

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	Civil Action No.: 22-cv-2667
v.)	
)	
EVOLVE BANK AND TRUST,)	
)	
Defendant.)	
)	

COMPLAINT

INTRODUCTION

1. The United States of America brings this action against Evolve Bank and Trust (“Evolve Bank” or “Evolve”) under the Fair Housing Act, 42 U.S.C. §§ 3601-3619 (“FHA”) and the Equal Credit Opportunity Act, 15 U.S.C. §§ 1691-1691f (“ECOA”).

2. The FHA and ECOA prohibit creditors, such as banks, from discriminating in home loans or other residential credit transactions on the basis of race, sex, national origin, and other characteristics.

3. Discrimination in the pricing of loans is one type of discrimination prohibited under the FHA and ECOA. Pricing discrimination occurs when lenders charge different interest rates, fees or costs for loans based on the race, sex, national origin or other protected characteristic of the borrower.

4. From at least 2014 through 2019 (“relevant time period”), Evolve Bank implemented policies and practices that resulted in Black, Hispanic, and female borrowers paying more in the “discretionary pricing” components of home loans than white or male borrowers. “Discretionary pricing” refers to the broad discretion in the initial interest rate

selection, as well as fees, charges or discounts, among other costs, that Evolve loan officers had discretion to add to or subtract from the risk-based price of the loan; these components were unrelated to a borrower's creditworthiness or the characteristics of the loan.

5. Evolve Bank's policies and practices constitute a pattern or practice of discrimination on the basis of race, sex, and national origin in violation of the FHA and ECOA. The policies and practices have caused significant economic harm and resulted in Black and Hispanic borrowers paying more for home loans than similarly-situated white borrowers, and in female borrowers paying more for their home loans than similarly-situated male borrowers.

JURISDICTION AND VENUE

6. This Court has subject-matter jurisdiction over this action under 28 U.S.C. § 1331, 28 U.S.C. § 1345, 42 U.S.C. § 3614(a), and 15 U.S.C. § 1691e(h) because the action arises under the laws of the United States, and the United States brings this case as a plaintiff.

7. Venue is proper pursuant to 28 U.S.C. § 1391(a)-(b), because Evolve Bank's principal place of business is in the Western District of Tennessee.

PARTIES

8. Plaintiff United States brings this action to enforce the provisions of the FHA and ECOA. The FHA and ECOA authorize the Attorney General to bring a civil action in federal district court whenever a matter is referred to him pursuant to 15 U.S.C. § 1691e(g) and whenever he has reason to believe that an entity has 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 Attorney General 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).

9. Evolve Bank is a full-service financial services organization headquartered in Memphis, Tennessee. Evolve Bank is wholly owned by Evolve Bancorp Inc.

10. Evolve Bank is subject to the regulatory authority of the Board of Governors of the Federal Reserve (the “Federal Reserve”).

11. Evolve Bank is subject to the FHA and ECOA and their respective implementing regulations, 24 C.F.R. pt. 100 and Regulation B, 12 C.F.R. pt. 1002.

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

FEDERAL RESERVE’S PAST AND PRESENT REFERRALS AND THE UNITED STATES’ INVESTIGATION

13. The Federal Reserve has referred Evolve Bank to the Department of Justice three times within the past ten years, each time after finding reason to believe that Evolve discriminated in its mortgage loan business and engaged in violations of the FHA and/or ECOA.

14. In May 2013, and again in September 2015, the Federal Reserve referred Evolve to the Department of Justice to examine two distinct possible patterns or practices of lending discrimination. The Department of Justice investigated each of these referrals and entered into a Consent Order with Evolve Bank in January 2016 to address certain specific fair lending practices that occurred between 2008 and 2013.

15. After making these referrals, the Federal Reserve conducted a review of Evolve Bank’s mortgage loans originated between January 1, 2014 and December 31, 2016, and determined that there was reason to believe that Evolve “engaged in a pattern or practice of pricing discrimination for mortgage loans based on national origin, race, and sex in violation of

section 701(a) of the ECOA.”

16. On February 8, 2019, the Federal Reserve again referred Evolve Bank to the Department of Justice pursuant to 15 U.S.C. § 1691e(g).

17. On April 9, 2019, the United States notified Evolve Bank that it was opening an investigation into whether the Bank had engaged in discrimination in the implementation of its mortgage lending policies from 2014 through 2019.

FACTUAL ALLEGATIONS

Evolve Bank’s Pricing Policies

18. From at least 2014 through 2019, Evolve Bank adopted and implemented loan pricing policies that discriminated against Black, Hispanic and female borrowers in the pricing of home loans. As alleged in detail below, Evolve’s pricing policy allowed loan officers broad discretion to select inflated initial interest rates to present to borrowers and then to determine what “concessions” or discounts from the loan price to offer borrowers, if any.¹

19. During the relevant time period, Evolve Bank conducted most of its mortgage lending through Loan Production Offices (“LPOs”). LPOs are offices in which loan officers and loan managers who handle mortgage applications work. Unlike bank branches, Evolve’s LPOs do not offer depository or other bank services and can be opened or closed without approval of the agency charged with regulating the bank, which in this case is the Federal Reserve. During the relevant time period, Evolve operated up to 37 LPOs in a given year, with at least 61 LPOs operating during this time period.

20. From 2014 through 2019, Evolve Bank negotiated with each of its LPOs to set

¹ This policy has been described as an “underage” policy, in contrast to an “overage” policy where loan officers are permitted to add fees or increase interest rates on mortgages.

an “LPO margin,” which is a fixed percentage of a loan amount that the LPO takes in as revenue. The “LPO Margin” varied among Evolve’s LPOs and typically fell between 2.25% and 5.93% of the loan amount.

21. From 2014 through 2019, Evolve Bank, like many lenders, used a software engine to generate a range of available interest rates for home loans based on a borrower’s credit and loan characteristics. Unlike many lenders in the industry, Evolve did not impose any limits on the range of available rates generated by the software engine that a loan officer could present to borrowers.

22. During this time period, Evolve Bank’s pricing policy gave loan officers broad discretion to depart substantially from the “par rate,” which is the rate that is based on a borrower’s creditworthiness and loan characteristics before any discounts or credits are applied, and to select a rate for the borrower that was several percentage points higher and more expensive than the par rate. Evolve gave loan officers wide discretion to select an artificially high interest rate for reasons having nothing to do with borrower creditworthiness or loan characteristics. In the mortgage lending industry, allowing loan officers this breadth of discretion to depart from the par rate is unusual.

23. After selecting the initial interest rate, Evolve Bank’s pricing policy also allowed LPOs and loan officers broad discretion to determine whether to offer “concessions” or discounts on the loan price to borrowers and to determine the amounts and types of those concessions. So long as the value of the concessions did not exceed the LPO margin, the LPO profited on the loan. For example, where an LPO margin was 4% on a \$100,000 loan, the LPO profited off of the loan so long as the discounts that it provided to a borrower on a loan did not exceed \$4,000. This allowed an LPO to provide select customers with larger discounts within

that LPO margin of \$4,000, while providing smaller or no discounts to other customers.

24. Contrary to the practice of many lenders in the industry, until at least July 2018, Evolve Bank did not require its loan officers to have a reason or to provide any documentation or justification for offering concessions or discounts to borrowers.

25. During the relevant time period, the concessions or discounts were not based on creditworthiness, loan characteristics, or other non-discriminatory factors.

Evolve Lacked Adequate Internal Control Systems

26. Since at least 2014, when the Department of Justice informed Evolve of its first investigation into pricing policies, Evolve Bank has been on notice that its mortgage lending operations and compliance management presented significant fair lending risk. Despite such knowledge, and until at least July 2018, Evolve's pricing policies allowed LPOs broad discretion to select artificially high rates and provide discounts and concessions without internal control systems to monitor that discretion. For example, unlike many lenders in the industry, Evolve Bank did not impose limits on the range of available rates that could be selected from the search engine; did not have any guidance, standards or training for LPOs and loan officers about how to apply concessions; did not require documentation of any kind for the concessions offered; and did not require corporate oversight or approval of concessions.

27. In July 2018, Evolve Bank first began to require corporate approval for larger discounts offered by LPOs to consumers. This type of approval is common in the mortgage industry to reduce fair lending risk. As detailed below, even after this approval process was instituted, Evolve's pricing policies continued to cause a disparate impact on Black and individual female borrowers.

28. Despite repeated notice that its operations presented fair lending risks, it was not

until February 2020 that Evolve Bank established a fair lending program and hired its first fair lending officer. Not until April 2020 did Evolve first require documentation to support discounts made for “competitive” reasons. Many mortgage lenders require documentation of discounts to reduce fair lending risk.

Statistical Analysis

29. Evolve Bank’s policy and practice of allowing the LPOs broad discretion to select inflated rates and provide concessions, together with a lack of appropriate internal control systems to monitor the LPOs, caused a disparate impact on Black, Hispanic and individual female borrowers in the pricing of home loans during the relevant time period.

30. From 2014 through 2019, Evolve Bank originated approximately 21,670 mortgage loans with an average loan value of \$215,305.

31. From 2014 through 2019, Evolve charged, on average, between 13 and 19 basis points more in discretionary pricing to Black borrowers than to white borrowers on their home loans. A basis point is one hundredth of one percent of the total principal amount of the loan. For example, in 2017, the Bank charged an average of 18.6 basis points more to Black borrowers than to white borrowers, resulting in Black borrowers paying, on average, approximately \$360 per person more in discretionary pricing than white borrowers. These disparities are statistically significant, are not related to borrower credit characteristics, and resulted in Black borrowers paying more overall for their loans than similarly-situated white borrowers.

32. Also during this period, Evolve charged, on average, between 14 and 21 basis points more in discretionary pricing to individual female borrowers than to individual male borrowers. For example, in 2017, the Bank charged an average of 16.4 basis points more to

individual female borrowers than to male borrowers, resulting in female borrowers paying, on average, approximately \$286 per person more in discretionary pricing than male borrowers. These disparities are statistically significant, are not related to credit characteristics, and resulted in individual female borrowers paying more overall for their loans than similarly-situated male borrowers.

33. During the time period January 2014 through June 2018, Evolve charged, on average, between 18 and 25 basis points more in discretionary pricing to Hispanic borrowers than to white borrowers. For example, in 2017, the Bank charged an average of 18.3 basis points more to Hispanic borrowers than to white borrowers, resulting in Hispanic borrowers paying, on average, approximately \$420 more per person in discretionary pricing than white borrowers. These disparities are statistically significant, are not related to credit characteristics, and resulted in Hispanic borrowers paying more overall for their loans than similarly-situated white borrowers.

34. The discretionary pricing disparities described above were not related to the borrowers' creditworthiness, loan characteristics or standard or fixed fees charged to all borrowers. The statistical disparities in discretionary pricing described above cannot be explained by factors unrelated to the borrowers' race, sex, or national origin.

35. The disparities described above were the result of Evolve Bank's policy of allowing its LPOs broad discretion to inflate interest rates offered to borrowers and discretion to provide discounts to lower the cost of those loans to selected borrowers at varying amounts, all without a lack of adequate internal control systems.

36. Evolve Bank failed to adequately monitor for or remedy the effects of racial, national origin, or sex disparities in pricing.

37. The policies and practices described above were not necessary to achieve one or more substantial, legitimate, nondiscriminatory interests of the Bank under the FHA or its regulations, see 78 Fed. Reg. 11459 (Feb. 15, 2013), or a legitimate business need under ECOA or Regulation B, 12 C.F.R. § 1002.6.

38. Evolve Bank's pricing of loans on a discriminatory basis caused Black, Hispanic, and individual female borrowers economic and other harms. The United States brings this lawsuit to hold Evolve Bank accountable for its violations of federal law and to remedy the substantial and widespread harmful consequences of its discriminatory lending policies and practices.

COUNT I – VIOLATION OF THE FAIR HOUSING ACT

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

40. Evolve Bank's mortgage lending-related policies and practices, as alleged herein, constitute:

- a. Discrimination on the basis of race, sex, or national origin in making available, or in the terms or conditions of, residential real estate-related transactions, 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, and 24 C.F.R. § 100.130; and
- b. Discrimination on the basis of race, sex, or national origin in the terms, conditions, or privileges of the sale of a dwelling or in the provision of services in connection therewith, in violation of the Fair Housing Act, 42 U.S.C. § 3604(b), and its implementing regulations, 24 C.F.R. § 100.50(b) and 24 C.F.R. § 100.65.

41. Evolve’s policies and practices, as alleged herein, constitute:
- a. a pattern or practice of resistance to the full enjoyment of rights secured by the Fair Housing Act, 42 U.S.C. §§ 3601-3619; and
 - b. a denial of rights granted by the Fair Housing Act to a group of persons – Black, Hispanic, and individual female borrowers – that raises an issue of general public importance.

42. Persons who have been victims of Evolve Bank’s discriminatory policies and practices are “aggrieved” as defined in 42 U.S.C. § 3602(i), and may have suffered damages as a result of the Bank’s conduct in violation of the Fair Housing Act, as described above.

COUNT II – VIOLATION OF THE EQUAL CREDIT OPPORTUNITY ACT

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

44. Evolve Bank’s mortgage lending-related policies and practices, as alleged herein, constitute discrimination against applicants with respect to credit transactions on the basis of race, sex or national origin in violation of the Equal Credit Opportunity Act, 15 U.S.C. § 1691(a)(1).

45. Evolve Bank’s policies and practices, as alleged herein, constitute a pattern or practice of discrimination and discouragement and resistance to the full enjoyment of rights secured by the Equal Credit Opportunity Act, 15 U.S.C. §§ 1691-1691f.

46. Persons who have been victims of Evolve 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 the Equal Credit Opportunity Act, as described above.

REQUEST FOR RELIEF

WHEREFORE, the United States prays that the Court enter an ORDER that:

(1) Declares that the policies and practices of Evolve Bank and Trust violate the Fair Housing Act;

(2) Declares that the policies and practices of Evolve Bank and Trust violate the Equal Credit Opportunity Act;

(3) Enjoins Evolve Bank and Trust, its agents, employees, and successors, and all other persons in active concert or participation with it, from:

- a. Discriminating on account of race, sex, or national origin in any aspect of their lending practices;
- b. Failing or refusing to take such affirmative steps as may be necessary to restore, as nearly as practicable, the victims of Evolve Bank and Trust's unlawful conduct to the position they would have been in but for the discriminatory conduct; and
- c. Failing or refusing to take such affirmative steps as may be necessary to prevent the recurrence of any such discriminatory conduct in the future; to eliminate, to the extent practicable, the effects of Evolve Bank and Trust's unlawful practices; and to implement policies and procedures to ensure that all borrowers have an equal opportunity to seek and obtain loans on a nondiscriminatory basis and with nondiscriminatory terms and conditions;

(4) Awards equitable relief and monetary damages to all the victims of Evolve Bank and Trust's discriminatory policies and practices for the injuries caused by Evolve Bank and Trust, including any damages provided for under 42 U.S.C. § 3614(d)(1)(B) and 15 U.S.C. § 1691e(h); and

(5) Assesses a civil penalty against Evolve Bank and Trust in an amount authorized by 42 U.S.C. § 3614(d)(1)(C), in order to vindicate the public interest.

The United States further prays for such additional relief as the interests of justice may require.

Dated: September 29, 2022

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 29, 2022, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system and sent the foregoing to Defendant's counsel, Jeffery Naimon, via electronic mail to jnaimon@buckleyfirm.com.

Respectfully submitted,

/s/ Sara L. Niles

Sara L. Niles
Trial Attorney
United States Department of Justice
Civil Rights Division
Housing and Civil Enforcement Section