

THE ATTORNEY GENERAL'S
2009 ANNUAL REPORT TO CONGRESS
PURSUANT TO THE
EQUAL CREDIT OPPORTUNITY ACT
AMENDMENTS OF 1976

SUBMITTED BY
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This report is submitted pursuant to Section 1691f of the Equal Credit Opportunity Act, as amended (ECOA), 15 U.S.C. § 1691, *et seq.*, regarding the activities of the Department of Justice (DOJ or the Department) under the statute. This report covers the 2009 calendar year.

In response to the devastation caused by the housing crisis, the Department has made fair lending a top priority for the Civil Rights Division. The Division has created the necessary infrastructure to support and expand our fair lending work, begun to identify major targets for enforcement and started to fundamentally reshape our relationships with other federal agencies and state partners, including state attorneys general.

We have created a Fair Lending Unit in the Division's Housing and Civil Enforcement Section in order to devote more resources to this critical work. Both current career attorneys and new hires will staff the unit, and we have already hired several new attorneys to fill additional positions. The unit will also have dedicated professional staff, including three economists, a mathematical statistician and staff to assist the attorneys. Initially, the unit will consist of more than 20 staff members who will devote all or a significant portion of their time to lending cases. Loosely modeled after the Human Trafficking Unit in the Division's Criminal section, which yielded tremendous results, this new unit will increase capacity, develop greater expertise and obtain significant results. The Division has also hired a Special Counsel for Fair Lending, a senior career position in the Office of the Assistant Attorney General, to ensure that fair lending issues receive immediate attention and high priority.

The Fair Lending Unit is focusing its efforts on the entire range of abuses seen in the market, from traditional access to credit issues, such as redlining, to reverse redlining, pricing discrimination and other areas. While the current crisis necessitates that much of our focus will be on mortgage lending, the unit will address discrimination in all areas of lending including unsecured consumer lending, auto lending, and credit cards.

I. REFERRALS

Pursuant to ECOA, bank regulatory agencies with enforcement responsibilities under this law "are authorized to refer matters to the Attorney General with a recommendation that an appropriate civil action be instituted." The agencies "shall refer the matter to the Attorney General whenever the agency has reason to believe that 1 or more creditors has engaged in a pattern or practice of discouraging or denying applications for credit in violation of section 1691(a) of this title." 15 U.S.C. § 1691e(g). In addition to the information on referrals provided below, the attached charts show the total number of referrals to DOJ made by each agency, for each calendar year from 2001 through 2009, as well as the number of those referrals based upon allegations of

race or national origin discrimination.

A. Referrals to DOJ

In 2009, DOJ received 31 fair lending referrals involving potential ECOA claims from the bank regulatory agencies:

- 21 from the Federal Deposit Insurance Corporation (FDIC);
- 6 from the Federal Reserve Board (FRB);
- 4 from the Office of Thrift Supervision (OTS); and
- None from the Office of the Comptroller of the Currency (OCC) or the National Credit Union Administration (NCUA).

These referrals included the following types of alleged discrimination: 13 involving marital status; 11 involving race or national origin; six involving age; and three involving gender.¹ As of December 31, 2009, we had returned 15 of the 31 referrals to the agencies for administrative resolution and continued to investigate the allegations in the 16 remaining referrals. By March 31, 2010, we had returned for administrative resolution 12 additional referrals made in 2008 or earlier. In addition to the 16 remaining referrals from 2009, we continue to investigate five referrals received in 2008 or earlier. For each of the referrals we returned to the agencies, we evaluated the facts and circumstances of the matter in light of the factors described in Section B below. The referrals are described (by agency) below.

Federal Deposit Insurance Corporation

The FDIC made 21 referrals in 2009: ten involved marital status discrimination; five involved race or national origin discrimination; four involved age discrimination; one involved gender discrimination; and one involved age and gender discrimination.

We returned 17 of these referrals for administrative resolution during 2009 and early 2010: ten involved marital status discrimination; two involved race or national origin discrimination; four involved age discrimination; one involved gender discrimination

The returned marital status discrimination referrals included allegations that the lender either applied different underwriting processes depending on whether co-applicants were married to each other, or improperly required spousal signatures on loan documents making a non-applicant spouse liable for the entire amount of the loan – not just on any jointly owned collateral – even when the individual spouse independently qualified for the loan under the creditor’s standards of creditworthiness. The returned race and national origin discrimination referrals included allegations of discrimination in pricing of home loans or potential steering of higher priced mortgage

¹ Several referrals involved multiple protected classes; therefore, the numbers of referrals by protected class categories appear to total more than 31.

loans. The returned age discrimination referrals included allegations of a preferential treatment for persons in age groups not entitled to preferential treatment. The returned gender discrimination referral involved allegations of pricing discrimination in automobile lending.

During 2009 and early 2010 we also returned for administrative resolution eight referrals received from the FDIC in prior years. Two of the referrals involved allegations of discrimination in the pricing of mortgages on the bases of race and national origin; four involved allegations of marital status discrimination; one involved allegations of age discrimination; and one involved allegations of discrimination against borrowers for having exercised rights protected under the Consumer Credit Protection Act.

Key factors for determining to return a referral to the FDIC included the nature of the violation; whether the bank had revised its lending policy; whether the bank had taken, or expressed willingness to take, appropriate corrective action for any persons who were aggrieved by the discriminatory policy; and the number of potential victims. In one of the race or national origin referrals regarding loan pricing, the FDIC took corrective action in the form of a public Cease and Desist Order.

During 2010, we continue to review the four remaining FDIC referrals from 2009; three involve allegations that the lender discriminated on the basis of race or national origin in the pricing or origination of mortgage loans or in its marketing and advertising, and one referral involves allegations of age and gender discrimination in a credit card program.²

Federal Reserve Board

The FRB made six referrals in 2009: one involved alleged redlining based on race or national origin discrimination; two involved alleged pricing discrimination based on race or national origin; two involved marital status discrimination; and one involved age discrimination.

During 2009 and early 2010, we returned three referrals for administrative resolution: two involved marital status discrimination and one involved age discrimination. The returned marital status discrimination referrals included allegations that the lender improperly required spousal signatures on loan documents making a non-applicant spouse liable for the entire amount of the loan even when the individual spouse independently qualified for the loan under the creditor's standards of creditworthiness or when the non-applicant spouse has no corporate or business relationship with the applicant. The returned age discrimination referral included allegations that benefits were improperly granted through an age-restricted account. During 2009 and early 2010 we also returned for administrative resolution two referrals received from the FRB in prior years: one involving allegations of marital status

² We have resolved all referrals received from the FDIC prior to 2009, either by returning the referral to the FDIC for administrative resolution or by filing a lawsuit.

discrimination and one involving allegations of discrimination based on gender. Key factors for determining to return a referral included the nature of the violation; whether the bank had revised its lending policy; and the number of potential victims.

During 2010, we continue to review the three remaining FRB referrals from 2009, which involve allegations that the lender discriminated on the basis of race or national origin in the pricing of mortgage loans or by redlining. We also continue to investigate two other referrals received from the FRB in prior years, both involving allegations that nationwide lenders discriminated in the pricing of mortgages based on race or national origin.

Office of Thrift Supervision

The OTS made four referrals in 2009. Three involve allegations of discrimination based on race or national origin in mortgage loan pricing or steering practices;³ and one involves allegations of marital status and gender discrimination in the pricing of automobile loans. During 2010, we continue to review the four referrals received in 2009.

During 2009 and early 2010, we returned for administrative resolution two referrals received from the OTS in prior years: one involving allegations of marital status discrimination and one involving allegations of pricing discrimination based on race or national origin. Key factors for determining to return a referral included the nature of the violation; whether the bank had revised its lending policy; and whether the bank had taken appropriate corrective action for any persons who were aggrieved by the discriminatory policy.

During 2010, we continue our review of three other referrals received from the OTS in prior years: two referrals involving allegations of discrimination in the pricing of mortgages on the bases of race and national origin, one of which also involves allegations of marital status discrimination in mortgage lending; and one referral involving allegations of redlining based on race.

Office of the Comptroller of the Currency

The OCC made no referrals during 2009.

National Credit Union Administration

The NCUA made no referrals during 2009.

³ Two of the three race or national origin referrals involve institutions that have been placed into receivership and raise issues of successor liability.

The Department of Housing and Urban Development⁴

HUD made no referrals during 2009.

B. Factors Considered By DOJ When Evaluating Referrals

In 1996, upon the recommendation of the General Accounting Office, DOJ provided guidance to the federal bank regulatory agencies on pattern or practice referrals. We described the distinction between referrals that we would return to the agency for administrative resolution and those we would pursue for potential litigation. While numerous factors are considered, referrals that are most likely to be returned generally have the following characteristics: (1) the practice has ceased and there is little chance that it will be repeated; (2) the violation may have been accidental or arose from ignorance of the law's more technical requirements, such as spousal signature violations and minor price breaks for certain age groups not entitled to preferential treatment; and (3) there either were few potential victims or *de minimis* harm to any potential victims.

Referrals that would likely be considered for litigation by the Department are referrals that do not meet the criteria set forth above, and have one or more of the following characteristics: (1) 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); (2) the practice is not likely to cease without court action; (3) the protected class members harmed by the practice cannot be fully compensated without court action; (4) 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 (5) 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.

II. LITIGATION

1. On September 30, 2009, we simultaneously filed and settled a case against First United Security Bank in southwest Alabama, alleging discriminatory pricing of home mortgages and redlining in violation of the Fair Housing Act and the Equal Credit Opportunity Act. The FDIC referred this matter to DOJ based on its finding of pricing discrimination, and the Division investigated and added the redlining claim, which focused on the Bank's failure to provide lending services in majority-African American census tracts in the market area designated by the Bank in filings with the Securities and Exchange Commission. United States v. First United Security Bank, Civil Action Number 09-0644, (S.D. Ala.).

⁴ Pursuant to the Fair Housing Act, 42 U.S.C. §§ 3610(e)(2), 3612(o), HUD may make pattern or practice referrals, including those involving lending discrimination, to the Department.

Under the terms of the settlement, which was entered by the court in November 2009, First United Security Bank is enjoined from discriminating on the basis of race, and will expand its operations in majority African-American areas of west central Alabama, including opening at least one new branch and expanding its assessment areas under the Community Reinvestment Act. The bank also will invest \$500,000 in a special financing program for the formerly redlined areas, spend more than \$110,000 for outreach to potential customers and promotion of its products and services in these areas, host regular consumer financial education, and pay up to \$50,000 to the alleged victims of pricing discrimination.

2. On September 30, 2009, we filed a lawsuit against Nara Bank and two groups of car dealerships in the bank's automobile lending network, alleging that the defendants violated ECOA by charging non-Asian customers, many of whom are Hispanic, higher "overages" or "dealer mark-ups" than similarly-situated Asian customers. United States v. Nara Bank, et al., Civil Action Number CV 09-7124 RGK (JCx), (C.D. Cal.).

We simultaneously filed a partial consent order resolving our claims against Nara Bank only. Under the terms of the order, which was entered by the court in November 2009, the Bank is enjoined from discriminating on the basis of race or national origin against any loan applicant or consumer in the terms or conditions relating to the extension of credit, including the setting of overages in indirect automobile lending purchases. In order to remedy its part in the alleged discrimination, Nara Bank will pay up to \$410,000 to compensate several hundred non-Asian borrowers who allegedly have been aggrieved by the discriminatory conduct. The case against Nara Bank was referred by the FRB; during the course of the Department's investigation we added the dealership defendants.

Litigation continues against the two dealerships—Union Auto Sales, Inc., d/b/a Union Mitsubishi; Han Kook Enterprises, Inc., d/b/a Los Angeles City Hyundai, Garden Enterprises, Inc., Grove Hyundai, Han Kook Imports, Vermont Chevrolet, and Han Kook Motors, Inc. Defendant Han Kook Enterprises filed a motion to dismiss on the grounds that the complaint fails to state a claim against it with sufficient specificity and that the complaint is barred by the ECOA statute of limitations. On March 3, 2010, the court found that the complaint is not time-barred because ECOA "does not impose a time limit on the Attorney General's ability to bring an action," provided the Attorney General alleges a pattern or practice of discrimination. The court, however, granted the motion to dismiss with leave to amend the complaint to provide additional specificity. On March 18, 2010, we filed the United States' First Amended Complaint. The litigation is ongoing.

3. In 2009, we initiated pre-suit negotiations in a case alleging pricing discrimination by two lenders. This case involves allegations that the lenders discriminated on the basis of race in their practice of delegating unsupervised and unmonitored broker fee pricing decisions to wholesale mortgage brokers. This practice had a disparate impact against African-American borrowers, in violation of the Fair

Housing Act and the Equal Credit Opportunity Act. Our investigation into this matter resulted from a referral by the Office of Thrift Supervision. On March 4, 2010, we filed and simultaneously settled this case with a consent order providing for up to \$6.1 million in damages to aggrieved persons and at least \$1 million for consumer financial education, as well as general and specific injunctive relief. United States v. AIG Federal Savings Bank and Wilmington Finance, Inc., Civil Action Number 1:10-cv-178 JJF, (D. Del.).

III. INVESTIGATIONS

During 2009, the Department concentrated significant resources on fair lending investigations involving a variety of allegations.

The Department continued its focus on investigating potential cases of race or national origin discrimination in loan pricing and steering. Many of these investigations result from review, either by the Department or the bank regulatory agencies of loan pricing data now available under the Home Mortgage Disclosure Act (HMDA). Since 2004, HMDA has required reporting lenders to collect and publicly report certain information about the interest rate charged on home mortgage loans that they originate. During 2009, in several matters we examined allegations that local, regional and national lenders priced mortgage loans or loan-related fees differently based on the race or national origin of the borrower, or offered different types of loan products based on the race or national origin of the borrowers.

The Department also continued to investigate allegations of redlining and reverse redlining. In a redlining case, a lender chooses not to provide its lending services on an equal basis in a neighborhood because of the race, color, or national origin of the people who live in the neighborhood, thereby denying residents of minority communities equal access to residential, consumer, or small business credit. During 2009, we examined allegations that several lenders discriminated on the basis of race and national origin by avoiding or refusing to do business in majority African-American and/or Hispanic neighborhoods because of the race, color, or national origin of those areas. We are particularly concerned that the prevalence of redlining will increase in the wake of the mortgage and foreclosure crisis. When prime lenders abandon communities by redlining, they become targets for less scrupulous lenders who may target minority neighborhoods for abusive products or loans. This latter practice is known as reverse redlining. During 2009 we examined allegations that several lenders or brokers targeted African-American and/or Hispanic communities for abusive loans. Lawsuits challenging redlining and reverse redlining practices are significant weapons in the battle against predatory lending.

During 2009, we also expanded our efforts to identify and address issues of potential discrimination in loan servicing and foreclosures related to the ongoing mortgage crisis. As discussed in Section IV, we are working with other government agencies and external stakeholders to address these issues.

IV. OTHER ACTIVITIES

Beginning in 2009, the Division participated in organizing and launching the federal Financial Fraud Enforcement Task Force, where the Assistant Attorney General for Civil Rights serves as a co-chair of the Non-Discrimination Working Group. Division representatives participated actively in a wide range of Task Force enforcement and outreach efforts in 2009, and these efforts are expanding in 2010. The Division has a particular focus on working collaboratively with the United States Attorneys' offices, as well as other federal and state enforcement agencies, to identify synergies between mortgage fraud and lending discrimination enforcement activities in order to increase efficacy in both areas. The Division also has played a key role in earlier collaborative efforts in 2009 to address the abuses of the mortgage crisis, through its participation in the State/Federal Mortgage Fraud Task Force. In addition, we regularly consult and work cooperatively with external stakeholders in a variety of education and outreach projects related to the mortgage crisis to get input from our partners about potential solutions. As noted above, in January 2010, the Division announced the creation of a fair lending unit in its Housing and Civil Enforcement Section to enhance all of the Division's fair lending activities.

We continue to participate in the federal Interagency Fair Lending Task Force with the FDIC, the FRB, the OCC, the OTS, the NCUA, HUD, the Office of Federal Enterprise Oversight (OFHEO), the Federal Housing Finance Board, and the Federal Trade Commission to discuss fair lending issues and the activities of the various agencies. We also regularly meet with these agencies separately and in subgroups to discuss and coordinate fair lending enforcement activities.

During the year, Division representatives also participated in a variety of conferences and meetings involving lenders, enforcement agencies, advocacy and consumer groups, and others interested in fair lending throughout the country, in order to inform critical stakeholders about our enforcement policies and activities.

ALL REFERRALS	2009	2008	2007	2006	2005	2004	2003	2002	2001	Total
FDIC	21	12	15	29	35	42	29	33	5	221
FED	6	3	9	5	2	3	0	6	1	35
OTS	4	4	3	0	0	1	0	0	1	13
OCC	0	1	0	0	0	0	0	1	3	5
NCUA	0	0	0	0	0	—	—	—	—	0
HUD	0	0	0	0	1	1	0	2	—	4
Total	31	20	27	34	38	47	29	42	10	278

Race/Nat'l Origin Discrimination	2009	2008	2007	2006	2005	2004	2003	2002	2001	Total
FDIC	5	2	1	3	1	0	2	1	2	17
FED	3	0	4	2	0	0	0	1	1	11
OTS	3	3	2	0	0	0	0	0	1	9
OCC	0	0	0	0	0	0	0	0	0	0
NCUA	0	0	0	0	0	—	—	—	—	0
HUD	0	0	0	0	1	1	0	2	—	4
Total	11	5	7	5	2	1	2	4	4	41