

THE ATTORNEY GENERAL'S
2008 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 2008 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 federal 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 2008, DOJ received 20 fair lending referrals involving potential ECOA claims from the bank regulatory agencies: 12 from the Federal Deposit Insurance Corporation (FDIC); three from the Federal Reserve Board (FRB); four from the Office of Thrift Supervision (OTS); and one from the Office of the Comptroller of the Currency (OCC). These referrals included the following types of alleged discrimination: 12 involving marital status; four involving race or national origin; one involving race, national origin and familial status; one involving age; one involving sex and source of income; and one involving the exercise of rights protected under the Consumer Credit Protection Act. As of December 31, 2008, we had returned eight of these referrals to the agencies for administrative resolution and continued to investigate the allegations in the twelve remaining referrals.¹ The referrals are described (by agency) below:²

¹ By mid-March 2009, we had returned seven additional referrals made in 2008, and continued to investigate the five remaining 2008 referrals.

² The attached chart shows the total number of such referrals to DOJ made by each agency, for each calendar year from 2001 through 2008.

Federal Deposit Insurance Corporation

The FDIC made 12 referrals in 2008: eight involved marital status discrimination; two involved race or national origin discrimination; one involved age discrimination; and one involved the exercise of rights protected under the CCPA.

We returned eleven of these referrals for administrative resolution during 2008 and early 2009. Eight 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 of the referrals involved allegations of age discrimination where a lender provided preferential treatment to persons in age groups not entitled to preferential treatment. One of the referrals involved allegations of race and national origin discrimination in loan pricing. One of the referrals involved allegations of discrimination on the basis of borrowers having exercised rights protected under the Consumer Credit Protection Act (CCPA).³ 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.

During 2009, we continue to review one remaining FDIC referral, involving allegations that the lender discriminated on the basis of national origin in the pricing of mortgage loans.⁴

³ The referral involved allegations that the lender denied credit card applications to borrowers who had exercised their rights under the CCPA by putting fraud alerts on their credit reports. Our review found that the denials were caused by a lack of understanding of the law's technical requirements, occurred during a short period of time, and were addressed promptly by the lender after the problem was identified.

⁴ During 2008, we continued to review ten referrals received from the FDIC during prior years. We returned seven of these referrals for administrative resolution during 2008. Five of these returned referrals involved allegations that lenders denied short-term consumer loans or credit cards 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. One returned referral 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 that 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

Federal Reserve Board

The FRB made three referrals in 2008: two involved marital status discrimination; and one involved discrimination on the basis of sex and source of income.

During 2008 and early 2009, we returned the three referrals for administrative resolution. Two of the returned 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 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 sex and source of income, where the lender improperly discounted child support payments as income when evaluating applications. After determining that the lender had discontinued the practice which had affected very few borrowers, we returned the matter for administrative resolution.⁵

creditor's standards of creditworthiness.

Of the remaining three FDIC referrals from prior years, one resulted in a federal district court action, one is an authorized lawsuit currently in presuit negotiations, and one resulted in a continuing investigation. (See Section II of this report).

⁵ During 2008, we continued to review nine referrals received from the FRB in prior years. Five of those referrals were returned in 2008. Two of the returned 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. One returned 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. The remaining two returned referrals involved allegations of marital status discrimination: one where the lender treated consumer loan applications for married joint applicants differently than for unmarried joint applicants; and one where the lender required nonapplicant spouses to sign on commercial loans even when there was no corporate or partnership relationship between the spouses.

At the end of 2008, we continued to review the remaining four FRB referrals from prior years. Three referrals involve allegations of a pattern or practice of discrimination on the basis of race or national origin in the pricing of loans. The remaining referral involves allegations of discrimination on the basis of marital status.

Office of Thrift Supervision

The OTS made four referrals in 2008. One involves allegations of discrimination based on race and national origin in the pricing of mortgages; one involves allegations of race, national origin and marital status discrimination in mortgages; one involves allegations of redlining African-American neighborhoods; and one involves allegations of marital status discrimination in the pricing of mortgages. At the end of the year, we continued to review the four referrals received in 2008.⁶

Office of the Comptroller of the Currency

The OCC made one referral in 2008 involving marital status discrimination, in which the lender applied different underwriting processes to co-applicants depending on whether they were married. After determining that the lender had discontinued the practice and expressed willingness to take appropriate corrective action for any persons who were aggrieved by the discriminatory policy, we returned the matter for administrative resolution.

National Credit Union Administration

The NCUA made no referrals during 2008.

The Department of Housing and Urban Development⁷

HUD made no referrals during 2008.⁸

II. LITIGATION

1. On September 29, 2008, we filed a complaint and proposed consent order in the Middle District of Alabama against First Lowndes Bank in Lowndes County, Ala., resolving allegations that the bank engaged in a pattern or practice of discrimination against African-American customers by charging them higher interest rates on manufactured housing loans, in violation of the Fair Housing Act (FHA) and Equal

⁶ During 2008, we continued to review two referrals received in 2007 from the OTS, both of which involve allegations that lenders discriminated on the basis of race or national origin in the pricing of mortgage loans.

⁷ Pursuant to the Fair Housing Act, 42 U.S.C. §§ 3610(e)(2), 3612(o), HUD makes lending discrimination referrals to DOJ.

⁸ During 2008, we returned a HUD referral received in a prior year involving allegations of a potential pattern or practice of predatory lending after determining that the evidence did not indicate a pattern or practice of discrimination on a prohibited basis under the FHA.

Credit Opportunity Act (ECOA). United States v. First Lowndes Bank, Civil Action No. 2:08 cv 798 WKW (M.D. Ala.).

Under the terms of the settlement, which was entered by the court on November 4, 2008, First Lowndes Bank will pay up to \$185,000, plus interest, to compensate African-American borrowers who were charged higher interest rates. In addition, the bank agreed to implement procedures to prevent discrimination in setting interest rates and to provide enhanced equal credit opportunity training to its officers and employees who set rates for housing loans. This case resulted from a referral by the Federal Deposit Insurance Corporation.

2. On September 29, 2008, we filed a complaint and proposed consent order in the District of Nevada against Nationwide Nevada, LLC, and its general partner NAC Management Corp., resolving allegations that the lender engaged in a pattern or practice of discrimination against persons living on Indian reservations, in violation of ECOA. United States v. Nationwide Nevada, LLC, Civil Action No. 2:08 cv 01309-ECR-RJJ (D. Nev.). The complaint alleges that the defendants violated the ECOA by systematically refusing to purchase automobile finance contracts for applicants living on Indian reservations in Utah and Nevada from at least 2003 to 2005.

Under the consent order, which was entered by the court on September 30, 2008, the defendants agreed to pay \$170,000 to compensate loan applicants who were denied loans by Nationwide Nevada due to their residence (or the residence of their co-applicant) on an Indian reservation. In addition, the company agreed to implement a non-discrimination policy stating that consideration of residency on an Indian reservation is not a valid basis for declining to purchase automobile sales finance contracts and to provide enhanced equal credit opportunity training to its officers and employees who determine whether to finance car loans. The policy also provides that the company is not required to purchase loans if it unable to determine, after good faith attempts to do so, that it will be permitted to perform self-help repossession of the financed vehicle in appropriate circumstances. This case resulted from an investigation conducted by the Civil Rights Division of the Department of Justice.

3. In 2008, we initiated pre-suit negotiations in a case alleging pricing and redlining discrimination by a lender. The claims in the case are that the lender engaged in a pattern or practice of discrimination in the pricing of certain home loans by charging African-American borrowers more than similarly-situated white borrowers, and by servicing the credit needs of majority-white areas, and avoiding majority-African-American areas. Our investigation into this matter resulted from a referral by the Federal Deposit Insurance Corporation.

III. INVESTIGATIONS

During 2008, 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 2008, 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.

During 2008, we also continued to conduct investigations of potential fair lending violations that were initiated based on the loan pricing data now available under the Home Mortgage Disclosure Act (HMDA). Since 2004, HMDA has required reporting lenders to collect and publicly report certain information about the interest rate charged on home mortgage loans that they originate. In these matters we examine allegations that lenders have priced mortgages differently based on the race or national origin of the borrower, or have offered different types of lending services based on the race or national origin of the residents of the areas they serve.

During 2008, we also began to review and consider potential discrimination issues involved in loan servicing and foreclosures related to the subprime mortgage crisis.

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 and 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.

ALL REFERRALS	2008	2007	2006	2005	2004	2003	2002	2001	Total
FDIC	12	15	29	35	42	29	33	5	200
FED	3	9	5	2	3	0	6	1	29
OTS	4	3	0	0	1	0	0	1	9
OCC	1	0	0	0	0	0	1	3	5
NCUA	0	0	0	0	—	—	—	—	0
HUD	0	0	0	1	1	0	2	—	4
Total	20	27	34	38	47	29	42	10	247

"—" means there is no entry for that agency in the ECOA report for that year