examinations we reviewed were generally well documented and supported. For example, OCC communicated concerns and potential violations to banks in accordance with agency guidance, and documentation included in examination records confirmed that the planned follow-up activities were generally completed in a timely manner. In addition, examination files we reviewed included documentation showing that, in accordance with OCC policies, OCC's supervisory staff generally sought input from supervisory review committees and legal staff before communicating potential violations to banks, as well as after receiving banks' replies.

Changes to OCC's Processes Have Led to Fewer Smaller Bank Examinations, but OCC Has Not Fully Assessed the Impact

Starting in 2018, OCC has made substantive changes to its annual screening and selection processes for fair lending examinations at smaller banks. These changes have contributed to fewer annual fair lending examinations and deficiency findings leading to MRAs at smaller banks. OCC has plans to, but does not yet, collect centralized information on lending activities selected for examination and whether examinations identified fair lending deficiencies or violations. Collecting and analyzing such centralized information could help ensure the effectiveness of OCC's processes for identifying and selecting lending activities for fair lending examinations at smaller banks and, in turn, a balance between improving efficiency and detecting fair lending problems.

OCC Substantively Changed Its Process for Creating Screening Lists Used to Select Smaller Bank Examinations Starting in 2018

OCC conducts an annual screening process to identify lending activities for fair lending examinations. First, as discussed earlier, OCC analyzes HMDA data each year to create a list of lending activities that indicate potential disparities at supervised banks.[40] In general, potential lending disparities are statistically significant differences based on race, ethnicity, or another prohibited basis in a bank's lending activities (underwriting; pricing, terms, and conditions; or redlining). Second, for midsize and community banks, OCC staff annually identify other lending activities at banks for which HMDA data analysis is not feasible.[41] As discussed in more detail below, staff use other information and methods to identify these activities. OCC compiles a final annual screening list containing both the HMDA-identified potential lending disparities and the activities identified through other information and methods. Importantly, OCC's screening may yield multiple potential lending disparities associated with a single bank, and thus a bank can appear multiple times on OCC's screening list.

[40]In a given calendar year, OCC conducts fair lending examinations using HMDA data reported by banks 2 years prior and screened and analyzed by the Analysis Division 1 year prior to the year when the examinations occur. As such, in 2018, OCC examined potential lending disparities that were detected using HMDA data that banks reported in 2016 and that the Analysis Division screened and analyzed in 2017. This report describes examinations using the calendar or fiscal year when they were conducted rather than the year in which the associated HMDA data were reported or screened.

[41]The Analysis Division, on behalf of OCC's Office of Large Bank Supervision, also conducts HMDA data screening and analysis to help select potential lending disparities at large banks for fair lending examination. However, that process is separate from the Midsize and Community Bank Supervision process and was not affected by the changes described in this report, according to OCC staff.

Beginning in 2018, OCC made two substantive revisions to its screening process for midsize and community banks.[42]

- **Elimination of potential lending disparities identified through statistical analysis that did not persist for 3 consecutive years.** For examinations that occurred before 2018, OCC staff included all statistically significant potential lending disparities for HMDA-reporting banks in the annual screening list. This approach flagged 469 potential disparities for examination in 2017 (see fig. 3).[43] However, for examinations that occurred from 2018 through 2020, OCC narrowed the screening list to include only potential lending disparities that were statistically significant in 3 consecutive years of HMDA data.[44] This new approach yielded substantially shorter screening lists that included 75 or fewer potential disparities per year for examination, representing a decrease of about 84 percent compared to 2017.
- **Elimination of randomly selected lending activities.** For examinations that occurred before 2018, OCC staff added randomly selected lending activities to the annual screening lists, selecting activities from banks for which HMDA data analysis did not yield

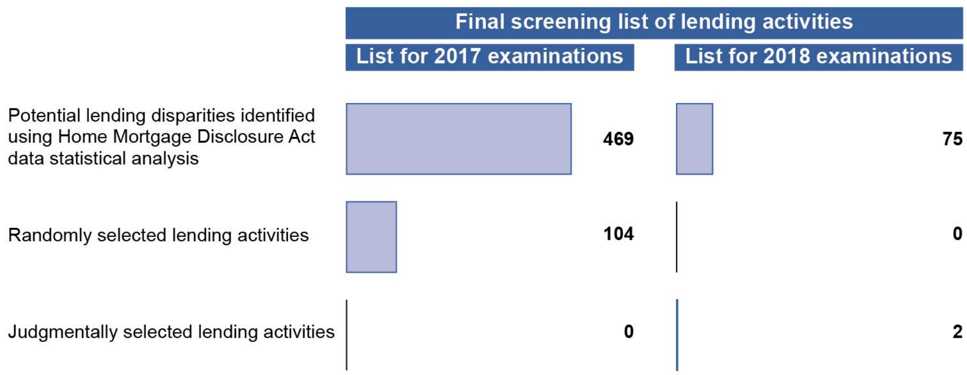
[42]OCC staff said they apply this annual HMDA data screening process to midsize and community banks, and to a small number of large banks that have relatively low volumes of mortgage lending. However, our analysis excluded any data related to the small number of large banks included in these screens, in part because our analysis of OCC data showed that the number of annual fair lending examinations Large Bank Supervision conducted remained consistent from 2017 through 2020, ranging from 24 to 28, after varying in prior years.

[43]For this list, the 469 potential disparities corresponded to 124 unique banks.

[44]According to OCC staff, HMDA data lack certain details, such as closing costs, which can cause OCC to identify potential lending disparities that are ultimately found to have a nondiscriminatory rationale. To target potential disparities that are more likely to reflect discriminatory lending patterns or practices, OCC's screening affecting examinations conducted in 2018 through 2020 began to apply criteria similar to those DOJ used in fair lending cases, including requiring the disparities to appear in 3 consecutive years of HMDA data.

statistically significant disparities or was not feasible.[45] For example, the screening list corresponding to 2017 examinations included 104 randomly selected activities.[46] Beginning with examinations conducted in 2018, OCC no longer included such random selections. Instead, OCC staff used information newly available from the standardized fair lending risk assessment tool to identify a limited number of high-risk activities at non-HMDA reporting banks for inclusion on the screening list. Consequently, fewer lending activities were included in the screening lists of potential examinations to conduct, ranging from two to eight judgmentally selected activities between 2018 and 2020.

Figure 3: OCC's Screening Lists of Lending Activities for Selecting Midsize and Community Bank Fair Lending Examinations, 2017–2018



Source: GAO analysis of Office of the Comptroller of the Currency (OCC) information. | GAO-22-104717

[45]OCC staff selected these activities from two groups of banks. The first group included HMDA-reporting banks for which HMDA analysis showed no statistically significant lending disparities. The second group included banks that were not required to report HMDA data or that made too few mortgage loans (i.e., HMDA data were insufficient for statistical analysis). FFIEC's 2009 interagency fair lending procedures, which provide a common framework for conducting examinations for all federal banking regulators, do not include reference to random sampling. OCC added random sampling to augment the interagency procedures. See Federal Financial Institutions Examination Council, *Interagency Fair Lending Examination Procedures*.

[46]For this list, the 104 randomly selected activities corresponded to 91 unique banks.

Accessible Data for Figure 3: OCC's Screening Lists of Lending Activities for Selecting Midsize and Community Bank Fair Lending Examinations, 2017–2018

Category	2017 examinations list	2018 examinations list
Potential lending disparities identified using HMDA statistical analysis	469	75
Randomly selected lending activities	104	0
Judgmentally selected lending activities	0	2

Note: For Home Mortgage Disclosure Act (HMDA) data reported by midsize and community banks in 2015, OCC staff screened and analyzed the data in 2016 and OCC used the screens to examine certain banks in 2017. For HMDA data banks reported in 2016, OCC staff screened the data in 2017 and OCC used the screens to examine certain banks in 2018. As a result, HMDA data reported in 2016 were the first to be screened under the updated process.

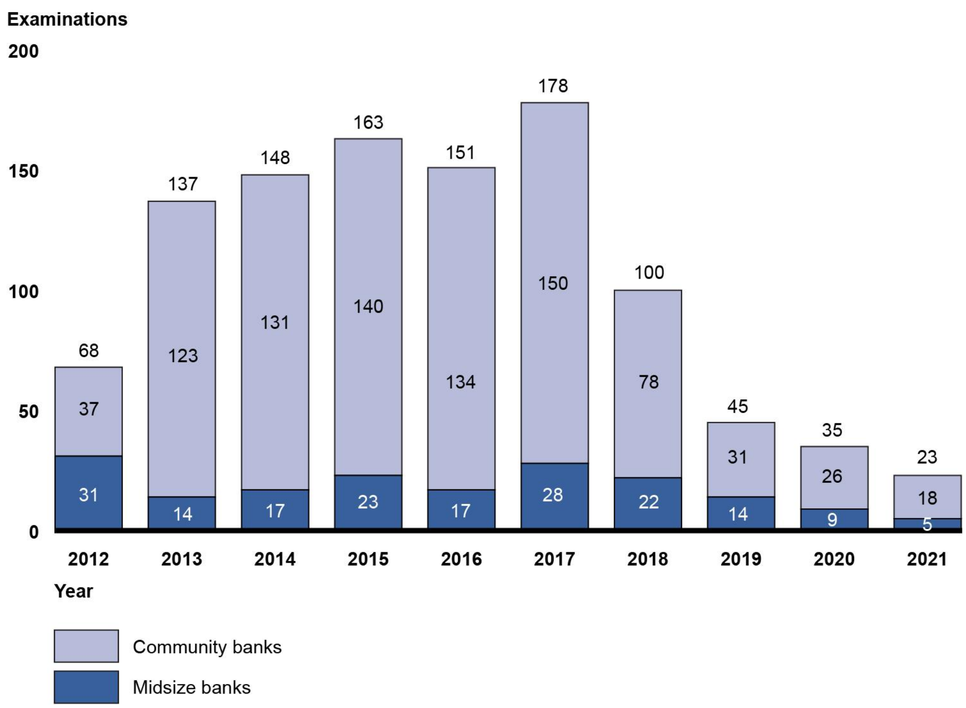
OCC staff said these process changes were part of ongoing efforts to improve the effectiveness of the screening and examination selection process so that fair lending examiner resources and expertise focus on examining banks with elevated fair lending risk. According to OCC staff, examiners reported that fair lending examinations of randomly selected banks rarely had substantive adverse findings, in part because they lacked HMDA data, limiting these examinations' scope. OCC staff said the fair lending risk assessment tool has replaced examinations of randomly selected lending activities because the tool is a more systematic way to consider banks' controls for mitigating fair lending risks. Specifically, 13 percent or fewer of the fair lending examinations conducted at midsize and community banks in 2013–2017 resulted in MRAs, and OCC staff said they were concerned that available fair lending resources were not being used effectively.

OCC Has Conducted Fewer, More Targeted Examinations of Smaller Banks Since 2018

We found that OCC's changes to its screening process resulted in fewer examinations of smaller banks since 2018, which was due in large part to the shorter screening lists (as shown in fig. 3 above) and to OCC's expectations for selecting examinations. Before 2018, Midsize and Community Bank Supervision staff were expected to select for examination at least one lending activity for each bank included in the screening list, according to OCC staff.[47]

As shown in figure 4, Midsize and Community Bank Supervision examiners ultimately conducted 178 fair lending examinations in 2017 and progressively fewer fair lending examinations each year from 2018 through 2021. OCC staff said they had anticipated that the process changes would lead to a decrease in the number of midsize and community bank examinations. In addition, they said that in 2020, many supervisory activities were deferred because concerns related to COVID-19 prevented examiners from examining some banks in person, which contributed to the office's decision to conduct 35 examinations.

Figure 4: Number of Fair Lending Examinations OCC Conducted at Midsize and Community Banks, 2012–2021



Source: GAO analysis of Office of the Comptroller of the Currency (OCC) information. | GAO-22-104717

[47]As mentioned earlier, the annual screening list may contain more than one potential lending disparity per bank. For example, if the screening list includes two potential redlining disparities and one potential pricing disparity for the same bank, Midsize and Community Bank Supervision may choose to examine one of the potential redlining disparities that year and choose not to select the other two disparities.

Accessible Data for Figure 4: Number of Fair Lending Examinations OCC Conducted at Midsize and Community Banks, 2012–2021

Year	Midsize	Community
2012	31	37
2013	14	123
2014	17	131
2015	23	140
2016	17	134
2017	28	150
2018	22	78
2019	14	31
2020	9	26
2021	5	18

Note: Although OCC conducts fair lending examinations on a calendar year cycle, these data are presented according to fiscal year because OCC staff said some data for midsize banks were collected and reported by fiscal year. OCC staff said concerns related to COVID-19 reduced the number of examinations OCC conducted at supervised banks in 2020. In 2021, OCC postponed 18 examinations of community banks and conducted them in the first quarter of fiscal year 2022.

Our analysis of MRA data showed that OCC conducted, by one measure, more targeted fair lending examinations of smaller banks after the process changes. A higher proportion of OCC's examinations of community banks conducted beginning in 2018 identified deficient fair lending practices. Specifically, the percentage of fair lending examinations of community banks that resulted in MRAs more than doubled from 2017 to 2019, from 11 to 26 percent (see table 4). As mentioned earlier, MRAs are an important tool to support forward-looking supervision by ensuring that a bank takes early action to correct deficiencies.

Table 4: OCC Fair Lending Examinations That Resulted in Matters Requiring Attention (MRA) Related to Fair Lending, Fiscal Years 2012–2020

na	Midsize banks			Community banks		
Fiscal year	**Examinations with MRAs**	**Total examinations**	**Percentage of examinations with MRAs**	**Examinations with MRAs**	**Total examinations**	**Percentage of examinations with MRAs**
2012	1	31	3%	14	37	38%
2013	1	14	7%	17	123	14%
2014	2	17	12%	17	131	13%
2015	4	23	17%	9	140	6%
2016	6	17	35%	10	134	7%
2017	5	28	18%	17	150	11%
2018: (**Examinations affected by changes to OCC's screening process**[a])	8	22	36%	10	78	13%
2019: (**Examinations affected by changes to OCC's screening process**[a])	5	14	36%	8	31	26%
2020[b] (**Examinations affected by changes to OCC's screening process**[a])	1	9	11%	1	26	4%

Source: GAO analysis of data from the Office of the Comptroller of the Currency (OCC). | GAO-22-104717

[a]Examinations conducted in 2018 were the first to be affected by OCC's screening process changes. The updated screening process eliminated potential lending disparities identified through statistical analysis that did not persist for 3 consecutive years and randomly selected lending activities. The 2018 examinations were selected from a screening list that OCC staff compiled in 2017, using Home Mortgage Disclosure Act (HMDA) data that banks reported in 2016. As a result, HMDA data reported in 2016 were the first to be screened under the updated process.

[b]OCC staff said concerns related to COVID-19 reduced the number of examinations OCC conducted at supervised banks in 2020.

However, Midsize and Community Bank Supervision examiners found and addressed fewer deficient practices using MRAs after the process changes led to substantially fewer annual examinations of smaller banks.

Midsize and Community Bank Supervision conducted approximately 130 fewer examinations in 2019 compared to 2017, and the total number of examinations with MRAs also decreased from 22 to 13 during that time. Thus, while OCC's updated process contributed to more targeted examinations, it also led to fewer opportunities to examine smaller banks' fair lending practices and identify deficiencies.[48]

OCC Has Not Collected and Analyzed Information on the Effects of Its Changes

OCC staff said that they have regularly revisited the screening process to better target lending activities with elevated fair lending risks using newly available data and information used by DOJ for factual support in fair lending lawsuits. For example, OCC staff found that newly available HMDA data variables, such as borrower credit scores and debt-to-income ratios, eliminated the need to apply the 3-year statistical significance requirement to non-redlining potential lending disparities.[49] OCC staff continued to apply the 3-year statistical significance requirement to redlining screens because they found that DOJ consistently used persistent statistical disparities to support redlining complaints. Finally, OCC recently incorporated factors that may indicate potential discrimination in appraisals into the screening process to reflect an interagency effort to address racial discrimination and bias in property appraisals.[50]

As OCC made changes to the screening process, it did not change the selection process, continuing to expect Midsize and Community Bank

[48]Office of the Comptroller of the Currency, "Interagency Statement Clarifying the Role of Supervisory Guidance," news release 2018-97, September 11, 2018, https://www.occ.gov/news-issuances/news-releases/2018/nr-ia-2018-97a.pdf. OCC staff said that MRAs also declined across all areas starting in 2014, when OCC revised its MRA policy to clarify that MRAs were no longer to be used to recommend best practices, require enhancements to practices that already met acceptable standards, or, generally, report adverse conditions. In 2017, OCC further revised its policy to make clear that MRAs are not to be used to require compliance with guidance documents. Finally, in 2018, OCC further clarified that it would no longer issue MRAs based on noncompliance with guidance documents.

[49]New variables became available in banks' 2018 HMDA data. For more information on HMDA data availability, see GAO-21-350.

[50]The Interagency Task Force on Property Appraisal and Valuation Equity Task Force was established in 2021 in response to an executive directive. Members include OCC, DOJ, the Department of Housing and Urban Development, and FFIEC.

Supervision staff to examine one lending activity per bank included in the screening list, according to OCC staff. Examiners generally worked with specialists in the Policy Division, and other offices as appropriate, on a case-by-case basis to identify each bank's riskiest lending activities and choose at least one to examine, OCC staff said.[51] However, OCC staff said that after the screening changes led to much shorter screening lists, examiners had questions about whether and how to select more than one lending activity for examination per bank.

In November 2021, the Policy Division released its screening list used for selecting 2022 fair lending examinations, and the accompanying guidance stated that Midsize and Community Bank Supervision examiners should assess whether resources were available to address all identified lending activities on the screening list. In particular, this guidance encouraged examiners not to default to the standard practice of choosing one lending activity per bank because each item on the screening list posed a high level of fair lending risk (as identified through HMDA data analysis or using other information). OCC's guidance also directed examiners to record reasons for any lending activity in the screening list that was not selected for examination.

As of March 2022, OCC staff said they plan to develop a centralized system for documenting examiners' rationale for not examining lending activities that were included in the more targeted screening list. In addition, the Policy Division is considering establishing a process to track the outcomes of fair lending examinations, according to OCC staff. However, OCC did not provide details or documentation of its plan to create a centralized data system and has not established time frames for implementing it.

Collecting information in a centralized system, as planned, could provide valuable insights that OCC could use to inform its screening and selection processes and assess the trade-off between resource management and adequate fair lending oversight on an ongoing basis:

[51]OCC staff said Midsize and Community Bank Supervision examiners generally selected the highest-risk potential disparity in the screening list for a given bank, considering HMDA statistical analysis results, if applicable, and other information, such as the results of a bank's fair lending risk assessment and any consumer complaints or self-identified concerns. Banks may self-identify concerns as they conduct self-evaluations to measure or monitor their compliance with fair lending laws and regulations.

- OCC could track which lending activities in a given year's screening list were selected for examination and which examinations resulted in substantive adverse outcomes, such as MRAs or fair lending violations. This information could help OCC evaluate whether its screening methodology effectively identified lending activities that pose fair lending risk and inform subsequent changes to OCC's screening methodology, such as helping OCC better use HMDA data to identify risky activities for examination.
- OCC could see which lending activities in the screening list were not selected for examination and analyze the rationales to identify and address any gaps in the types of lending activities that are examined. Further, analyzing resource-based rationales for not examining certain lending activities could inform resource allocation decisions and help OCC achieve its goal of ensuring an appropriate balance between conducting sufficient examinations and effectively using available examiner resources.

Federal internal control standards state that management should define objectives clearly to enable the identification of risks and design appropriate control activities to achieve agency objectives and respond to risks.[52] Clearly defining objectives involves establishing time frames, and control activities can include appropriate documentation of the agency's activities and management tracking of activities and comparison to goals and objectives. Following through on its plans to centralize fair lending examination information would allow OCC to analyze the impact of its screening and selection processes on an ongoing basis to ensure an appropriate balance between improving efficiency and identifying problematic lending practices.

Conclusions

The persistence of significant racial wealth disparities in the United States underscores OCC's critical role in ensuring banks provide fair access to financial services and comply with fair lending laws. Fair lending examinations are an important tool for ensuring that banks provide fair access to financial services. Our review of selected examinations found that examiners followed procedures inconsistently when assessing potential redlining, and OCC's examiner guidance is outdated and unclear on the steps examiners need to take when conducting redlining reviews. By providing clearer guidance on how examiners should conduct redlining

[52] GAO-14-704G.

reviews, OCC could better ensure the consistency of its redlining examinations and its enforcement of fair lending laws.

We also found that OCC does not systematically evaluate the trade-offs made each year between efficiency and effectiveness when identifying and selecting problematic fair lending activities for examination. The plan that OCC is considering to centralize data on fair lending examination selections and outcomes would provide information on the reasons some activities are not examined each year and allow for analysis of which activities lead to substantive adverse outcomes. Following through and implementing this plan would allow OCC to more fully analyze its processes, and would inform future process changes to ensure the effectiveness of its fair lending examinations of smaller banks.

Recommendations for Executive Action

We are making the following two recommendations to OCC:

As OCC updates its redlining examination procedures, the Comptroller of the Currency should ensure the Compliance Risk Policy Division takes into account the new types of analysis being performed when it documents the steps that the examiners should take as they evaluate whether a bank has potentially engaged in redlining in violation of fair lending laws. (Recommendation 1)

The Comptroller of the Currency should ensure the Compliance Risk Policy Division and the Office of Midsize and Community Bank Supervision establish time frames for carrying out their plan to centrally track information on midsize and community bank fair lending examination screening, selection, and outcomes. The Compliance Risk Policy Division should use this information to analyze its screening and selection processes on an ongoing basis to ensure an appropriate balance of (1) effective identification of fair lending deficiencies and violations and (2) efficiency given available resources. (Recommendation 2)

Agency Comments and Our Evaluation

We provided a draft of this report to CFPB, DOJ, the Department of Housing and Urban Development, and OCC for review and comment. OCC provided written comments, which are summarized below and reproduced in appendix III. CFPB, DOJ, and OCC provided technical comments, which we incorporated as appropriate.

OCC generally agreed with our recommendations and stated that it plans to (1) update the OCC examiner handbook applicable to redlining examinations and develop examiner training, and (2) develop a centralized process and procedures to collect and monitor information on fair lending activities, including examination selection decisions and examination outcomes, by the end of 2022.

We believe these would be positive steps by OCC and note that these actions should help improve the consistency of redlining examination practices and applicable enforcement actions. They also should provide OCC staff with useful information on the effectiveness of examination selection methodologies and could inform decisions to ensure adequate examination coverage given available examiner resources.

We are sending copies of this report to the appropriate congressional committees, the Acting Comptroller of the Currency, the Director of CFPB, the Attorney General, the Secretary of The Department of Housing and Urban Development, and other interested parties. In addition, the report is available at no charge on the GAO website at https://www.gao.gov.

If you or your staff have any questions about this report, please contact me at (202) 512-8678 or clementsm@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made major contributions to this report are listed in appendix IV.

Michael Clements

Michael E. Clements
Director, Financial Markets and Community Investment

Appendix I: Objectives, Scope, and Methodology

This report examines (1) how the Office of the Comptroller of the Currency (OCC) identifies and addresses any deficient fair lending risk management practices at supervised banks and refers potential fair lending violations to the Department of Justice (DOJ), (2) the extent to which OCC examiners followed policies and procedures in selected fair lending examinations, and (3) how examination selection processes have changed and the effects of the changes on OCC's fair lending oversight activities.

To address our first objective, we analyzed agency information and interviewed OCC and other relevant agencies' staff to understand how OCC conducts fair lending oversight.

- First, we obtained and analyzed OCC data on fair lending-related matters requiring attention (MRA) and enforcement actions issued in 2012–2020.[1] To assess the reliability of the data, we obtained and reviewed information from OCC to understand the data systems the agency uses to collect the data, how the agency uses the data, and any known data limitations. We determined these data to be sufficiently reliable for describing OCC's supervision and enforcement activities.
- We also reviewed OCC's fair lending guidance documents, such as fair lending and other examiner handbooks, and policy and procedure

[1]MRAs are generally used to address deficiencies in a bank's fair lending-related practices that deviate from sound governance, internal controls, and risk management principles. Enforcement actions are generally used to address the most severe supervisory concerns, including significant or unaddressed fair lending deficiencies or violations of fair lending laws. We chose to begin our analysis in 2012 because OCC signed a memorandum of understanding with the Consumer Financial Protection Bureau that year that formalized interagency coordination procedures.

manuals for large, midsize, and community banks.[2] Further, we reviewed policy and procedure manuals on MRAs, enforcement actions, and the bank appeals process. We interviewed OCC staff to discuss how OCC identifies and addresses deficient practices and violations of law.

- We also interviewed staff at the Consumer Financial Protection Bureau, which oversees certain OCC-supervised banks' compliance with the Equal Credit Opportunity Act (ECOA), about processes for sharing information to facilitate supervision.
- Because OCC is required to refer to DOJ matters that constitute a pattern or practice of discrimination in violation of ECOA or the Fair Housing Act (FHA), we analyzed agency documents and interviewed staff from OCC and DOJ to understand how OCC complies with this requirement. We obtained and analyzed OCC documentation on all fair lending matters that OCC referred to DOJ in 2012–2020, and we reviewed public documentation on OCC's and DOJ's actions related to the referrals. We also reviewed DOJ's guidance to federal agencies related to the referrals and DOJ's annual fair lending reports. These reports summarized the agency's activities to enforce fair lending laws, including information on agency referrals and any concluded DOJ investigations resulting from such referrals.[3] Lastly, we interviewed staff from OCC and DOJ's Civil Rights Division to understand how each agency processed referrals and to discuss any changes to the processes in 2012–2020.
- We interviewed staff from the Department of Housing and Urban Development, because OCC is also required to notify that agency of information suggesting a violation of FHA. We also interviewed staff from two national consumer advocacy groups to obtain their views on

[2]OCC guidance documents we reviewed included the following: Office of the Comptroller of the Currency, *Comptroller's Handbook: Bank Supervision Process* (Washington, D.C.: September 2019); *Comptroller's Handbook: Examination Process, Large Bank Supervision* (Washington, D.C.: September 2019); *Comptroller's Handbook: Examination Process, Community Bank Supervision* (Washington, D.C.: September 2019); *Comptroller's Handbook: Consumer Compliance, Compliance Management Systems* (Washington, D.C.: June 2018); and *Comptroller's Handbook: Fair Lending* (Washington, D.C.: January 2010).

[3]See Department of Justice, *Identifying Lender Practices That May Form the Basis of a Pattern or Practice Referral to the Department of Justice* (Washington, D.C.: 1996) and *The Attorney General's 2020 Annual Report to Congress Pursuant to the Equal Credit Opportunity Act Amendments of 1976* (Washington, D.C.: Sept. 24, 2021). DOJ files a report with Congress on its fair lending enforcement activities annually. We reviewed DOJ's reports covering each year from 2012 through 2020.

how they identify potential fair lending violations and any related challenges.

To address our second objective, we reviewed a nongeneralizable sample of 18 OCC fair lending examinations and fair lending risk assessments (supervisory activities) conducted in 2018–2020 to understand the policies and processes for assessing banks' lending activities and whether examiners followed them. To select these supervisory activities, we used a purposeful stratified sampling procedure in which we judgmentally chose examinations representing each of the four possible examination outcomes. These outcomes are (1) referral to DOJ, (2) enforcement action, (3) MRA, and (4) no action. This resulted in 16 fair lending examinations and two fair lending risk assessments conducted in 2018–2020:

- **Five examinations that resulted in OCC referrals to DOJ or enforcement actions.** We used OCC information on DOJ referrals and enforcement actions in 2018–2020 to select a total of five examinations.
- **Four examinations and two fair lending risk assessments that resulted in MRAs.** We received from OCC a list of fair lending MRAs issued in 2012–2020. We selected six MRAs issued in 2018–2020 from this list. We identified them based on bank size, measured by total assets under management, to ensure that our sample included several large, midsize, and community banks.[4] After reviewing the documentation for these six MRAs, we found that four resulted from fair lending examination findings and two resulted from fair lending risk assessment findings.
- **Seven examinations that resulted in no OCC supervisory action.** We received from OCC a list of fair lending examinations conducted in 2018–2020. We identified examinations that resulted in no action and selected six examinations that ended with no supervisory action from

[4]We also attempted to select examinations of banks' mortgage lending and nonmortgage lending activity based on high-level descriptors in the data, which included reference to FHA (which applies to mortgage lending only) or ECOA (which applies to mortgage and nonmortgage lending). However, two of the three examinations referencing ECOA that we selected focused on mortgage lending activities. This is in line with OCC processes. OCC selects banks for fair lending examinations using primarily statistical analysis of Home Mortgage Disclosure Act data, which applies only to mortgage loans, as no similar data set exists for nonmortgage loans.

OCC.[5] We categorized them by the OCC District Office that conducted the examination and randomly selected examinations from these groups to ensure that our selection represented bank examination teams located in different geographic areas. Finally, using sample documents OCC provided, we identified one additional examination that resulted in no action in 2018–2020 and added this examination to our selection.

We excluded the two fair lending assessments from our review of examinations. After reviewing the documentation for the 16 fair lending examinations, we determined that six were examinations of potential discrimination in credit underwriting; four examinations were of potential discrimination in credit pricing, terms, and conditions (pricing); and six examinations were of potential redlining (OCC does not have a centralized list of examinations characterized by type). We excluded one redlining examination from our review, because examiners did not have the same information that was available to examiners in the other redlining examinations we reviewed. Thus, it was not possible to compare the methods used by examiners to those used by examiners in the other redlining examinations we reviewed. Consequently, we reviewed 15 fair lending examinations (six underwriting, four pricing, and five redlining examinations).

To understand the policies, procedures, and processes that OCC used to conduct fair lending examinations, we used a number of sources. These included OCC's 2010 fair lending examiner handbook, OCC documents describing how the agency identified and selected fair lending examinations in 2017-2021, examination documents, and clarifying statements from interviews with OCC staff.

Finally, for the sample of 15 examinations, we reviewed examination documentation to determine how OCC examiners followed the fair lending examiner handbook, policies, and procedures when conducting the

[5]OCC provided a list of fair lending supervisory activities that included examinations conducted as a result of its annual examination screening and selection processes, risk assessments, and follow-up activities related to MRAs or enforcement actions. According to OCC staff, the list generally did not include any fair lending examinations that supervisory offices initiated independent of the screening and selection processes, such as examinations resulting from concerns identified during fair lending risk assessments. We excluded nonexamination supervisory activities from our sample. We then used additional data and documents from OCC to identify and exclude examinations that resulted in MRAs and enforcement actions, such that examinations resulting in no action could be identified as a residual.

different types of examinations. We determined that the control activities component of internal control was significant to this objective, along with the underlying principles that management should design control activities to achieve objectives and respond to risks and implement control activities through policies. We reviewed examiners' analyses of the evidence obtained for each type of examination and their documentation of key findings and decisions.[6] We assessed whether examiner activities were consistent with OCC procedures and processes and the extent to which such procedures and processes were consistent with federal internal control standards.[7] While the observations from the 15 examinations are not generalizable to all examinations conducted by OCC, they provided examples and context regarding how bank examination teams identify and address fair lending deficiencies and violations and make and document supervisory decisions.

To address our third objective, we reviewed and analyzed annual lists that OCC used to select banks for fair lending examination in 2017–2020. We determined that the risk assessment and control activities components of internal control were significant to this objective, along with the underlying principles that management should define objectives and design control activities to achieve objectives and respond to risk. We reviewed OCC's accompanying annual guidance for supervisory offices' use of the annual selection lists. Additionally, we interviewed OCC staff to understand changes OCC made to its fair lending oversight processes in 2012–2020, such as its updated methods for producing these lists and making decisions on annual fair lending examination activity.[8] We assessed OCC's policies and procedures for supervision of banks' fair lending compliance, including the changes in examination selection processes, against federal internal control standards.[9]

[6]We drew on prior GAO work and OCC's fair lending guidance documents to identify key examination workpapers that OCC uses to document key decisions during examination and enforcement activities.

[7]See GAO, *Standards for Internal Control in the Federal Government*, GAO-14-704G (Washington, D.C.: Sept. 10, 2014).

[8]OCC's fair lending examination guidance, found in the OCC *Fair Lending Comptroller's Handbook* (Washington D.C.: January 2010), was last updated prior to 2012. OCC's *Comptroller's Handbook: Examination Process, Bank Supervision Process* (Washington, D.C.: September 2019) reflected the recent fair lending examination selection process updates.

[9]GAO-14-704G.

To address all three objectives, we reviewed relevant federal laws and regulations, including FHA, ECOA, and their implementing regulations.[10] We also reviewed prior GAO reports, such as reports on federal banking regulators' supervision, regulatory capture in bank supervision, and the strengths and limitations of data to aid federal regulators in overseeing compliance with fair lending laws.[11]

We conducted this performance audit from January 2021 to June 2022 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

[10]FHA, 42 U.S.C. §§ 3601-3619, 24 C.F.R. pt. 100; ECOA, 15 U.S.C. §§ 1691-1691f, 12 C.F.R. pt. 1002.

[11]See GAO, *Bank Supervision: Regulators Improved Supervision of Management Activities but Additional Steps Needed*, GAO-19-352 (Washington, D.C.: May 14, 2019); *Large Bank Supervision: OCC Could Better Address Risk of Regulatory Capture*, GAO-19-69 (Washington, D.C.: Jan. 24, 2019); and *Fair Lending: Data Limitations and the Fragmented U.S. Financial Regulatory Structure Challenge Federal Oversight and Enforcement Efforts*, GAO-09-704 (Washington, D.C.: July 15, 2009).

Appendix II: OCC's Processes for Planning Fair Lending Oversight Activities for Supervised Banks

Office of the Comptroller of the Currency (OCC) examiners develop a supervisory strategy for every supervised bank covering three supervisory cycles. According to OCC staff, examiners conduct fair lending risk assessments and other fair lending oversight activities, if applicable, for each bank that engages in retail lending as part of each bank's supervisory strategy.[1] Staff said the supervisory strategy process is generally as follows:

- Annually, the Committee on Bank Supervision issues strategy planning guidance that sets forth the upcoming year's strategic priorities and objectives for the oversight of OCC banks.[2]
- Each supervisory office then drafts risk-based supervisory strategy guidance that integrates all supervisory activities planned and quantifies examiner resources needed for that supervisory office.
- Supervisory offices use the approved guidance to draft supervisory strategies for assigned banks.
- The draft strategies are then developed and reviewed by the applicable supervisory office. For large and midsize banks, staff from Systemic Risk Identification Support and Specialty Supervision review the strategies to ensure they contain all required activities, including the fair lending risk assessments.[3]

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[1]OCC is required by statute to conduct a full-scope, on-site examination of each insured depository institution every 12 or 18 months. 12 U.S.C. § 1820(d). OCC supervisory policy provides that a bank's full-scope examination must include an assessment of the bank's fair lending risk.

[2]The Committee on Bank Supervision is made up of senior executives, including officials from Large Bank Supervision, Midsize and Community Bank Supervision, and Bank Supervision Policy's Senior Deputy Comptroller. The committee ensures coordination of supervisory activities, operating plans, and major projects, as well as consistency with OCC's strategic plan and initiatives.

[3]Staff in OCC's Systemic Risk Identification Support and Specialty Supervision provide fair lending subject matter expertise to large and midsize bank examiners.

- Strategies are then reviewed and approved by the deputy comptroller in the applicable supervisory office.

Once the strategy for a bank is finalized, changes such as deferring or canceling an activity require authorization by the appropriate supervisory office's deputy comptroller or an official with delegated authority.[4]

[4]The approved strategies and changes must be documented in OCC's supervisory records. According to OCC staff, web-based and other tools are used to request and approve changes.

Appendix III: Comments from the Office of the Comptroller of the Currency

Office of the Comptroller of the Currency

Washington, DC 20219

June 1, 2022

Mr. Michael Clements
Director, Financial Markets and Community Investment
U. S. Government Accountability Office
Washington, DC 20548

Dear Mr. Clements,

Thank you for providing the Office of the Comptroller of the Currency (OCC) an opportunity to review the Government Accountability Office's (GAO) draft report titled *Fair Lending: Opportunities Exist to Enhance OCC's Oversight of Banks' Lending Practices*. Technical edits have been provided separately.

As part of this review, the GAO has provided two recommendations. The recommendations and the OCC's responses are provided below:

Recommendation 1
As OCC updates its redlining examination procedures, the Acting Comptroller of the Currency should ensure the Compliance Risk Policy Division takes into account the new types of analysis being performed when it documents the steps that the examiners should take as they evaluate whether a bank has potentially engaged in redlining in violation of fair lending laws.

To address this recommendation, the OCC plans to:

- Update the "Fair Lending" booklet of the Comptroller's Handbook. The updated examination procedures will clarify and expand the list of redlining risk factors, highlight certain key points regarding redlining case elements that have historically raised concerns, and update information from public redlining cases that concluded since the interagency fair lending examination procedures were published in 2010. The updated booklet is expected to be published no later than December 31, 2022.

- Develop additional training for examiners to highlight redlining examination best practices. Training will include live multi-part agency wide webinars that will be archived for future reference by agency staff. The training webinars are expected to be made available to examiners no later than September 30, 2022.

Recommendation 2
The Acting Comptroller of the Currency should ensure the Compliance Risk Policy Division and the Office of Midsize and Community Bank Supervision establish time frames for carrying out their plan to centrally track information on midsize and community bank fair lending

examination screening, selection, and outcomes. The Compliance Risk Policy Division should use this information to analyze its screening and selection processes on an ongoing basis to ensure an appropriate balance of (1) effective identification of fair lending deficiencies and violations and (2) efficiency given available resources.

To address this recommendation, the OCC plans to:

- Work collaboratively to develop a centralized process and procedures to collect and monitor information on fair lending activities. The new process will include procedures regarding the selection and non-selection of identified focal points, the disposition of focal points not selected, and the documentation of examination outcomes, including whether supervisory activities identified fair lending deficiencies or potential violations. The target date to implement a data collection and monitoring process is January 1, 2023.

Fair access to credit and fair treatment of customers are key parts of the OCC mission, and we take our fair-lending oversight responsibility very seriously. We appreciate the GAO's detailed review of the OCC's fair lending oversight activities and the recognition in the report of steps that the OCC has taken in recent years, which are part of our ongoing efforts to update and improve our fair lending supervisory process. The two recommendations and our responsive actions will further strengthen the agency's fair lending program, which will help OCC-supervised lenders maintain their focus on fair lending.

If you need additional information, please contact Krista LaBelle, Acting Associate Deputy Comptroller for Bank Supervision Policy, at (202) 649-6221.

Sincerely,

Grovetta N. Gardineer

Digitally signed by Grovetta N. Gardineer
Date: 2022.06.01 14:27:04 -04'00'

Grovetta N. Gardineer
Senior Deputy Comptroller for Bank Supervision Policy

2

Accessible Text for Appendix III: Comments from the Office of the Comptroller of the Currency

June 1, 2022

Mr. Michael Clements
Director, Financial Markets and Community Investment
U. S. Government Accountability Office
Washington, DC 20548

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- Develop additional training for examiners to highlight redlining examination best practices. Training will include live multi-part agency wide webinars that will be archived for future reference by agency staff. The training webinars are expected to be made available to examiners no later than September 30, 2022.

Recommendation 2
The Acting Comptroller of the Currency should ensure the Compliance Risk Policy Division and the Office of Midsize and Community Bank Supervision establish time frames for carrying out their plan to centrally track information on midsize and community bank fair lending examination screening, selection, and outcomes. The Compliance Risk Policy Division should use this information to analyze its screening and selection processes on an ongoing basis to ensure an appropriate balance of (1) effective identification of fair lending deficiencies and violations and (2) efficiency given available resources.

To address this recommendation, the OCC plans to:

- Work collaboratively to develop a centralized process and procedures to collect and monitor information on fair lending activities. The new process will include procedures regarding the selection and non-selection of identified focal points, the disposition of focal points not selected, and the documentation of examination outcomes, including whether supervisory activities identified fair lending deficiencies or potential violations. The target date to implement a data collection and monitoring process is January 1, 2023.

Fair access to credit and fair treatment of customers are key parts of the OCC mission, and we take our fair-lending oversight responsibility very seriously. We appreciate the GAO's detailed review of the OCC's fair lending oversight activities and the recognition in the report of steps that the OCC has taken in recent years, which are part of our ongoing efforts to update and improve our fair lending supervisory process. The two recommendations and our responsive actions will further strengthen the agency's fair lending program, which will help OCC-supervised lenders maintain their focus on fair lending.

If you need additional information, please contact Krista LaBelle, Acting Associate Deputy Comptroller for Bank Supervision Policy, at (202) 649-6221.

Sincerely,

Grovetta N. Gardineer
Senior Deputy Comptroller for Bank Supervision Policy

Accessible Text for Appendix III: Comments from the Office of the Comptroller of the Currency

Appendix IV: GAO Contact and Staff Acknowledgments

GAO Contact

Michael E. Clements, (202) 512-8678 or clementsm@gao.gov

Staff Acknowledgments

In addition to the contact named above, Karen Tremba (Assistant Director), Silvia Arbelaez-Ellis (Analyst in Charge), Rachel DeMarcus, Jill Lacey, Elizabeth Leibinger, Marc Molino, Jessica Sandler, and Jennifer Schwartz made key contributions to this report.

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