

THE ATTORNEY GENERAL'S
2007 ANNUAL REPORT TO CONGRESS
PURSUANT TO THE
EQUAL CREDIT OPPORTUNITY ACT
AMENDMENTS OF 1976

SUBMITTED BY
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This report is submitted pursuant to Section 1691f of the Equal Credit Opportunity Act, as amended (ECOA), 15 U.S.C. § 1691, et seq., regarding the activities of the Department of Justice (DOJ or the Department) under the statute. This report covers the 2007 calendar year.

I. REFERRALS

Pursuant to ECOA, bank regulatory agencies with enforcement responsibilities under this law “are authorized to refer matters to the Attorney General with a recommendation that an appropriate civil action be instituted.” The agencies “shall refer the matter to the Attorney General whenever the agency has reason to believe that 1 or more creditors has engaged in a pattern or practice of discouraging or denying applications for credit in violation of section 1691(a) of this title.” 15 U.S.C. § 1691e(g).

In 1996, upon the recommendation of the General Accounting Office, DOJ provided guidance to the bank regulatory agencies on pattern or practice referrals. We described the distinction between referrals that we would return to the agency for administrative resolution and those we would pursue upon referral. Referrals that would likely be returned generally have the following characteristics: (1) the practice has ceased and there is little chance that it will be repeated; and (2) the violation may have been accidental or arose from ignorance of the law’s more technical requirements, such as spousal signature violations and minor price breaks for certain age groups not entitled to preferential treatment.

In 2007, DOJ received 27 fair lending referrals involving potential ECOA claims from the bank regulatory agencies: 15 from the Federal Deposit Insurance Corporation (FDIC); nine from the Federal Reserve Board (FRB); and three from the Office of Thrift Supervision (OTS). These referrals included the following types of alleged discrimination: 15 involving marital status; seven involving race or national origin; four involving age; and one involving religion. As of December 31, 2007, we had returned 16 of these referrals to the agencies for administrative resolution and continued to investigate the allegations in the eleven remaining referrals. The referrals are described (by agency) below:

Federal Deposit Insurance Corporation

The FDIC made 15 referrals in 2007: 11 involved marital status discrimination; two involved age discrimination; one involved race discrimination; and one involved religious discrimination.

We returned 13 of these referrals for administrative resolution during 2007. Two of the returned referrals involved allegations of age discrimination where a lender

provided preferential treatment to persons in age groups not entitled to preferential treatment. Ten of the returned referrals involved allegations of marital status discrimination, where the lender either applied different underwriting processes depending on whether co-applicants were married to each other, or improperly required spousal signatures on loan documents making a non-applicant spouse liable for the entire amount of the loan – not just on any jointly owned collateral – even when the individual spouse should have independently qualified for the loan under the creditor’s standards of creditworthiness. One returned referral involved allegations of an isolated violation of ECOA based on religion. In each of these cases, the bank revised its lending policy and expressed willingness to take appropriate corrective action for any persons who were aggrieved by the discriminatory policy.

At the end of 2007, we continued to review the two remaining FDIC referrals, which involve the following allegations: (1) that one lender discriminated on the basis of race in the pricing of mortgage loans; and (2) that one lender discriminated on the basis of marital status.¹

Federal Reserve Board

The FRB made nine referrals in 2007: four involved marital status discrimination; four involved race or national origin discrimination; and one involved age discrimination. During 2007, we returned three of the referrals for administrative resolution. One of the returned referrals involved allegations of age discrimination where a lender provided preferential treatment to persons in age groups not entitled to preferential treatment.

¹ During 2007, we continued to review ten referrals received from the FDIC during 2006. We returned seven of these referrals during 2007 and early 2008. Six returned referrals involved allegations that lenders denied short-term consumer loans to borrowers who had exercised their rights under the Consumer Credit Protection Act by putting fraud or military active duty alerts on their credit reports. Our review found that the denials were caused by a vendor’s computer software error, occurred during a short period of time, and were addressed promptly by the bank after the problem was identified. Another returned referral involved allegations that a lender had discriminated on the basis of national origin in the pricing of consumer loans. After reviewing the evidence, including the fact that the bank self-identified the problem and the isolated nature of the practice, we returned the referral to the agency for administrative resolution in 2007. At the end of 2007, we continued to review three 2006 referrals, one involving allegations similar to the six returned referrals described above. The two other 2006 referrals that we continued to review involve allegations that lenders have discriminated on the basis of race in the pricing of mortgage loans. At the end of 2007 we also continued to review a referral received from the FDIC in 2005, which involved allegations that a lender discriminated on the basis of marital status by charging co-applicants for a loan, who were not married to each other, higher interest rates than similarly situated spousal co-applicants.

One returned referral involved allegations of marital status discrimination, where the lender improperly required spousal signatures on loan documents making a non-applicant spouse liable for the entire amount of the loan even when the individual spouse should have independently qualified for the loan under the creditor's standards of creditworthiness or when the non-applicant spouse has no corporate or business relationship with the applicant. In both of these matters, the bank revised its lending policy and expressed willingness to take appropriate corrective action for any persons who were aggrieved by the discriminatory policy. The third returned referral involved allegations of race and national origin discrimination, where a bank had implemented two criteria as part of its underwriting policies that appeared to be discriminatory; after reviewing the evidence, including the fact that the bank had promptly discontinued the policies at issue, which had been limited in application, we returned the matter for administrative resolution.

At the end of 2007, we continued to review the six remaining referrals. Three of these referrals involved allegations of marital status discrimination, where the lender improperly required spousal signatures on loan documents making a non-applicant spouse liable for the entire amount of the loan – not just on any jointly owned collateral – even when the individual spouse should have independently qualified for the loan under the creditor's standards of creditworthiness.² One of these “spousal signature” referrals also involved allegations that the bank permitted only spouses as co-applicants on unsecured loans. The three additional referrals that we continue to review involve allegations: (1) that two lenders discriminated on the basis of race or national origin in the pricing of mortgage loans; and (2) that one lender discriminated on the basis of race and national origin in the pricing of automobile loans.³

Office of Thrift Supervision

The OTS made three referrals in December 2007. At the end of the year, we continued to review all three referrals, which involve the following allegations: (1) that two lenders discriminated on the basis of race in the pricing of mortgage loans; and (2) that one lender discriminated on the basis of age in its student credit card programs.

² One of these referrals was returned to the FRB in March 2008.

³ During 2007, we continued to review three referrals received from the FRB in 2006. Two of the referrals involved allegations of marital status discrimination, where the lender improperly charged higher rates in automobile loans to co-applicants who were not married to each other. After reviewing the evidence, including the fact that both banks had promptly stopped the practices at issue, we returned those referrals in 2007. The third referral involves allegations that a mortgage company engaged in redlining on the basis of race, thereby excluding certain neighborhoods from the bank's mortgage lending activities. At the end of 2007, we continued to review this referral.

Office of the Comptroller of the Currency

The OCC made no referrals during 2007.

National Credit Union Administration

The NCUA made no referrals during 2007.

The Department of Housing and Urban Development⁴

HUD made no referrals during 2007.⁵

II. LITIGATION

1. On January 12, 2007, we filed a complaint and proposed consent order in the Northern District of Alabama against Compass Bank of Birmingham, Alabama, alleging that Compass Bank violated the Equal Credit Opportunity Act by engaging in a pattern or practice of discrimination on the basis of marital status in thousands of automobile loans that it made through hundreds of different car dealerships in the South and Southwest between May 2001 and May 2003. United States v. Compass Bank, Civil Action No. 07-H-0102-S (N.D. Ala.). Specifically, the complaint alleges that the bank distributed rate sheets to the automobile dealerships in its indirect auto lending network instructing those dealerships to charge co-applicants with a non-spousal relationship higher interest rates than spousal co-applicants and that the bank implemented these rate sheets by charging co-applicants higher interest rates than similarly-situated married co-applicants. This case resulted from a referral by the Federal Reserve Board.

Under the terms of the consent order, which was entered by the court on February 21, 2007, Compass Bank will pay up to \$1.75 million to compensate several thousand non-spousal co-applicants whom the United States alleges were charged higher rates as a result of their marital status. The consent order also requires the bank to ensure that its underwriting guidelines and procedures do not discriminate on the basis of marital status and to implement fair lending training programs for its employees.

⁴ Pursuant to the Fair Housing Act, 42 U.S.C. §§ 3610(e)(2), 3612(o), HUD makes lending discrimination referrals to DOJ.

⁵ During 2007, we continued to review one referral received from HUD during 2005. That referral involved allegations that the lender discriminated against African-American customers by targeting them for “predatory loans” with high fees and interest rates. After reviewing and analyzing all the evidence, including additional information obtained in 2006 and 2007 regarding comparable lenders, we closed this matter and returned it to HUD in 2007.

2. On August 21, 2007, we filed a complaint and proposed consent order in the Eastern District of Pennsylvania against Springfield Ford, alleging that the car dealership violated the Equal Credit Opportunity Act by engaging in a pattern or practice of discriminating against African-American customers by charging them higher dealer markups on car loan interest rates than similarly situated white customers. United States v. Springfield Ford, Case No. 2:07-cv-03469-PBT (E.D. Pa.). Under the consent order, which was entered by the court on September 4, 2007, Springfield Ford will pay up to \$94,565, plus interest, to African-American customers who were charged higher interest rates. In addition, the dealership will implement changes in the way it sets markups, including guidelines to ensure that the dealership follows the same procedures for setting markups for all customers, and that only good faith, competitive factors consistent with ECOA influence that process. The dealership also will provide enhanced equal credit opportunity training to officers and employees who set rates for automobile loans. This case was investigated jointly with the Pennsylvania Attorney General's Office. That office resolved its related state law claims through a separate state court agreement with the dealership.

3. On August 21, 2007, we filed a complaint and proposed consent order in the Eastern District of Pennsylvania against Pacifico Ford, alleging that the car dealership violated the Equal Credit Opportunity Act by engaging in a pattern or practice of discriminating against African-American customers by charging them higher dealer markups on car loan interest rates than similarly situated white customers. United States v. Pacifico Ford, Case No. 2:07-cv-03470-PBT (E.D. Pa.). Under the consent order, which was entered by the court on September 4, 2007, Pacifico Ford will pay up to \$363,166, plus interest, to African-American customers who were charged higher interest rates. In addition, the dealership will implement changes in the way it sets markups, including guidelines to ensure that the dealership follows the same procedures for setting markups for all customers, and that only good faith, competitive factors consistent with ECOA influence that process. The dealership also will provide enhanced equal credit opportunity training to officers and employees who set rates for automobile loans. This case was investigated jointly with the Pennsylvania Attorney General's Office. That office resolved its related state law claims through a separate state court agreement with the dealership.

4. On November 7, 2007, the Court entered a consent order resolving United States v. First Nat'l Bank of Pontotoc, Case No. 3:06CV061-M-D (N.D. Miss.), a lawsuit alleging that a former Bank vice president engaged in a pattern or practice of sexual harassment against female borrowers and applicants for credit, in violation of the Fair Housing Act and the Equal Credit Opportunity Act. The complaint alleged that the vice president's conduct included making offensive comments of a sexual nature, engaging in unwanted sexual touching, and requesting or demanding sexual favors from female customers over a period of years before his employment with the Bank ended. The complaint also alleged that the Bank was liable for its vice president's actions.

Under the consent order, the defendants paid \$250,000 to 15 identified victims,

and \$50,000 to the United States as a civil penalty. The defendants also will pay up to up to \$50,000 to any additional victims. Bank employees are required to receive training on the prohibition of sexual harassment under federal fair lending laws. The agreement also requires the Bank to implement both a sexual harassment policy and a procedure by which an individual may file a sexual harassment complaint against any employee or agent of the First National Bank of Pontotoc. This investigation was initiated under the Department's own pattern or practice authority.

III. INVESTIGATIONS

During 2007, the Department concentrated significant resources on fair lending investigations involving a variety of allegations. The Department continued its focus on investigating potential redlining cases, in which a lender chooses not to do business in a neighborhood because of the race, color, or national origin of the people who live in the neighborhood, thereby denying residents of minority communities equal access to residential, consumer, or small business credit. When communities are abandoned by prime lenders through redlining, they become targets for less scrupulous lenders who may target minority neighborhoods for abusive products or loans. Lawsuits challenging redlining practices thus are an effective means to combat predatory lending. During 2007, we examined allegations that several lenders in both rural and urban areas discriminated on the basis of race and national origin by avoiding or refusing to do business in majority African-American and/or Hispanic neighborhoods because of the race, color, or national origin of those areas. We also conducted investigations involving alleged discrimination by lenders that refused to make certain loans on Indian reservations.

During 2007, we also continued to conduct investigations based on the loan pricing data now available under the Home Mortgage Disclosure Act (HMDA) that may indicate potential fair lending violations. Under HMDA, many lenders are required to collect and publicly report certain information about the home mortgage loans that they originate. Beginning in 2004, those lenders were required to report for the first time certain limited information about loans in which the borrower was charged an interest rate above thresholds established by the Federal Reserve Board regulations ("high cost loans"). Studies by FRB staff indicate that nationwide, minority borrowers receive such high-cost loans at a significantly higher rate than whites. During 2005, 2006 and 2007, we have initiated and conducted several investigations to examine whether specific lenders were discriminating against minority borrowers by charging those borrowers higher interest rates than similarly-situated white borrowers. Based on a thorough review of the evidence, we closed two such investigations by the end of 2007; the others are continuing.

IV. OTHER ACTIVITIES

We continue to participate in an interagency task force with the FDIC, the FRB, the OCC, the OTS, the NCUA, HUD, the Office of Federal Enterprise Oversight (OFHEO), the Federal Housing Finance Board (FHFB), the Federal Trade Commission (FTC) to discuss fair lending issues and the activities of the various agencies. We also regularly meet with these agencies separately or in subgroups to discuss and coordinate fair lending activities.

During the year, Division representatives participated in a variety of conferences and meetings involving lenders, enforcement agencies, advocacy and consumer groups, and others interested in fair lending throughout the country, in order to disseminate information on our enforcement policies and activities.