

# BUCKLEY

## Fair Lending and Fair Servicing Practice

The major federal fair lending laws — the Equal Credit Opportunity Act and the Fair Housing Act — date to the 1960s and 1970s, but over the past decade federal and state agencies have renewed their focus on enforcing them. The creation of the Consumer Financial Protection Bureau and its emphasis on fair lending and servicing, emerging Department of Housing and Urban Development rules, continued enforcement by the Department of Justice, Federal Reserve, Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency, along with the growing emphasis by state attorneys general have created a prolonged period of tight government scrutiny of fair lending and servicing.

Lenders' use of alternative data and emerging technologies like artificial intelligence, volatile economic conditions, innovative loan products and servicing practices, and data proliferation have further intensified the spotlight on compliance with fair lending and servicing laws.

Buckley, which *Chambers USA* calls “a firm of preeminent repute in the fair lending space,” has led the way in defending the nation's top banks, mortgage lenders, auto lenders, credit card issuers, fintech companies, and other consumer finance companies in traditional and emerging areas of fair lending and fair servicing. We are well-positioned to handle the known issues, and more importantly, anticipate future trends because of our knowledge of this area — which allows us to prepare our clients accordingly.

Our team of experienced fair lending and servicing attorneys has been directly involved in the vast majority of major developments in fair lending and servicing policy, regulation, enforcement, and litigation over the years, and we regularly rely upon this insight to assist our clients in handling traditional issues and novel challenges.

Our deep understanding of fair lending and servicing issues and practical advice engender our clients' trust, and a history of success in representing clients in complex matters has put our Fair Lending and Servicing practice at the top of list when potential issues arise. The attorneys who are part of Buckley's Fair Lending and Servicing practice routinely represent and advise clients on a variety of significant matters, including:

- Representing financial services clients in government enforcement actions, investigations, and other administrative proceedings
- Counseling clients through federal and state agency fair lending and servicing examinations

- Representing clients in complex civil litigation involving complex regulatory issues
- Conducting risk assessments and regulatory compliance reviews, including providing both qualitative and quantitative support drawing on the firm's experience in Bayesian Improved Surname Geocoding (BISG) proxy methodology
- Providing comprehensive regulatory counseling and compliance advice to mitigate fair lending risk
- Designing and implementing forward-looking fair lending compliance and monitoring programs, including those in emerging areas such as the alternative financial services space and the use of technology and innovation in lending
- Advising on issues related to the intersection of emerging technologies and innovation with fair lending and servicing laws and regulations, including alternative data, artificial intelligence, and machine learning

From redlining and steering allegations to pricing, underwriting, and loan servicing discrimination claims, we have represented clients in hundreds of fair lending and servicing matters initiated by federal agencies, state regulators, and private parties, as well as in self-initiated reviews. Representative matters handled by attorneys in Buckley's Fair Lending and Servicing practice include:

- Representing numerous entities in concurrent investigations and enforcement actions by federal and state regulators, including the DOJ, HUD, CFPB, prudential banking regulators, and state attorneys general, related to allegations of discriminatory lending practices
- Representing numerous banks and nonbanks in escalated state and federal government supervisory activity regarding origination and servicing practices
- Representing financial institutions in housing discrimination complaints filed by individuals and consumer advocacy groups with local and state civil rights commissions and HUD, including complaints referred to DOJ
- Actively advising lenders on fair lending risk from digital media, marketing, and advertising
- Conducting fair lending and fair servicing risk assessments for financial

institutions, including entities offering mortgages, auto loans, credit cards, student loans, and personal loans

- Representing bank and nonbank indirect auto creditors in both public and nonpublic settlements with the CFPB and the DOJ over alleged fair lending violations
- Representing banks in putative class actions and complex litigation alleging discrimination in various loan products, including allegations of redlining and discrimination in pricing and underwriting
- Representing specialty lenders in multi-agency fair lending supervision, investigations, and internal reviews
- Defending numerous financial institutions in fair lending protests to transactional applications filed with the federal banking agencies
- Defending complex litigation brought by several municipalities alleging discriminatory lending practices with negative impacts to the municipality