

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
PECOS DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 FORT DAVIS STATE BANK,)
)
 Defendant.)
 _____)

CIVIL ACTION NO. P 13-CV-77

CONSENT ORDER

I. INTRODUCTION

This Consent Order is submitted jointly by the parties for the approval of and entry by the Court simultaneously with the filing of the United States' Complaint in this action. This Consent Order resolves the claims of the United States that Fort Davis State Bank ("FDSB" or "the Bank") has engaged in a pattern or practice of lending discrimination on the basis of national origin in the pricing of unsecured consumer loans in violation of the Equal Credit Opportunity Act (ECOA), 15 U.S.C. §§ 1691-1691f.

Under the provisions of the Consent Order, FDSB agrees to continue to utilize the uniform pricing policies and procedures it has developed to ensure that the prices it charges for the loans covered by this Consent Order, including the portion of the price that reflects the discretion of the loan officer or any company employee, are set in a non-discriminatory manner consistent with the requirements of ECOA. FDSB also shall compensate Hispanic borrowers of unsecured consumer loans who may have suffered monetary damages as a result of the Bank's alleged violations of the ECOA.

There has been no factual finding or adjudication with respect to any matter alleged by the United States. Accordingly, the execution of this Consent Order is not, and is not to be considered as, an admission or finding of any violation of ECOA by FDSB. FDSB denies the United States' allegations that it engaged in national origin discrimination. The parties have entered into this agreed Consent Order to resolve voluntarily the claims asserted by the United States in its Complaint to avoid the risks and burdens of litigation. The parties agree that full implementation of the terms of this Consent Order shall provide a resolution of the allegations of the United States in a manner consistent with FDSB's legitimate business interests.

II. BACKGROUND

FDSB is based in Fort Davis, Texas. It currently operates three branches – one in Fort Davis, Texas, another branch in Alpine, Texas, and a third branch in Presidio, Texas. Until early 2013, it also operated a branch in Odessa, Texas. As of September 30, 2012, FDSB had assets of \$78.5 million. The bank is owned by Fort Davis Bancshares, Inc., a one-bank holding company, also located in Fort Davis. FDSB is subject to the regulatory authority of the Federal Deposit Insurance Corporation (FDIC).

Beginning in December 2010, the FDIC conducted an examination of FDSB's lending practices to evaluate its compliance with ECOA. During that examination, it identified potential disparities in the Bank's pricing of unsecured consumer loans to Hispanic borrowers for loans originated between November 1, 2009 and November 30, 2010. After further analysis, the FDIC found reason to believe that FDSB had engaged in a pattern or practice of discrimination on the basis of national origin against Hispanic borrowers. On August 22, 2011, pursuant to 15 U.S.C. 1691e(g), the FDIC referred the lending practices of FDSB to the United States Department of Justice.

After reviewing the information provided by the FDIC and conducting its own investigation, the United States contends that FDSB charged higher interest rates on unsecured consumer loans to Hispanic borrowers than to non-Hispanic borrowers from January 1, 2008 to December 31, 2010. The Complaint alleges that during this time period, the higher rates of interest that FDSB charged to Hispanic borrowers were a result of FDSB's policy or practice of giving its employees broad subjective discretion in setting interest rates for unsecured consumer loan transactions. Although information as to each applicant's national origin was not solicited or noted in loan applications, such information was known to the Bank's loan officers, who personally handled each loan transaction at one or more of FDSB's branch offices. The Complaint alleges that prior to January 1, 2011, FDSB did not properly instruct its loan officers regarding their obligation to treat prospective customers without regard to national origin, and the Bank allegedly failed to supervise or monitor the performance of its loan officers effectively to ensure compliance with fair lending laws. The Complaint alleges that prior to January 1, 2011, FDSB's policy or practice of giving its employees broad subjective discretion in handling every aspect of the unsecured consumer loan transaction was not justified by business necessity or legitimate business interests.

III. TERMS OF CONSENT ORDER

1. Unless otherwise stated herein, the remedial provisions of this Consent Order shall be implemented within ninety (90) days of the Effective Date of this Consent Order and shall continue throughout its term. The Effective Date of this Consent Order shall be the date on which it is approved and entered by the Court.

2. Unless otherwise stated herein, the types of loans covered by this Consent Order include automobile financing, home improvement loans, mortgage loans, and unsecured consumer loans.

A. General Prohibitory Injunction

3. FDSB, including all of its officers, employees, agents, representatives, assignees, and all those in active concert or participation with any of them, is hereby enjoined from engaging in any act or practice that discriminates on the basis of national origin in any aspect of a credit transaction in violation of ECOA. This prohibition includes, but is not limited to: the adoption, performance, or implementation of any policy, practice, or act that results in national origin discrimination in the charging of loan prices, including the portion of the loan price that reflects the discretion of the loan officer or any other company employee, to those who borrow money for loans covered by this Consent Order.

4. This Consent Order requires the Bank to take actions to remedy its alleged discrimination. FDSB retains the discretion to take any additional actions that it believes are appropriate to achieve the goals of this Consent Order. Nothing in this Consent Order will require FDSB to make unsafe or unsound loans or to require loans to be originated or priced based upon the national origin of the borrower or prospective borrower.

B. Pricing Policies and Procedures

5. In 2010, FDSB began to develop uniform pricing policies and procedures for unsecured consumer loans. FDSB has further revised these pricing policies to include, as applicable the following: (1) standards for collecting applications, current financial documents, and credit reports for all borrowers for the loans covered by this Consent Order; (2) standards for maintaining loan files for the loans covered by this Consent Order; and (3) a uniform pricing

matrix or matrices for the loans covered by this Consent Order. Each uniform pricing matrix or matrices sets forth objective, non-discriminatory standards for determining interest rates for the loans covered by this Consent Order and includes: (i) limits on the amount by which the interest rate may deviate, either upward or downward, from the rate as determined by the matrix or matrices; (ii) the factors that a loan officer or bank official may consider in the exercise of that discretion; (iii) a requirement that each loan file must include written documentation of the factors set forth in the pricing matrix or matrices and, where the final interest rate varies from the published rate, the factors relied on in connection with an individual loan application and how those factors affected the pricing decision and independent approval of the adjusted rate by a senior officer; and (iv) a requirement that before an interest rate is fixed, loan officers must inform applicants in writing that the rate is determined by a variety of factors and may be negotiable within limits set by the loan policies.

6. FDSB shall require all loan officers and employees who originate loans covered by this Consent Order to comply with its pricing policies, once approved by the United States. FDSB also shall require an appropriate manager, under the supervision of a designated senior official of the Bank, to review compliance with these requirements, including the existence of a legitimate non-discriminatory reason for any disparities between Hispanic and non-Hispanic borrowers and steps to ensure that discretionary loan prices do not vary by national origin. Any loan that is not in compliance with these requirements may not be funded. In the event that a loan inadvertently is funded in violation of the policies, an appropriate refund shall be provided to the borrower. All reviews shall be documented and kept in the loan files.

C. Monitoring Program

7. FDSB shall have in place a monitoring program designed to ensure compliance with this Consent Order. The program shall be designed to monitor the Bank's loans for potential disparities based on national origin. At a minimum, FDSB shall monitor the interest rates of its loan products covered by this Consent Order. The program also shall require a quarterly review by senior managers. Each such quarterly review shall be documented and presented to FDSB's Board of Directors for review and approval not later than sixty (60) days after the end of each quarter. Each quarterly review shall include, but not be limited to, an analysis designed to detect interest rate disparities based on national origin with respect to the Bank's loan products covered by this Consent Order. The Bank shall use the 2000 Census surname lists published by the U.S. Census Bureau to identify borrower national origin for the purpose of compliance with this requirement.

a. In the event that any such review discloses interest rate disparities between Hispanic and non-Hispanic borrowers, FDSB shall attempt to determine the reason(s) for those disparities and shall promptly take corrective action to address disparities that are not justified by a legitimate business need. Corrective action shall include, as warranted, financial remediation for borrowers, further modifications to FDSB's pricing policies and/or monitoring programs as appropriate, and education, discipline, or termination of employee(s). FDSB shall document all such disparities, determinations, and actions taken and shall provide a summary of the quarterly reviews and any documentation and analysis relating thereto to the United States on a quarterly basis.

b. In the event that any such review discloses significant disparities with respect to any particular employee or branch, FDSB shall require the employee or branch manager to

explain the non-discriminatory reason(s) for those disparities. If there is no reasonable, non-national origin-based explanation for the noted disparities, FDSB shall require the employee or branch manager to take prompt corrective action to address the disparities.

8. If the United States raises any objections to FDSB's determinations or remedial actions, the parties shall meet and confer to consider appropriate steps to address the concerns raised by the United States' review. If the parties are unable to come to an agreement regarding such objections, any party may bring the dispute to this Court for resolution.

D. Notification to the United States and Right to Object

9. FDSB shall provide a copy of the policies it utilizes to implement Paragraphs 5-6 of this Consent Order and descriptions of the monitoring programs required under Paragraphs 7 to the United States. Further, during the term of this Consent Order, FDSB may modify the policies and monitoring programs described in Paragraphs 5-7. The United States shall have thirty (30) days from receipt of the policies and descriptions or modifications thereof to raise any objections to them, and if it raises any, the parties shall confer to resolve their differences. In the event the parties are unable to do so, either party may bring the dispute to this Court for resolution. Until the Court resolves such a dispute, the policies or modifications thereof will not go into effect.

E. Borrower Notices

10. FDSB shall post and prominently display in each location where loan applications are received by the Bank a notice of non-discrimination (a sample of which is attached as Appendix A).

11. FDSB shall require its employees who originate loans covered by this Consent Order to provide to the borrower a notice of non-discrimination that provides substantially the same information as is contained in Appendix A. This disclosure shall be in writing, signed by the originator and the borrower (if the borrower executes), and submitted by the originator to be made part of the loan file maintained by FDSB. This disclosure shall be made as early as practicable but not later than the time of the loan application.

F. Equal Credit Opportunity Training Program

12. FDSB shall continue to provide equal credit opportunity training to its management officials, loan officers, and any other employees or agents who participate in the origination of the Bank's loans covered by this Consent Order. During this training, FDSB shall provide to each participant: (a) access to a copy of this Consent Order and the loan policies adopted pursuant to it; and (b) training on the terms of this Consent Order, the loan policies adopted pursuant to it, the requirements of ECOA, and his or her responsibilities under each. During the term of this Consent Order, FDSB shall provide annual training to covered employees with respect to his or her responsibilities and obligations under ECOA and this Consent Order. FDSB shall bear all costs associated with the training.

13. FDSB shall secure from each employee or agent specified in the preceding paragraph a signed statement acknowledging that he or she has received access to a copy of this Consent Order and the loan policies and has completed the initial equal credit opportunity training. The signature of the acknowledgement may be either manual or electronic. These statements shall be substantially in the form of Appendix B (Acknowledgment) and Appendix C (Equal Credit Opportunity Training). During the term of this Consent Order, each new employee

or agent who participates in the origination of the Bank's loans covered by this Consent Order shall be provided access to a copy of this Consent Order and given an opportunity to have any questions answered, and shall sign the acknowledgment form statement (Appendix B) within ten (10) days of beginning his or her employment in that position.

G. Satisfaction of the United States' Claims for Monetary Relief

14. FDSB shall deposit in an interest-bearing escrow account the total sum of \$159,000 to compensate for monetary damages that aggrieved persons may have suffered as a result of the alleged violations of ECOA with respect to unsecured consumer loans (the "Settlement Fund"). Title to this account shall be in the name of "FDSB Bank for the benefit of aggrieved persons pursuant to Consent Order of the Court in Civil Action No. [xxx]". FDSB shall provide written verification of the deposit to the United States within five (5) days of the Effective Date of this Consent Order. Any interest that accrues shall become part of the Settlement Fund and be utilized and disposed of as set forth herein.

15. Within thirty (30) days of the Effective Date of this Consent Order, the United States shall request any information it believes shall assist in identifying aggrieved persons and determining any damages. FDSB shall, within thirty (30) days of receipt of such request, supply, to the extent that it is within the Bank's control, such information as requested. Requested data may be supplied as a supplement to the database already provided to the United States by the Bank in the course of the United States' inquiry. To the extent that the information is not within FDSB's control, the Bank shall, within thirty (30) days of receipt of such request, supply any data in its control that identifies other parties that may have the information.

16. The United States shall, upon reasonable notice, be allowed access to the Bank's records and files to verify the accuracy of the data provided and to otherwise identify persons entitled to the payments from the Settlement Fund.

17. Within ninety (90) days of the receipt of the information described in Paragraphs 16-17, the United States shall provide to FDSB a list of aggrieved persons and an amount each individual shall receive from the Settlement Fund to compensate for monetary damages these persons may have suffered, subject to the conditions set forth in Paragraph 19. FDSB shall have sixty (60) days from receipt of such list in which to review the list and the United States shall consider in good faith any issues raised by the Bank.

18. Payments from the Settlement Fund to aggrieved persons shall be subject to the following conditions, provided that the details in administration of the Settlement Fund set forth in Paragraphs 20-21, can be modified by agreement of the parties and without further Court approval:

(a) No aggrieved person shall be paid any amount from the Settlement Fund until he or she has executed and delivered to FDSB a written release, as set forth in Appendix D, of all claims, legal or equitable, that he or she might have against the released persons and entities regarding the claims asserted by the United States in this lawsuit, so long as such claims accrued prior to the entry of this Consent Order; and

(b) The total amount paid by FDSB collectively to the aggrieved persons shall not exceed the amount of the Settlement Fund, including accrued interest.

19. FDSB shall, no later than sixty (60) days after receiving the compensation list referred to in Paragraph 18, notify each identified person eligible for compensation by a letter (using its reasonable best efforts to locate each person). The form of this letter shall be subject to the review and approval of the United States. At a minimum, the letter shall state that the identified person is eligible for compensation in the indicated amount provided he or she executes and returns to the Bank a copy of the agreed-upon release, which release shall be enclosed with the notice along with an addressed and postage-paid return envelope. Each letter shall identify the loan(s) the Bank originated to the identified person. If the parties are unable to agree on the terms of the letter, any party may bring the dispute to the Court for resolution. Any letters that are returned with a forwarding address shall promptly be re-sent to that new address. FDSB shall provide an accounting of these notifications, indicating the name and address to which each was dispatched, within the sixty (60) day period referred to in this paragraph.

20. FDSB shall issue checks in the amount indicated on the compensation list to all identified persons who execute and return the releases. FDSB shall issue and mail such checks no later than twenty-one (21) days after the receipt of the release. FDSB shall set forth reasonable deadlines for requirements of return of releases, and for the timely deposit of checks, subject to approval of the United States, so that the compensation is distributed and checks are presented for payment or become void prior to the date that is one year from the date the initial notifications are sent. For the twelve (12) month period after the initial notifications are sent to aggrieved persons pursuant to Paragraph 20, FDSB shall provide the United States with a monthly accounting of releases received, checks sent, and notifications for which no response has been received or that were reported to be undeliverable. The United States may make its own efforts to locate aggrieved persons.

21. After the satisfaction of paragraphs 15-21, above, and the expiration of the corresponding time periods, any money remaining in the Settlement Fund, including interest, shall be distributed to a qualified organization(s) for the purpose of providing services related to credit counseling, financial literacy, and other related educational programs targeted at Hispanic potential and former borrowers in communities where FDSB's branches are located. Before selecting the qualified organization(s), FDSB will obtain a proposal from the organization(s) on how the funds will be used consistent with the above-stated purpose, submit such proposal to the United States, and consult with and obtain the non-objection of the United States. The United States and FDSB may request modification of the proposal before approving the organization(s). The parties shall thereafter seek approval from the Court to distribute the remaining funds to the qualified organization(s).

FDSB shall also require that the qualified organization(s) receiving funds submit to FDSB and the United States a detailed report on how the funds are utilized within one year of receipt of funds, and every year thereafter until the funds are exhausted.

22. FDSB shall not be entitled a set-off, or any other reduction, of the amount of payments to aggrieved persons because of any debts owed by the identified persons. The Bank also shall not refuse to make a payment based on a release of legal claims or loan modification previously signed by any aggrieved persons.

H. Complaint Resolution Program

23. During the period of this Consent Order, FDSB shall maintain a complaint resolution program to address consumer complaints alleging discrimination regarding loans originated by the Bank. Documentation regarding this complaint resolution program, including

documentation of individual complaints and resolutions, if any, shall be made available to the United States on a quarterly basis and included in the reports referenced in Paragraph 26. This program will not review complaints concerning the Settlement Fund provided by Paragraphs 15-23. A person shall not be deemed ineligible for the complaint resolution program on the basis of having executed the release described in Paragraph 19(a), but there is no requirement under this Consent Order that any complaint necessarily be resolved for or against the Bank.

IV. EVALUATING AND MONITORING COMPLIANCE

24. For the duration of this Consent Order, FDSB shall retain all records relating to its obligations hereunder as well as its compliance activities as set forth herein. The United States shall have the right to review and copy such records upon request. Such records may be maintained electronically.

25. Within six months of the effective date of this Consent Order, FDSB shall submit a report to the United States on the Bank's progress in establishing and implementing each of the remedial items specified in this Consent Order. A second report shall be filed on the first anniversary of this Consent Order. Thereafter, FDSB shall submit a report annually for the term of the Consent Order describing the actions taken in compliance with the provisions of the Consent Order. The report shall include an objective assessment of the extent to which each obligation was met, an explanation of why any particular component fell short of meeting the goal for that year, and any recommendations for additional actions to achieve the goals of this Consent Order. If applicable, FDSB shall attach to the annual reports representative copies of training material disseminated pursuant to this Consent Order.

V. ADMINISTRATION

26. The Consent Order shall terminate three (3) months after the submission of FDSB's third annual report to the United States. Notwithstanding the above, this Consent Order may be extended upon further motion of the United States to the Court, for good cause shown.

27. Any time limits for performance fixed by this Consent Order may be extended by mutual written agreement of the parties. Other modifications to this Consent Order may be made only upon approval of the Court, by motion by either party. The parties recognize that there may be changes in relevant and material factual circumstances during the term of this Consent Order that may impact the accomplishment of its goals. The parties agree to work cooperatively to discuss and attempt to agree upon any proposed modifications to this Consent Order resulting therefrom.

28. In the event that any disputes arise about the interpretation of or compliance with the terms of this Consent Order, the parties shall endeavor in good faith to resolve any such dispute between themselves before bringing it to this Court for resolution. The parties agree that if it either reasonably believes that the other party failed to comply with any obligation under this Consent Order, it shall provide written notice thereof and allow a period of at least thirty (30) days to discuss a voluntary resolution of the alleged violation, before presenting the matter to this Court. In the event of either a failure by FDSB to perform in a timely manner any act required by this Consent Order or an act by FDSB, in violation of any provision hereof, the United States may move this Court to impose any remedy authorized by law or equity, including attorneys' fees and costs.

29. The parties agree that, as of the date of the entry of this Consent Order, litigation is not "reasonably foreseeable" concerning the matters described above. To the extent that either

party previously implemented a litigation hold to preserve documents, electronically stored information (ESI), or things related to the matters described above, the party is no longer required to maintain such litigation hold. Nothing in this paragraph relieves either party of any other obligations imposed by this Consent Order.

30. Nothing in this Consent Order shall excuse the Bank's compliance with any currently or subsequently effective provision of law or Consent Order of a regulator with authority over FDSB that imposes additional obligations on the Bank.

31. FDSB's compliance with the terms of this Consent Order shall fully and finally resolve all claims of the United States relating to the alleged violation of the fair lending laws by means of discriminating on the basis of national origin, as alleged in the Complaint in this action, including all claims for equitable relief and monetary damages and penalties. Each party to this Consent Order shall bear its own costs and attorney's fees associated with this litigation.

32. The Consent Order does not create any third-party beneficiaries.

33. The Court shall retain jurisdiction for the duration of this Consent Order to enforce the terms of the Consent Order, after which time the case shall be dismissed with prejudice.

SO APPROVED AND ORDERED, this ____ day of _____, 2013.

UNITED STATES DISTRICT JUDGE

The undersigned hereby apply for and consent to the entry of this Consent Order:


For the United States:

ROBERT PITMAN
United States Attorney
Western District of Texas

JOCELYN SAMUELS
Acting Assistant Attorney General
Civil Rights Division

/s/ John Paniszczyn

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APPENDIX A

**We do Business in Accordance with
Federal Fair Lending Laws**

**UNDER THE EQUAL CREDIT OPPORTUNITY
ACT, IT IS ILLEGAL TO DISCRIMINATE IN ANY
CREDIT TRANSACTION:**

**On the basis of race, color, national origin, religion,
sex, marital status, or age;**

Because income is from public assistance; or

**Because a right has been exercised under the Federal
Consumer Credit Protection Laws.**

**IF YOU BELIEVE YOU HAVE BEEN
DISCRIMINATED AGAINST, YOU SHOULD SEND
A COMPLAINT TO:**

**FDIC Consumer Response Center
1100 Walnut Street, Box #11
Kansas City, MO 64106
Tel.: 1-877-275-3342
<http://www.fdic.gov/consumers/>**

OR

**U.S. Department of Justice
Civil Rights Division
Housing and Civil Enforcement
Section
Washington, DC 20530
Tel: 1-800-896-7743
<http://www.usdoj.gov/crt/housing>**

APPENDIX B

Officer and Employee Acknowledgment

I acknowledge that on _____, I was provided copies of the Consent Order entered by the Court in United States v. Fort Davis State Bank (W.D. Tex.), and the loan policies developed pursuant thereto. I have read and understand these documents and have had my questions about these documents answered. I believe I understand my legal responsibilities and shall comply with those responsibilities.

Signature

Print Name

Job Title

Date

APPENDIX C

Officer and Employee Training Certification

I certify that on _____, I received training with respect to my responsibilities under the Consent Order entered by the Court in United States v. Fort Davis State Bank (W.D. Tex.), and the federal fair lending laws. I have had the opportunity to have my questions about them answered. I believe I understand my legal responsibilities not to discriminate under the federal fair lending laws, including the Equal Credit Opportunity Act, and shall comply with those responsibilities.

Signature

Print Name

Job Title

Date

APPENDIX D

Release

In consideration for the parties' agreement to the terms of the Consent Order entered in United States v. Fort Davis State Bank (W.D. Tex.), and the payment to me of \$ _____, pursuant to the Consent Order and effective upon that payment, I hereby release and forever discharge all claims, rights, remedies, and recoveries related to the facts of credit discrimination in the origination of unsecured consumer loans at issue in the litigation referenced above, and release and forever discharge all claims, rights, remedies, and recoveries arising from credit discrimination alleged in that litigation in connection with the origination of my loan(s), known and unknown, up to and including the date of execution of this release.

I understand that this releases those claims, rights, remedies and recoveries against Fort Davis State Bank, and against any and all related entities, parents, predecessors, successors, subsidiaries, and affiliates, and against any and all of their past and present directors, officers, agents, managers, supervisors, shareholders, and employees and their heirs, executors, administrators, successors in interest, or assigns.

Executed this ____ day of _____, _____.

Signature


Print Name

Address

CERTIFICATE OF SERVICE

I hereby certify that on 18 December 2013 a copy of the foregoing pleading was sent via electronic mail transmission to the following counsel of record:

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Trial Attorney
United States Department of Justice