

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	Civil Action No.
v.)	
)	
)	
FIRST MERCHANTS BANK,)	
)	
Defendant.)	
_____)	

COMPLAINT

The United States of America brings this action against Defendant First Merchants Bank under the Fair Housing Act (“FHA”), 42 U.S.C. §§ 3601-3619, and the Equal Credit Opportunity Act (“ECOA”), 15 U.S.C. §§ 1691-1691f. In enacting the FHA and ECOA, Congress sought to outlaw “redlining,” a form of mortgage credit discrimination in which financial institutions deny or avoid providing credit services based on the characteristics of the neighborhood surrounding the would-be borrower’s dwelling.

As alleged below, First Merchants Bank is headquartered in Muncie, Indiana and has branches throughout Central Indiana, Illinois, and Ohio. The totality of the evidence—including publicly available data submitted by the Bank under the Home Mortgage Disclosure Act of 1975 (“HMDA”), 12 U.S.C. §§ 2801-2811—indicates that the Bank has engaged in unlawful redlining of majority-Black areas of Indianapolis-Marion County. The Bank’s policies and procedures were intended to deny residents in majority-Black census tracts equal access to, or discourage them from applying for, real estate-related credit. Those policies and procedures also had the effect of denying equal access to, or discouraging residents of those majority-Black census tracts from

applying for, real estate-related credit. The Bank adopted and implemented these policies and procedures based on the racial composition of those neighborhoods, and its conduct was neither justified by a business necessity nor necessary to achieve a substantial, legitimate, non-discriminatory interest.

PARTIES

1. The United States, through the Attorney General, is charged with the enforcement of the FHA and ECOA, and brings this action under its enforcement authority, as set forth in 42 U.S.C. § 3614(a) and 15 U.S.C. § 1691e(h). The FHA and ECOA authorize the United States to bring a civil action in federal district court whenever it has reason to believe that an entity is engaged in a pattern or practice of resistance to the full enjoyment of rights secured by the FHA and ECOA. 42 U.S.C. 3614(a); 15 U.S.C. § 1691e(h). The FHA further authorizes the United States to bring suit where the defendant has denied rights to a group of persons and that denial raises an issue of general public importance. 42 U.S.C. 3614(a).

2. First Merchants Bank, N.A. is a full-service bank headquartered in Muncie, Indiana with branches throughout Central Indiana, Illinois, and Ohio. The Bank has approximately 1,800 employees and 110 branches in Indiana. First Merchants Bank offers personal banking and mortgage lending services. The Bank supplements those services with online banking and mobile smartphone applications. Currently, the Bank has \$9 billion in assets, \$6.5 billion in loans, and \$6.9 billion in deposits, making it one of the largest financial institutions in Central Indiana.

3. First Merchants Bank is subject to the FHA, ECOA, and their respective implementing regulations, 12 C.F.R. pt. 1002 and 24 C.F.R. pt. 100.

4. First Merchants Bank is currently subject to the regulatory authority of the Federal Deposit Insurance Corporation (“FDIC”), and was subject to the regulatory authority of the Office of the Comptroller of the Currency (“OCC”) until on or about April 1, 2016.

5. First Merchants Bank is a “creditor” within the meaning of ECOA, 15 U.S.C. § 1691a(e), and is engaged in “residential real estate-related transactions” under the FHA, 42 U.S.C. § 3605.

JURISDICTION AND VENUE

6. This Court has subject-matter jurisdiction over this action under 28 U.S.C. § 1331 and 28 U.S.C. § 1345 because it arises under the laws of the United States, and the United States brings this case as a plaintiff.

7. Venue is proper in this Court under 28 U.S.C. § 1391(a)-(b) because the Bank’s principal place of business is located within this judicial district.

FACTUAL ALLEGATIONS

Racial demographics of Indianapolis-Marion County

8. The Indianapolis-Carmel-Anderson, Indiana Metropolitan Statistical Area (“MSA”) contains eleven counties: Boone, Brown, Hamilton, Hancock, Hendricks, Johnson, Madison, Morgan, Putnam, Shelby, and Indianapolis-Marion County, which operates as a unified city-county government under Indiana law.

9. Within the MSA, the vast majority of Blacks reside in Indianapolis-Marion County, according to census data from the 2015 American Community Survey’s five-year estimate. Of the 398 census tracts within the MSA, 51 are majority-Black, and 50 of those 51 tracts are located in Indianapolis-Marion County. The other lone majority-Black census tract is in Madison County. In terms of percentage, Blacks represent 27.5% of the total population in Indianapolis-Marion

County. By comparison, no other county within the MSA has a Black population higher than 8.3%.

First Merchants Bank's discriminatory lending practices

10. On June 5, 2017, the United States informed First Merchants Bank that it had initiated an investigation into whether the Bank's lending practices in the Indianapolis-Carmel-Anderson MSA constituted discrimination on the basis of race in violation of the FHA and ECOA. Specifically, the investigation focused on whether the Bank engaged in illegal redlining by avoiding and otherwise failing, on the basis of race, to provide mortgage credit services to majority-Black areas within Indianapolis-Marion County between 2011 and 2017.

11. The information obtained in that investigation shows that First Merchants Bank redlined majority-Black areas within the Indianapolis-Carmel-Anderson MSA, particularly those in Indianapolis-Marion County, by:

- a. Excluding Indianapolis-Marion County and its 50 majority-Black census tracts from the Bank's Community Reinvestment Act ("CRA")¹ assessment area, while including overwhelmingly white counties;
- b. Failing to have any branch locations in majority-Black areas of Indianapolis-Marion County;
- c. Refusing to market in majority-Black areas of Indianapolis-Marion County.
- d. Having a disproportionately low number of loan applications from majority-Black neighborhoods in Indianapolis-Marion County compared to its peer institutions;

¹ The CRA is codified at 12 U.S.C. §§ 2901-2908, and its implementing regulations appear at 12 C.F.R. pt. 228.

- e. Having a disproportionately low number of loan originations in majority-Black neighborhoods compared to its peer institutions; and
- f. Having a residential mortgage lending policy that provides a lending preference based on the location of borrowers, not their creditworthiness.

1. *Discriminatory CRA assessment areas*

12. First Merchants Bank's unlawful use of race in its lending practices can be seen in the assessment areas it established and maintained under the CRA.

13. Under the CRA, a bank's assessment area must generally consist of one or more metropolitan areas or contiguous political subdivisions unless that area would be extremely large, of unusual configuration, or divided by significant geographic barriers. 12 C.F.R. § 228.41(c)-(d). In accordance with the CRA and its implementing regulations, First Merchants Bank has delineated an assessment area that partially covers the Indianapolis-Carmel-Anderson MSA. 12 C.F.R. § 228.41(a). This assessment area is known as the Indianapolis Metropolitan Area Assessment Area ("Indianapolis MA AA").

14. Between 2011 and 2015, First Merchants Bank engaged in a significant period of expansion through a series of mergers and acquisitions, which led to significant changes to the Bank's Indianapolis MA AA. During that period, the Bank added several majority-White counties to its Indianapolis MA AA and excluded Indianapolis-Marion County from the assessment area, thus excluding all but one majority-Black census tract within the Indianapolis-Carmel-Anderson MSA. *See* Exhibit ("Ex.") A.

15. Beginning in 2011, the Bank's Indianapolis MA AA consisted of five of the eleven counties that comprise the Indianapolis-Carmel-Anderson MSA: Hamilton, Hendricks, Morgan, Jefferson, and Brown. Between 2012 and 2015, after a series of mergers and acquisitions, the

Bank added Shelby and Madison Counties to its Indianapolis MA AA. By only including counties surrounding Indianapolis-Marion County in the Indianapolis MA AA between 2012 and 2015, the assessment area resembled, by the Bank's own admission, a "horseshoe."

16. The irregular, horseshoe-shaped nature of the Indianapolis MA AA included nearly all of the majority-White suburban counties of Indianapolis-Marion County while carving out the urban core and thus almost every majority-Black census tracts within the Indianapolis-Carmel-Anderson MSA.

17. Indeed, by only including counties surrounding Indianapolis-Marion County in its horseshoe-shaped Indianapolis MA AA, First Merchants Bank excluded 50 of the 51 majority-Black census tracts within the Indianapolis-Carmel-Anderson MSA.

18. In 2016, after acquiring another Indiana-based bank, Ameriana Bank, First Merchants Bank added Indianapolis-Marion County, along with Hancock County, to its Indianapolis MA AA and addressed the horseshoe-shaped nature of the assessment area.

2. *No branches in majority-Black neighborhoods*

19. Even after adding Indianapolis-Marion County to the Indianapolis MA AA, First Merchants opened, closed, or consolidated its bank branches in a manner that served the banking and credit needs of residents in majority-White census tracts within the Indianapolis-Carmel-Anderson MSA while discouraging potential applicants from majority-Black census tracts, thus denying residents within majority-Black census tracts an equal opportunity to have their banking and credit needs served.

20. First Merchants Bank has 34 branches within the Indianapolis-Carmel-Anderson MSA and its Indianapolis MA AA. Of those, 33 are located within the majority-White suburban counties surrounding Indianapolis-Marion County. *See* Ex. B.

21. Until December 2015, First Merchants Bank had no branch within Indianapolis-Marion County. In the Ameriana acquisition, the Bank acquired Ameriana branches in Henry County, Hancock County, Shelby County, and an Ameriana branch that was under construction in Broad Ripple, an affluent majority-White area of Indianapolis-Marion County.

22. Construction of the Broad Ripple branch was finished in December 2015, and the branch became a full-service branch after it was integrated into First Merchants Bank's computer systems in early 2016.

23. First Merchants Bank has never opened or operated a bank branch in any of the 50 majority-Black census tracts within Indianapolis-Marion County.

24. Within Indianapolis-Marion County, First Merchants Bank's residential mortgage loan officers conducted the bulk of their residential mortgage loan business at the Broad Ripple branch and at two other branches located in Carmel and Fishers, two majority-White suburbs located in Hamilton County, which is just north of Indianapolis-Marion County.

25. None of First Merchants Bank's residential mortgage loan officers maintained offices or a presence in majority-Black census tracts within Indianapolis-Marion County. First Merchants Bank did not specifically assign a residential mortgage loan officer to service or otherwise work in majority-Black census tracts within Indianapolis-Marion County, until November 2018, more than a year after the United States initiated its investigation.

3. *Marketing that excluded majority-Black areas*

26. Since 2011, First Merchants Bank has engaged in limited marketing outside of majority-White areas within its Indianapolis MA AA, and has thus failed to meaningfully advertise in majority-Black census tracts within Indianapolis-Marion County.

27. First Merchants Bank has made strategic decisions to market residential mortgage lending products by focusing on the majority-White suburban counties of Indianapolis-Carmel-Anderson MSA to the exclusion of marketing in majority-Black areas within Indianapolis-Marion County and to potential borrowers in those areas.

28. For example, in 2013 and 2014, First Merchants Bank conducted marketing campaigns advertising home equity lines of credit (“HELOC”). In doing so, the Bank limited its marketing efforts to majority-White suburban areas located in Johnson, Hamilton, and Boone Counties, which all border Indianapolis-Marion County. The Bank’s HELOC marketing campaigns did not focus on any areas in Indianapolis-Marion County, nor did they focus on any majority-Black census tracts.

29. In 2016, First Merchants Bank conducted a HELOC marketing campaign focused on an “Indy Donut,” which the Bank defined as majority-White suburban areas of Indianapolis-Marion County located in Johnson, Hamilton, and Boone Counties. The Bank’s “Indy Donut” did not focus on any areas in Indianapolis-Marion County, nor did it focus on any majority-Black census tracts.

30. In 2016, First Merchants Bank conducted another marketing campaign aimed at low to moderate income census tracts in which the Bank advertised home improvement loans. In doing so, the Bank omitted low to moderate income census tracts within Indianapolis-Marion County from a list of low to moderate income census tracts that would receive direct mail advertisements. As a result, First Merchants Bank also omitted every majority-Black census tract within Indianapolis-Marion County from its marketing campaign.

31. In 2017, First Merchants Bank conducted another HELOC marketing campaign focused on majority-White suburban areas of Indianapolis-Carmel-Anderson MSA located in

Johnson, Hamilton, and Boone Counties. The Bank supplemented its 2017 HELOC marketing campaign with some limited advertising in the form of billboards in Indianapolis-Marion County. Those advertisements were limited to the affluent majority-White neighborhood of Broad Ripple where the Bank has its only branch in Indianapolis-Marion County.

32. To supplement its 2016 and 2017 HELOC marketing campaigns, First Merchants Bank also conducted online and digital marketing, targeting areas by zip code. Zip codes in Indianapolis-Marion County were not included.

4. *Disproportionately low number of applications from majority-Black neighborhoods*

33. First Merchants Bank's lending practices have discouraged prospective applicants in majority-Black neighborhoods from seeking loans, which has led to relatively few residential mortgage loan applications from those areas.

34. As a result, between 2011 and 2017, First Merchants Bank severely underperformed comparable lenders in generating residential mortgage loan applications from majority-Black areas within the Indianapolis-Carmel-Anderson MSA, which are primarily in Indianapolis-Marion County. The disparity in the number of applications between First Merchants Bank and its peer institutions is statistically significant, and remained statistically significant throughout the seven-year period.²

35. From 2011 to 2017, First Merchants Bank received 9,661 HMDA-reportable residential mortgage loan applications for single-family dwellings within the Indianapolis-Carmel-

² For purposes of the United States' statistics-based factual allegations, "peer institutions" and "comparable lenders" to First Merchants Bank are defined as financial institutions in the MSA that received between 50% and 200% of the Bank's annual volume of residential mortgage loan applications.

Anderson MSA.³ Of those applications, only 1.77% came from majority-Black census tracts within the MSA. In comparison, First Merchants Bank's peer institutions received 102,150 HMDA-reportable residential mortgage loan applications for single-family dwellings within the MSA during the same time period. Of those applications, 6.15%, came from majority-Black census tracts within the MSA—more than roughly three and a half times the rate of First Merchants Bank.

36. Even within majority-Black census tracts in Indianapolis-Marion County, the vast majority of First Merchants Bank's residential mortgage loan applications have come from White applicants. From 2011 to 2017, First Merchants Bank received 171 HMDA-reportable residential mortgage loan applications for single-family dwellings within majority-Black census tracts in Indianapolis-Marion County. Of those applications, 69% came from White applicants, and 13% came from Black applicants. In comparison, First Merchants Bank's peer institutions received 6,285 HMDA-reportable residential mortgage loan applications for single-family dwellings within majority-Black census tracts in Indianapolis-Marion County. Of those applications, 36% came from White applicants, and 44% came from Black applicants.⁴

37. These figures show a statistically significant failure by First Merchants Bank, relative to its peer institutions, to provide residential mortgage lending services to borrowers in majority-Black census tracts on an equal basis with borrowers in majority-White census tracts

³ Single-family dwellings for HMDA reporting purposes are defined by federal regulators as “one-to-four family structures.” Federal Financial Institutions Examination Council, *HMDA Glossary*, <https://www.ffiec.gov/%5C/hmda/glossary.htm#S>.

⁴ For First Merchants' peers, 12% of applications did not identify the race of the applicant. For First Merchants, 13% of applications did not identify the race of the applicant. Among racially identifiable applications, however, it is clear that within majority-black tracts, First Merchants' peers do the bulk of their lending to Blacks, but in those same tracts, First Merchants does the bulk of its lending to Non-Hispanic Whites.

within the Indianapolis-Carmel-Anderson MSA and specifically within Indianapolis-Marion County.

5. *Disproportionately low number of originations in majority-Black neighborhoods*

38. Because First Merchants Bank's lending practices have discouraged prospective applicants in majority-Black neighborhoods from seeking loans, the Bank also originated a smaller percentage of HMDA-reportable residential mortgage loans in those neighborhoods compared to its peer institutions between 2011 and 2017. The disparity in the percentage of originations between First Merchants Bank and its peer institutions is statistically significant, and remained statistically significant throughout the seven-year period.

39. From 2011 to 2017, First Merchants Bank originated a smaller proportion of HMDA-reportable residential mortgage loans in majority-Black census tracts in comparison to comparable lenders. For example, within the Indianapolis-Carmel-Anderson MSA, only 1.7%, of First Merchants Bank's 7,067 originations were secured by a single-family residential property located in a majority-Black census tract. By contrast, First Merchants Bank's peer institutions had 60,648 originations within the MSA during the same period. Of those originations, 4.64%, came from majority-Black census tracts within the MSA—more than two and a half times the rate of First Merchants Bank.

40. These figures show a statistically significant failure by First Merchants Bank, relative to its peer institutions, to provide residential mortgage lending services to borrowers in majority-Black census tracts on an equal basis with borrowers in majority-White census tracts within the Indianapolis-Carmel-Anderson MSA.

6. *Lending preference in favor of majority-White areas*

41. Between 2011 and 2017, First Merchants Bank's Residential Mortgage Loan Policy contained a lending preference for "existing or potential customers within its branch footprint" The Bank defines its "branch footprint" as where it has branches. The Bank's Residential Mortgage Loan Policy allows for loans "outside [of] the normal trade area," and the Bank interprets "trade area" in the Policy to mean where it has branches. Whether the Bank will provide a loan outside of its trade area and branch footprint under the Policy depends "on customer qualifications and bank relationship," language the Bank adopted because, as the Policy itself states, "many of [the Bank's] customers own second homes outside of [its] normal trade area and [it] desires to serve that borrowing need"

42. Within the Indianapolis-Carmel-Anderson MSA, First Merchants Bank has all of its branches in majority-White areas. Within Indianapolis-Marion County, the Bank's Broad Ripple branch, the only branch it has in the area, is located in an affluent majority-White neighborhood. As a result, because First Merchants Bank defines its "branch footprint" and "trade area" as where it has branches, the Bank's "branch footprint" and "trade area" within the MSA and Indianapolis-Marion County are based in majority-White areas.

43. Because the Bank's "branch footprint" and "trade area" are based primarily in majority-White areas, Whites are much more likely to live near a First Merchants Bank branch than Blacks, and thus, Whites are much more likely to be "existing or potential customers" of the Bank and to have a "bank relationship" with First Merchants Bank than Blacks.

44. The adoption of the Residential Mortgage Loan Policy was intentional and willful, and has led to a large statistically significant disparity in the number of residential mortgage loan

applications and originations First Merchants Bank received from majority-White areas and majority-Black areas within the Indianapolis-Carmel-Anderson MSA between 2011 and 2017.

COUNT I - DISCRIMINATION ON THE BASIS OF RACE

45. The United States incorporates all prior paragraphs of the Complaint as if fully set forth herein.

46. Persons who have been victims of First Merchants Bank's discriminatory policies and practices are aggrieved as defined in 42 U.S.C. § 3602(i) and 15 U.S.C. § 1691e(i), and may have suffered damages as a result of the Bank's conduct in violation of both the Fair Housing Act and the Equal Credit Opportunity Act, as described above.

47. The conduct of First Merchants Bank as described above constitutes:

- a. Making residential real estate-related transactions unavailable, or discrimination in the terms or conditions of such transactions, on the basis of race, in violation of the Fair Housing Act, 42 U.S.C. § 3605(a), and its implementing regulations, 24 C.F.R. § 100.110(b), 24 C.F.R. § 100.120(a)-(b), and 24 C.F.R. § 100.50(b)(1)-(3);
- b. Discrimination on the basis of race in the terms, conditions, or privileges of the sale or rental of dwellings, or the provision of services or facilities in connection with the sale or rental of dwellings, in violation of the Fair Housing Act, 42 U.S.C. § 3604(b), and its implementing regulations, 24 C.F.R. § 100.50(b)(1)-(3);
- c. Making dwellings unavailable to persons because of race, in violation of the Fair Housing Act, 42 U.S.C. § 3604(a), and its implementing regulations, 24 C.F.R. § 100.50(b)(1)-(3); and

- d. Discrimination against applicants with respect to credit transactions, on the basis of race, in violation of the Equal Credit Opportunity Act, 15 U.S.C. § 1691(a)(1), and its implementing regulations, 12 C.F.R. § 202.4(a)-(b).

**COUNT II - PATTERN OR PRACTICE OF DISCRIMINATION
AND A DENIAL OF RIGHTS TO A GROUP OF PERSONS**

48. The United States incorporates all prior paragraphs of the Complaint as if fully set forth herein.

49. Persons who have been victims of First Merchants Bank's discriminatory policies and practices are aggrieved as defined in 42 U.S.C. § 3602(i) and 15 U.S.C. § 1691e(i), and may have suffered damages as a result of the Bank's conduct in violation of both the Fair Housing Act and the Equal Credit Opportunity Act, as described above.

50. The conduct of First Merchants Bank as described above constitutes:

- a. A pattern or practice of resistance to the full enjoyment of rights secured by the Fair Housing Act, 42 U.S.C. § 3614(a), and the Equal Credit Opportunity Act, 15 U.S.C. § 1691e(h); and
- b. Unlawful discrimination and a denial of rights granted by the Fair Housing Act to a group of persons that raises an issue of general public importance within the meaning of 42 U.S.C. § 3614(a).

REQUEST FOR RELIEF

WHEREFORE, the United States requests that the Court enter an order that:

1. Declares that the conduct of First Merchants Bank violates the Fair Housing Act;
2. Declares that the conduct of First Merchants Bank violates the Equal Credit Opportunity Act;

3. Enjoins First Merchants Bank, its agents, employees, successors, and all other persons in active concert or participation with it from:

- a. Discriminating on account of race in any aspect of their lending business practices;
 - b. Failing or refusing to take such affirmative steps as may be necessary to restore, as nearly as practicable, the victims of First Merchants Bank's unlawful practices to the position they would be in but for the Bank's discriminatory conduct;
 - c. Failing or refusing to take such affirmative steps as may be necessary to prevent the recurrence of any discriminatory conduct in the future and to eliminate, to the extent practicable, the effects of First Merchants Bank's unlawful practices, and providing policies and procedures to ensure all segments of the Bank's market areas are served without regard to prohibited characteristics;
4. Awards monetary damages against First Merchants Bank in accordance with 42 U.S.C. § 3614(d)(1)(B) and 15 U.S.C. § 1691e(h);
 5. Assesses a civil penalty against First Merchants Bank in an amount authorized by 42 U.S.C. § 3614(d)(1)(C), in order to vindicate the public interest; and
 6. Awards the United States any additional relief as the interest of justice may require.

Dated: June 13, 2019

Respectfully submitted,

WILLIAM P. BARR
Attorney General

ERIC S. DREIBAND
Assistant Attorney General
Civil Rights Division

JOSHUA MINKLER
United States Attorney
Southern District of Indiana

SAMEENA SHINA MAJEED
Chief

/s/ Kelly Rota
KELLY ROTA
Assistant United States Attorney
United States Attorney's Office
Southern District of Indiana
10 West Market Street, Suite 2100
Indianapolis, IN 46204-3048
Phone: (317) 226-6333
Fax: (317) 226-6125
Kelly.Rota@usdoj.gov

/s/ Junis L. Baldon
JON M. SEWARD
Principal Deputy Chief
JUNIS L. BALDON
MARTA CAMPOS
Trial Attorneys
Housing and Civil Enforcement Section
950 Pennsylvania Avenue NW - NWB
Washington, D.C. 20530
Phone: (202) 514-4713
Fax: (202) 514-1116
Junis.Baldon@usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of June 2019, I electronically served via electronic mail and filed the foregoing with the Clerk of the Court for the U.S. District Court for the Southern District of Indiana via the CM/ECF system, which will send notice to all registered users. In addition, I certify that the foregoing has been served via first-class U.S. mail and by electronic mail in accordance with the Federal Rules of Civil Procedure to the following:

Andrea K. Mitchell
Mitchell Sandler LLC
1120 20th Street, NW
Suite 725
Washington, DC 20036
Phone: (202) 886-5261
amitchell@mitchellsandler.com

Richard J. Hall
Barnes & Thornburg LLP
11 South Meridian Street
Indianapolis, IN 46204
Phone: (317) 231-7516
richard.hall@btlaw.com

/s/ Junis L. Baldon
Attorney for Plaintiff United States of America