New York State
Department of Financial Services

Report on Apple Card Investigation

March 2021

I. Summary

The New York State Department of Financial Services (the "Department" or "DFS") is the State's financial services and insurance regulator. The Department supervises and regulates the activities of approximately 1,500 banking and other financial institutions with assets totaling more than $2.6 trillion, including state-chartered banks, branches and agencies of foreign banks, credit unions, credit reporting agencies, and mortgage bankers and servicers, as well as the activities of nearly 1,800 insurance companies with assets totaling more than $4.7 trillion. The Department's Consumer Protection and Financial Enforcement Division protects consumers of financial products and services by fighting consumer fraud, ensuring compliance with federal and state law, and educating consumers. Among the Department's responsibilities is enforcing New York and federal fair lending laws.

The Department issues this report to inform the public of the outcome of its investigation of allegations of discrimination against women in the underwriting of the Apple Card co-branded credit card ("Apple Card") offered by Apple Inc. ("Apple") and underwritten by Goldman Sachs Bank USA ("Goldman Sachs" or the "Bank"), a New York State-chartered bank.

In November 2019, allegations surfaced on Twitter regarding discrimination by the Bank in extending credit for Apple Card. Consumers complained that the Bank, in its underwriting of Apple Card credit card accounts, offered lower credit limits to women applicants and denied women accounts unfairly. These claims, in turn, brought the issue of equal credit access to the broader public, sparking vigorous public conversation about the effects of sex-based bias on lending, the hazards of using algorithms and machine learning to set credit terms, as well as reliance on credit scores to evaluate the creditworthiness of applicants.

Lenders, including credit card issuers, are prohibited from considering an applicant's sex or gender identity or expression when deciding the offer and terms of credit. The Department, authorized to enforce federal and state fair lending laws and mandated to protect consumers, launched an investigation into the allegations.

As detailed below, the Department's exhaustive review of documentation and data provided by the Bank and Apple, along with numerous interviews of consumers who complained of possible discrimination, did not produce evidence of deliberate or disparate impact discrimination but showed deficiencies in customer service and transparency, which the Bank and Apple have since taken steps to remedy. Additionally, this report addresses issues illuminated by the public discussion of the allegations, including misconceptions about spousal "shared finances" and authorized users, how to build credit history, the need for increased transparency in credit decisions, bias inherent in credit scoring, and the risks and benefits of using artificial intelligence in credit decision-making.

II. Background

a. History of Discrimination against Women in Lending

Before the passage of the federal Equal Credit Opportunity Act ("ECOA") in the 1970s, racial, ethnic, and sex-based bias were inherent and even expected in creditworthiness determinations. Professional credit managers routinely applied their "judgment" or "intuition" to decision-making. These beliefs often included false and harmful assumptions regarding women's abilities to manage finances, their likelihood of earning an income independently, and the perceived negative effect on their income potential from childbearing. Consequently, single and married women, whether employed full-time or not, and regardless of "breadwinner" status, were not offered credit independently and typically had to provide a male co-signer.

Statistical scoring, introduced in the mid-twentieth century, was intended in part to reduce or eliminate unacceptable human biases from credit determinations. Nonetheless, lenders continued to consider a broad range of data in calculating creditworthiness, including data associated with discriminatory assumptions. The industry continued to seek to determine an applicant's "good character," the same quality that credit managers historically assigned applicants, but through the prism of statistical analysis.

Upon its passage, ECOA prohibited reliance on sex or marital status, and then, later, race, nationality, religion, age, and the receipt of public assistance, in lending decisions. In sum, ECOA and related New York law rendered impermissible the statistical scoring that took into account these consumer characteristics.[1] These laws are believed to have reduced bias in credit decision-making and broadened access to credit. At the same time, women and minorities in the United States continue to qualify generally for less credit and at higher cost than white men. The Department's commitment to combating and remediating the problem of sex-based discrimination in lending recognizes this history.

b. Apple Card

Apple and Goldman Sachs launched Apple Card in August 2019. Although advertisements stated that Apple Card was "created by Apple, not a bank," Goldman Sachs was responsible for the Apple Card credit policy and underwriting decisions as well as the management of the Apple Card program, including customer service. Advertising also promoted Apple Card as helping users "lead a healthier financial life" through the elimination of fees and provision of tools for managing spending and reducing interest. Marketing materials further

[1] The New York State Human Rights Law contains equal credit opportunity provisions prohibiting discrimination on the basis of, "race, creed, color, national origin, sexual orientation, gender identity or expression, military status, age, sex, marital status, disability, or familial status." New York State Exec. Law § 296-a.

stated Apple Card would offer more privacy to users than other credit cards: announcing the card's introduction, Tim Cook, CEO of Apple, said it was designed to "put privacy and security first." The card additionally extended cash-back incentives, enhanced for purchases of Apple products, and Apple touted that iPhone users could apply using an app on their phones and begin using their new account "in minutes." These claims attracted consumers, who flocked to apply for the Apple Card. In the first few months the card was available, millions of Americans, including hundreds of thousands of New Yorkers, applied for Apple Cards.

c. Allegations of Discrimination

The initial allegations that caught public attention originated from a tech entrepreneur (the "Consumer") who reported on Twitter that although his wife and he file joint tax returns and live in a community property state, he was offered a credit limit on an Apple Card 20 times higher than her offer. In a series of tweets, beginning November 7, 2019, the Consumer ascribed the difference in credit limits to sex discrimination. The Consumer also voiced concerns that the Bank relied on algorithms and machine learning for credit decision-making and complained that an Apple Card customer service agent could not explain these algorithms or the basis for the difference in credit limits. Furthermore, the Consumer was frustrated by the Bank's policy requiring new Apple Card account holders to maintain an Apple Card account for six months before they could be eligible for a credit limit increase.

The Consumer's complaints generated many Twitter responses, including tweets by a co-founder of Apple who tweeted that he, too, was offered dramatically better credit terms than his wife was offered, even though the couple shared bank and credit card accounts and held their assets jointly. The Bank, upon re-review of both sets of credit files, raised the credit limits of both women to match the credit limits of their respective spouses within days after their

complaints surfaced. At that time, the Bank also eliminated the six-month waiting period for appeals of credit decisions.

III. The Department's Investigation

The Department undertook an investigation into whether the Bank unlawfully discriminated against women in Apple Card underwriting. In the course of its investigation, the Department reviewed several thousand pages of records and written responses from the Bank and Apple, interviewed witnesses, and met with representatives of both companies and analyzed underwriting data from the Bank. The Department also interviewed Apple Card applicants who complained of discrimination. Details of the investigation are set forth below.

a. Fair Lending Review

Under federal and New York law, lenders, including credit card issuers, are barred from considering an applicant's sex and marital status in issuing credit. Lenders are permitted, however, to offer different terms to borrowers based on objective differences in their creditworthiness.

The law generally recognizes two categories of discrimination in lending: disparate treatment and disparate impact. The first prohibited category of discrimination, disparate treatment, refers to the intentional use of prohibited classifications (such as sex and marital status) in lending decisions. Disparate impact, on the other hand, refers to facially neutral lending policies that nevertheless result in unequal outcomes for members of protected classes, such as race or sex. DFS reviewed the Apple Card policies and practices for evidence of both disparate treatment and disparate impact and found that women and men with equivalent credit characteristics had similar Apple Card application outcomes.

With regard to disparate treatment, the Department did not find evidence of unlawful intentional discrimination against women or members of other protected classes. The Department did not find, for example, any policy providing for lower credit limits for women or evidence suggesting the Bank intentionally judged women and men by different standards.

Likewise, the Department did not find evidence of disparate impact fair lending violations in the Bank's Apple Card credit lending decisions. The Department's Consumer Examinations Unit ("CEU") , which specializes in statistical analysis of lending outcomes to detect disparate impact and evaluates lenders of all types regulated by the Department, evaluated the Bank's Apple Card underwriting data to determine whether the Bank's credit decisions resulted in disparate impact. CEU regularly conducts fair lending exams of all New York state-chartered banks. During the last year, through its examinations of other institutions supervised by the Department, CEU has uncovered and remediated a variety of improper lending practices, including inadequate fair lending training, inadequate fair lending safeguards for third parties involved in the lending process, and excessive discretion afforded to lending personnel in evaluating loan applications.

Using a very large data set of the Bank's Apple Card underwriting data for nearly 400,000 New York applicants, covering applications dating from the launch of Apple Card until the time of the initial discrimination complaints, CEU used regression analysis, a standard technique, to evaluate the underwriting. CEU's analysis did not bear out violations of fair lending laws. Additionally, the Department found that the Bank had a fair lending program in place for ensuring its lending policy—and underlying statistical model—did not consider prohibited characteristics of applicants and would not produce disparate impacts.

At the Department's request, the Bank also explained its Apple Card credit decisions for individuals who sent discrimination complaints to the Department. In each instance, the Bank was able to identify the factors that led to the credit decisions, such as credit score, indebtedness, income, credit utilization, missed payments, and other credit history elements. These decisions appeared to be consistent with the Bank's credit policy, and none of the factors identified was an unlawful basis for a credit determination.

b. Review of Other Consumer Complaints

1. Lack of Transparency

Consumers also complained to the Department of a lack of transparency in the process for determining credit terms. Although the law requires lenders to explain underwriting decisions to applicants only in the event of a denial of credit, the Department notes that transparency as to account holders' credit terms supports consumer trust. The Consumer suggested on Twitter that the Bank used a "black box" algorithm that produced unexplainable outcomes. Although the Bank was able to explain, at the request of the Department, the credit decisions for all of the individuals who filed complaints, lack of transparency to the complainants themselves in this case seemed to produce confusion that could have been mitigated.

A more robust, consumer-focused policy for account holder requests appealing Apple Card credit terms could have reduced customer confusion. Requiring account holders to wait six months to appeal credit terms frustrated applicants who were surprised by their Apple Card credit limits and annual percentage rates. In the aftermath of media scrutiny in November 2019, the Bank's prompt change in policy demonstrated that the Bank was capable of reviewing credit terms and offering modifications more quickly than initially allowed.

Responsiveness to customer appeals is especially important when account holders have little insight into the basis for their credit terms. As noted above, the federal law mandates that lenders explain only credit denials to applicants, not the reasons for the amount and terms of credit granted. At the same time, in the rush to roll out Apple Card, the Bank seemed unprepared for the possibility that its complex underwriting model that allowed applicants to begin using their Apple Cards right away would produce outcomes that might surprise applicants. These issues were compounded by internal deadlines and pressure on the Bank to roll out the Apple Card by a particular date. In the end, a more nimble policy for credit term review at the time of the Apple Card introduction would have provided consumers with a greater sense of fair treatment.

The Department notes the recent efforts of Goldman Sachs and Apple to increase transparency through the introduction of the "Path to Apple Card." In the course of the investigation, the Department and the Bank engaged in constructive dialogue in connection with consumer concerns set forth in this report, including transparency in the issuance of credit. The Bank and Apple focused on these issues and, in the course of these discussions, launched a new initiative, "Path to Apple Card."

Introduced in June 2020, Path to Apple Card is a program designed to assist declined applicants in improving their credit, with the goal of obtaining an Apple Card upon completion of the program. If invited to join Path to Apple Card, a consumer receives step-by-step instructions which, if completed satisfactorily, will lead to approval for the Apple Card. These step-by-step instructions may include, for example: making timely payments on all loans and lines of credit, reducing credit card and personal loan debt, and resolving past due balances. More than 70,000 consumers have enrolled in the Path to Apple Card program. The initial Path

to Apple Card applicants are nearing completion of the program, and nearly 5,000 applicants have been approved for an Apple Card. Nearly one-third of applicants are on track to receive approval for an Apple Card in the coming weeks.

The Department notes also that the Apple Card website now provides an explanation for the credit terms issued by Goldman Sachs.[2] This portion of the website, "A Closer Look at our Application Process," provides a snapshot of the data the Bank draws upon in setting credit terms, including utility payment histories, disposable income, and information provided in credit reports provided by TransUnion:

A wider window for approval.

FICO scores may be the industry's standard for credit decisions, but they don't always tell the whole story of your financial fitness. To get a better picture of your creditworthiness, Goldman Sachs draws from a wide variety of data, including:

TransUnion bureau data, which gives a record of your credit performance on past and current debt obligations.

The disposable income left after your monthly debt obligations.

Where applicable, your available payment history with utilities such as telecom, gas, and electricity.

Your history of paying down debts based on your past credit activities.

The annual income you report on your Apple Card application.

The same webpage offers explanations regarding how consumers may increase the probability of Apple Card approval. These recommendations include paying more than the minimum on debt payments, building a credit history, and limiting applications to credit card issuers within a brief period of time. A snapshot of the website is provided below:

[2] https://www.apple.com/apple-card/financial-health/

Good money habits lead to good credit.

You can do several things to boost your chances of approval:

- When possible, pay at least (or more than) the minimum amounts due on your debt payments.
- Ensure that you have disposable income left over after your monthly debt obligations.
- Avoid submitting applications to multiple credit issuers within a short time span.
- Check your credit report — it's free to do once a year — as it is the source material for your FICO Score 9. If something looks inaccurate, contact the creditor associated with your account and/or dispute the item with your credit bureaus.
- The length of your credit history is an important aspect of your credit score and getting new credit. You can build credit by opening an account in your name, being an authorized user on someone else's account, and periodically using the accounts you already own and paying them on time.

2. *Different Credit Outcomes for Spouses*

In the course of the investigation, the Department learned it is a common misconception that spouses are entitled to equal credit terms from credit card issuers if they "shared finances." Like the Consumer on Twitter, they expressed the belief that they should have received the same Apple Card offers as their spouses because they shared bank accounts and other assets.

Although these couples complained that they were treated differently by the Bank, they typically had different credit scores, and a closer look revealed differences in credit profiles between spouses. In some instances, for example, one spouse was named on a residential mortgage, while the other spouse was not. Likewise, some individuals carried multiple credit cards and a line of credit, while the other spouse held only a single credit card in his or her name. These distinguishing characteristics can lead to differing credit offers. This is because creditors consider an applicant's experience with and history of managing credit to be a predictor of future credit management, so a credit history with multiple tradelines and mix of credit types, such as a mortgage, student loans, and credit cards with on-time payments may produce more favorable

credit terms than a sparser credit history with just one or two credit cards, even if the those cards are always paid off fully and timely. (Creditors are also required to consider an applicant's ability to pay in making underwriting decisions, though they have discretion to consider only independent resources of an applicant or to take into account resources to which the applicant has a reasonable expectation of access. The Apple Card application asked applicants to include "all sources of income," including "income from someone else," such as a spouse.)

3. Inability to Add an Authorized User

Consumers also expressed frustration with Apple Card's policy disallowing authorized users. An authorized user is an individual permitted by the account holder to use a credit card. Adding an authorized user does not involve creditor review of the authorized user's credit history, and the authorized user is generally not legally responsible for the debts on the account.[3] (A joint account holder, in contrast, is considered in the underwriting process and is fully liable for debts on an account.) Authorized user status is frequently used by couples who share finances. Without the option of authorized user status, any consumer who wishes to use an Apple Card must apply and be individually evaluated through the Bank's underwriting process. To date, this remains the Apple Card policy, though according to recent news reports, Apple and the Bank are planning to introduce a multi-user feature for Apple Card that will allow an account holder to authorize family members to use the account holder's Apple Card.

Although authorized user status can offer convenience, consumers should be aware of potential pitfalls. Admittedly, consumers can commence building credit history through authorized user status. At the same time, lenders may give less weight to authorized user status in evaluating creditworthiness. In other words, relying on access to credit as an authorized user

[3] Liability for debts may vary depending on state law, as described below.

rather than establishing independent accounts may lead to a weaker credit history. Additionally, a spouse ultimately may be liable for account debts even if only an authorized user. In these instances, the authorized user spouse accrues a lesser credit history, but remains liable for debts on the account.[4] Furthermore, if an account holder's credit history declines, the authorized user's credit record may be negatively affected.

The Department encourages individuals to establish their own credit history responsibly. Opening an individual credit card account and making timely payments—no matter how small—provides a baseline for growing a credit history. Over time, requesting credit increases likewise serves to enhance credit history. Similarly, other loans—including auto loans and student loans—should be paid timely. Banks and credit unions also offer low-risk credit-builder loans designed to help build credit. In addition, couples should recognize that naming only one spouse on a mortgage loan limits the ability of the other to grow credit based on that mortgage.

IV. Contextualizing the Investigation's Findings: Credit Scoring and Credit Access More Generally

The consumers who initially raised concerns about Apple Card generally had not encountered barriers to obtaining credit. Indeed, among the consumers who submitted complaints to the Department following the allegations on Twitter, almost all were moved to complain because, as a result of prior experience with credit applications, they were surprised that they were denied an Apple Card or hadn't been granted more favorable terms for their Apple Card. However, unequal access to credit is a systemic problem in need of a remedy. The outcome of this investigation—that the Department did not find unlawful discrimination against

[4] For example, any property held jointly by a couple may be subject to a claim from a creditor against the account holder. Also, in community property states, debts are shared by the couple in the course of a divorce. Even in states such as New York, which is not a community property state, a judge could assign credit card debts to an authorized user spouse in a divorce settlement.

women applicants for Apple Card, that the individuals who raised concerns tended to have good access to credit otherwise, and that the problems might have been prevented by better management of the product's roll-out—does not prove otherwise. The use of credit scoring in its current form and laws and regulations barring discrimination in lending are in need of strengthening and modernization to improve access to credit.

a. Understanding Credit Scores

Credit scoring, commonly relied upon by lenders for credit determinations, affects nearly all consumers attempting to access credit, but the source of credit scores and their effect on credit access is not necessarily well-known. Almost all applicants who submitted complaints to the Department expressed the belief that their credit scores should have led to approval for an Apple Card or more favorable terms, but their understanding of the bases for their scores diverged substantially.

There are many types of credit scores, and an individual's credit scores can change frequently. In addition to Fair Isaac, the source of FICO scores, the three major credit reporting agencies produce VantageScore credit scores, and creditors also produce in-house proprietary scores, which they may use in combination with FICO and VantageScore to evaluate creditworthiness.[5] In determining creditworthiness, lenders may consider an applicant's debt, income, carried balances, payment history, and history of credit accounts as well as other data. Scores may vary depending on the weight that the scoring companies and creditors attribute to each of these factors, as well as on the credit reporting bureau that is the source of the information upon which they are based. (Not all credit bureaus retain the same information, and scores fluctuate as a consumer's borrowing and repayment activity changes.) Creditors may also

[5] *Differences Between Consumer- and Creditor-Purchased Credit Scores,* Consumer Financial Protection Bureau at 20 (2012).

consider factors such as additional credit applications and late payments as relevant to the applicant's likelihood of credit repayment.[6]

Consumers should take advantage of free annual credit reports to review their own credit reports for errors because such errors could affect creditworthiness. An error-free credit report helps ensure that consumers are offered credit for which they are qualified given their actual credit history. This is especially consequential for large purchases.[7] A 2013 Federal Trade Commission report found that 5% of consumers' credit reports contained errors sufficient to increase their cost of borrowing (a 2004 study by the National Association of Public Interest Research Groups found a greater percentage of similarly serious errors).[8] Cathy O'Neil, in her 2016 book, *Weapons of Math Destruction: How Big Data Increases Inequality and Threatens Democracy,* reports that getting errors fixed can be extremely difficult—"slow to the point of tortuous." Detailed advice on how to check one's own credit record, including a link to free annual credit reports, is available on the Department's website:

https://www.dfs.ny.gov/consumers/banking_money/credit_report_score.

b. Historical Discrimination Reflected in Current Credit Scores

Even when credit scoring is done in compliance with the law, it can reflect and perpetuate societal inequality. It is not unlawfully discriminatory for a lender to consider income, assets, credit history, and similar factors to predict likelihood of default of an applicant. However,

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[6] An application for credit often entails a "hard inquiry" on a person's credit, which shows up in a credit record and can reduce the person's credit score at least temporarily. Apple Card applications triggered a hard inquiry only after an offer of credit had been made, and the applicant had accepted the terms, so rejected applicants' credit scores were not affected by the denials.

[7] https://www.consumerfinance.gov/ask-cfpb/when-should-i-review-my-credit-report-en-312/

[8] Cathy O'Neil, *Weapons of Math Destruction: How Big Data Increases Inequality and Threatens Democracy* (2016); Lisa Rice and Deidre Swesnik, *Discriminatory Effects of Credit Scoring on Communities of Color,* 46 Suffolk Univ. L. Rev. 935, 939, 950 (2013) (describing the unreliability of the sources of information reported to credit bureaus, authors cite study by the National Association of State PIRGs that found, "79% of credit reports contained errors; 25% of credit reports contained significant errors that would result in denial of credit; 54% had inaccurate personal information; 30% listed closed accounts as open; and 8% did not list major credit accounts.")

because these same variables often reflect the nation's long history of racial and gender discrimination, even the exclusive consideration of such financial characteristics does not prevent that history of discrimination from affecting credit scores and, consequently, access to credit. Lack of access to affordable and quality credit perpetuates inequality by imposing on those with fewer resources higher costs in paying for necessities, and inhibiting the ability of the poor to build wealth.[9]

Moreover, to the extent consumers do have access to credit, the type of credit they use can affect their credit scores. As a research report from the National Fair Housing Alliance points out, consumers with limited access to mainstream financial services, who tend to be members of communities of color, may be constrained in their ability to build and maintain good credit.[10] For example, whereas mainstream lenders report repayment and default, payday lenders do not typically report when a borrower pays off a loan, but credit reports frequently contain information on unpaid payday loans.[11] Thus, the credit records of borrowers who repay their payday loans will not find this evidence of their creditworthiness reflected in their credit scores, but those who fail to pay them off will see their scores harmed. Similarly, riskier credit products, regardless of the source, tend to harm credit scores. Borrowers with similar characteristics are more likely to default on subprime loans than prime loans, and targeting minority groups for risky credit products, including individuals qualified for prime products, is not a practice of the distant past.[12] In 2012, Wells Fargo Bank settled with the federal government after an

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[9] *See, e.g.,* National Consumer Law Center Racial Justice and Economic Opportunity Project, *Past Imperfect: How Credit Scores and Other Analytics "Bake In" and Perpetuate Past Discrimination* (2016),

[10] Rice and Swesnik at 947 (2013); *see also*, Laura Sullivan, *et al., The Racial Wealth Gap: Why Policy Matters*, Institute for Assets and Social Policy, Brandeis University and Demos at 10 (2015) ("proliferation of payday lenders in many neighborhoods of color, combined with the scarcity of banks and credit unions, is another likely contributor to weak credit").

[11] Payday loans are prohibited in New York State.

[12] Rice and Swesnik at 954; *see also,* Sullivan, *et al.,* at 10

investigation showed that the bank steered Black and Latino borrowers to subprime mortgages while offering prime loans to similarly qualified white borrowers.[13]

Compounding this issue, when lenders develop underwriting models, they rely on past lending data to test new models. Data is sometimes purchased, for example, from FICO. Long-time lenders may use their own internal data for testing models. These data, in turn, may reflect historical bias or "legacy bias," i.e., bias from a prior product, or latent bias produced by histories of discrimination. Thus, the data used by creditors in developing and testing a model can perpetuate unintended biased outcomes.

c. Alternatives to Traditional Creditworthiness Evaluations

Given traditional credit underwriting's reliance on data reflecting deeply-rooted disparities, introducing alternative underwriting methods may help reduce these legacy biases and award consumers credit for transactions not typically considered in the underwriting process. The use of alternative data in underwriting may promote greater access to credit and to higher-quality, affordable credit products, in addition to a reduction in underwriting bias. The use of alternative data could also provide a basis for underwriting consumers who are currently considered "credit invisible," meaning they have no credit history with the major credit reporting agencies or have only thin or old credit histories.[14]

At the same time, these methods also pose potential risks. These risks include inaccuracy in assessing creditworthiness, discriminatory outcomes, and limited transparency. Examples of

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[13] *Id.*; Sullivan, *et al.*, at 10 (citing https://www.justice.gov/opa/pr/justice-department-reaches-settlement-wells-fargo-resulting-more-175-million-relief).

[14] Testimony of Chi Chi Wu, U.S. House of Representatives Committee on Financial Services Task Force on Financial Technology, "Examining the Use of Alternative Data in Underwriting and Credit Scoring to Expand Access to Credit" 1 (July 25, 2019), https://www.nclc.org/images/pdf/credit_reports/testimony-alternative-data-credit-scoring.pdf

alternative data include monthly utility payments, bank account cash flow, and web-browsing history. Incorporating these methods could enhance or tarnish credit history.

In December of 2019, multiple federal agencies issued an interagency statement[15] on the use of alternative data in underwriting, stating that:

> [U]se of alternative data may improve the speed and accuracy of credit decisions and may help firms evaluate the creditworthiness of consumers who currently may not obtain credit in the mainstream credit system. Using alternative data may enable consumers to obtain additional products and/or more favorable pricing/terms based on enhanced assessments of repayment capacity. These innovations reflect the continuing evolution of automated underwriting and credit score modeling, offering the potential to lower the cost of credit and increase access to credit.

Noting the potential to reduce risk, the agencies urged firms to apply "robust compliance management [that] includes appropriate testing, monitoring and controls to ensure consumer protection risks are understood and addressed." The agencies also affirmed that fair lending laws would apply to the use of alternative data and innovative methods.

The interagency statement specifically mentioned so-called "second look" programs as a potential tool for improving credit opportunity. Second look programs use alternative data to evaluate applicants who otherwise would be declined. Using alternative data in these programs reduces the risk of inadvertent harm to a consumer's credit score, since consumers whose scores are sufficient to obtain credit using traditional underwriting would not proceed to a "second look" evaluation, leaving only those consumers for whom alternative data may provide a benefit or leave them with the same outcome as the initial review -- denial. During the months following the Apple Card roll-out, Goldman Sachs ran such a program, offering some applicants with limited or no credit histories an alternative basis for approval: the option to provide their Apple customer data to use in underwriting. These applicants otherwise would have been denied

[15] https://www.fdic.gov/news/speeches/spdec0319.pdf

an Apple Card. For each applicant, Apple released to the Bank the applicant's prior history of purchasing Apple devices and the payment method(s) on file with Apple. Applicants approved for an Apple Card through this process were granted at most a $2,500 credit limit. However, the Bank terminated the program after concluding that the data did not improve underwriting accuracy. The Department did not find any violations associated with this program.

d. Conclusion

The Department aims to encourage innovations that improve credit access while maintaining rigorous standards to prevent discrimination. With input from stakeholders, including consumer advocates, the banking industry, and the emergent fintech sector, and other experts, the Department is working to continually adapt its regulatory approach to achieve these two goals.