

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
PECOS DIVISION

UNITED STATES OF AMERICA,)
Plaintiff,)
v.) CIVIL ACTION NO.
FORT DAVIS STATE BANK,)
Defendant.)

)

COMPLAINT

The United States of America alleges:

1. This action is brought by the United States to enforce the Equal Credit Opportunity Act, 15 U.S.C. §§ 1691-1691f (“ECOA”).
2. From at least 2008 to 2010, Defendant Fort Davis State Bank (“FDSB” or “the Bank”) engaged in a pattern or practice of discrimination on the basis of national origin because it charged Hispanic borrowers higher interest rates on unsecured consumer loans compared to the rates charged to similarly situated non-Hispanic white borrowers.
3. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 15 U.S.C. § 1691e(h).
4. Venue is proper pursuant to 28 U.S.C. §§ 1391(b) and (c) because Defendant resides in the Western District of Texas and because a substantial part of the events or omissions giving rise to this action occurred in the Western District of Texas.

5. Defendant FDSB is a state-chartered bank based in Fort Davis, Texas. FDSB operates three branches in Fort Davis, Alpine, and Presidio, Texas. Until early 2013, FDSB operated a fourth branch in Odessa, Texas.

6. FDSB offers a variety of loan products, including mortgage loans, consumer loans, commercial loans, and agricultural loans. The Bank originates its loans through loan officers operating at one or more of its branches.

7. As of September 30, 2012, the Bank had total assets of \$78.5 million and total equity capital of \$6.68 million. FDSB is subject to the regulatory authority of the Federal Deposit Insurance Corporation (“FDIC”).

8. FDSB is subject to federal laws governing fair lending, including ECOA and the regulations promulgated thereunder. ECOA prohibits financial institutions from discriminating on the basis of, *inter alia*, national origin in their lending practices. Charging higher prices for loans on the basis of national origin, including charging higher rates of interest, is one of the discriminatory lending practices prohibited by ECOA. FDSB is a “creditor” within the meaning of section 702(e) of ECOA, 15 U.S.C. § 1691a(e).

9. Beginning in December, 2010, the FDIC conducted an examination of the lending practices of FDSB to evaluate compliance with ECOA. Based on analysis of the average rates of interest that the Bank charged on unsecured consumer loans made between November 1, 2009 and November 30, 2010, the FDIC found reason to believe that FDSB had engaged in a pattern or practice of discrimination on the basis of national origin against Hispanic borrowers.

10. On August 22, 2011, following its examination, the FDIC referred the lending practices of FDSB to the United States Department of Justice pursuant to 15 U.S.C. § 1691e(g).

11. After receiving the referral from the FDIC, the United States analyzed the interest rates that FDSB charged for unsecured consumer loans originated between January 1, 2008 and December 30, 2010. The United States also reviewed and evaluated the Bank's loan policies, procedures, and practices for that time period.

12. Prior to May 2011, FDSB had no written defined pricing guidelines or specific policies related to loan pricing of unsecured consumer loans. It did not use a uniform pricing system such as a matrix or rate sheet, and loan officers had broad subjective discretion to set interest rates on unsecured consumer loans.

13. Between at least January 1, 2008 and December 30, 2010, FDSB made approximately 750 unsecured consumer loans to Hispanic borrowers. During this period, FDSB charged interest rates to Hispanic borrowers for unsecured consumer loans that were 405 basis points¹ higher, on average, than the rates charged to non-Hispanic borrowers. This disparity is statistically significant.

14. After accounting for relevant loan and borrower credit factors, including loan term, loan amount, debt-to-income ratio, and indicators of the borrower's credit history, FDSB charged interest rates to Hispanic borrowers between at least January 1, 2008 and December 30, 2010 that were from 100-228 basis points higher, on average, than the rates charged to similarly situated non-Hispanic white borrowers. These disparities are statistically significant.

15. The differences in interest rates charged to Hispanic borrowers and those charged to non-Hispanic white borrowers cannot be explained by factors unrelated to national origin.

16. The higher rates of interest that FDSB charged to Hispanic borrowers for unsecured consumer loans are a result of FDSB's policy or practice of giving its employees

¹ One basis point represents one hundredth of a percentage point (0.01%).

broad subjective discretion in setting the interest rate for unsecured consumer loan transactions. Information as to each applicant's national origin was available and known to the Bank's loan officers, who personally handled each loan transaction at one of the Bank's branch offices. FDSB did not properly instruct its loan officers regarding their obligation to treat prospective customers without regard to national origin, and the Bank has failed to supervise or monitor the performance of its loan officers to ensure compliance with fair lending laws.

17. FDSB's policy or practice of giving its employees broad subjective discretion in handling every aspect of the unsecured consumer loan transaction has had a disparate detrimental impact on Hispanic borrowers compared to similarly situated non-Hispanic borrowers and is not justified by business necessity or legitimate business interests.

18. FDSB's actions, policies, and practices, as alleged herein, constitute discrimination against applicants with respect to credit transactions on the basis of national origin in violation of ECOA.

19. FDSB's actions, policies, and practices, as alleged herein, constitute a pattern or practice of resistance to the full enjoyment of rights secured by ECOA.

20. Persons who have been victims of FDSB's discriminatory actions, policies and practices are affected persons as defined in ECOA, 15 U.S.C. § 1691e, and have suffered injury and damages as a result of FDSB's violation of ECOA.

21. FDSB's pattern or practice of discrimination has been intentional, willful, and implemented with reckless disregard for the rights of Hispanic borrowers.

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

1. Declares that the policies and practices of the Defendant constitute violations of the Equal Credit Opportunity Act, 15 U.S.C. §§ 1691-1691f;

2. Enjoins the Defendant, its agents, employees, and successors, and all other persons in active concert or participation with it, from:
 - a. Discriminating on the basis of national origin against any person with respect to any aspect of a credit transaction;
 - b. Failing or refusing to take such affirmative steps as may be necessary to restore, as nearly as practicable, the victims of the Defendant's unlawful conduct to the position they would have been in but for the discriminatory conduct; and
 - c. Failing or refusing to take such actions as may be necessary to prevent the recurrence of any such discriminatory conduct in the future.
3. Awards monetary damages, pursuant to 15 U.S.C. § 1691e(h), to all persons harmed by the Defendant's discriminatory policies and practices.

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

Dated: Dec. 18, 2013

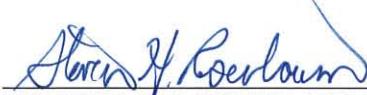
Respectfully submitted,

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CERTIFICATE OF SERVICE

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