

January 14, 2010

**Justice Dept. Fights Bias in Lending**

The headline above published in the *New York Times* announced the Obama administration's initiation of a more aggressive enforcement of Fair Lending laws. The article announced,

Under federal civil rights laws, a lending practice is illegal if it has a disparate impact on minority borrowers, and the Obama administration is signaling that it intends to make the enforcing of fair lending laws a signature policy push in 2010.

The Obama administration "is creating a new unit that will focus exclusively on unfair lending practices" according to the article. Tony Perez, assistant attorney general for the Justice Department's Civil Rights Division was quoted as saying, "***We are looking at any and every practice in the industry.***"

The article also describes a new legal theory called "**reverse redlining**" which the article explains as situations in which "a bank systematically singles out minority neighborhoods for loans with inferior terms like high up-front fees, high interest rates and lax underwriting practices."

The buzz word in Washington today is "robust" as in more aggressive enforcement of banking regulations announced by the Treasury Department in its proposal for a new Consumer Financial Protection Agency in May of 2009. In 2010 you can expect a more "robust" examination of your *Fair Lending* track record and your *CRA performance*.

**Are you prepared for a more "robust" examination of your Fair lending and CRA Performance?**

Recently a GeoDataVision client and veteran compliance officer of \$1 billion community bank told me he had been through the toughest CRA performance evaluation he had ever experienced. The examiner in charge told him that the Agency had been criticized for lax regulatory enforcement and its examination authority was now in jeopardy. Field examiners have been ordered be more "helpful" to banks - only the regulator view of "helpful" means much more rigorous and demanding compliance examinations.

**What you can do to prepare for a more "robust" examination**

The best way to prepare for more demanding CRA and Fair Lending examinations is to have your own internal performance review program. An internal Fair Lending review program should include documented procedures to help you identify any potential discriminatory situations. This means having the ability to compare the outcomes of mortgage applications between majority and minority mortgage applicants and identifying potential disparate

outcomes. It also means reviewing your minority mortgage lending activity in light of your local mortgage market so you can recognize potential problems indicated by a lack of reasonable minority mortgage application activity within your bank.

In essence, a strong Fair Lending Risk Management program contains two essential elements:

- The ability to compare majority and minority mortgage application activity and outcomes
- The ability to put your minority mortgage application activity into a market perspective

Recently GeoDataVision produced a set of Fair Lending Performance Reports for a client with some surprising outcomes. While the reports did not indicate any obvious problems with respect to disparate outcomes between majority and minority mortgage applications they did discover a possibly serious problem in the lack of a reasonable volume of minority mortgage application activity. Only 3% of the bank's mortgage applications were from minorities whereas the minority mortgage market in the community accounted for nearly 25% of all reported mortgage applications. The failure to attract any volume even close to the market is an indicator of discrimination in terms of marketing policies and product offerings.

A solid CRA Performance Review Program requires collecting your loan data and analyzing like examiners do. This means:

- Collecting your CRA data
- Organizing and computing your CRA data to reflect the "lending tests" that will be applied in a CRA examination
- Gathering local HMDA and Small Business loan market data
- Computing the performance standards that are driven by the market
- Comparing your results with the market-driven performance standards

Regulatory Compliance certainly is not what it used to be!

Contact your GeoDataVision representative to learn how we can help you be better prepared for your next examination.