



Department of Justice

THE ATTORNEY GENERAL'S
REPORT TO CONGRESS
PURSUANT TO THE EQUAL
CREDIT OPPORTUNITY ACT
AMENDMENTS OF 1976

SUBMITTED FEBRUARY 1, 1980

This is the fourth annual report submitted pursuant to Section 707 of the Equal Credit Opportunity Act (15 U.S.C. 1691f) which requires the Attorney General to advise the Congress "concerning the administration of [his] functions under" the Act. This report is based on activities during the 1979 calendar year.

I. ORGANIZATIONAL CHANGES

In April 1979 the Housing and Credit Section of the Civil Rights Division -- the organizational unit responsible for enforcing the Equal Credit Opportunity Act -- was merged with the Education Section to form the General Litigation Section. This change was prompted by an interest in attacking interrelated problems on a broad basis, rather than piece-meal. We hope that by combining our expertise from the two Sections, the Department will be able to more effectively address some of the problems which result from segregated housing patterns. Where residential housing is marketed, and financed, on a racial basis, it has a substantial and direct impact on school desegregation. The same people will now be dealing with both of these difficult and pervasive problems.

The General Litigation Section has 43 lawyers and 32 paralegal and clerical employees assigned to it. Now that the Department has brought several ECOA cases, and has developed approaches to investigate and litigate credit matters, we have also modified the overall approach to credit enforcement. Until recently, seven or eight lawyers were assigned to work solely on

credit problems. The present system will give credit responsibilities to each person in the General Litigation Section. Even though the individuals who now work on credit matters will also have other obligations, we think that the new procedure will generally increase the Department's effectiveness in enforcing the statute.

II. COMPLAINTS AND INVESTIGATIONS

The Civil Rights Division received complaints or other information concerning possible ECOA violations by 135 creditors during 1979. These covered a wide spectrum of creditors, including retail establishments, credit card companies, mortgage lenders, banks, and credit unions. This represents a slight increase from the 124 complaints received in 1978. Except for a few instances that were obviously not violations or which already were under investigation by other federal agencies, we looked into each one of the 135 matters. The investigations ranged from mortgage red-lining matters requiring weeks of intensive work by several lawyers and support personnel to brief inquiries designed to gather additional information to confirm that an unsuccessful credit applicant had been treated properly.

During 1979, the Federal Trade Commission referred one Equal Credit Opportunity Act matter to us. This led to the filing of a lawsuit against Montgomery Ward. No other referrals were received from federal agencies.

III. LITIGATION

The Department brought or participated in the following cases in 1979:

1. United States v. Citizens Bank and Trust Company (E.D. Ky.) (filed January 3, 1979) alleged sex and marital status discrimination and failure to provide rejected applicants with the notice of adverse action required by the Act. A consent decree resolving this case was filed at the same time as the complaint.

2. Markham v. Colonial Mortgage Service Co. Associates, Inc., et al. (U.D.C. Civ.) (brief filed January 31, 1979). In this private Equal Credit Opportunity Act suit, the Department filed an amicus brief arguing that an Illinois Savings and Loan discriminated on the basis of marital status in violation of **the Act** when it refused to aggregate the incomes of two unmarried joint applicants, but regularly did so for similarly situated married applicants. On May 24, 1979, the Court of Appeals reversed a lower court decision and ruled that the procedure in question did violate the statute.

3. United States v. Beneficial Corporation and Beneficial Management Corporation (D. N.J.) (filed May 8, 1979), alleged that the defendants discriminate against elderly persons and on the basis of marital status when making credit decisions. The complaint also claims that unsuccessful applicants are not provided with the required notice of adverse action.

4. United States v. Montgomery Ward (D. D.C.) (filed May 29, 1979), charged that the practices of this large retailer violated the Federal Trade Commission Act and constituted a "pattern or practice" which the Department of Justice has authority to remedy. The suit was developed by the Federal Trade Commission and the Justice Department was notified under the provisions of 15 U.S.C. §56(a)(1). The complaint alleged that Ward violated the notice requirements (1) by giving inaccurate and misleading reasons that did not satisfy the Act's requirement of specificity, (2) by giving as reasons factors which were not actually considered in the evaluation process, and (3) by failing to provide as reasons the characteristics which were actually evaluated. A consent decree was filed with the complaint. In addition to requiring that Ward give proper notice to rejected applicants who had not received adequate reasons for being denied credit, the decree prohibits future use of zip codes or similar geographic factors in evaluating applications. The defendant also agreed to pay \$175,000 in civil penalties.

5. Cherry v. Amoco Oil Company (N.D. Ga.) (brief filed July, 1979). The Department participated as amicus in this suit which was brought by a white woman alleging that Amoco's use of zip codes in its credit scoring system discriminates on the basis of race and that the firm violated her ECOA rights by rejecting her application because of the location of her residence. On November 27, 1979, the court held that Ms. Cherry, who claimed that she

lived in a predominantly black neighborhood, was directly **affected** by Amoco's use of zip codes and had standing to sue even though **the** alleged credit evaluation process may have been unlawful because **it** discriminated against black persons as a group. The court **also** determined that the ECOA prohibits the use of credit standards which have the effect of discriminating on the basis of race. The decision is consistent with the positions taken in the brief filed by the Department.

6. One other suit has been approved. The prospective defendant has been invited to consider resolving the matter through a consent decree and the case will not be filed until these discussions are concluded.

In addition to the initiation of new suits and participating in private cases as amicus, our litigation activities have raised issues which will further define the Equal Credit Opportunity Act. The most important of these questions concerns whether creditors violate the statute by intentionally avoiding contact with potential black applicants, including refusing to hire black sales representatives, and whether the Attorney General is authorized to recover damages for persons who are victims of ECOA violations. The first issue has come up in United States v. American Future Systems, Inc. (E.D. Pa.) and should be decided within the next few months. The second question is scheduled to be argued on February 11 in United States v. Beneficial Corporation (D. N.J.), a case involving a creditor which processes about 4,000,000 loan applications each year. In light of the fact that there have been virtually no class

action suits filed to vindicate the rights granted by the Equal Credit Opportunity Act, the government's ability to obtain monetary relief for victims of discrimination in the Beneficial case and in similar suits against large creditors will have a profound effect on the enforcement of the Act.

IV. OTHER ACTIVITIES

The Department continues to coordinate its enforcement work with the efforts of federal and state agencies. Departmental attorneys regularly participate in the training programs of other agencies and information is routinely shared by the various organizations. However, when the Right to Financial Privacy Act became effective on March 10, it seriously impaired the ability of our staff to obtain data from some of the agencies responsible for regulating depository institutions. Eventually, arrangements were made so that it now appears that records will be furnished after excising those portions which identify specific customers.

Attorneys from the Justice Department have conferred regularly with agency staffs in connection with significant Equal Credit Opportunity Act issues that have been raised, and in August we submitted extensive written comments to the Federal Reserve Board in response to its examination of standards to be applied to credit scoring system users. We believe that the resolution of these questions will have a substantial impact on the availability of credit.

The Department also continues to meet with, and talk to, women's groups, associations of citizens, civil rights organizations, creditors, and lawyers' groups in order to make sure that

victims of discrimination know about their rights under the Act, to explain the provisions of the Act and the Department's enforcement procedures to creditors and their legal representatives, and to learn more about the credit discrimination problems experienced by consumers.

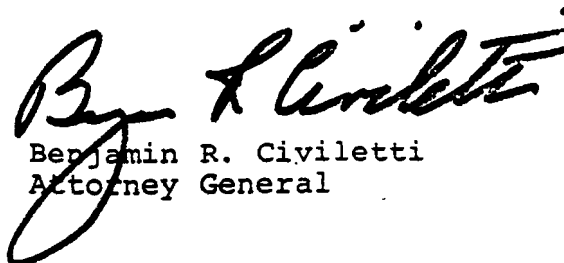
V. COMMENTS

During the last year, the Department has shifted its focus slightly and spent more of its energies on litigating cases rather than developing new suits. We hope that this emphasis will result in useful precedents when the questions now pending in the Beneficial and American Future Systems cases are decided.

The number of Equal Credit Opportunity Act complaints received in 1979 was, again, relatively small; we continue to be concerned by this low volume because based on the number of violations reported by other agencies, it appears that many creditors are engaged in unlawful activities, but we are not learning of them. We believe that with a larger number of lawyers assigned to credit matters, it will lead to a greater flow of information. However, we are also exploring new methods for targeting investigations. This includes a system for reviewing data developed by private studies as well as information generated by state governments and other federal agencies.

Finally, where appropriate, future suits attacking the problems of metropolitan-wide school and housing segregation will

have a financing component designed to remedy credit discrimination that is related to housing.



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