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## THE RECENT ONSLAUGHT OF FAIR LENDING LITIGATION AGAINST MORTGAGE INDUSTRY PARTICIPANTS

*In this article, the authors explore exemplars of a recent onslaught of government and private fair lending litigation against mortgage industry participants. The litigation arises in a variety of contexts, including claims challenging “modern-day redlining,” loan origination, servicing, and marketing practices; the use of machine-learning algorithms in advertising; and appraisal issues. They identify best practices for institutions that seek to proactively manage fair lending risk in this litigious environment.*

By Olivia Kelman and Lanette Suárez Martín \*

The Biden administration announced a clear policy directive days after the president’s inauguration: “The Federal Government has a critical role to play in . . . enforcing Federal civil rights and fair housing laws” and, to fulfill that role, “the Federal Government shall work with communities to end housing discrimination, to provide redress to those who have experienced housing discrimination, [and] to eliminate racial bias and other forms of discrimination in all stages of home-buying and renting[.]”<sup>1</sup>

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<sup>1</sup> The White House, *Memorandum on Redressing our Nation’s and the Federal Government’s History of Discriminatory Housing Practices and Policies* (Jan. 26, 2021).

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With the passage of nearly two years, it is clear that the federal agencies responsible for enforcing laws that prohibit discrimination in residential real-estate related transactions have actively carried the torch, filing numerous fair lending lawsuits against many different types of mortgage industry participants to challenge a broad assortment of conduct. Private parties — including advocacy organizations, individual persons, and local government entities like cities and counties — have similarly increased their pursuit of aggressive fair lending claims in courts. The mere accusation of discrimination frequently involves significant tangible and reputational costs, and in this environment, mortgage industry participants must be on notice that fair lending represents an area of heightened risk.

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