

ENTERED

October 12, 2016

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO. 2:16cv413
)	
CHARTER BANK,)	
)	
Defendant.)	
)	
)	

CONSENT ORDER

I. INTRODUCTION

This Consent Order (“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 Order resolves the claims of the United States that Charter Bank (“Charter” or “Bank”) has engaged in a pattern or practice of lending discrimination on the basis of national origin in the pricing of vehicle-secured consumer loans in violation of the Equal Credit Opportunity Act (ECOA), 15 U.S.C. §§ 1691-1691f.

Under the provisions of the Order, Charter agrees to maintain uniform pricing policies and procedures designed to ensure that the prices it charges for the loans covered by this Order, including any 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 the ECOA. Charter also will compensate Hispanic borrowers of vehicle-secured consumer loans who were affected by its pricing policies between January 1, 2009 and June 30, 2014.

There has been no factual finding or adjudication with respect to any matter alleged by the United States. The parties have entered into this Order to resolve voluntarily the claims asserted by the United States in order to avoid the risks and burdens of litigation. The parties agree that full implementation of the terms of this Order will provide a resolution of the allegations of the United States in a manner consistent with Charter's legitimate business interests.

II. BACKGROUND

Charter is a state-chartered bank based in Corpus Christi, Texas. Charter operates four branches - three in Corpus Christi, Texas and one in Rockport, Texas. Charter offers a wide range of loan products, including mortgage loans, consumer loans, and commercial loans. The Bank originates its loans exclusively through loan officers at its branch offices. As of June 30, 2016, the Bank had total assets of approximately \$268 million. Charter is subject to the regulatory authority of the Federal Deposit Insurance Corporation ("FDIC").

Beginning in October 2013, the FDIC conducted an examination of Charter's consumer lending practices to evaluate compliance with the ECOA. Based on analysis of the average interest rates that Charter charged from July 31, 2012 to August 31, 2013 for vehicle-secured consumer loans, the FDIC found reason to believe that Charter had engaged in a pattern or practice of discrimination on the basis of national origin against Hispanic borrowers. On June 12, 2014, following the examination described above, the FDIC referred the lending practices of Charter to the United States Department of Justice pursuant to 15 U.S.C. § 1691e(g).

After conducting its own investigation and reviewing the information provided by the FDIC, the United States contends that Charter charged higher interest rates on vehicle-secured consumer loans to Hispanic borrowers than to non-Hispanic borrowers from at least January 1,

2009 through June 30, 2014. The Complaint alleges that prior to July 1, 2014, the higher rates of interest that Charter charged to Hispanic borrowers for vehicle-secured consumer loans were a result of Charter's policy or practice of giving its employees broad subjective discretion in setting the interest rate of those loans.

III. TERMS OF ORDER

1. Unless otherwise stated herein, the remedial provisions of this Order will be implemented within ninety (90) days of the Effective Date of this Order and will continue throughout its term. The Effective Date of this Order will 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 Order include auto and other vehicle purchase, secured (except for commercial and agricultural), unsecured, home purchase, home equity, home improvement, home construction, and consumer lot/land loans.

A. General Prohibitory Injunction

3. Charter, 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 the 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 Order.

4. This Order requires the Bank to take actions to remedy its alleged discrimination. Charter retains the discretion to take any additional actions that it believes are appropriate to achieve the goals of this Order. Nothing in this Consent Order will require Charter 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 July 2014, Charter revised its pricing policies for consumer loans, including the loans covered by this Order. Charter began to implement the revised pricing policies in August 2014. The revised pricing policies include the following: (a) standards for collecting applications, current financial documents, and credit reports for all borrowers for the loans covered by this Order; (b) standards for maintaining loan files for the loans covered by this Order; and (c) a uniform pricing matrix that sets forth objective, non-discretionary, and non-discriminatory standards for determining interest rates for consumer loans, including the loans covered by this Order.

6. During the term of this Order, Charter must maintain the consumer loan pricing policies described in Paragraph 5, except as amended pursuant to Paragraph 10. If the Bank elects to revise its loan pricing policies to include a discretionary element in the pricing of consumer loans covered by this Order, the revised pricing policies must include: (i) limits on the amount by which the interest rate may deviate, either upward or downward, from the rate as determined by the matrix; (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 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 (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.

7. Charter will maintain its current policy requiring all loan officers and employees who originate consumer loans, including the loans covered by this Order, to comply with the revised pricing policies required by Paragraph 5. Charter also will maintain its current policy requiring an appropriate manager, under the supervision of a designated senior official of the Bank, to review compliance with these policies and to take steps to ensure that such loan prices do not vary materially by national origin. All reviews shall be documented and kept in the loan files. Any loan that is not in compliance with the pricing policies required by Paragraph 5 may not be funded. In the event that a loan inadvertently is funded in material violation of these policies, an appropriate refund will be provided to the borrower.

C. Monitoring Program

8. Charter currently has in place a monitoring program designed to detect disparities in interest rates and pricing adjustments based on national origin with respect to the Bank's loan products, including the loans covered by this Order. Charter will maintain that program during the term of this Order, except as amended pursuant to Paragraph 10. The results of this review are submitted quarterly for review by senior managers. Each such quarterly review is documented and presented to Charter's Board of Directors for review and approval within sixty (60) days after the end of each quarter.

a. In the event that any such review discloses statistically significant disparities between Hispanic and non-Hispanic borrowers, Charter will attempt to determine the reason(s) for those disparities and will promptly take corrective action to address disparities that are

attributable to a policy or practice of Charter and not justified by a legitimate business need. Corrective action will include, as warranted, financial remediation for borrowers, further modifications to Charter's pricing policies and/or monitoring programs as appropriate, and education, discipline, or termination of employee(s).

b. In the event that any such review discloses statistically significant disparities with respect to any particular employee or branch, Charter will 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, Charter will require the employee or branch manager to take prompt corrective action to address the disparities.

c. Charter will provide a summary of the quarterly reviews and any documentation and analysis relating thereto to the United States on a quarterly basis as part of the reporting required in Paragraph 28. The submission will document all determinations made, and corrective actions taken, pursuant to the two preceding subparagraphs.

9. If the United States raises any objections to Charter's determinations or remedial actions described in Paragraph 8, the parties will 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, either party may bring the dispute to this Court for resolution.

D. Notification of the United States and Right to Object

10. During the term of this Order, Charter may change the policies it utilizes to implement Paragraphs 5-7 and the monitoring program required under Paragraph 8 of this Order upon written advance notice to the United States, which will have thirty (30) days from receipt of

such notice to raise any objection to the proposed change(s).¹ If the United States raises any objection, Charter will not implement the change(s), and the parties shall confer to resolve their differences. If they are unable to do so, either party may bring the dispute to this Court for resolution.

E. Borrower Notices

11. Charter will 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).

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

F. Equal Credit Opportunity Training Program

13. Within ninety (90) days of the Effective Date of this Order, Charter will 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 Order. During this training, Charter will provide to each participant: (a) access to a copy of this Order and the loan policies adopted pursuant to it; and (b) training on the terms of this Order, the loan

¹ All material required by this Order to be sent to counsel for the United States shall be sent by commercial overnight delivery addressed as follows: Chief, Housing and Civil Enforcement Section, Civil Rights Division, U.S. Department of Justice, 1800 G Street, NW, Suite 7002, Washington, DC 20006, Attn: DJ 188-74-15.

policies adopted pursuant to it, the requirements of the ECOA, and his or her responsibilities under each. During the term of this Order, Charter will provide annual training to covered employees with respect to his or her responsibilities and obligations under the ECOA and this Order. Charter will provide representative copies of training materials as part of the reporting required in Paragraph 28.

14. The content of this training program will be approved in advance by the United States. Charter will bear all costs associated with the training.

15. Upon completion of the training required by Paragraph 13, Charter will 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 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 Order, each new management official, loan officer, and any other employee or agent who participates in the origination of the Bank's loans covered by this Order will be provided access to a copy of this Order and given an opportunity to have any questions answered, and will 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

16. Charter will deposit in an interest-bearing escrow account the total sum of \$165,820 to compensate for monetary damages that affected persons may have suffered as a result of the alleged violations of the ECOA with respect to vehicle-secured consumer loans (the "Settlement Fund"). Title to this account shall be in the name of "Charter Bank for the benefit of

affected persons pursuant to Order of the Court in Civil Action No. 2:16cv413". Charter will provide written verification of the deposit to the United States within five (5) days of the Effective Date of this Order. Any interest that accrues will become part of the Settlement Fund and be utilized and disposed of as set forth herein.

17. The United States will request any information it believes will assist in identifying affected persons and determining any damages. Charter will, 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 Charter's control, the Bank will, within thirty (30) days of receipt of such request, supply any information in its control that identifies other parties that may have the requested information.

18. The United States will, 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.

19. After Charter supplies the information referred to in Paragraph 17, the United States will provide to Charter a list of affected persons and an amount each individual will receive from the Settlement Fund to compensate for monetary damages these persons may have suffered, subject to the conditions set forth in Paragraph 20. Charter will have sixty (60) days from receipt of such list in which to review the list and the United States will consider in good faith any issues raised by the Bank.

20. Payments from the Settlement Fund to affected persons shall be subject to the following conditions, provided that the details in administration of the Settlement Fund set forth

in Paragraphs 21-22 can be modified by agreement of the parties and without further Court approval:

a. No affected person shall be paid any amount from the Settlement Fund until he or she has executed and delivered to Charter 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 Order; and

b. The total amount paid by Charter collectively to the affected persons shall not exceed the amount of the Settlement Fund, including accrued interest.

21. Charter will, no later than sixty (60) days after receiving the compensation list referred to in Paragraph 19, or no later than fourteen (14) days after the resolution of any issues raised by the Bank pursuant to Paragraph 19, whichever is later, notify each identified person eligible for compensation by a letter (using the most recent mailing address in its records). The form of this letter will be subject to the review and approval of the United States. At a minimum, the letter will 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 will be enclosed with the notice along with an addressed and postage-paid return envelope. Each letter will identify the loan(s) the Bank originated to the identified person. The letter will explain the complaint resolution program referenced in Paragraph 26 of this Order. 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. For each identified person who has not responded after sixty (60) days, Charter will skip trace and promptly resend the letter to any new address that it

finds. For each identified person who has not responded after one hundred and twenty (120) days, Charter will use its best efforts to make at least one additional successful contact. Upon request, Charter will provide an accounting of all notifications it sends, indicating the name and address to which each was dispatched. Charter will continue to accept releases for a minimum of nine (9) months from the date the initial notifications are sent.

22. Charter will issue checks in the amount indicated on the compensation list to all identified persons who execute and return the releases. Charter will issue and mail such checks no later than twenty-one (21) days after the receipt of the release. Checks will remain valid for a minimum of ninety (90) days from when mailed. Charter will provide, at least once every fourteen (14) days, an 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 affected persons.

23. All money not distributed to identified persons from the Settlement Fund, including accrued interest, shall be distributed to one or more organizations that provide credit counseling, financial literacy, and other related programs targeted at Hispanic potential and former consumer loan borrowers in communities where the Bank's branches are located ("Organization"). Before selecting the Organization(s), Charter will obtain proposals from the Organization(s) on how the funds will be used consistent with the above-stated purpose, submit such proposals to the United States, and consult with and obtain the non-objection of the United States. The United States and Charter may request modification of the proposals before approving the Organization(s). Organization(s) must not be related to Charter, Charter's parent, or any entity owned by Charter's parent.

24. The parties shall obtain the Court's approval for the Organization(s) and the amount to be distributed to each prior to distribution provided by Paragraph 23. Within fifteen (15) days of the United States' non-objection to the Organization(s), the parties shall move the Court to order the distribution of the funds. The parties shall provide the Court with information regarding how the proposed organization(s) meet the requirements set forth in Paragraph 23. Charter shall require each Organization to submit to Charter and the United States a report detailing that funds are utilized for the purposes identified in Paragraph 23 within one year after the funds are distributed and every year thereafter until the funds are exhausted. For any Organization that does not provide such a report, Charter shall require that the funds be returned to it for redistribution to the other Organization(s) approved to receive funds.

25. Charter will not be entitled to a set-off, or any other reduction, of the amount of payments to identified persons because of any debts owed by the identified persons. Charter also will not refuse to make a payment based on a release of legal claims or loan modification previously signed by any identified person.

H. Complaint Resolution Program

26. During the period of this Order, Charter will maintain a complaint resolution program to address consumer complaints alleging discrimination regarding loans originated by Charter. Documentation regarding this complaint resolution program, including documentation of individual complaints and resolutions, if any, will be included in the reports referenced in Paragraph 28. A person will not be deemed ineligible for the complaint resolution program on the basis of having executed the release described in Paragraph 20(a), but there is no requirement under this Order that any complaint necessarily be resolved for or against the Bank.

IV. EVALUATING AND MONITORING COMPLIANCE

27. For the duration of this Order, Charter will retain all records relating to its obligations hereunder as well as its compliance activities as set forth herein. The United States will have the right to review and copy such records upon request.

28. Within six (6) months of the Effective Date of this Order, Charter will submit a report to the United States on the Bank's progress in establishing and implementing each of the remedial items specified in this Order. Subsequent reports will be submitted quarterly for the term of the Order describing the actions taken in compliance with the provisions of the Order. The reports will include an objective assessment of the extent to which each quantifiable 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 Order.

V. ADMINISTRATION

29. This Order will terminate four (4) years and three (3) months after the Effective Date of this Order. Notwithstanding the above, this Order may be extended upon further motion of the United States to the Court, for good cause shown.

30. Any time limits for performance fixed by this Order may be extended by mutual written agreement of the parties. Except as specified in Paragraph 20, other modifications to this 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 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 Order resulting therefrom.

31. In the event that any disputes arise about the interpretation of or compliance with the terms of this Order, the parties will endeavor in good faith to resolve any such dispute between themselves before bringing it to this Court for resolution. The parties agree that if either party reasonably believes that the other party failed to comply with any obligation under this Order, it will 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 Charter to perform in a timely manner any act required by this Order, or an act by Charter 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.

32. The parties agree that, as of the Effective Date, litigation is not "reasonably foreseeable" concerning the matters described in the Order. To the extent that either party previously implemented a litigation hold to preserve documents, electronically stored information, or things related to the matters described in the Order, the party is no longer required to maintain such a litigation hold, with the exception of documents, electronically-stored information, or other things relating to loans originated by Charter between January 1, 2009, and June 30, 2014.

33. The Order will be binding on Charter, including its officers, employees, agents, assignees, and successors in interest, and all those in active concert or participation with any of them. In the event that Charter seeks to transfer or assign all or part of its operations, and the successor or assign intends to carry on the same or similar use, as a condition of sale, Charter will obtain the written accession of the successor or assign to any obligations remaining under the Order for its remaining term.

34. Nothing in this Order will excuse the Bank's compliance with any currently or subsequently effective provision of law or order of a regulator with authority over Charter that imposes additional obligations on the Bank.

35. Charter's compliance with the terms of this Order will fully and finally resolve all claims of the United States Attorney General relating to the alleged violation of the ECOA 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. This Order does not release any claims that may be held or are currently under investigation by any executive agency established by 12 U.S.C. § 5491 or the appropriate Federal Banking Agency, as defined in 12 U.S.C. § 1813(q). Each party to this Consent Order will bear its own costs and attorneys' fees associated with this litigation.

36. This case is administratively closed but the Court will retain jurisdiction for the duration of this Consent Order to enforce the terms of the Order, after which time the case will be dismissed with prejudice.

SO APPROVED AND ORDERED, this 12th day of October, 2016.


UNITED STATES DISTRICT JUDGE

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

For the United States:

LORETTA E. LYNCH
Attorney General

KENNETH MAGIDSON
United States Attorney
Southern District of Texas

VANITA GUPTA
Principal Deputy Assistant Attorney General
United States Department of Justice
Civil Rights Division

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For Defendant:

CHARTER BANK

By:

Sid Ridlehuber
President
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Phone: (361) 241-7681
Fax: (361) 241-3544

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 access to copies of the Consent Order entered by the Court in United States v. Charter Bank (S.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. Charter Bank (S.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. Charter Bank (S.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 vehicle-secured consumer loans at issue in the litigation referenced above.

I understand that this releases those claims, rights, remedies and recoveries against Charter 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