



Highlights of [GAO-09-704](#), a report to congressional requesters

Why GAO Did This Study

The Fair Housing Act (FHA) and the Equal Credit Opportunity Act (ECOA)—the “fair lending laws”—prohibit discrimination in lending. Responsibility for their oversight is shared among three enforcement agencies—the Department of Housing and Urban Development (HUD), Federal Trade Commission (FTC), and Department of Justice (DOJ)—and five depository institution regulators—the Federal Deposit Insurance Corporation (FDIC), Board of Governors of the Federal Reserve System (Federal Reserve), National Credit Union Administration (NCUA), Office of the Comptroller of the Currency (OCC), and Office of Thrift Supervision (OTS). This report examines (1) data used by agencies and the public to detect potential violations and options to enhance the data, (2) federal oversight of lenders that are identified as at heightened risk of violating the fair lending laws, and (3) recent cases involving fair lending laws and associated enforcement challenges.

GAO analyzed fair lending laws, relevant research, and interviewed agency officials, lenders, and consumer groups. GAO also reviewed 152 depository institution fair lending examination files. Depending upon file availability by regulator, GAO reviewed all relevant files or a random sample as appropriate.

What GAO Recommends

Congress should consider options, such as requiring larger lenders to report additional data, to enhance the data available to detect potential fair lending violations. Further, as part of ongoing discussions on revising the regulatory structure, Congress should consider how to best ensure consistent and effective federal oversight of the fair lending laws. In comments, agencies and regulators generally agreed with the report’s analysis.

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FAIR LENDING

Data Limitations and the Fragmented U.S. Financial Regulatory Structure Challenge Federal Oversight and Enforcement Efforts

What GAO Found

The Home Mortgage Disclosure Act (HMDA) requires certain lenders to collect and publicly report data on the race, national origin, and sex of mortgage loan borrowers. Enforcement agencies and depository institution regulators use HMDA data to identify outliers—lenders that may have violated fair lending laws—and focus their investigations and examinations accordingly. But, HMDA data also have limitations; they do not include information on the credit risks of mortgage borrowers, which may limit regulators’ and the public’s capacity to identify lenders most likely to be engaged in discriminatory practices without first conducting labor-intensive reviews. Another data limitation is that lenders are not required to report data on the race, ethnicity, and sex of nonmortgage loan borrowers—such as small businesses, which limits oversight of such lending. While requiring lenders to report additional data would impose costs on them, particularly smaller institutions, options exist to mitigate such costs to some degree, such as limiting the reporting requirements to larger institutions. Without additional data, agencies’ and regulators’ capacity to identify potential lending discrimination is limited.

GAO identified the following limitations in the consistency and effectiveness of fair lending oversight that are largely attributable to the fragmented U.S. financial regulatory system:

- Federal oversight of lenders that may represent heightened risks of fair lending law violations is limited. For example, the enforcement agencies are responsible for monitoring independent mortgage lenders’ compliance with the fair lending laws. Such lenders have been large originators of subprime mortgage loans in recent years and have more frequently been identified through analysis of HMDA data as outliers than depository institutions, such as banks. Depository institution regulators are more likely to assess the activities of outliers and, unlike enforcement agencies, they routinely assess the compliance of lenders that are not outliers. As a result, many fair lending violations at independent lenders may go undetected, and efforts to deter potential violations may be ineffective.
- Although depository institution regulators’ fair lending oversight efforts may be more comprehensive, the division of responsibility among multiple agencies raises questions about the consistency and effectiveness of their efforts. For example, each regulator uses a different approach to analyze HMDA data to identify outliers and examination documentation varies. Moreover, since 2005, OTS, the Federal Reserve, and FDIC have referred more than 100 lenders to DOJ for further investigations of potential fair lending violations, as required by ECOA, while OCC made one referral and NCUA none.

Enforcement agencies have settled relatively few (eight) fair lending cases since 2005. Agencies identified several enforcement challenges, including the complexity of fair lending cases, difficulties in recruiting and retaining staff, and the constraints of ECOA’s 2-year statute of limitations.