



Equal Credit Opportunity Act and Fair Lending law

Office of Fair Lending & Equal Opportunity
Office of Enforcement
Consumer Financial Protection Bureau

Note: This document was used in support of a live discussion. As such, it does not necessarily express the entirety of that discussion nor the relative emphasis of topics.



Consumer Financial
Protection Bureau

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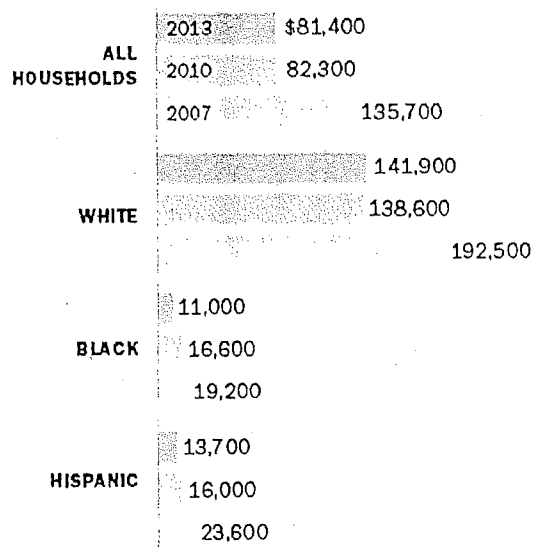
Overview

- Background on fair lending and credit discrimination
- Laws and regulations
- Fair lending strategic priorities
- Implementation / Fair lending enforcement matters
- Types of ECOA cases (what to look for...)
- Resources

Background

Wealth by Race and Ethnicity, 2007-13

Median net worth of households, in 2013 dollars



Note: Blacks and whites include only non-Hispanics.
 Hispanics are of any race.
 Source: Pew Research Center tabulations of Survey of Consumer Finances public-use data

PEW RESEARCH CENTER

- In 2005 the median net worth of the middle 20% of households
 - Non-Hispanic White \$130,350
 - African American \$11,013
 - Hispanic \$17,078

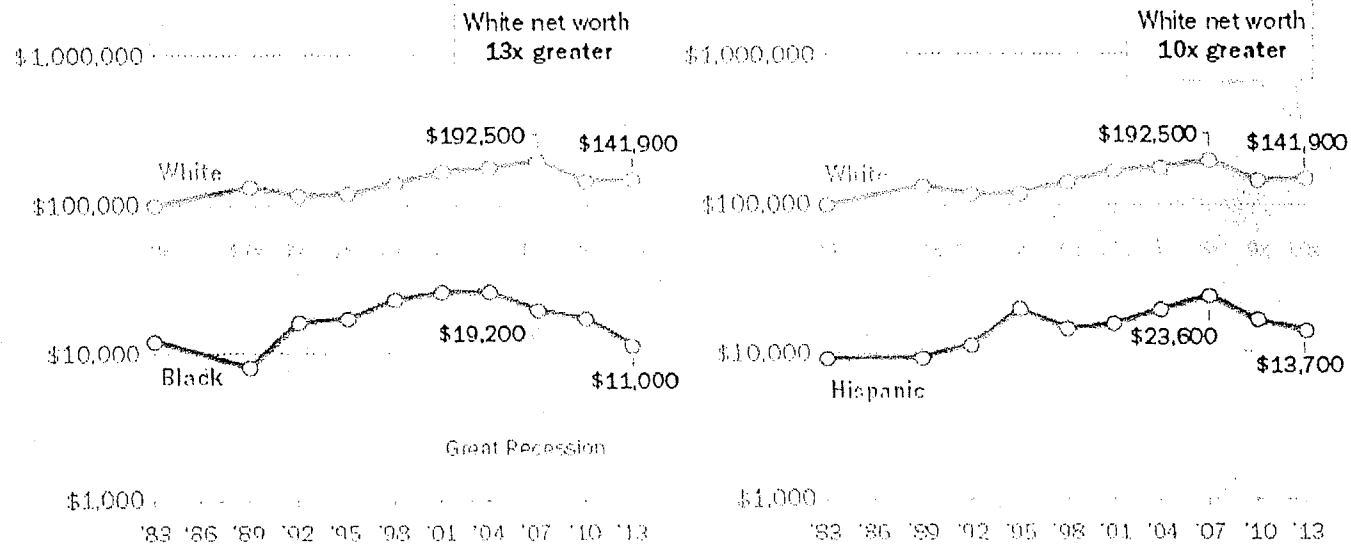
- In 2011 the median net worth of the middle 20% of households
 - Non-Hispanic White \$110,531
 - African American \$6,349
 - Hispanic \$7,683

-Source: U.S. Census

Background

Racial, Ethnic Wealth Gaps Have Grown Since Great Recession

Median net worth of households, in 2013 dollars



Notes: Blacks and whites include only non-Hispanics. Hispanics are of any race. Chart scale is logarithmic; each gridline is ten times greater than the gridline below it. Great Recession began Dec '07 and ended June '09.

Source: Pew Research Center tabulations of Survey of Consumer Finances public-use data

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Fair Lending under Dodd-Frank

Dodd-Frank defines “Fair Lending” as:

“fair, equitable, and nondiscriminatory access to credit for consumers.”

DFA § 1002(13).

CFPB's Key Fair Lending Laws

Home Mortgage Disclosure Act

- HMDA requires lenders to report individual mortgage loan data, including data on race, ethnicity, and sex.
- HMDA is an enumerated consumer law, over which the CFPB has supervision, enforcement, and rulemaking authority

Equal Credit Opportunity Act

- The ECOA prohibits creditors from discriminating in any aspect of a credit transaction against any applicant on the basis of race, color, religion, national origin, sex, marital status, age, receipt of income from any public assistance program, or exercising in good faith a right under the Consumer Credit Protection Act.
- ECOA is an enumerated consumer law, over which the CFPB has supervision, enforcement, and rulemaking authority

Other Relevant Fair Lending Laws

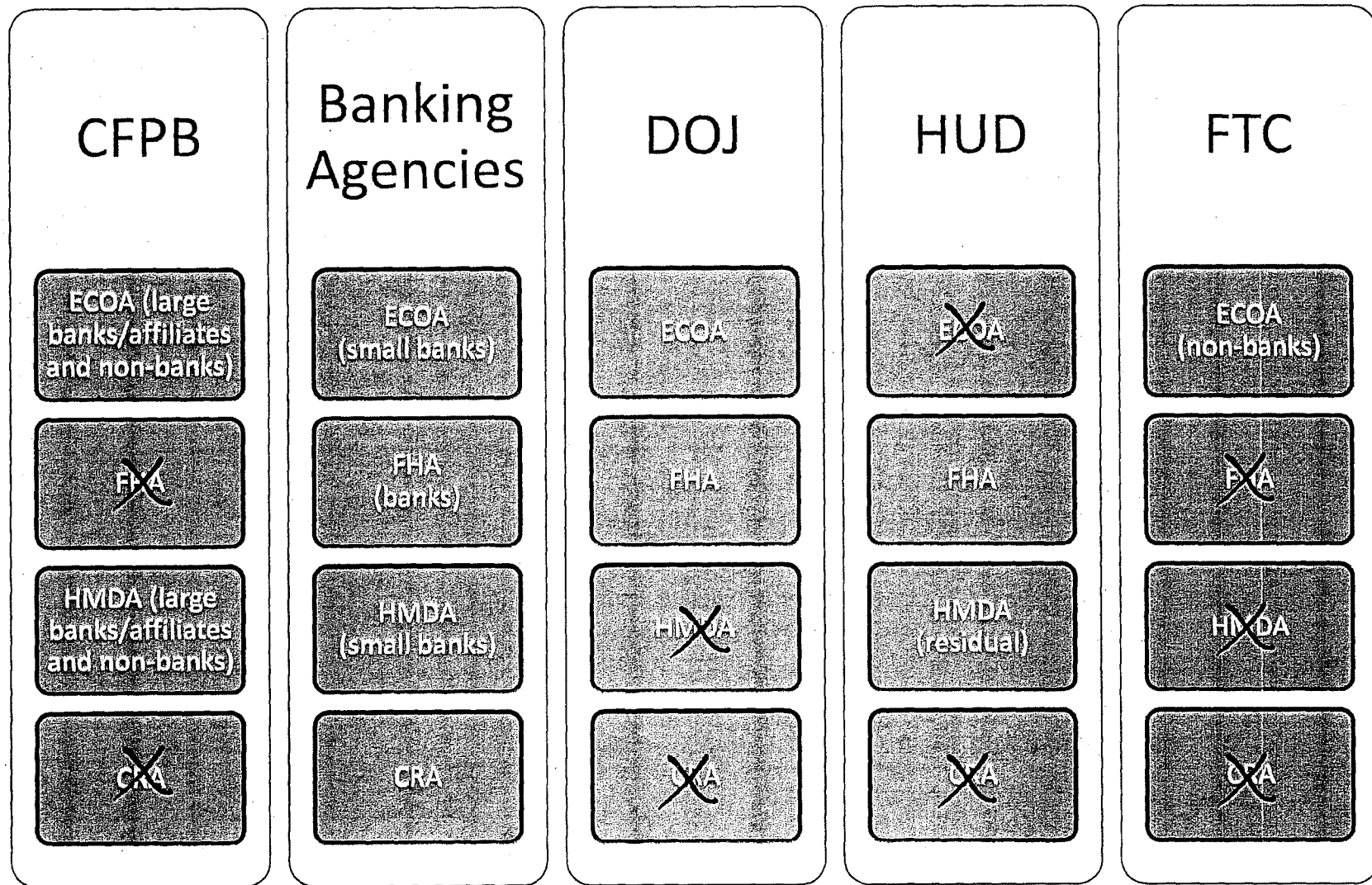
Fair Housing Act

- The FHA makes it unlawful for any person whose business includes engaging in residential “real estate-related transactions” to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race, color, religion, sex, handicap, familial status, or national origin.
- Residential real estate-related transactions, include mortgages loans and home improvement loans.
- The FHA is not an enumerated consumer law.

Community Reinvestment Act

- The CRA requires the prudential regulators periodically to evaluate a bank’s record of helping to meet the credit needs of the communities in which the bank operates.
- The CRA is not an enumerated consumer law.

Fair Lending Interagency Supervision & Enforcement



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Home Mortgage Disclosure Act

CFPB's Jurisdiction and Authority

- CFPB has supervision authority for HMDA for transferring banks and their affiliates and service providers and certain non-bank institutions (DFA §§ 1024, 1025)
- CFPB principally enforces HMDA under Subtitle E of Title X, and violations of HMDA constitute violations of Title X (12 U.S.C. § 2804(b)-(d))
- CFPB has rulemaking authority for HMDA and must revise Regulation C to implement HMDA's new reporting requirements (12 U.S.C. § 2804(a); DFA § 1022)
- Additional data fields must be reported, including: age, total points and fees, prepayment penalty, credit score, and rate spread (for all loans) (12 U.S.C. § 2803(b)(4)-(6))

Equal Credit Opportunity Act

CFPB's Jurisdiction and Authority

- CFPB has supervision authority for ECOA for banks with more than \$10 billion in assets and their affiliates and service providers as well as certain non-bank institutions (DFA §§ 1024-25)
- Subject to Subtitle B of Title X, CFPB enforces ECOA under Subtitle E of Title X with respect to any “person” (15 U.S.C. § 1691c(a)(9))
- CFPB may refer violations of ECOA to DOJ, and must refer certain violations (15 U.S.C. § 1691e(g))
- CFPB has rulemaking authority for ECOA (15 U.S.C. § 1691b; DFA § 1022)

Equal Credit Opportunity Act

Regulation B generally prohibits creditors from:

- Discriminating against an applicant in any aspect of a credit transaction on a prohibited basis; and
- Discouraging an applicant or prospective applicant from making or pursuing an applicant on a prohibited basis.

Regulation B

Regulation B sets forth specific requirements regarding discrimination regarding:

- Requesting information: A creditor shall not inquire about the race, color, religion, national origin, sex, marital status, age, receipt of income from any public assistance program, or exercising in good faith a right under the Consumer Credit Protection Act in connection with a credit transaction, with specified exceptions.
- Evaluating applicants: A creditor shall not take a prohibited basis into account, with limited exceptions (*e.g.*, age).
 - Common issue: joint credit reports for married vs. unmarried co-borrowers.
- Extending credit: A creditor shall not refuse to grant an individual account to a creditworthy applicant because of a prohibited basis.
 - Common issue: inappropriate spousal signatures.

Regulation B

Spousal Signatures:

- Generally, a creditor may not require an applicant's spouse who is not a joint applicant to sign the credit instrument, if the applicant qualifies on his/her own.
- There are limited exceptions, including:
 - When a signature is required by state law to give access to the collateral in the event of default; and
 - When the primary applicant does not meet lending standards alone (but, if a co-signer is necessary, a creditor cannot require that it be a spouse).

Regulation B

Regulation B also requires creditors to:

- Notify applicants of action taken on their applications;
- Report credit history in the names of both spouses on an account;
- Retain records of credit applications;
- Collect information about the applicant's race and other personal characteristics in applications for certain dwelling-related loans; and
- Provide applicants with copies of appraisal reports used in connection with credit transactions.

Regulation B

What is credit discrimination related to “public assistance”?

- “Any Federal, state, or local governmental assistance program that provides a continuing, periodic income supplement, whether premised on entitlement or need, is ‘public assistance’ for purposes of the regulation. The term includes (but is not limited to) . . . mortgage supplement or assistance programs”
- “The Committee believes and intends that this provision in the bill will help assure reasonable access to the credit market to those persons who are financially dependent, and, in the case of public assistance to the needy, will help in their quest for financial independence.” S. REP. 94-589, 5, 1976 U.S.C.C.A.N. 403, 407.

Legal Theories of Discrimination under ECOA

Disparate Treatment

When a lender treats an applicant differently even based on a prohibited basis (even if only in part)

Disparate Impact

When a lender applies a policy equally to credit applicants, but the policy has a disproportionate adverse impact on a protected class

Legal Theories of Discrimination under ECOA

Inclusive Communities and Disparate Impact

- Texas's position: the FHA does not permit disparate impact liability because
 - There is no "effects" language. *Smith v. City of Jackson*.
 - "because of" language
 - HUD's burden-shifting framework is "made up."
- Solicitor General argues:
 - HUD authoritatively interpreted the statute and the Agency's interpretation is reasonable
 - Amendments to the law confirm Congress anticipated the use of disparate impact under the law
 - No equal protection problems.
- Case is focused on disparate impact under FHA and not ECOA

OFLEO's Fair Lending Priorities

- OFLEO prioritization process
 - Complaints
 - Supervisory and enforcement history
 - Quality of the CMS
 - Analysis of publicly available data
 - Market insights
- Current Priorities
 - 1 - Mortgage lending
 - 2 - Indirect auto lending
 - 3 - Credit card
 - 4 - Small business

Red Flags: Discretionary Policies

Watson v. Fort Worth Bank & Trust, 487 U.S. 977 (1988)

- Held that “subjective or discretionary employment practices may be analyzed under the disparate impact approach in appropriate cases”

Common Discretionary Policies that Increase the Risk of Discrimination

- Yield-spread premiums and overages
- Broker fees
- Dealer markups or dealer reserves
- Overrides in automated underwriting systems

Wal-mart Stores Inc. v. Dukes, 131 S. Ct. 2541 (2011)

- *Illinois v. Wells Fargo & Co.*, No. 09-26434 (Ill. Cir. Ct. Cook County Oct. 25, 2011) (“[T]he analysis of use of statistical data as a measure of disparate impact arose in *Wal-Mart* . . . in the context of a challenge to a certification of a class action suit. Thus, the pertinent issue before the Supreme Court was whether the plaintiff demonstrated questions of law and fact common to the class, an issue not pending before this Court. For that reason, an attempt to analogize the Supreme Court’s search for the ‘glue holding the alleged *reasons* for all those [employment] decisions together,’ to the analysis necessitated by the pending motion to dismiss, is not useful to the disposition of the motion.”) (citations omitted)

Red Flags: Statistical Analyses

Statistical Significance

- Results are statistically significant if they are unlikely to have occurred by chance.
- Results with a 5% significance level are considered statistically significant.

LEADS Process

- Over three-quarters of our FL leads originate from the ENF leads database
 - Other leads originate from interagency referrals, private counsel, advocacy groups, supervisory channels, etc.
- When disparate treatment, disparate impact, overt discrimination, or redlining on a prohibited basis is alleged, please check the “ECOA” box and refer to Fair Lending
 - More than one referral can be made in the ENF leads database
 - Please also refer leads involving HMDA, MLO comp, and appraisal issues
 - When in doubt, please err on the side of a referral.
- FL leads have led to a number of enforcement matters
 - Example 1: Bancorp South
 - Example 2: First Savings

Types of Lending Discrimination

Pricing Discrimination

Occurs when borrowers of a protected class are charged higher interest rates and/or fees than similarly-situated borrowers not in that protected class

Steering

The practice of referring or directing applicants from protected classes to products with less favorable terms even though they qualify for credit products with better terms

Redlining

Exclude minority neighborhoods from equal lending services

Reverse Redlining

Occurs when borrowers of a protected class are targeted for unfavorable loans because of a prohibited basis

Underwriting Discrimination

Lending practices that apply different standards for assessing creditworthiness of protected class borrowers

Case Examples:

Pricing Discrimination (race/national origin)

- Mortgage
 - [REDACTED]
 - [REDACTED] | [REDACTED]
- Indirect Auto Lending (markup)
 - Ally Financial
 - Honda, Toyota, [REDACTED] (currently in negotiations)
 - Fifth Third (currently in negotiations)

Case Examples: Steering (race/national origin)

- Countrywide (\$335M) and Wells Fargo (\$184M)
 - DOJ settlements regarding 2004-2008 loans
 - Thousands of African-American and Hispanic borrowers steered into subprime mortgages when non-Hispanic white borrowers with similar credit profiles received prime loans.
 - All the borrowers who were discriminated against were qualified for mortgage loans according to banks' own underwriting criteria.
 - Disturbing evidence of disparate treatment e.g. affidavits regarding “mud loans” and “ghetto loans.”

Case example: Redlining

“Redlining is a form of illegal disparate treatment in which a lender provides unequal access to credit, or unequal terms of credit, because of the race, color, national origin, or other prohibited characteristic(s) of the residents of the area in which the credit seeker resides or will reside or in which the residential property to be mortgaged is located.”

-- Interagency Fair Lending Examination Procedures

Philadelphia, PA

Legend

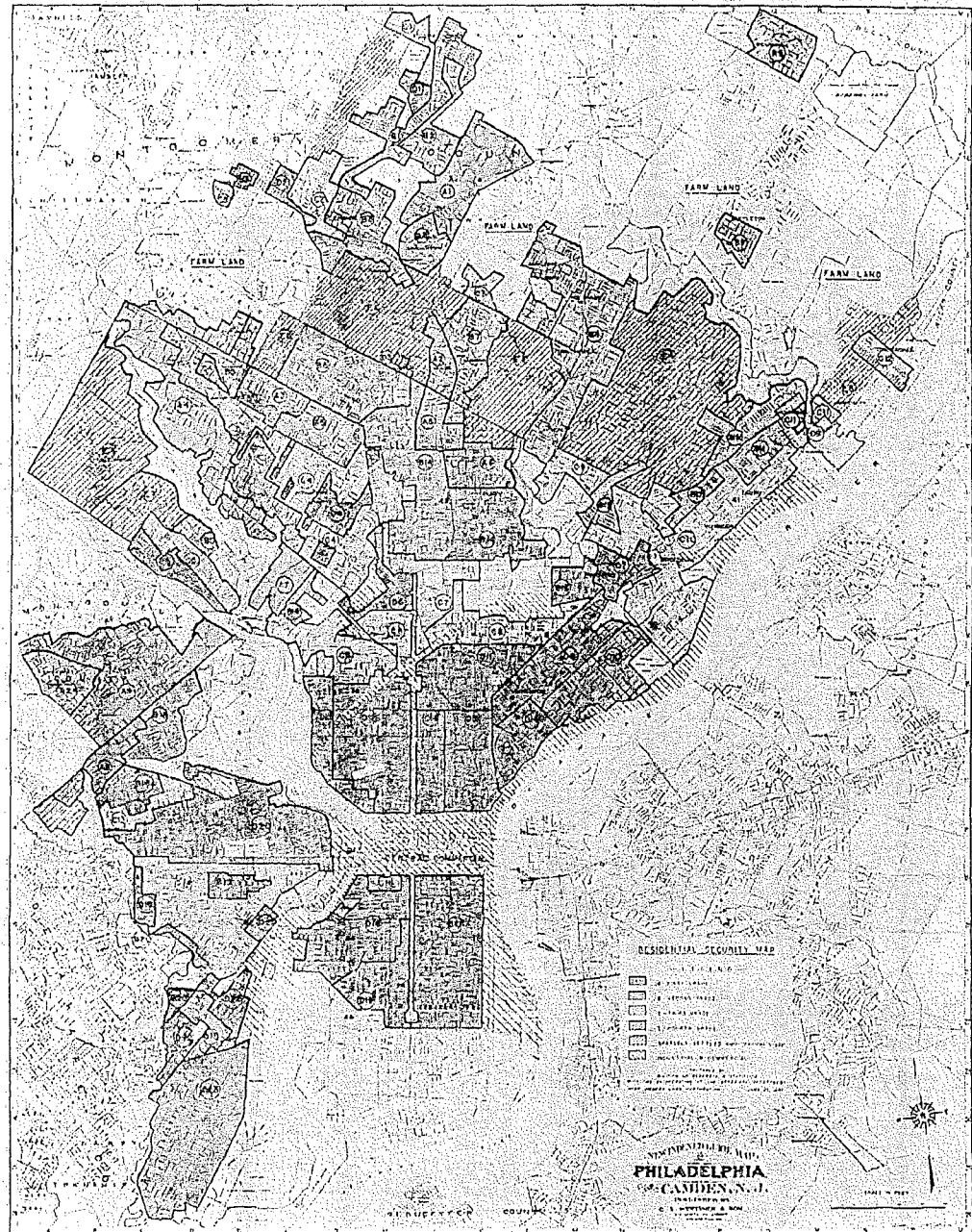
Green – “First Grade”

Blue – “Second Grade”

Yellow – “Third Grade”

Red – “Fourth Grade”

The Homeowners Loan Corporation (HOLC) a government sponsored organization made security maps in the 1930s that graded mortgage lending risk in certain cities. “Fourth grade” areas, marked in or by red, were typically African-American and/or poor neighborhoods.



Baltimore, MD

Legend

Green – “Best”

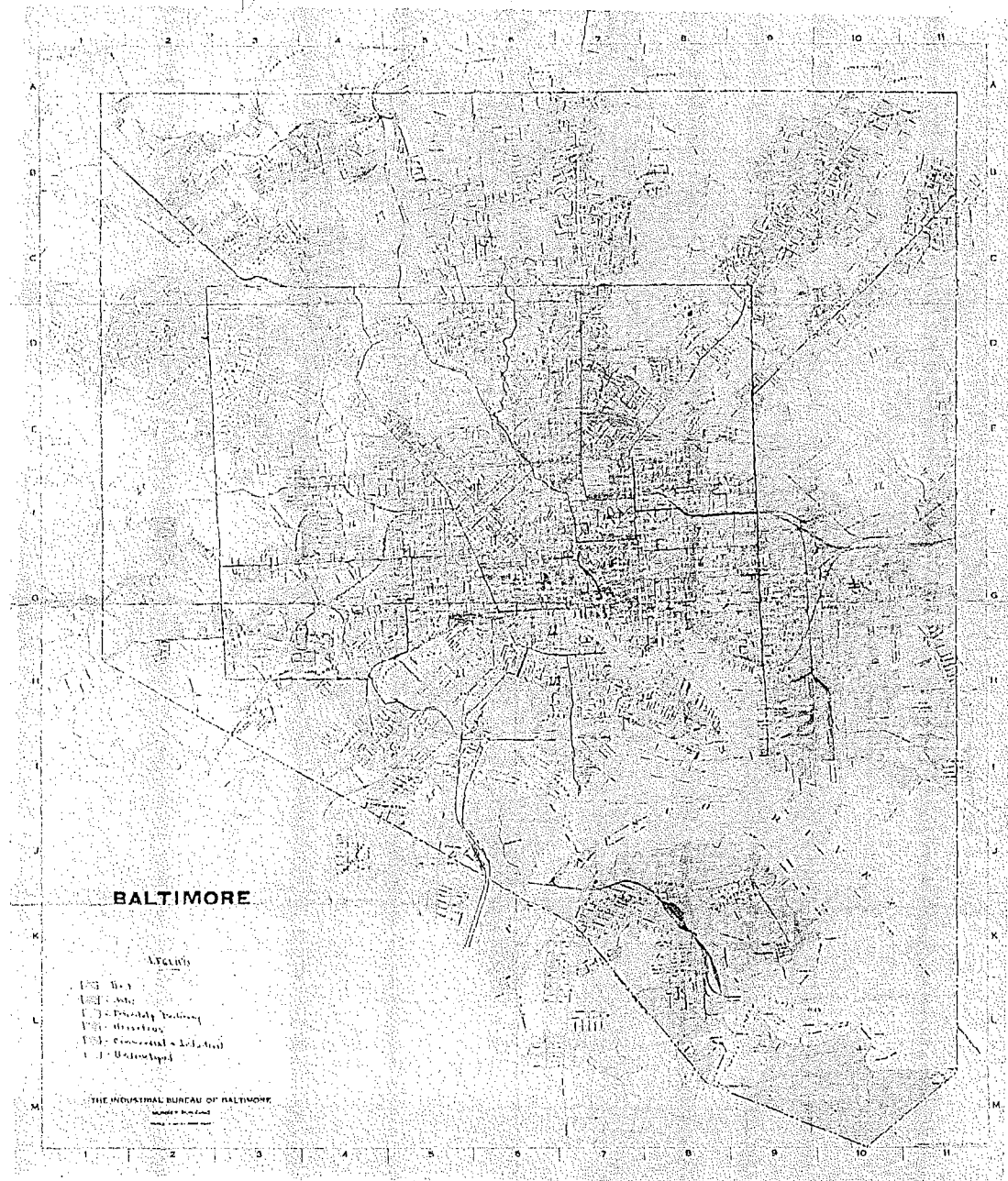
Blue – “Static”

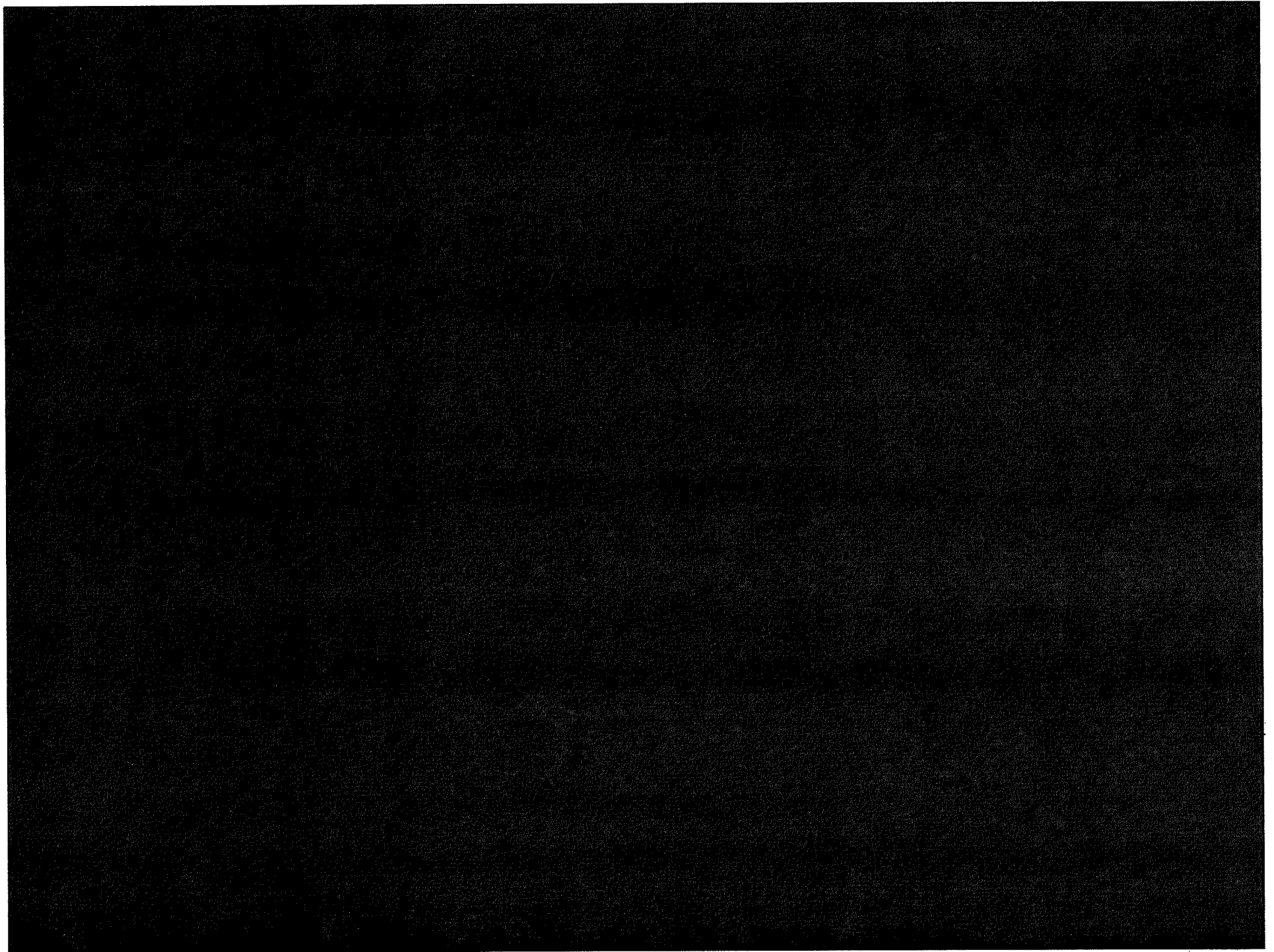
Yellow – “Definitely Declining”

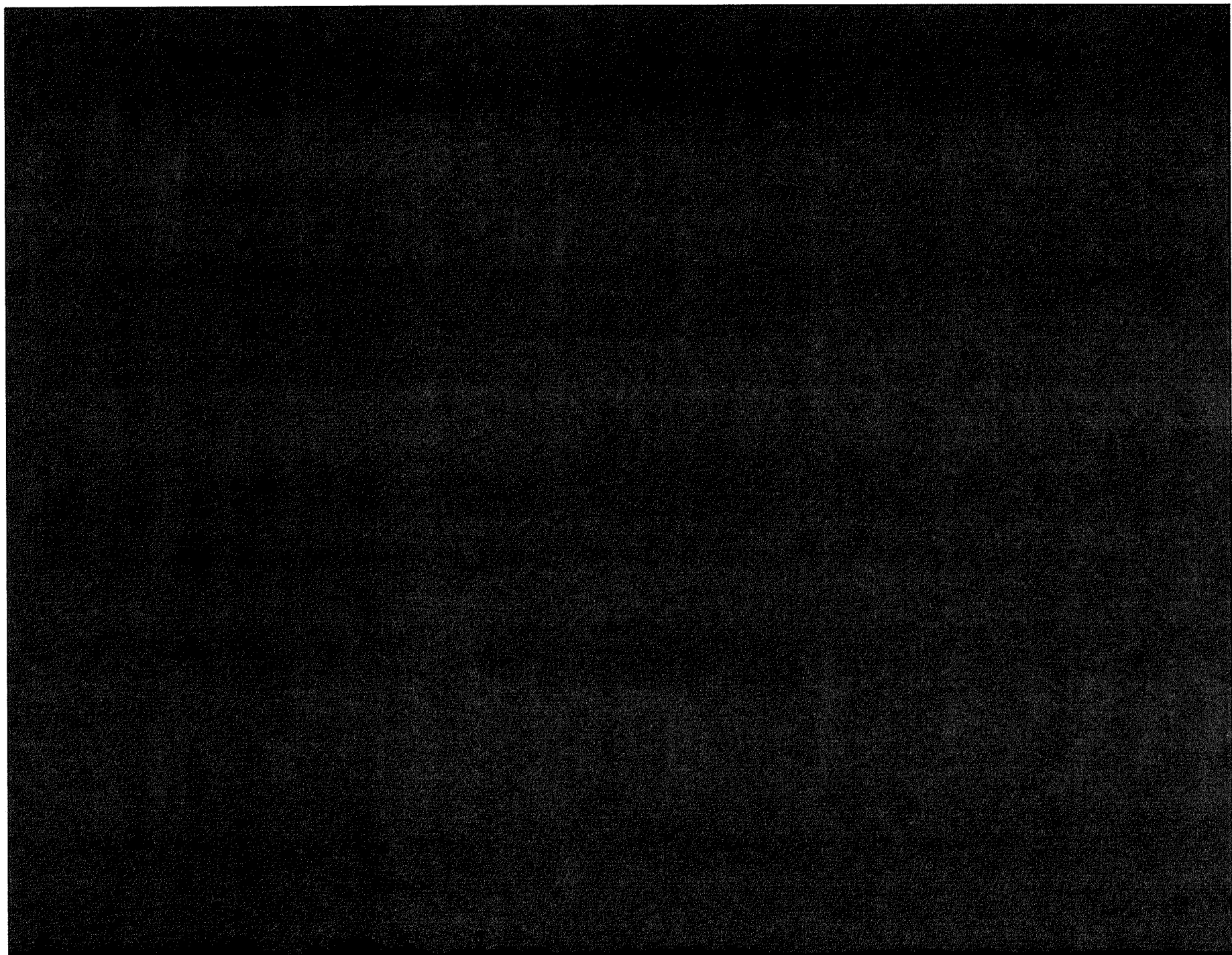
Red – “Hazardous”

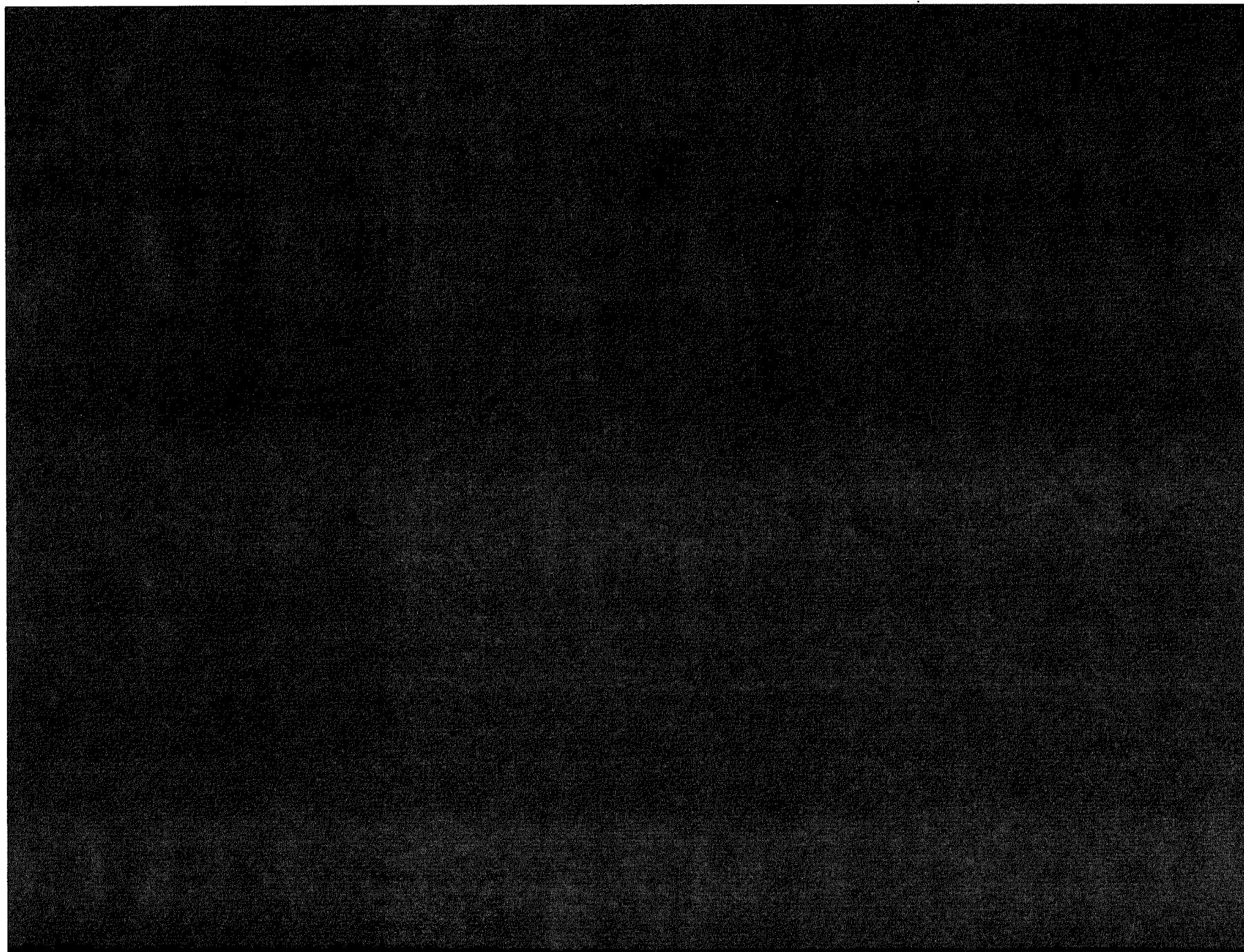
Brown – “Commercial and Industrial”

White – “Undeveloped”









**Case Example Redlining settlement:
U.S. v. Midwest BankCentre (E.D. Mo. 2011)**

Applications, St. Louis MSA

- Loan data 2004-2008
- Received 2250 single-family residential loan applications
- Only 61 (2.7%) were for property in majority black census tracts
- Peer rate was 10.7%

Originations, St. Louis MSA

- Originated 1861 single-family residential loans
- Only 42 (2.3%) were for property in majority black census tracts
- Peer rate was 8.6%

**Case Example Redlining settlement:
U.S. v. Midwest BankCentre (E.D. Mo. 2011)**

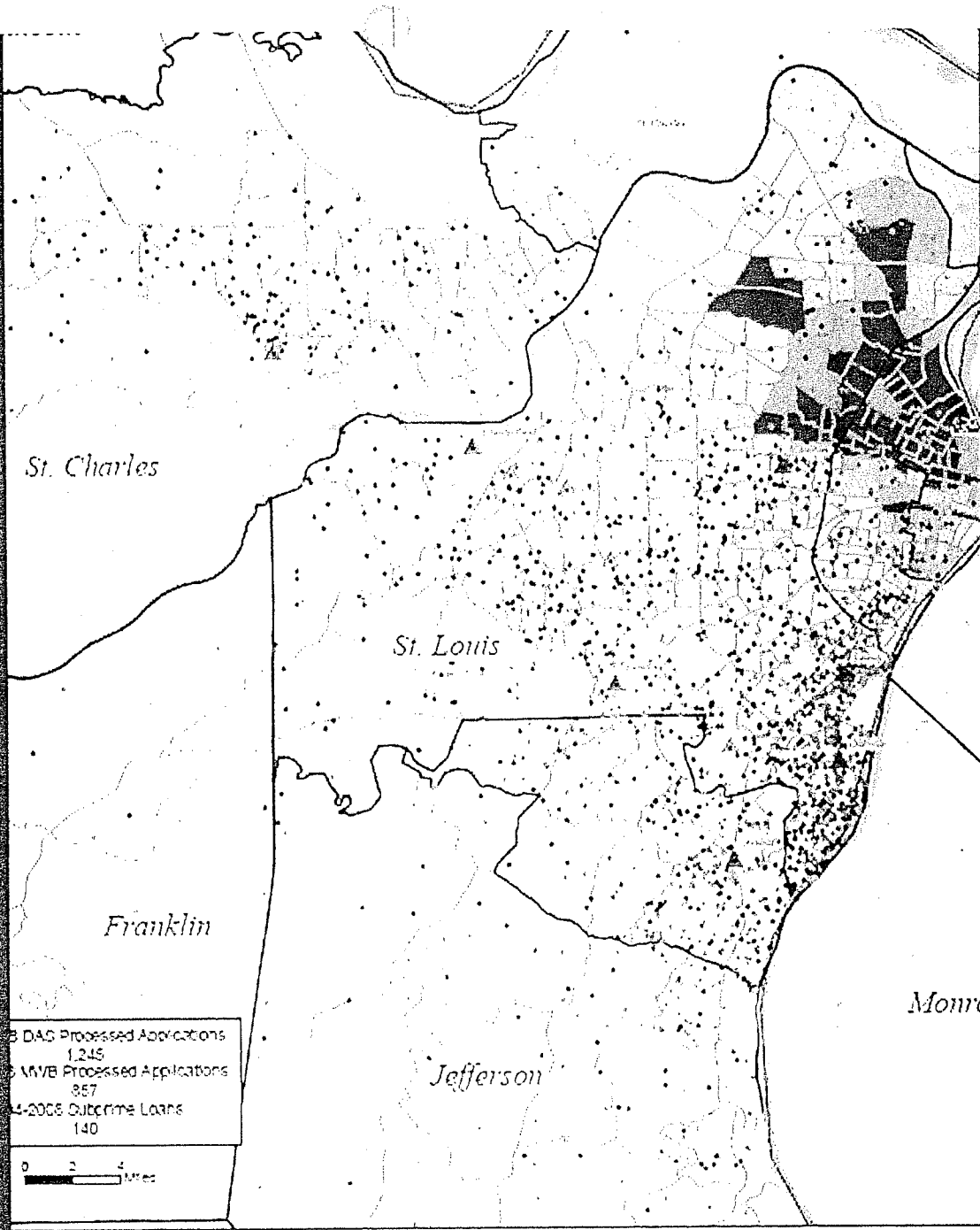
Complaint

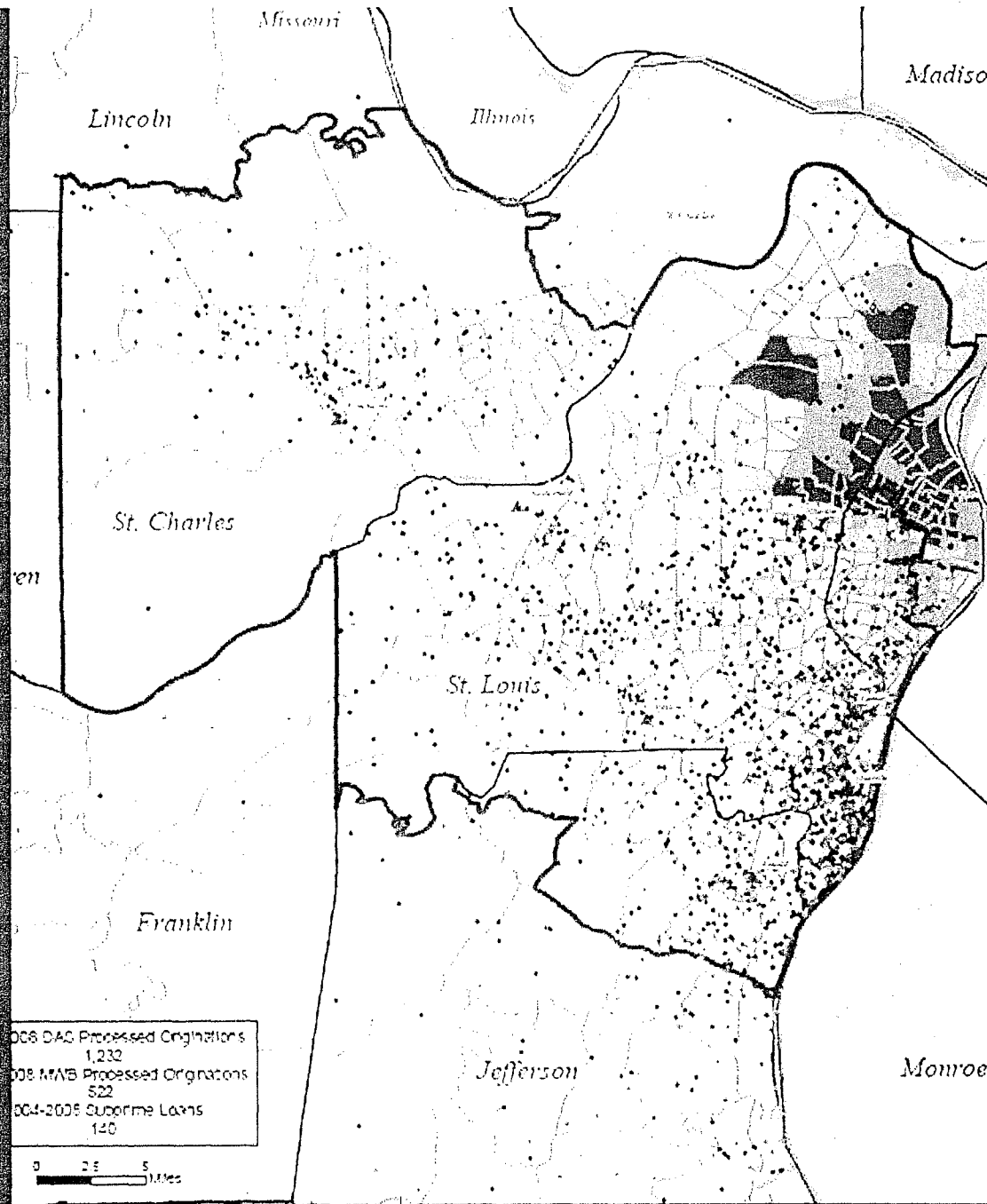
CRA Assessment Area:

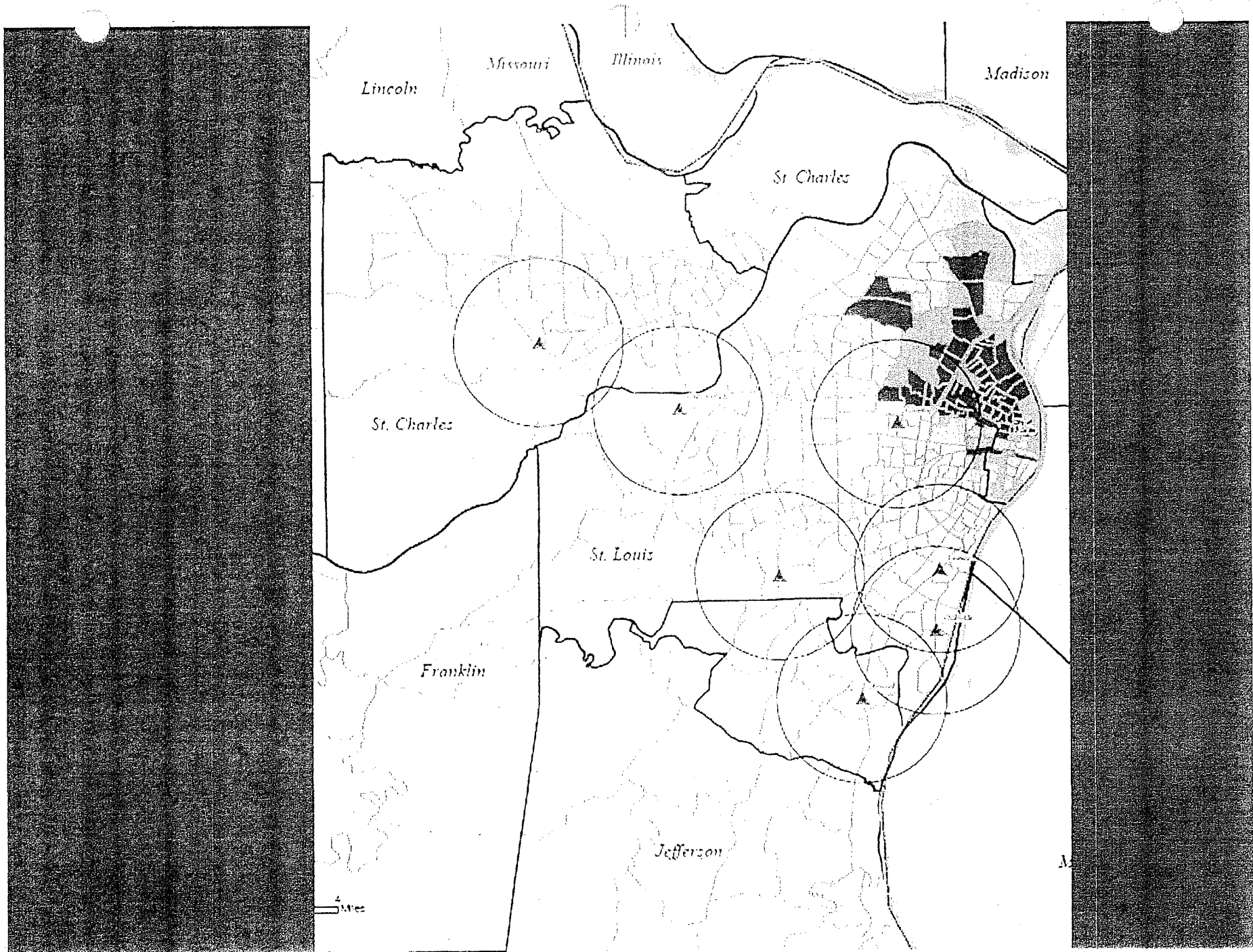
- Excluded parts of City of St. Louis and St. Louis County
- Formed a horseshoe around majority-African-American census tracts
- Excluded 40 of 67 majority-African-American tracts in the City of St. Louis
- No branches in any majority African-American census tracts

Consent Order

- \$900,000 special financing fund, credit repair and access to low-cost checking accounts for residents of redlined communities
- Open a branch in previously redlined community
- Engage in affirmative outreach and marketing to previously redlined communities







Case Example: Reverse Redlining

Reverse redlining defined:

- The practice of extending credit on unfair terms to communities that have been historically denied access to credit, predominantly on the basis of race.
- The term comes from the manner in which this newer practice builds off of and has been enabled by the older practice of “redlining,” or “denying the extension of credit to specific geographic areas due to the income, race, or ethnicity of its residents.”
- The lack of lending institutions operating in African American and minority communities led to a credit vacuum in these communities.
- This dearth of credit created underserved communities that subprime lenders could “easily target and efficiently exploit.”

Example: *United States v. Auto Fare, Inc.* (W.D.N.C.)

- A pattern or practice of reverse-redlining violating ECOA by two Charlotte buy here pay here auto dealerships, and their common owner, for targeting African Americans with unfair and predatory used car loans that frequently resulted in repossessions.
- The consent order requires the dealerships, for a period of four years, to make improvements to a number of their practices, so that the terms of their loans and repossession practices are no longer unfair and predatory, including lower interest rates and more time before repossession.
- Also requires defendants to establish a \$225,000 fund to compensate former borrowers.

Case example: Underwriting discrimination

Public assistance private litigation in Texas

- Allegations: Cornerstone Mortgage, Amegy Bank (originator), Wells Fargo (loan purchaser) do not include Housing Choice vouchers as income.
- Motions to dismiss argue:
 1. Plaintiffs were not applicants
 2. Plaintiffs were not denied
 3. Plaintiffs were not harmed

❖ *See also Bancorp South*

Case example: Credit Cards

Synchrony Bank (formerly GE Capital Retail Bank)

- GE Capital had two different promotions that allowed credit card customers with delinquent accounts to settle their balances by paying off a specific portion of their debt.
- GE Capital did not extend these offers to any customer who indicated that they preferred to communicate in Spanish or had a mailing address in Puerto Rico, even if the customer met the promotion's qualifications.
- This meant that Hispanic populations were unfairly denied the opportunity to benefit from these promotions.
- \$169 million to about 108,000 borrowers excluded from debt relief offers because of their national origin.

Case example: HMDA enforcement actions

Mortgage Master

- Non bank in Walpole, MA had significant data errors in 21,105 mortgage loan applications as reported in 2011.
- Consent order requires a CMP of \$425,000, correction and resubmission of 2011 HMDA data, and the development and implementation of an effective HMDA CMS.

Washington Federal

- Bank headquartered in Seattle, WA had significant errors in 5,785 mortgage loan applications reported in 2011.
- Consent order requires a CMP of \$34,000, correction and resubmission of HMDA data, and the development and implementation of an effective HMDA CMS.

Potential HMDA non-reporters

Warning Letter Pilot Project

- Office of Enforcement proposed sending letters warning companies that the Bureau has received information about their conduct which, if true, potentially violates the law.
- Fair Lending is looking at using the concept for entities that have failed to report HMDA data but are required to do so.
- Initial screen has identified [REDACTED] companies that meet HMDA reporting requirements for both 2012 and 2013 without filing, covering a combined \$ [REDACTED] of origination across [REDACTED] loans.
- Currently working on which entities to contact and the wording of the letter.

Resources and Where to Find Them

Statutes and Regulations:

- ECOA <http://www.gpo.gov/fdsys/pkg/USCODE-2011-title15/html/USCODE-2011-title15-chap41-subchapIV.htm>
- Reg B http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&tpl=/ecfrbrowse/Title12/12cfr1002_main_02.tpl
- HMDA <http://www.gpo.gov/fdsys/pkg/USCODE-2011-title12/pdf/USCODE-2011-title12-chap29.pdf>
- Proposal to amend HMDA <https://www.federalregister.gov/articles/2014/08/29/2014-18353/home-mortgage-disclosure-regulation-c>
- Reg C http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&tpl=/ecfrbrowse/Title12/12cfr1003_main_02.tpl
- CRA <http://www.gpo.gov/fdsys/pkg/USCODE-2013-title12/pdf/USCODE-2013-title12-chap30.pdf>
- FHA <http://www.justice.gov/crt/about/hce/title8.php>

Guidance:

- CFPB guidance on disparate impact http://files.consumerfinance.gov/f/201404_cfpb_bulletin_lending_discrimination.pdf
- CFPB bulletin on indirect auto lending and ECOA http://files.consumerfinance.gov/f/201303_cfpb_march_Auto-Finance-Bulletin.pdf
- CFPB bulletin on Social Security Disability Income Verification http://files.consumerfinance.gov/f/201411_cfpb_bulletin_disability-income.pdf
- CFPB bulletin on Housing Choice Voucher Ownership Program Section 8 Housing Choice Voucher Homeownership Program http://files.consumerfinance.gov/f/201505_cfpb_bulletin-section-8-housing-choice-voucher-homeownership-program.pdf
- CFPB bulletin on HMDA and Regulation C http://files.consumerfinance.gov/f/201310_cfpb_hmda_compliance-bulletin_fair-lending.pdf
- Exam manual http://files.consumerfinance.gov/f/201210_cfpb_supervision-and-examination-manual-v2.pdf
- Interagency Fair Lending Examination Procedures <https://www.ffiec.gov/pdf/fairlend.pdf>

MOU:

- DOJ http://files.consumerfinance.gov/f/201212_cfpb_doj-fair-lending-mou.pdf

Resources and Where to Find Them (continued)

Consent orders/complaints:

- Ally <http://www.consumerfinance.gov/newsroom/cfpb-and-doj-order-ally-to-pay-80-million-to-consumers-harmed-by-discriminatory-auto-loan-pricing/>
- National City/PNC <http://www.consumerfinance.gov/newsroom/cfpb-and-doj-take-action-against-national-city-bank-for-discriminatory-mortgage-pricing/>
- Provident Funding Associates <http://www.consumerfinance.gov/newsroom/cfpb-and-department-of-justice-take-action-against-provident-funding-associates-for-discriminatory-mortgage-pricing/>
- Synchrony Bank <http://www.consumerfinance.gov/newsroom/cfpb-orders-ge-capital-to-pay-225-million-in-consumer-relief-for-deceptive-and-discriminatory-credit-card-practices/>
- DOJ Redlining Complaints and Consent Judgments: <http://www.justice.gov/crt/about/hce/caselist.php>
- HUD Redlining Charges and Conciliation Agreements: http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp

Background information:

- Wealth inequality has widened along racial, ethnic lines since end of Great Recession (Pew Research Center) <http://www.pewresearch.org/fact-tank/2014/12/12/racial-wealth-gaps-great-recession/>
- The Case for Reparations (Atlantic Monthly article describing in part the history of discriminatory lending) <http://www.theatlantic.com/features/archive/2014/05/the-case-for-reparations/361631/>
- Living Apart: How the Government Betrayed a Landmark Civil Rights Law (Pro Publica) <http://www.propublica.org/article/living-apart-how-the-government-betrayed-a-landmark-civil-rights-law>
- Redlining maps <http://www.urbanosis.org/projects/holc-fha/digital-holc-maps/>
- Allegations in the Wells Fargo steering case: <http://www.relmanlaw.com/docs/Baltimore-Declarations.pdf>
- Article on reverse redlining: http://sites.temple.edu/lawreview/files/2012/02/83.4_Nier_St.Cyr_.pdf

Questions?

Fair lending enforcement working group

[REDACTED]