Published on *The National Law Review* https://natlawreview.com

The DOJ’s Fight Against Redlining Continues

Article By:

Memrie M. Fortenberry

The Department of Justice (DOJ) is keeping its promise to combat redlining and has recently entered into a consent order with Lakeland Bank in the Newark, New Jersey, area. The DOJ alleged that Lakeland violated the Fair Housing Act and the Equal Credit Opportunity Act by engaging in unlawful redlining and refusal to offer mortgage lending services to minority borrowers.

The alleged fair lending violations spanned a long period, from 2015 to 2021. During that time, the bank operated 39 branches in six counties in New Jersey and one in Pennsylvania; however, the complaint focused primarily on activities conducted within three specific counties in New Jersey: Essex, Somerset, and Union (Newark Lending Area). Lakeland did not include the entire counties as part of its designated assessment area determined pursuant to the Community Reinvestment Act (CRA). Rather, only portions of these three counties were included, and the excluded portions were the majority Black and Hispanic tracts in the counties.

During the period at issue, the bank did not operate any of its 39 branches within majority-minority census tracts nor were any of Lakeland’s lenders responsible for targeting minority customers. The DOJ alleged that the bank “knew its branches were not servicing the credit needs of majority Black and Hispanic areas” and was made aware of this through internal fair lending reviews and analysis of data collected pursuant to the Home Mortgage Disclosure Act (HMDA). In 2017, as a result of these internal findings, Lakeland created a Community Development Action Committee in an effort to increase lending in majority-minority areas; however, no meaningful action, such as marketing and community outreach to and in majority-minority areas, was taken by the committee. This failure to act combined with the minimal number of applications received and loans originated as well as the lack of branches and lenders in majority-minority areas led the DOJ to conclude that Lakeland discouraged minority applications and, therefore, restricted minority access to credit.

It is common practice during the course of regulatory examinations, third-party audits, and internal reviews to compare a lender’s mortgage lending-related activity with that of its peers in order to assess the lender’s level of potential fair lending risk. In this instance, the conclusion of the comparison of Lakeland with its peers was that Lakeland received approximately five times fewer HMDA reportable mortgage applications from minority applicants or consumers applying for credit for the purpose of purchasing property located in a majority-minority area. As a result, the DOJ determined that Lakeland’s low number of applications was the result of discrimination rather than the lack of demand for properties in these areas.

By virtue of the consent order, Lakeland agreed to increase its outreach to majority-minority areas by committing to spend a minimum of $150,000 per year on advertising, community outreach, consumer financial education, and credit counseling in the Newark Lending Area. Additionally, Lakeland agreed to invest $12 million in a loan subsidy fund to increase access to credit in majority Black and Hispanic neighborhoods in the same area. Lakeland opened a loan production office in early 2022 in a majority-minority census tract and has committed to opening one full-service branch in a majority Black and Hispanic tract in Newark and another in the Newark Lending Area. As part of the settlement, Lakeland also agreed to conduct a detailed assessment of its fair lending policies and practices, including status reporting and a compliance action plan; training for all applicable employees, management, and directors; and a third-party credit needs assessment. Additionally, the bank agreed to create a Community Development Partnership and hire a community development officer to oversee outreach efforts to residents in the affected areas. The Community Development Partnership commitment includes a minimum $400,000 investment toward providing services related to credit counseling, financial education, homeownership, and foreclosure prevention to residents of majority Black and Hispanic tracts in the Newark Lending Area.

Much of the focus of the allegations against Lakeland centered on the lack of marketing and outreach to majority-minority areas. Lakeland did not document these efforts or the means by which referrals for applications were obtained. There are a number of actions banks and mortgage lenders should implement to defend against future discrimination claims, including:

- Developing a system for documenting marketing outreach to majority-minority areas for the entire organization as well as for each lender.
- Reviewing designated CRA assessment areas to determine that majority-minority areas are not purposefully excluded and that the assessment area is made up of entire geographies.
- Understanding and documenting the specific characteristics and makeup of the organization’s entire market area down to the census tract level in order to identify reasons for any low application and lending rates.

National Law Review, Volume XII, Number 300