

**The Attorney General's  
2019 Annual Report to Congress  
Pursuant to the Equal Credit Opportunity Act  
Amendments of 1976**



**Submitted by**

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**July 2020**

The Department of Justice (DOJ or the Department) submits this report regarding its activities in 2019 to enforce the Equal Credit Opportunity Act (ECOA), 15 U.S.C. 1691, *et seq.* See 15 U.S.C. 1691f. The report also includes information about DOJ’s lending work under the Fair Housing Act (FHA), 42 U.S.C. 3601, *et seq.*, and the Servicemembers Civil Relief Act (SCRA), 50 U.S.C. 3901, *et seq.* Within DOJ, the Civil Rights Division (Division) is responsible for enforcing ECOA, the FHA, and the SCRA. The Division’s Housing and Civil Enforcement Section handles this responsibility.

## I. INTRODUCTION

In 2019, the Civil Rights Division attained substantial relief for victims of lending discrimination in two settlements addressing discrimination in mortgage lending under ECOA and the FHA, and relief for servicemembers in three settlements involving unlawful repossessions, foreclosures, and vehicle lease terminations.

## II. LENDING DISCRIMINATION ENFORCEMENT UNDER ECOA AND THE FHA

The Division has authority to enforce ECOA and the FHA on its own initiative or upon referral from another agency. ECOA prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, or age, because an applicant receives income from a public assistance program, or because an applicant has in good faith exercised any right under the Consumer Credit Protection Act. The FHA prohibits discrimination in home mortgage loans, home improvement loans, and other home credit transactions because of race, color, religion, sex, national origin, familial status, or disability.

In cases involving discrimination in mortgage or home improvement loans, the Division may file suit under both ECOA and the FHA.

The Division has authority under both statutes to challenge a pattern or practice of discriminatory conduct. The Division investigates abuses in the mortgage market, including redlining and discriminatory underwriting and pricing. The Division also investigates allegations of unlawful conduct in non-mortgage lending, including discrimination in auto loans, unsecured consumer loans, student loans, and credit card products.

In 2019, the Division opened four fair lending investigations, filed two lawsuits alleging fair lending violations, and settled two matters, obtaining over \$2 million in relief.

### **Civil Rights Division Partners**

#### Bank regulatory agencies

**CFPB** – Consumer Financial Protection Bureau

**FDIC** - Federal Deposit Insurance Corporation

**FRB** - Federal Reserve Board

**NCUA** - National Credit Union Administration

**OCC** - Office of the Comptroller of the Currency

#### Other partners

**FTC** - Federal Trade Commission

**HUD** - Dep’t of Housing and Urban Development

## **2019 Filings and Settlements**

On June 13, 2019, the Division simultaneously filed a complaint and proposed settlement resolving *United States v. First Merchants Bank* (S.D. Ind.). The complaint alleged that First Merchants violated ECOA and the FHA by engaging in unlawful redlining of majority-African-American neighborhoods in the Indianapolis metropolitan area. First Merchants maintained a service area that formed a horse-shoe around the urban core of the Indianapolis metropolitan area and excluded 50 of 51 majority-African-American census tracts, despite First Merchants' significant expansion between 2011 and 2015. Even when First Merchants acquired a local bank in 2016 resulting in the addition of the downtown area to its service area, First Merchants failed to locate branches in or market to majority-African-American neighborhoods, but instead maintained lending preferences for existing or potential customers within its old service area. As compared to peer lenders, First Merchants had a disproportionately lower number of applicants and loan originations in majority-African-American neighborhoods.

***Federal law prohibits lenders from discriminating against mortgage applicants and other potential customers based on race. We commend First Merchants for cooperatively resolving this case by taking steps to ensure that its residential lending products and services are made available to everyone in Indianapolis, regardless of race.***

Assistant Attorney General for the Civil Rights Division, Eric S. Dreiband, Press Release for *United States v. First Merchants Bank*, June 13, 2019

The settlement provides for First Merchants to open a branch and a loan production office to serve predominantly-African-American neighborhoods. First Merchants also agreed to create a \$1.2 million loan subsidy fund and invest \$500,000 in advertising, outreach, and credit education. These provisions are intended to remedy the harm caused by the actions alleged in the complaint. Compliance is ongoing.

On September 30, 2019, the Department filed a complaint in *United States v. Guaranteed Auto Sales* (D. Md.), alleging that defendant Guaranteed Auto Sales, a used car dealership, along with its owner and manager, violated ECOA by offering different terms of credit based on race to those seeking to purchase and finance used cars at the dealership in Glen Burnie, Maryland. The United States alleges that defendants engaged in a pattern or practice of discrimination by offering less favorable auto loan terms to African-American testers than white testers, including by telling African-American testers that they needed larger down payments than white testers for the same used cars. The lawsuit is based on the results of testing conducted by the Department's Fair Housing Testing Program, in which individuals posed as prospective car buyers to gather information about possible discriminatory practices.

During 2019, the Division entered into the final of seven separate settlement agreements with individual defendants in *United States v. The Home Loan Auditors, LLC, et al.*, (N.D. Cal.), a case alleging a predatory mortgage rescue scheme. The lawsuit, filed in 2016, was described in detail in the 2016 ECOA report. The complaint alleged that The Home Loan Auditors, LLC, as well as several affiliated entities and seven individuals, targeted Hispanic homeowners facing foreclosure with

unnecessary “forensic loan audits” and other loan modification services. Under the settlement agreements, the defendants will pay a total of more than \$148,000 into a restitution fund that will be used to partially refund fees to defendants’ clients. The defendants also agreed to refrain from engaging in discriminatory conduct in the future, and five of the seven individual defendants agreed to an additional \$405,699 in total suspended judgments, which the United States can collect if the defendants misrepresented their current financial condition. The defendants also agreed to pay an additional \$91,650 in damages to two HUD complainants and their counsel. Compliance is ongoing.

As discussed in greater detail in last year’s report, on April 12, 2019, the Division also reached a settlement in *United States v. Hatfield* (W.D.N.C). The case was brought against Robert N. Hatfield (“Hatfield”) who ran a real estate business in Wilkes County, North Carolina, involving the sale, rental, and financing of residential properties. The case, which had been in litigation since 2017, involved allegations that Hatfield violated ECOA and the FHA by engaging in a pattern or practice of sexually harassing current and prospective female residents. The complaint included an ECOA claim because part of the conduct involved the extension of credit. In addition to barring Hatfield from participating in the rental, sale, or financing of residential properties, the settlement agreement secured \$550,000 in damages to 17 victims and a \$50,000 civil penalty. Compliance is ongoing.



Assistant Attorney General  
for the Civil Rights Division,  
Eric S. Dreiband

### **Ongoing Discrimination Investigations**

At the end of 2019, the Division had five open fair lending investigations covering a variety of issues.<sup>1</sup> These investigations were predicated on possible violations including:

- Redlining discrimination by providing unequal access to credit because of the racial or ethnic demographics of the neighborhoods in which consumers live;
- Discrimination in the pricing of mortgage loan products based on race, national origin and sex; and
- Discrimination in mortgage lending on the basis of disability.

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<sup>1</sup> As explained elsewhere in this report, the Division has independent authority to enforce ECOA and the FHA without a referral from another agency. Accordingly, not all of these investigations represent referrals.

### III. SERVICEMEMBERS' LENDING ENFORCEMENT



The Civil Rights Division enforces a number of laws designed to protect the rights of members of the military, including the Servicemembers Civil Relief Act (SCRA). The SCRA provides protections, in areas such as housing and credit, for individuals in military service, so that they can focus their full attention on their military responsibilities without adverse consequences for themselves or their families. The SCRA's benefits and protections include: a 6% interest rate cap on financial obligations that were incurred prior to military service; the ability to postpone civil court proceedings; protections in connection with default judgments; protections related to residential and motor vehicle lease terminations; and special requirements related to evictions, mortgage foreclosures, and installment contracts, such as auto loans.

Enforcing these rights is an important priority of the Division. Members of the military who have made great personal sacrifices on behalf of this country should not return from military service to find their credit ruined, their cars repossessed, or their homes foreclosed on in violation of the SCRA.

#### **Outreach Efforts**

During 2019, Department staff presented on the SCRA and the Servicemembers and Veterans Initiative's ("Initiative") work at 24 events nationwide. These events were held across the country,



SCRA Presentation for servicemembers and Judge Advocate General attorneys at Ft. Benning, Georgia November 2019

reaching all five branches of the military, reserve components, and the National Guard. At these events, the Initiative provided substantive trainings on the SCRA for legal professionals (including military attorneys), know-your-rights presentations for enlisted servicemembers, and presentations for law school clinics and outside legal assistance organizations. Many of these events relied on the support and participation of the Civil Rights Division's Housing and Civil Enforcement and Employment Litigation Sections, and U.S. Attorney's Offices from across the country.

## **Filing Related to Auto Repossessions**

On August 1, 2019, the Division obtained \$3 million for servicemembers in its second case involving a motor vehicle lessor's failure to refund pre-paid lease amounts to servicemembers who exercised their SCRA rights to terminate their leases early after receiving military orders. The settlement agreement in *United States v. Nissan Motor Acceptance Corp.* (M.D. Tenn.) requires Nissan to pay \$2,937,971 in damages to servicemembers and a \$62,029 civil penalty to the United States, for a total of \$3 million. The agreement also requires Nissan to adopt new policies and training to prevent future violations of the SCRA. The complaint alleges that Nissan, which provides motor vehicle lending and leasing services, repossessed vehicles owned by 113 protected servicemembers without the required court orders and failed to refund pre-paid capitalized cost reduction amounts to servicemembers who terminated their leases early following receipt of qualifying military orders.

***Men and women in uniform risk their lives to serve our country, and Congress enacted the Servicemembers Civil Relief Act to protect them when they serve our nation. The U.S. Department of Justice will continue to enforce the Act vigorously in order to protect servicemembers and to ensure that all covered industries comply fully with the law.***

Assistant Attorney General for the Civil Rights Division, Eric Dreiband, Press Release for *United States v. Nissan Motor Acceptance Corp.*, August 1, 2019

## **Filing Related to Home Foreclosures**

The SCRA protects servicemembers and their families from having their property foreclosed on without a court order. On February 6, 2019, the United States filed a complaint and entered into a settlement agreement in *United States v. PHH Mortgage Corp.* (D.N.J.). The Division launched its investigation into PHH Mortgage's practices after a United States Marine Corps veteran from Vancouver, Washington, submitted a complaint to the Department alleging that PHH had foreclosed on his home less than two months after he was released from active duty in Operation Iraqi Freedom. The Division's complaint alleged that PHH, one of the nation's largest mortgage servicers, foreclosed on the Marine veteran and five other SCRA-protected servicemembers without the required court orders. The settlement agreement requires PHH to pay \$125,000 in damages to each servicemember, for a total of \$750,000.

## **IV. COLLABORATION WITH FEDERAL AND STATE PARTNERS AND OUTREACH TO STAKEHOLDERS**

The Division continues its collaborative work with other federal partners, including its participation in the Federal Interagency Fair Lending Task Force. The Task Force's discussions often center on topics such as consistency in approaches among the Division and the other agencies, common issues that result in referrals to the Division, and investigatory issues that can arise across the various agencies, allowing the participants to benefit from other agencies' perspectives and experience.

As in prior years, Division representatives participated in conferences, training programs, and meetings involving lenders, compliance officials, industry experts, enforcement and regulatory agencies, consumer groups, and others interested in fair lending throughout the country, in order to inform critical stakeholders about the Division's enforcement activities. In 2019, Division staff participated in six such events, and for the ninth year in a row, Division staff as well as other federal fair lending enforcement agencies participated in a national webinar hosted by the FRB.

## **V. REFERRALS**

Under ECOA, the bank regulatory agencies are required to refer matters to the Division when they have reason to believe a lender has engaged in a pattern or practice of discrimination. Referrals of lending matters are also made under ECOA by the FTC, and under the FHA by HUD and certain bank regulatory agencies. From 2001 through 2019, the bank regulatory agencies, the FTC, and HUD referred a total of 477 matters involving a potential pattern or practice of lending discrimination to the Justice Department. One hundred fifty-four of those referrals involved race or national origin discrimination.

The Division received nine ECOA and FHA lending referrals in 2019: three from the CFPB, two each from the FDIC and OCC, and one each from the FRB and NCUA. As explained in prior reports, when the Division receives a referral from a regulatory agency, it determines whether to open an investigation or defer the matter to the regulator for administrative enforcement. Starting in 2013, we made a commitment to the regulators to shorten our review time to 60 days as part of our continuing effort to increase the effectiveness and efficiency of our fair lending enforcement. To date we have met our goal 100% of the time, including an average of 43 days to decision in 2019.<sup>2</sup>

### **Factors Considered By DOJ When Evaluating Referrals**

In 1996, based on the recommendation of the Government Accountability Office, DOJ provided a summary to the federal bank regulatory agencies on pattern or practice referrals. The summary describes the factors that DOJ would consider in determining which matters it would return to the agency for administrative resolution and which ones it would pursue for potential litigation. The summary is posted on the Division's website at

<https://www.justice.gov/sites/default/files/crt/legacy/2014/03/05/regguide.pdf>.

The Division considers numerous factors in deciding whether to retain or return a referral. As a general matter, referrals that are most likely to be returned have the following characteristics:

- The practice has ceased and there is little chance that it will be repeated;
- The violation may have been accidental or arose from ignorance of the law's more technical requirements; examples of such violations may involve spousal signature violations and

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<sup>2</sup> One referral was received on November 28, 2018 and was in review during the lapse in appropriations between December 22, 2018 and January 25, 2019. The calculation is based on days when the government was operating normally.

- minor price breaks for certain age groups not entitled to preferential treatment; and
- There were either few potential victims or *de minimis* harm to potential victims.

As a general matter, the Division retains referrals that do not meet the criteria set forth above, and have one or more of the following characteristics:

- The practice is serious in terms of its potential for either financial or emotional harm to members of protected classes (for example, discrimination in underwriting, pricing, or provision of lender services);
- The practice is not likely to cease without court action;
- The protected class members harmed by the practice cannot be fully compensated without court action;
- Damages for victims, beyond out-of-pocket losses, are necessary to deter the lender (or others like it) from treating the cost of detection as a cost of doing business; or
- The agency believes the practice to be sufficiently common in the lending industry, or raises an important issue, so as to require action to deter lenders.

These factors are also applicable when DOJ has conducted an investigation and is making a decision whether the facts warrant a lawsuit.

### **2019 Referrals to DOJ**

The 9 referrals in 2019 included the following types of alleged discrimination:<sup>3</sup>

- 5 involving race or national origin;
- 2 involving gender;
- 2 involving color
- 2 involving source of income;
- 1 involving religion; and
- 1 involving age.

As set forth in charts immediately following this report, the referrals involved various types of credit and a range of alleged discriminatory conduct, including discriminatory underwriting, overt policies that discriminate on the bases of marital status and receipt of public assistance income.

For six of the nine bank regulatory referrals in 2019, we returned the matter to the referring agency for enforcement without opening an investigation; this number includes referrals where the referring agency specifically requested we defer to it for administrative enforcement. The referrals that were returned for administrative enforcement during 2019 are also described, by agency, in the charts following this report. For each of the referrals we returned to the agencies, the Division evaluated the facts and circumstances of the matter in light of the factors described above.

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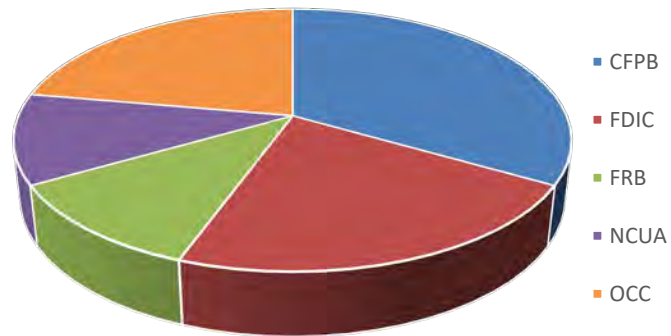
<sup>3</sup> Because individual referrals can involve more than one protected class, referrals detailed by protected class exceed the total number of referrals.



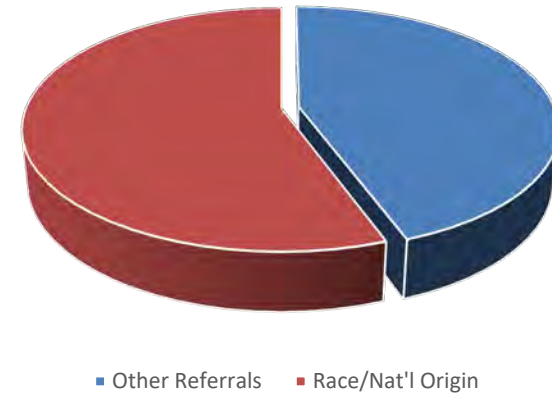
## **VI. CONCLUSION**

The Civil Rights Division continues to enforce laws that provide fair lending protections for all Americans. Through vigorous enforcement of ECOA, the FHA, and the SCRA the Division continues to further its critical mission to ensure equal access to credit in the marketplace.

### 2019 Lending Referrals to DOJ by Agency



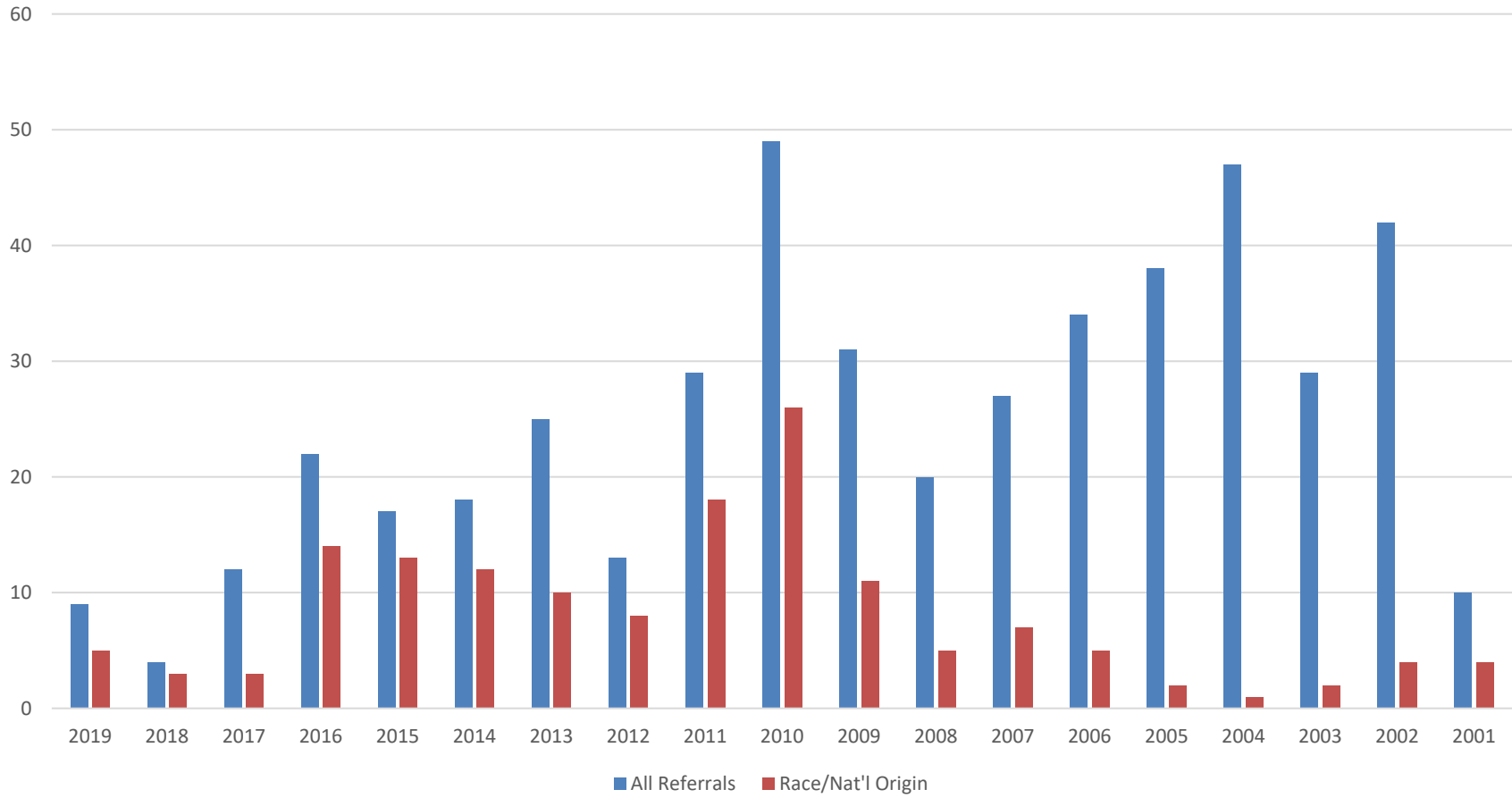
### 2019 Referrals by Protected Class







**N = 9 referrals**


**FTC and HUD made no referrals**



## Historical Fair Lending Referrals to DOJ



## Lending Discrimination Referrals by Other Agencies to DOJ

Bank regulatory agencies	2019 Referrals by Protected Class	2019 Referrals Resulting in DOJ Investigations	2019 Referrals Returned to Agency	Referrals Pending from Prior Years as of December 31, 2019
CFPB 	<i>3 total</i> 1 race: redlining 1 race/national origin: indirect auto lending 1 source of income: underwriting	<i>1</i> 1 race: redlining	<i>0</i> 1 race/national origin: indirect auto lending 1 source of income: underwriting	<i>0</i>
FDIC 	<i>2 total</i> 1 source of income: indirect auto lending 1 religion: underwriting commercial lines of credit	<i>0</i>	<i>2 total</i> 1 source of income: indirect auto lending 1 religion: underwriting commercial lines of credit	<i>0</i>
FRB 	<i>1 total</i> 1 race/national origin/sex: mortgage pricing	<i>1</i> 1 race/national origin/sex: mortgage pricing	<i>0</i>	<i>1</i> <i>Pacific Mercantile Bank, in compliance</i>
NCUA 	<i>1 total</i> 1 age: underwriting	<i>0</i>	<i>1 total</i> 1 age: underwriting	<i>0</i>

Bank regulatory agencies	2019 Referrals by Protected Class	2019 Referrals Resulting in DOJ Investigations	2019 Referrals Returned to Agency	Referrals Pending from Prior Years as of December 31, 2019
OCC 	2 total <sup>4</sup>  1 race/color/national origin: redlining 1 national origin/color/gender: mortgage pricing	1 total  1 race/color/national origin: redlining	1 total  1 race/national origin/gender: mortgage pricing	0

Other partners	2019 Referrals by Protected Class	2019 Referrals Resulting in DOJ Investigations	2019 Referrals Returned to Agency	Referrals Pending from Prior Years as of December 31, 2019
FTC 	0	0	0	0
HUD 	0	0	0	2 total  <i>U.S. v. Advocate Law Groups of Florida, P.A., et al.</i> , in litigation  <i>U.S. v. The Home Loan Auditors</i> , in litigation

<sup>4</sup> These two referrals were made under the Fair Housing Act only.

## 2001 – 2019 All Lending Discrimination Referrals by Other Agencies to DOJ

ALL REFERRALS	2019	2018	2017	2016	2015	2014	2013	2012	2011	2010	2009	2008	2007	2006	2005	2004	2003	2002	2001	Total
<i>Bank regulatory agencies</i>																				
CFPB	3	0	2	8	8	15	6	1	0	—	—	—	—	—	—	—	—	—	—	43
FDIC	2	1	4	4	4	3	11	8	14	33	21	12	15	29	35	42	29	33	5	305
FRB	1	0	3	7	4	0	6	2	7	6	6	3	9	5	2	3	0	6	1	71
NCUA	1	1	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	4
OTS*	—	—	—	—	—	—	—	—	4	6	4	4	3	0	0	1	0	0	1	23
OCC	2	1	1	1	0	0	1	1	1	2	0	1	0	0	0	0	0	1	3	15
<i>Other partners</i>																				
HUD	0	1	0	2	1	0	1	1	1	2	0	0	0	0	1	1	0	2	0	13
FTC	0	0	0	0	0	0	0	0	2	—	—	—	—	—	—	—	—	—	—	2
<b>Total</b>	<b>9</b>	<b>4</b>	<b>12</b>	<b>22</b>	<b>17</b>	<b>18</b>	<b>25</b>	<b>13</b>	<b>29</b>	<b>49</b>	<b>31</b>	<b>20</b>	<b>27</b>	<b>34</b>	<b>38</b>	<b>47</b>	<b>29</b>	<b>42</b>	<b>10</b>	<b>476</b>

## 2001 – 2019 Race/National Origin Lending Discrimination Referrals by Other Agencies to DOJ

Race/Nat'l Origin	2019	2018	2017	2016	2015	2014	2013	2012	2011	2010	2009	2008	2007	2006	2005	2004	2003	2002	2001	Total
<i>Bank regulatory agencies</i>																				
CFPB	2	0	1	7	7	10	2	0	0	—	—	—	—	—	—	—	—	—	—	29
FDIC	0	1	1	2	3	2	5	5	10	14	5	2	1	3	1	0	2	1	2	60
FRB	1	0	0	3	3	0	3	1	2	4	3	0	4	2	0	0	0	1	1	28
NCUA	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
OTS*	—	—	—	—	—	—	—	—	3	4	3	3	2	0	0	0	0	0	1	16
OCC	2	1	1	0	0	0	0	1	1	2	0	0	0	0	0	0	0	0	0	8
<i>Other partners</i>																				
HUD	0	1	0	2	0	0	0	1	0	2	0	0	0	0	1	1	0	2	0	10
FTC	0	0	0	0	0	0	0	0	2	—	—	—	—	—	—	—	—	—	—	2
<b>Total</b>	<b>5</b>	<b>3</b>	<b>3</b>	<b>14</b>	<b>13</b>	<b>12</b>	<b>10</b>	<b>8</b>	<b>18</b>	<b>26</b>	<b>11</b>	<b>5</b>	<b>7</b>	<b>5</b>	<b>2</b>	<b>1</b>	<b>2</b>	<b>4</b>	<b>4</b>	<b>153</b>

\* On July 21, 2011, the CFPB launched and the Office of Thrift Supervision (OTS) merged into the OCC.

“—” indicates there is no entry for that agency in the ECOA report for that year