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What's INSIDE

What's Hot in Fair Lending?
 (6 Action Steps) 3

Action Training
 Fair Lending: Beat the Wolf to the Door (Chart) 4

Compliance Notes
 What is Compliance?; Comments?; Customer Gift Idea; FRB Referrals to DOJ 5

Compliance Calendar 5

In the Editor's Opinion
 Selling v. Service 6

Compliance Notes
 Dugan Speaks to Bankers; Dugan on Supervision; HOEPA Triggers; FDIC Referrals to DOJ 6

Compliance Q&A
 Community Development Loans Redefined; Benefits of Offering Small Loans; Reporting Write-Down Adjustments; Refusing High Risk Flood Loans 7

Compliance Online 8

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Enforcement Actions

January 2006 – June 2007

By Steve Sudhoff

The August 6 announcement by the Federal Reserve Board and FinCEN of \$25 million in penalties against American Express entities for BSA violations underscores the financial impact of failure to maintain adequate compliance programs. Hundreds of enforcement actions are undertaken by the Federal banking regulators each year, each one representing a newspaper headline, yet little systematic analysis of these actions has been undertaken.

We've analyzed all of the enforcement actions from the beginning of 2006 through the middle of 2007 in order to give you a better idea of the actions taken by regulators in response to different types of compliance problems. We'll start by taking a look at the numbers in aggregate, and then describe the biggest money penalties. We'll next look at the different types of enforcement actions and the different types of compliance problems addressed by those actions.

Methodology

We looked at the enforcement actions listed on the websites of the Federal Reserve Board, the FDIC, the OCC and OTS from January 1, 2006, through June 30, 2007, for a total of 948 enforcement actions. We selected the 379 which applied to financial institutions, that is, excluded those that applied to institution-affiliated parties (including several cases involving auditing firms). Of these 379 enforcement actions, we excluded 133 which were terminations, as well as two which were amended actions. This left us with 264 'new' enforcement actions over six quarters.

We categorized each enforcement action by its nature, i.e., whether a cease and desist, a civil money penalty, a consent order, an order of prompt correction action, termination of insurance, or a written (or formal) agreement. The single case where the action

(continued on next page)

ActionSteps

- ✓ Check the most recent audit of the compliance issues that result in civil money penalties – especially Flood Insurance and BSA. Be sure you had no citations and that all findings have been corrected.
- ✓ Do a spot review of flood insurance renewal practices.
- ✓ Talk with the frontline about suspicious activity and make sure that they are reporting it when they see it.
- ✓ Review your HMDA data collection process and check for errors. If you have had problems before, get it right this time!

was a combination (C&D and civil money penalty) was classified as a civil money penalty.

We then read through each enforcement action to attempt to get a flavor of why the action was undertaken. While some actions explicitly gave the reason, not all of the agencies include information about the specific violations. In these cases, we deduced the nature of the problems from the remedies. While most actions (particularly written agreements) called for better management and compliance processes, these actions often required improvements in specific areas, such as BSA compliance, which we took to be the underlying driver for the action. In several cases, we referred to press releases from regulators to determine the cause for the action. We decided to identify no more than two reasons for each action.

Of the 948 enforcement actions announced by the federal banking regulators from January 2006 through June 2007, 264 were new actions directed toward institutions. Civil Money Penalties accounted for 123, or 47%, of these actions, followed by Cease and Desist Orders which accounted for 77, or 29%, of these actions. Written/Formal Agreements accounted for 52, or 20%, of these actions, leaving 12 other actions, including six Consent Orders, five Terminations of Insurance, and one Prompt Correction Action Directive.

Details About The Five Biggest Money Penalties

Israel Discount Bank of New York:

FinCEN, the FDIC, and the New York State Banking Department, in a press release, stated that the bank failed to implement an adequate BSA program, and lacked internal controls and appropriate measures to detect and report money laundering and other suspicious activity in a timely manner. The problems found included failure to establish appropriate, specific due diligence policies, procedures and controls reasonably designed to detect and report instances of money laundering through its correspondent accounts for non-U.S. persons.

BankAtlantic: The OTS findings included violations of the Currency and Foreign Transactions Reporting Act, and related BSA regulations issued by the U.S. Department of the Treasury and by OTS. Specific problems included weaknesses in SARs and other reports and statements. Notwithstanding corrective actions already taken by the bank, the OTS concluded that “a cease and desist order for affirmative relief and a civil money penalty assessment were necessary and appropriate to address the violations, deficiencies, and weaknesses discussed in the 2004 Examination, and to ensure that the Bank continues the corrective actions taken and that such actions remain adequate to provide for the Bank’s future compliance with the BSA, SAR, and OFAC laws and regulations.”

Beach Bank: According to a press release from the Florida Office of Financial Regulation (OFR), “FinCEN, FDIC, and OFR determined that Beach Bank had failed to implement an adequate anti-money laundering program and monitor accounts for suspicious activity. In particular, the agencies found that the bank did not implement internal controls or systems to manage risk in the bank’s high-risk accounts, resulting in a failure to timely report suspicious activity.”

Liberty Bank of New York: FinCEN, the FDIC, and the New York State Banking Department found that the bank failed to implement an adequate BSA/anti-money laundering program, with internal controls and appropriate measures to detect and report money laundering and other suspicious activity in a timely manner. The agencies also found that systemic defects in Liberty Bank’s anti-money laundering program resulted in a failure to comply with information sharing requests from law enforcement under section 314(a) of the USA PATRIOT Act.

United Bank for Africa: In general, regulators concluded that the bank and the branch recklessly engaged in unsafe or unsound banking practices by failing to establish and maintain internal controls and audit functions sufficient to ensure compliance with the Bank Secrecy Act. The specifics paint an interesting picture.

Beginning in May 1998 and continuing through at least March 2004, prior to the appointment of the bank’s current Board and senior management, suspicious activities occurred in two branch customer accounts, including the account of a customer controlled by the former Chairman of the Bank. The activities in these accounts included suspected money laundering, insider abuse and advance payment fraud.

Although these problems should have been apparent following inquiries received by the bank between 2000 and 2005 from Nigerian regulators and Nigerian and U.S. law enforcement related to activities occurring in the foregoing customer accounts, the

(continued on page 8)

Civil Money Penalties

\$25,761,569 was assessed in civil money penalties across 123 actions. The following table shows how several large actions account for most of these penalties.

Institution	Amount	Reason
Israel Discount Bank of New York	\$12,000,000	BSA/OFAC/SAR
BankAtlantic	\$10,000,000	BSA/OFAC/SAR
Beach Bank	\$800,000	BSA/OFAC/SAR
Liberty Bank of New York	\$600,000	BSA/OFAC/SAR
United Bank for Africa	\$500,000	BSA/OFAC/SAR
International Bank of Miami	\$250,000	Lending
LaSalle Bank (two actions against related institutions)	\$204,524	Flood
Metropolitan Bank and Trust Company	\$150,000	BSA/OFAC/SAR
U.S. Bank	\$125,000	Flood
Webster Bank	\$125,000	Flood
RBC Centura Bank	\$106,930	Flood
TOTAL	\$24,861,454	

What's Hot in Fair Lending?

PCi's annual CRA and Fair Lending Colloquium is always a place to learn the latest on what is hot in fair lending and the 2007 colloquium was no exception. Several panels discussed the trends on investigations and enforcement activities. This year's program looked broadly at fair lending, beginning with the impact of HMDA pricing and other data.

HMDA Data

Examiners use HMDA data to identify possible concerns as does the Department of Justice. While HMDA data does not prove discrimination, it can highlight concerns. But institutions should remember that the HMDA data is only one factor used in setting examinations. Other risk factors are used as well.

In conducting the HMDA-targeted examinations, the agencies usually find that there is not a problem. HMDA produces many false positives – and false negatives.

HMDA Warning

It is always a relief to learn that your institution is not on the list of institutions targeted for an in-depth fair

lending examination. Speakers at the conference were united in warning that not being identified through HMDA data does not mean that there is no discrimination. It simply means that the overall picture does not show problems. However good the HMDA data looks, the institution is still liable for a single occurrence of discrimination.

Institutions should also remember that discrimination concerns are not limited to pricing. Other issues, such as equal access and equal treatment, are equally important to consider.

Examination Triggers

The most significant risk factors that can trigger a special fair lending examination include pricing discretion for loan officers, a relationship between loan officer compensation and pricing that could motivate the loan officer to strive for higher prices, and consumer complaints. These issues are all identified in a review of policies and procedures along with complaints received by the institution and by the agency.

Pricing

During fair lending examinations, examiners look at much more than the HMDA data. They also look at underwriting practices, loan pricing, products offered, and controls for fair lending. Any discretion given to loan officers to make loans with overages or underages should be clearly laid out in the institution's policy. The policy should place limits on the discretion and specify the circumstances when discretion may be exercised.

Another good pricing practice is to require a second review of the pricing before the loan is made.

When pricing is the issue, the question is how the borrower, with specific, measurable qualifications, ended up with the pricing on the loan. For example, how did a borrower with a high credit score end up with a higher-priced loan?

The most important pricing issue to review is the amount of discretion available to loan officers. Examiners collect loan and pricing data in addition to the HMDA data on high-priced loans as does the Department of Justice. Both the examiner and DOJ investigator look for a similar problem: whether a loan officer exercised pricing discretion unfairly. What the examiner wants to see is good documentation of all reasons for pricing differences.

Non-HMDA Information

When a case is referred to DOJ and DOJ decides to investigate further, they will ask for additional information from the lender. First, DOJ will ask the lender to provide more current data. The data used in the examination may be several years old by the time a case is referred to DOJ.

Next, they will ask for information to determine how much discretionary pricing is allowed. They will also determine how much discretion is allowed and where the exercise of discretion can occur. For example, giving discretion to loan officers in different branches and markets can

(continued on page 8)

Action Steps

- ✓ **Review your last two reports of examination to see what the examiners considered and whether any concerns or suggestions were raised.**
- ✓ **Review internal audits for the same time period and note whether any concerns were identified.**
- ✓ **Make a list of all product changes and new products during the same time period.**
- ✓ **Review how the changes were made and the new products introduced, looking for any fair lending weaknesses.**
- ✓ **Select loan products for a pricing analysis. Follow the examiners' procedures to compare pricing and borrower qualifications.**
- ✓ **Use the suggestions on Page 4 of this issue identify your greatest risks of exposure and to shape your self-assessment.**

Fair Lending

Beat the Wolf to the Door

We are often asked what a fair lending self assessment should cover and we've given lots of answers – in general terms. No-one in the compliance profession questions the need for a fair lending self-assessment. But the question is what the self-assessment should include and how to do it.

PCi's 2007 CRA and Fair Lending Colloquium brought together the most active players in fair lending examinations and enforcement. No-one likes to find discrimination so they were more than willing to

share their ideas and techniques. To a person, examiners and investigators strongly recommend that you find anything first through your self-assessment

Fair lending self assessment is as much an art as a science. The art is anticipating where your points of exposure may be. To do this, you need a good grasp of fair lending investigation techniques and a thorough understanding of how your institution does business. Understand the delicate balance between opportunities to treat customers differently and the effectiveness of controls. Understand how

consumers enter your lending systems and how lending decisions are made.

This page includes criteria for analyzing and comparing loans and loan decisions. There are too many to use each time you perform a self-assessment. Use this as a shopping list. Decide what you need to analyze and then select comparison methods. Always keep in mind that there is no such thing as a comprehensive resource for a fair lending analysis. Use the fair lending examination procedures, use this list and use your skills and imagination.

Tool	Analysis Activity
Credit scores	Compare credit scores by: <ul style="list-style-type: none"> • price offered to the borrower. List and compare borrower groups and prices. Then reverse it and compare prices by borrower groups. • loan product offered to the borrower. List and compare borrower groups and loan products made or offered. Then reverse it and compare products by borrower groups. • loan to value ratios for both approvals and denials. List and compare borrower scores by approval, denial and loan product. Give careful attention to treatment of the middle area of just qualified or almost qualified scores. • debt-to-income ratios for both approvals and denials. Note any missing documentation of ratios and analyze that by prohibited basis. • property location. Break out borrower credit scores by location and approval or denial. Look for inconsistencies, particularly inconsistencies that are connected to location. • borrower characteristics (race, gender, etc.). Separate approvals from denials by prohibited bases and compare the approval and denial decisions by score. • selection of score from a tri-merge credit report. Determine whether lenders and underwriters consistently use the score (high, low, middle) specified by loan policy.
Loan Products	Compare loan products by: <ul style="list-style-type: none"> • price of product, including points and fees. • proportion made to customers by prohibited basis. • products made to borrowers by prohibited bases. Determine whether any group gets terms or products that differ from the other groups.
Loan origination channels	Compare loan origination channels by: <ul style="list-style-type: none"> • number of loans made through each channel. • types of loans made through each channel. • pricing differences for loans made through any channel. • deviations from loan policy. If you find deviations from policy, determine whether documentation explaining the deviation is adequate.
Loan Pricing	Compare loan pricing by: <ul style="list-style-type: none"> • borrower qualifications. Look for any qualified borrowers that receive high- or higher-priced loans than equally or less qualified borrowers. • borrower and property location. Look for any differences based on location. • loan policy and product criteria. When you find a deviation from policy, look for documentation that explains the deviation from policy.

What Is Compliance?

According to Charles Bowman, compliance manager with Bank of America, compliance is the art of enabling businesses to operate legally, ethically and profitably in an increasingly complex market. This is not always easy. Doing the right or ethical thing in the face of profit motive can be difficult to sell. That's why Bowman believes that compliance officers must be great marketers.

Comments?

Not many banks or thrifts took the time to comment on the proposed CRA Q&As. The agencies received less than 50 comment letters. Those letters include comments from trade associations and interest groups. Most of the comments were directed toward the proposed Q&As on investment in national and regional funds and in minority-owned financial institutions.

Customer Gift Idea

Most customers are very concerned about identity theft and check fraud, so here's an idea to help your customers. We love to hand out pens and pencils with the institution's logo on it. Why not make the gift pen one of those with special ink that prevents check fraud? There are pens for sale with ink that cannot be washed off the check. So why not give your customers the pen that keeps on giving – by preventing check fraud?

FRB Referrals to DOJ

Every bank's nightmare is being referred to the Department of Justice for fair lending problems. In the first six months of 2007, the Federal Reserve referred five cases to DOJ. Two of the cases involved mortgage pricing discrimination by nationwide lenders. Another case involved indirect lending. The bank purchased loans from a dealer that set pricing unfairly. Other cases have involved pricing based on marital status and findings of redlining. The FRB has also cited banks for weaknesses in fair lending policies.

October

- * Both BSA and ECOA have important anniversaries this month. This is a good time to schedule training.
- * Use what is left of the month to review the status of your HMDA reports. Remember, the third quarter data must be posted by the end of October.

November

- * Comments on the OTS proposal regarding unfair or deceptive practices are due by November 6, 2007.
- * Wrap up training before the holiday season begins. After that, you won't have much of an audience.

December

- * Watch for a proposal from the FRB to revise and tighten HOEPA rules.
- * Prepare to implement the new figures for HMDA reporting and HOEPA measures.
- * Hand out check-fraud-proof pens as a gift from the Compliance Department.

January, 2008

- * Check the new figures for HMDA exemptions and for intermediate small institutions to determine your status.
- * Check the numbers for calculating high cost loans and update your worksheets or program.
- * It's a new year and a new training calendar. Get started early. Not much else happens in the early winter months, so there should be no excuses for no-shows.
- * Review the schedule for annual reports – of all kinds – and remind people of the deadlines.

February

- * It's HMDA scrub time again. Get ready. Scrub early.

In the editor's *Opinion*

Selling v. Service

Somewhere along the line, selling became a higher priority than service. If you don't believe that, just look at your incoming mail and the caller ID on your phone. There is much more unwanted advertising than real mail in what the U.S. Postal Service carries from house to house. Your institution's junk mail may be in that load of mail.

The success of a marketing campaign is measured by shockingly low rates of return. For example, a 4% response to a marketing campaign is considered wildly successful. Four percent? What kind of marketing APY is that? And what happened to the other 96%? And why doesn't anyone care?

There must be a reason why most of the marketing targets don't respond. And the reason is probably that they aren't interested in what you are selling. So into the trash or shredder it goes – that wonderful, artful, carefully worded, compliant marketing piece.

Let's face it. People are being inundated by junk mail. Everyone, it seems, has something to sell. Consumers get calls and letters that they don't want. Consumers have responded by seeking ways to put a stop to this selling barrage. To a consumer, the influx of marketing materials seems like a home invasion. The result of this consumer frustration are the "do not call" and "do not solicit" rules.

Apparently these legislative expressions of consumer frustration have not had the desirable effect on those who make the selling v. service decisions. Instead of getting the message, they simply look for new ways to sell: if I can't call and I can't pre-screen, how can I get them?

This approach to building up business is terribly lopsided. It focuses only on the ability to sell but not on the product or service that is to be delivered. In some cases, the marketers have totally ignored the benefits of the product and the effect of consumer purchases on the consumer. Hopefully, there is a companion team working on the product delivery and service. But what goes on in that area has little to do with marketing techniques and goals.

There is something missing in the sales-focused environment. What happened to the quality of the product? What happened to service? It is common to set sales targets, but who – if anyone – sets service targets? Has anyone used service as a real selling tool?

What does service matter, anyway? If you meet the sales targets, who cares? Simple: your customer cares. Selling is no good unless you keep the customer. You keep customers by providing good service. You lose them – fast – by providing bad service. Banking is based on long term relationships. These relationships are based on trust.

Promises made in marketing pieces are just that – promises. Service is reality. Service is the delivery of what was promised. Service is what builds trust.

There are many examples of marketing promises followed by the reality of servicing failures. And there are examples of marketing promises that simply weren't true. Of course, that is called a deceptive trade practice and is illegal, but most marketers are not seriously impeded by that concept. Let the lawyers deal with it later.

Have we lost sight of the customer? The focus on marketing considers only what we can thrust at or force on a gullible buyer. It pays no attention to the needs and wants of the customer. But that is actually what banking is all about.

Whether your target is selling or providing excellent service, it is fundamentally all about the customer. Pay attention to the wants and needs of your customers and you will find that is the best selling technique ever invented. It can't be measured by the number or percentage of responses to a mailing, but it results in a strong and growing customer base.

Compliance *Notes*

Dugan Speaks to Bankers

In his address to the ABA Annual Convention, Dugan stressed the importance of underwriting. Lenders should underwrite loans so that they have a "reasonable prospect" of being repaid. OCC reviews of classified and criticized loans show that recently underwritten loans include a high proportion of what examiners describe as weak underwriting.

Dugan believes that banks have not suffered losses from these weakly underwritten loans because they were sold. He referred to originating and selling as a "originate-to-distribute" model. When the plan is to sell loans, the importance of underwriting relaxes.

Dugan advised the audience that banks should strengthen their underwriting standards to be based on the fundamental principle of maintaining a reasonable expectation that the loans will be repaid. This standard of underwriting should be used for all loans, not only those that will be kept in portfolio. He stated that banks should have risk management systems to measure, monitor and control the underwriting differences for both originate-to-distribute and the buy-and-hold model.

Dugan on Supervision

"We're regulators. It's our job to have concerns and we do have concerns." No wonder examinations are so much fun.

HOEPA Triggers

Each year, the Federal Reserve updates to the HOEPA trigger are measured by total points and fees. The trigger that started at \$400 will be \$561 for 2008. Remember to update your calculations if you make high cost loans – or come close.

FDIC Referrals to DOJ

FDIC has referred three fair lending pricing cases to DOJ. The agency also resolved and closed two cases on pricing without referrals. HMDA pricing data flags institutions for investigation but is not used exclusively to draw conclusions.

Question: We are a large bank having questions about community development loans and investments. The new definitions were published with the Intermediate Small Bank rules. How does the expanded definition apply to large banks – if at all?

Answer: The expanded definition of community development applies to institutions of all sizes. It will be used routinely in examinations of intermediate small banks and of large banks. It will also be applied to activities of Small Banks if appropriate in considering an outstanding rating. This expanded definition brings in more projects – or reduces the ways to exclude them. The new definition gives more recognition to economic development activities by recognizing the impact on low- and moderate-income groups.

Question: I read about the FDIC program to promote small loans. These programs would target payday loan customers and other small borrowers. Why should banks get involved in this type of lending?

Answer: Even though these loans may not seem sufficiently profitable to institutions that usually make larger loans, there are several strong reasons to offer a small loan program. The most significant reason is that the payday loan customer may also be your customer. Payday lenders generally require a post-dated check that the payday lender deposits when the loan is due. The check is payment for the loan. And someone who has a check to write is a bank customer – perhaps yours. You could be losing business to the payday lender down the street.

Second, the most common reason for a payday customer to borrow is to pay or prevent bank fees, such as a late fee on a credit card. Making the small loan within the institution keeps the funds – and the profit – in the system rather than

How should we...

Do we have to...

What can we do...

Can you help...

leaching funds out to payday lenders. Of course, this reason also means that financial institutions should look carefully at the fees they charge.

Finally, the program is designed to build new banking customers and to strengthen relationships with existing customers. Affordable is also friendly. This program makes the bank more accessible and less forbidding to customers. It is also a way to teach the savings habit to the borrower: One of the recommendations is to design a program that places part of the payment into a savings account for the customer.

Question: As responsible lenders, we are being encouraged to take a variety of steps to help borrowers with predatory or non-traditional loans that they cannot pay. If we make adjustments for the borrower that include principle write-down, can we count the write-down amount as an investment for CRA purposes?

Answer: The official response is that you may not count the write-down amount as an investment. The agencies view the amount as money that has already been counted under the loan. The no-double-counting principle prevails. That being said, however, you should be able to present this under the service umbrella. Try to get positive consideration to the fact that you are willing to do this, even though the actual dollars can't be counted.

Question: Our institution is thinking about having a policy of making no loans in a flood hazard area. I have concerns about such a decision. What do you recommend?

Answer: This is a great example of dueling regulations – or being between a rock and a hard place. On the one hand, we have public policy (albeit ambiguous) that discourages development in high risk zones. On the other hand, we prohibit redlining.

There can be concerns when an institution refuses to lend in a defined geographic region. Using flood hazard as the justification is different from redlining based on discrimination. There are strong public policy reasons that support a decision to refuse to lend in a high risk flood hazard zone. A primary public policy reason would be to deter construction in areas that are likely to suffer weather-related damage and therefore cost more because of insurance to say nothing of damaging the barrier reefs.

The concern, however, is that there may be strong parallels to race or ethnicity – as was the case in New Orleans. High risk flood zones tend to be less desirable property and are therefore more likely to be locations for warehouses, mobile home parks, and affordable housing.

Before implementing such a lending policy, the institution should look at the impact of the policy by race, ethnicity, and income levels. If persons who would be adversely affected by an institution's refusal to lend in high risk flood hazard zones have viable options, such a policy should not be a problem. However, if the population groups would be adversely affected and not have viable options, the policy could be construed as discriminatory. Use HMDA data for the institution and for the community as a whole. Compare the lending patterns with flood mapping to see what the social impact of such a policy would be.

Recently Finalized Rules

Are you wondering when that new rule on TIL or Reg CC was or does become final? BOIs **Recently Finalized Rules** page lists information on final rules in reverse chronological order by the rule's effective date.

www.bankersonline.com/topstory/finalizedr.html

PURPOSE:

To keep your compliance, audit, and legal officers and staff up-to-date on regulatory and compliance issues and industry related techniques;

To provide guidance for implementing and managing your compliance program;

To increase your awareness and understanding of compliance developments;

To provide you with information that will be useful in communicating compliance information to bank staff; and,

To assemble all of the above in a readable, understandable, usable format that can be photocopied and distributed in-house by each subscriber.

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Enforcement Actions: January 2006-June 2007 (continued from page 2)

practices continued. Instead, during the period from 1998 to 2004, the Bank violated 12 C.F.R. § 21.11 by failing to identify the suspicious activities transacted through the foregoing customer accounts and by failing to file suspicious activity reports regarding these two branch customers.

During this period, the bank and the branch also violated 12 C.F.R. § 21.21 by failing to establish and maintain a compliance program reasonably designed to assure and monitor compliance with the requirements of the Bank Secrecy Act. This failure adversely affected management's ability to identify and report suspicious activity.

Reasons for Enforcement Actions

We searched each enforcement action for its cause, limiting ourselves to no more than two reasons for each action. Among the 264 actions we identified 293 reasons for the actions. The following table summarizes the reasons:

Reason for Action	Number of Actions
Flood	88
Lending/Credit Issues	73
BSA/OFAC/SAR	68
HMDA	17
Asset-Liability Management	13
Miscellaneous or NA	34
TOTAL	293

Civil Money Penalties and Reasons for Enforcement Actions

How do civil money penalties relate to the reasons for enforcement actions? The following table gives some answers.

Reason for Action	Aggregate Civil Money Penalties
Flood	\$1,107,064
BSA/OFAC/SAR	\$24,050,000
Lending	250,000
HMDA	\$105,300
All else and eliminations	\$249,205
TOTAL	\$25,761,569

Our next article on penalties will analyze FinCEN enforcement actions.

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What's Hot in Fair Lending (continued from page 3)

result in differential treatment whereas giving pricing discretion that is always subject to centralized underwriting and review indicates less risk.

DOJ also looks at loan products offered and the channels through which they are delivered. Marketing and availability of loan product information has always been a part of DOJ investigations and remedies. Almost every consent agreement includes affirmative marketing provisions.

Fair lending analyses turn on comparing terms and types of loans made by borrower qualifications, identity and sometimes location. Understanding the loan product channels is key to this investigation. Information about channels is supported or explained by how the lender considers credit-related factors, such as the credit scores of applicants.

With this information, DOJ looks at and compares individual loan terms with others in the same market. This involves comparing pricing, such as rates and points. It also involves comparing the specific loan products – fixed-rate or ARMs – that the customer was offered.