



Department of Justice

STATEMENT OF

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DEPUTY ASSISTANT ATTORNEY GENERAL
CIVIL RIGHTS DIVISION
DEPARTMENT OF JUSTICE**

BEFORE THE

**SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS
COMMITTEE ON FINANCIAL SERVICES
UNITED STATES HOUSE OF REPRESENTATIVES**

CONCERNING

**ROOTING OUT DISCRIMINATION IN MORTGAGE LENDING:
USING HMDA AS A TOOL FOR FAIR LENDING ENFORCEMENT**

PRESENTED

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Testimony of
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Before the Committee on Financial Services
United States House of Representatives

As the Civil Rights Division celebrates its 50th Anniversary this year, it is an honor to appear before this committee to talk about the Division's fair lending enforcement.

As Deputy Assistant Attorney General for the Civil Rights Division, I review the work of the Housing and Civil Enforcement Section, which is charged with ensuring non-discriminatory access to housing, credit, and public accommodations. We understand the importance of these opportunities to American families, and we work hard to meet this weighty responsibility. The Division has a strong commitment to enforcing the Fair Housing Act, the Equal Credit Opportunity Act, Title II of the Civil Rights Act of 1964, the land use provisions of the Religious Land Use and Institutionalized Persons Act, and the Servicemembers Civil Relief Act.

Two of these federal civil rights laws enforced by the Housing and Civil Enforcement Section proscribe discrimination in mortgage lending. The Fair Housing Act, 42 U.S.C. § 3601, *et seq.*, prohibits discrimination in residential real estate-related transactions, including loans and other financial assistance, on the basis of race, color, religion, national origin, sex, familial status, and disability. The Equal Credit

Opportunity Act, 15 U.S.C. § 1691, *et seq.*, also known as ECOA, prohibits creditors from discriminating in any aspect of a credit transaction on the basis of race, color, religion, national origin, sex, marital status, age, because an applicant receives income from a public assistance program, or because an applicant has exercised rights under the Consumer Credit Protection Act. Therefore, ECOA prohibits discrimination in consumer and business lending, as well as mortgage lending.

Our fair lending enforcement efforts protect borrowers' rights in a wide variety of contexts. All Americans have the right to purchase houses and automobiles, and to borrow money for their businesses or consumer purchases, free of illegal discrimination. While a lender may legitimately consider a range of factors in determining whether to make a loan to an applicant, illegal discrimination has no place in this determination.

Recent Fair Lending Cases

During 2006 and 2007, we have filed three fair lending lawsuits that illustrate the range of our fair lending efforts. In April 2006, the Division filed its first-ever sexual harassment case under the Equal Credit Opportunity Act in *United States v. First National Bank of Pontotoc*. In doing so, the Division relied upon its expertise in sexual harassment cases in the Fair Housing Act context. In the fair housing context, this Administration has almost tripled the number of lawsuits alleging a pattern or practice of sexual harassment by landlords against female tenants in the last 6 ½ years as compared to the same time period in the late 1990's. We have obtained appropriate injunctive relief

and damages for the victims of up to \$1.1 million—the highest jury verdict ever obtained by the Division in a fair housing case. The fair lending complaint alleges that a former vice president of the First National Bank of Pontotoc in Pontotoc, Mississippi, used his position to sexually harass female borrowers and applicants for credit. Our original complaint alleged that the former bank vice-president’s conduct violated ECOA and that the Bank is responsible for the discriminatory conduct during the bank vice-president’s tenure in that position. Recently, we amended the complaint to add a claim that the defendants also violated the Fair Housing Act. This case is currently in litigation, and more than a dozen female victims of the discrimination have come forward so far to tell their stories.

Last fall, we filed and resolved a “redlining” lawsuit against Centier Bank in Indiana, alleging violations of the Equal Credit Opportunity Act and the Fair Housing Act. In this case, we alleged Centier unlawfully refused to provide its lending products and services on an equal basis to residents of minority neighborhoods, thereby denying residential and small business loans to hundreds of prospective African-American and Hispanic borrowers. This practice is often called “redlining.” Under the consent order the bank already has begun to open new offices and expand its lending operations in the previously excluded areas. The order also requires the bank to invest \$3.5 million in a special financing program and spend at least \$875,000 on outreach, marketing, and consumer financial education in these previously excluded areas over the next five years.

Earlier this year, we filed and resolved a case against Compass Bank of Alabama for violating the Equal Credit Opportunity Act by engaging in a pattern of discrimination on the basis of marital status. Compass Bank makes thousands of automobile loans each year through its network of hundreds of car dealerships in the South and Southwest. We alleged that the bank charged co-applicants who were not married to each other, or “non-spousal” co-applicants, higher interest rates than similarly-situated married co-applicants. Indeed, the Bank instructed its network of auto dealerships in writing to add 1 to 2 percentage points to the interest rate for joint applicants who were not married to each other. Under the consent order, which was signed by the federal judge in February, the Bank will pay up to \$1.75 million to compensate several thousand non-spousal co-applicants whom we alleged were charged higher rates as a result of their marital status.

In addition, we currently are engaged in pre-suit negotiations in cases alleging that two automobile dealerships engaged in patterns or practices of discrimination, over a period of years, by charging African-American applicants for automobile loans higher interest rates than similarly-situated non-African-American applicants for such loans. Our investigations into these matters were conducted jointly with a State Attorney General’s office.

HMDA & Redlining

A moment ago, I mentioned *United States v. Centier Bank*, a lawsuit alleging that the bank chose not to do business in minority neighborhoods because of the race, color,

and national origin of the people who live there. Such “redlining” practices deny residents of minority communities equal access to residential, consumer, or small business credit. When communities are abandoned by prime lenders through redlining, those communities 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.

Traditionally, the Division has focused considerable fair lending resources on these lawsuits, with Centier being the fourth redlining case that we filed and resolved in this Administration. The development of a redlining lawsuit requires extensive analysis of the bank’s lending data, which is made public pursuant to the Home Mortgage Disclosure Act, also known as HMDA. For each redlining investigation the Division undertakes, we conduct extensive statistical comparisons of the bank’s residential lending patterns to the lending patterns of other banks and home mortgage lenders in that geographic area. Primarily in this way, the Division has utilized HMDA data extensively for well over a decade now.

HMDA Pricing Data

As the Committee knows, beginning with the year 2004, all home mortgage lenders that report under HMDA are required to collect and report certain data about the interest rates that they charge on the reported home loans. This information is often called “HMDA pricing data.” The reported data is designed to identify so-called “higher-

priced loans,” most of which are subprime loans. In September 2005, the HMDA pricing data for calendar year 2004 was released publicly, and in September 2006, the HMDA pricing data for calendar year 2005 was released publicly. For each of these years, Federal Reserve staff published a study of the newly-released HMDA data finding that African-American and Hispanic borrowers receive higher-priced loans more often than non-Hispanic whites.¹

The HMDA pricing data has provided the Division with a welcome, additional source of information for identifying potential investigations of whether a particular lender unfairly charges higher interest rates to a class protected under the fair lending laws.² But it is important to remember that the loan data available through HMDA is only a starting point – it cannot tell us whether any particular mortgage lender is discriminating. We analyze the HMDA pricing data as a starting point to identify disparities in the pricing of loans, primarily focusing on race or national origin. Where disparities are present, we conduct further analyses using publicly available data to determine whether there may be non-discriminatory explanations for the disparities. In deciding whether to initiate an investigation of a particular lender, the Division evaluates

¹ Regarding 2004 HMDA data, see “New Information Reported under HMDA and Its Application in Fair Lending Enforcement,” 2005 Federal Reserve Bulletin 344. Regarding 2005 HMDA data, see “Higher-Priced Home Lending and the 2005 HMDA Data,” 2006 Federal Reserve Bulletin A123.

² The Division identifies targets for potential fair lending investigations in a variety of ways, including referrals from bank regulatory agencies, referrals from HUD, citizen or organizational complaints and inquiries, and publicly available data (such as HMDA) or reports.

all available information, including any relevant data from the Federal Reserve studies and its own analysis of the HMDA data.

We also began to receive bank agency referrals based on the HMDA pricing data in the fall of last year. So far we have received three such referrals from the FDIC and two from the Federal Reserve Board.

In evaluating the HMDA data, it is important to recognize that subprime loans can serve a legitimate purpose. Some borrowers have bad credit histories and simply cannot qualify for the less costly prime loans. Under the Fair Housing Act and ECOA, the question is whether lenders are discriminating on the basis of race or national origin, or other proscribed grounds, against certain borrowers by charging them more than other borrowers, or by steering them to loans with high interest rates and fees even if they qualify for less-costly loans.

Based on DOJ analysis of the HMDA data and bank regulatory agency referrals, we have opened several investigations of lenders. During investigations of alleged discrimination in loan “pricing,” we generally obtain detailed additional information from the lender that is not available through HMDA. In order to determine whether minority borrowers are being charged more than *similarly-situated* white borrowers, we need to analyze data about other factors that lenders can legitimately consider in setting interest rates. For example, the HMDA data does not include information such as a borrower’s credit score, loan-to-value ratios, and debt-to-income ratios. In most cases, each of these

factors has a direct impact on a borrower's mortgage interest rate. Other factors that directly affect the interest rate of a particular loan are the term of the loan, whether the rate is fixed or variable, and the amount of the loan ("jumbo" loans generally carry higher interest rates than those within the "conforming" limits for purchase by Fannie Mae or Freddie Mac). Conducting statistical and econometric analyses of additional data obtained from a lender enables us to assess whether those factors explain the pricing differences identified in the HMDA data.

We also seek information from the lender about its lending policies and practices and the characteristics of its various loan products, in order to evaluate the loan data and the results of our analysis in the context of that lender's business practices. We recognize that lenders determine the products they will offer, and the rates and fees for those products, taking into account a wide variety of factors, including the price it pays for the money it lends to borrowers ("costs of funds"), whether the lender holds loans in its portfolio or sells them in the secondary market, and whether the lender extends credit through its own officers or independent brokers. We analyze all the evidence in each case to determine which factors played a role in that lender's rate-setting practices.

These fair lending investigations require a substantial investment of time and resources. While I cannot discuss details of ongoing investigations, I am pleased to report that all of the lenders currently under investigation are cooperating with the Division.

We have completed and closed two such investigations and others are ongoing. For the investigations that are ongoing, we continue to evaluate whether enforcement action is appropriate. We expect to initiate more investigations in the coming months. These investigations may stem from the Division's own analysis, or may be referred from a bank regulatory agency.

The Division also works hard to coordinate our fair lending enforcement efforts with other agencies, so that federal government enforcement efforts in these areas are as efficient and effective as possible. The Division actively participates in the Inter-Agency Fair Lending Task Force, which includes representatives of the numerous federal agencies involved in the fight for fair lending. The Task Force meets regularly to share information and address issues related to topics such as pricing discrimination. In addition, since the first release of the HMDA pricing data, Division staff meets regularly with staff from the other two federal agencies designated along with DOJ to enforce fair lending laws against non-bank lenders: the Federal Trade Commission and the Department of Housing and Urban Development.

The Division shares this Committee's goal of utilizing all available information, including the HMDA pricing data, to identify and stop lending discrimination. We are working hard to achieve that goal, and we welcome the Committee's support.