

**The Attorney General's
2012 Annual Report to Congress
Pursuant to the Equal Credit Opportunity Act
Amendments of 1976**



**Submitted by
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July 2013

This report is submitted pursuant to Section 1691f of the Equal Credit Opportunity Act (ECOA), as amended, 15 U.S.C. 1691, *et seq.*, regarding the activities of the Department of Justice (DOJ or the Department) under the statute, which is enforced by the Department's Civil Rights Division. This report covers the 2012 calendar year and includes information about all of the Division's fair lending work, including its activities under the Fair Housing Act (FHA), as amended, 42 U.S.C. 3601, *et seq.*, and the Servicemembers Civil Relief Act (SCRA), as amended, 50 U.S.C. App. 501, *et seq.*

I. INTRODUCTION

In the wake of the housing and foreclosure crisis, the President and the Attorney General have made fair lending enforcement a top priority. In early 2010, the Attorney General established a dedicated Fair Lending Unit in the Civil Rights Division's Housing and Civil Enforcement Section. The Division worked throughout 2009 and 2010 to prioritize fair lending enforcement and to strengthen its relationships with governmental and community partners across the country. In 2011, the Division's investment in fair lending came to fruition,

Record Relief

The Division has obtained more than \$660 million in monetary relief in fair lending settlements since the beginning of the Obama Administration, including the three largest residential lending discrimination settlements in Justice Department history, which is more than the previous 23 years combined.

producing record-breaking cases in collaboration with other government agencies and other offices within the Department of Justice. In 2012, the Division obtained a record 11 lending settlements that will provide more than \$265 million in monetary relief to the individual victims and communities harmed by illegal lending practices. Highlights from 2012 include:

- **Challenging Lenders that Steer Minority Borrowers to Subprime Loans.**

Just months after bringing the Department's largest fair lending case ever, *United States v. Countrywide*, the Division filed and settled a case of similar magnitude against Wells Fargo Bank, the largest residential home mortgage lender in the United States. The Division's lawsuit alleged that for five years Wells Fargo systematically placed African-American and Hispanic borrowers in subprime loans, while placing similarly-qualified white borrowers in prime loans. The settlement requires Wells Fargo to pay nearly \$185 million to victims of discrimination, and to invest \$50 million in several metropolitan areas hardest hit by the bank's discrimination and the foreclosure crisis.

- **Ensuring Relief for Servicemembers Subject to Wrongful Foreclosure.**

The Division negotiated consent orders with the nation's five largest mortgage loan servicers that, when combined with the Division's 2011 SCRA foreclosure settlements, and a 6th settlement in 2012, ensure that the vast majority of all foreclosures against servicemembers will be subject to court ordered review. Under the 2012 settlements, most servicemembers who were subject to a wrongful foreclosure will be compensated a minimum of \$125,000 each plus any lost equity. The 2012 settlements were incorporated into an historic mortgage servicer settlement among the United States, 49 state attorneys general, the District of Columbia and the five servicers. These agreements provide for \$25 billion in relief based on the servicers' illegal mortgage loan servicing practices, plus the financial compensation to servicemembers whose homes were subject to wrongful foreclosure.

- **Strengthening Partnerships with Other Agencies.**

The Division continued to strengthen its relationships with the federal banking regulators, including the new Consumer Financial Protection Bureau (CFPB), the Department of Housing and Urban Development, and the Federal Trade Commission. For example, during 2012, the Division and the CFPB entered into a Memorandum of Understanding to strengthen coordination and collaborative efforts to promote strong and effective civil rights enforcement.

As the 2011-2012 enforcement record illustrates, the Division's Fair Lending Unit uses every possible tool to address the range of abuses seen in the market, in both mortgage and non-mortgage lending.

II. LENDING DISCRIMINATION ENFORCEMENT UNDER ECOA AND THE FHA

The Division has authority to enforce the Equal Credit Opportunity Act and the Fair Housing Act on its own or upon referral from another agency. ECOA prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age, because an applicant receives income from a public assistance program, or because an applicant has in good faith exercised any right under the Consumer Credit Protection Act. The FHA prohibits discrimination in home mortgage loans, home improvement loans, and other home credit transactions because of race, color, religion, sex, national origin, familial status, or disability.

In cases involving discrimination in mortgage loans or home improvement loans, the Division may file suit under both ECOA and the FHA.

The Division has authority under both statutes to challenge a pattern or practice of discriminatory conduct, and the Division's Fair Lending Unit focuses on the range of abuses seen in the market, from traditional access to credit issues like redlining to abuses like pricing, steering, reverse redlining, and mortgage insurance discrimination. The Fair Lending Unit also investigates abuses in non-mortgage lending, including discrimination involved in unsecured consumer loans, auto loans, student loans, and credit card products.

Steering: Placing Minority Borrowers in Subprime Loans while Similar White Borrowers Get Prime Loans: *United States v. Wells Fargo, NA*

In 2012, we filed and settled *United States v. Wells Fargo Bank, NA* (D.D.C.), a pattern or practice case that will provide over \$234 million in monetary relief for borrowers and communities that suffered because of Wells Fargo's practices. The complaint alleged that Wells Fargo discriminated in both its retail and wholesale operations by systematically placing African-American and Hispanic borrowers into subprime mortgages while giving similarly-qualified non-Hispanic white borrowers prime loans from 2004-2009. As a result of being placed in the more expensive subprime loans, more than 8,500 Hispanic and African-American borrowers were exposed to greater risk of default and foreclosure. The complaint also alleged that between 2004 and 2009 Wells Fargo discriminated by charging 30,000 African-American and Hispanic wholesale borrowers higher fees and rates than non-Hispanic white borrowers because of their race or national origin.

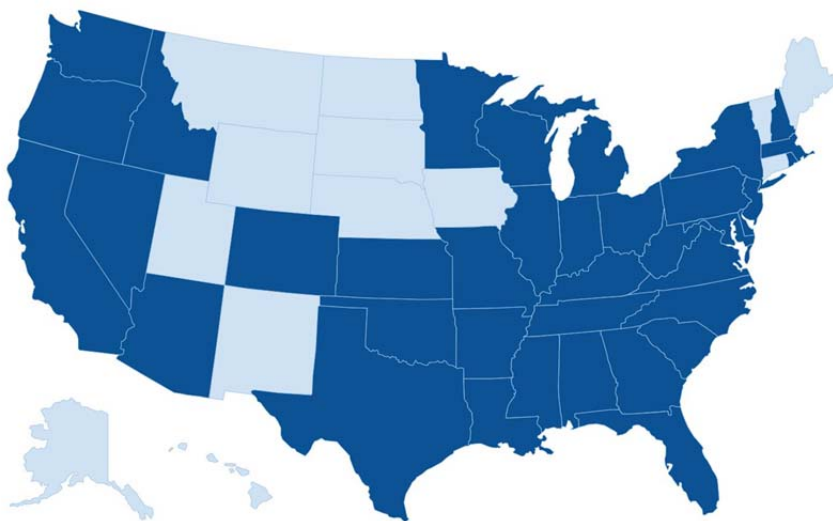


Deputy Attorney General James M. Cole speaks at the June 13, 2012 press conference announcing the *Wells Fargo* settlement. He is joined by Assistant Attorney General for Civil Rights Thomas E. Perez, Illinois Attorney General Lisa Madigan, and Comptroller of Currency Thomas Curry.

The Wells Fargo settlement marks the second time in a year that DOJ obtained more than two hundred million dollars in relief in a lending case. Pursuant to the consent order, entered by the court on September 21, 2012, Wells Fargo will pay borrowers \$184.25 million in compensation,

including \$129.25 million to retail and wholesale borrowers who were steered into subprime mortgages because of their race or national origin. In addition, Wells Fargo will provide \$50 million in direct down payment assistance to borrowers in communities around the country hard hit by the housing crisis and Wells Fargo's discrimination.

The Wells Fargo case was the result of joint efforts by the Division and the Office of the Comptroller of the Currency, Wells Fargo's regulator. The OCC's review, which resulted in a referral to the Department, found that African-American borrowers were placed in subprime loans more frequently than similarly-qualified white borrowers. In the Wells Fargo case, like the *United States v.*



States in navy blue have had substantial concentrations of people affected by unlawful lending practices in the Division's Wells Fargo case.

Countrywide Financial Corp. (C.D. Cal.) case filed in 2011, United States Attorneys' Offices from around the country stood ready to help the Division if the cases went into contested litigation.

Beyond the Numbers

The Wells Fargo case is not just about numbers. It is about the 80-year-old African-American resident in the Baltimore area with a 714 credit score and a rock solid credit file who received a subprime loan instead of a prime loan, and who was not told that she might have qualified for a prime loan with better terms. By the time she realized that she had been given a higher-cost loan, it was too late. The damage was done: like many subprime loans, her loan came with an adjustable interest rate ("ARM") that spiked after two years. Until the interest rate hike, she didn't even realize that she had been given a subprime loan. Under the Division's settlement, this resident and thousands like her will receive monetary compensation for the damages they suffered.

Pricing Discrimination: Charging Borrowers More Because of Their Race or National Origin

In addition to the Wells Fargo case, which included a pricing claim, the Division filed and resolved two significant pricing discrimination cases in 2012, and obtained settlements in both to provide substantial monetary compensation for the victims of discrimination.

United States v. SunTrust Mortgage, Inc. On May 31, 2012, we filed and settled for \$21 million *United States v. SunTrust Mortgage, Inc.* (E.D. Va.) alleging a pattern or practice of lending discrimination in violation of the Fair Housing Act and Equal Credit Opportunity Act. The complaint alleged that SunTrust Mortgage systematically charged at least 20,000 African-American and Hispanic borrowers across the country higher discretionary broker fees and retail loan markups than comparable white borrowers from 2005-2009. The consent order, entered by the Court on September 14, 2012, provides for \$21 million to compensate borrower victims—the third largest monetary settlement in a Department of Justice fair lending case—as well as injunctive relief specifying that SunTrust Mortgage must maintain for at least three years specific improved pricing policies and fair lending monitoring. This case was referred to the Department by the Federal Reserve Board.

United States v. GFI Mortgage Bankers, Inc. On August 27, 2012, the Department resolved *United States v. GFI Mortgage Bankers, Inc.* (S.D.N.Y.) (“GFI”), a pattern or practice case alleging lending discrimination in violation of the Fair Housing Act and Equal Credit Opportunity Act. The complaint, which was filed in April 2012, alleged that from 2005 through at least 2009, GFI charged African-American and Hispanic borrowers significantly higher interest rates and fees than it charged to similarly-situated white borrowers for home loans, resulting in thousands of dollars in overcharges to minority borrowers because of race or national origin. The consent order requires GFI to pay \$3.5 million in compensation to approximately 600 African-American and Hispanic GFI borrowers, the largest per-victim recovery in a Department of Justice pricing case, and to pay the government the maximum \$55,000 civil penalty allowed by the Fair Housing Act. The settlement also requires GFI to develop and implement new policies to ensure non-discriminatory pricing decisions and fair lending monitoring. The settlement came after the United States had filed a brief opposing GFI’s motion to dismiss the case, and the court had stated it was “skeptical” of GFI’s argument that federal law

allows lenders to price loans in a way that produces such disparate impacts on minority borrowers. This case was referred to the Department by HUD.

Minimum Loan Amount Policies: United States v. Luther Burbank Savings

On September 12, 2012, we filed and settled *United States v. Luther Burbank Savings* (C.D. Cal.). The complaint alleged that from 2006 to 2011, Luther engaged in a pattern or practice of discrimination in its residential lending activities in violation of the Fair Housing Act and Equal Credit Opportunity Act. The complaint alleged that Luther enforced a \$400,000 minimum loan amount policy for its wholesale single-family residential mortgage loan program that had a disparate impact on the basis of race and national origin. Under the consent order entered by the court in October 2012, Luther will invest \$2 million in a special financing program, partnerships with community-based organizations, outreach, training, and consumer education programs to increase the residential mortgage credit extended to qualified borrowers seeking loans of \$400,000 or less in the predominantly minority areas of California affected by the bank's discrimination. Luther now has a \$20,000 minimum loan amount policy. This case was referred to the Department by the Office of Thrift Supervision, which is now part of the OCC.

Discrimination Based on Disability Income

On September 13, 2012, we filed and settled *United States v. Bank of America, N.A.* (W.D.N.C.). The complaint, based on a HUD referral, alleged that Bank of America discriminated against persons with disabilities who receive public assistance in underwriting and originating loans, by requiring loan applicants who receive Social Security Disability Insurance (SSDI) income to provide a letter from their doctor as part of the loan application. The consent order, entered by the court in October 2012, requires the Bank to maintain revised policies, conduct employee training and pay compensation to victims. Bank of America will pay \$1,000, \$2,500 or \$5,000 to eligible mortgage loan applicants who were asked to provide a letter from their doctor to document the income they received from SSDI. Applicants who were asked to provide more detailed medical information to document their income may be paid more than those who were asked to have a doctor verify their source of income. In addition, the HUD complainants who initiated this suit received a total of \$125,000.

Discrimination in Auto Lending

The Division successfully continued its litigation in an auto lending case previously described in the Attorney General's 2009, 2010 and 2011 ECOA reports. In *United States v. Union Auto Sales*. (C.D. Cal.), the Division's complaint asserted a pricing discrimination claim under ECOA. The district court in 2010 dismissed the complaint as insufficient under two recent Supreme Court cases, *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007) and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009). The Division appealed the case to the Ninth Circuit Court of Appeals, which reversed the district court, finding that the allegations of the complaint plausibly stated a claim for relief, which is all that is required at the pleading stage. 2012 WL 2870333 (C.A.9 (Cal.)). In the fall of 2012, the case was remanded to the district court for further proceedings.

Pending Discrimination Investigations

At the end of 2012, the Division had nine open fair lending investigations and three authorized lawsuits. These include ongoing enforcement efforts focusing on the following forms of lending discrimination:

- Discrimination in the underwriting or pricing of mortgage loans, such as steering to less favorable loan products and discrimination in discretionary markups and fees, including several investigations being conducted jointly with other federal agencies;
- Discrimination in unsecured consumer loans, based on referrals from the bank regulatory agencies;
- Discrimination in automobile lending based on race-based targeting for "buy here-pay here" dealers, who are dealers that provide financing for customers themselves, including an investigation being conducted jointly with a state attorney general's office;
- Redlining through the failure to provide equal lending services to minority neighborhoods or reverse redlining through the targeting of minority communities for predatory loans; and

- Discrimination based on marital status, sex, or age, including discrimination based on a borrower's maternity leave status.

In 2013, we are also broadening our fair lending investigations to include a focus on discrimination in discretionary markups and fees in automobile lending, including several investigations being conducted jointly with the CFPB.

The Division expects that in 2013, a number of its pending investigations, particularly those where lawsuits have been authorized, will result in contested litigation or settlements.¹

III. SERVICEMEMBERS' LENDING ENFORCEMENT

The Civil Rights Division enforces several laws designed to protect the rights of members of the military, including the Servicemembers Civil Relief Act (SCRA). The SCRA postpones, suspends, terminates, or reduces the amount of certain consumer debt obligations for active duty members of the armed forces, so that they can focus their full attention on their military responsibilities without adverse consequences for themselves or their families. Among these protections



Assistant Attorney General Thomas E. Perez and U.S. Attorney David Hale meet with soldiers from the 101st Airborne Division at Fort Campbell, Kentucky.

are (1) a prohibition on foreclosure of a servicemember's property without first getting approval from the court if the servicemember obtained the loan prior to entering military service, and (2) the right for a servicemember to have his or her interest rate lowered to six percent on debt that was incurred before entering military service.

Enforcing these rights is an important priority of the Division. Members of the military who have made great personal sacrifices on behalf of this country should not be required to transition to civilian life only to find their credit ruined and their homes sold off.

Wrongful Foreclosure Cases

In February 2012, we filed consent orders with Bank of America, JPMorgan Chase & Co., Wells Fargo & Company, Citigroup Inc., and Ally Financial, Inc. (formerly GMAC). Under those agreements, the nation's five largest mortgage loan servicers are conducting reviews to determine whether they foreclosed on any servicemembers either judicially or non-judicially in violation of the SCRA since 2006, and whether they unlawfully charged any servicemembers interest in excess of six percent on their mortgages since 2008. As a result of these settlements, combined with the Division's 2011 settlements with Bank of America and Saxon covering non-judicial foreclosures and a sixth settlement we reached in 2012, the vast majority of all foreclosures against servicemembers are now subject to court ordered review.

Most foreclosure victims identified through these reviews by the nation's five largest mortgage servicers will be compensated \$125,000 plus any lost equity with interest. Servicemember victims who were denied a required reduction to a six percent interest rate will be compensated by the amount wrongfully charged in excess of six percent, plus triple the amount refunded, or \$500, whichever is larger.¹ These agreements were incorporated into the historic mortgage servicer settlement among the United States, 49 state attorneys general, the District of Columbia and the five servicers, *United States, et al., v. Bank of America Corp., et al.* (D.D.C.). That settlement provides for \$25 billion in relief based on the servicers' illegal mortgage loan servicing practices. The financial compensation to servicemembers is in addition to the \$25 billion.

Wrongful Foreclosures, Repossessions and Court Judgments; Improper Denials of Six Percent Interest Rate

On July 26, 2012, we filed and settled *United States v. Capital One, N.A.* (E.D. Va.), one of the most comprehensive SCRA settlements ever obtained by a government agency or any private party under the SCRA. Under the consent order, Capital One agreed to pay approximately \$12 million in monetary relief to resolve allegations of a variety of SCRA violations, including wrongful foreclosures, improper repossessions of motor vehicles, wrongful court judgments,

¹ All but one of these reviews also require the servicers to identify violations of the SCRA six percent rule. Six percent violations of the remaining servicer were addressed in a previously settled private lawsuit.

improper denials of the six percent interest rate the SCRA guarantees to servicemembers on pre-service credit card and other loans, and insufficient six percent benefits granted on credit cards, car loans and other types of accounts. The agreement requires Capital One to pay approximately \$7 million in damages to servicemembers for SCRA violations, including at least \$125,000 plus compensation for any lost equity (with interest) to each servicemember whose home was unlawfully foreclosed upon, and at least \$10,000 plus compensation for any lost equity (with interest) to each servicemember whose motor vehicle was unlawfully repossessed. In addition, the agreement required Capital One to create a \$5 million fund to compensate servicemembers who did not receive the appropriate amount of SCRA benefits after requesting a reduction to a six percent interest rate on their credit card accounts, motor vehicle finance loans, and consumer loans. Approximately \$2 million of this fund was used as payments to servicemembers. The remaining approximately \$3 million has been donated by Capital One to military aid societies.

IV. COLLABORATION WITH FEDERAL AND STATE PARTNERS AND OUTREACH TO STAKEHOLDERS

The Division's ability to bring these strong enforcement actions is a direct result of close collaboration with federal and state partners. All of the Division's lending discrimination cases in 2012 involved collaborative work with other government agencies and other offices within the Department, including the U.S. Attorneys' offices. The Division brought several cases based on referrals from the federal bank regulatory agencies, as well as two lending discrimination cases based on referrals from the Department of Housing and Urban Development (HUD). In addition, the Division entered into a Memorandum of Understanding with the Consumer Financial Protection Bureau (CFPB) to strengthen coordination and collaborative efforts between the agencies and opened its second joint investigation with the CFPB. Several joint or parallel investigations with other agencies that originated in prior years remained ongoing in 2012.

The Division participates in the Federal Interagency Fair Lending Task Force with federal regulatory agencies empowered to refer matters to DOJ and to discuss and coordinate fair lending enforcement activities. As illustrated in Section V of this report, much of that work has resulted in a steady stream of referrals from those agencies involving race or national origin discrimination over the past several years. All of the agencies the Division has partnered with are members of the Non-Discrimination Working Group of the President's Financial Fraud Enforcement Task Force, which is chaired by the Assistant Attorney General for Civil Rights.

Finally, Division representatives, led by the Assistant Attorney General, participated in 2012 in numerous conferences, training programs, 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 the Division's enforcement policies and activities. The Division has made outreach and education to industry stakeholders a priority because it plays a critical role in promoting compliance with the law. In addition to our in-person outreach efforts, for the second year in a row the Division and all other federal fair lending enforcement agencies participated in a webinar hosted by the Federal Reserve Board. The webinar enabled the more than 2,500 participants to hear about government-wide fair lending priorities. The Division will continue these efforts in 2013 in order to strengthen and improve its enforcement of fair lending protections.

V. REFERRALS

Under ECOA, the bank regulatory agencies and the CFPB are required to refer matters to the Department when they have reason to believe a lender has engaged in a pattern or practice of discrimination. Referrals also are made under ECOA by the FTC and under the FHA by HUD. From 2009-2012, the bank regulatory agencies, the FTC and HUD referred a total of 122 matters involving a potential pattern or practice of lending

Many Partners, Many Acronyms

FDIC - Federal Deposit Insurance Corporation
FRB - Federal Reserve Board
OTS - Office of Thrift Supervision
OCC - Office of the Comptroller of the Currency
NCUA - National Credit Union Administration
CFPB - Consumer Finance Protection Bureau
FTC - Federal Trade Commission
HUD – Dep't of Housing and Urban Development

discrimination to the Justice Department. Sixty-three of the 122 referrals involved race or national origin discrimination, a combined total that is far higher than the 30 race and national origin discrimination referrals the Division received from 2001-2008. All five of the lending discrimination cases filed by the Division in 2012 and described in Part II were the subject of referrals from the federal bank regulatory agencies or HUD.

When the Division receives a referral from a bank regulatory agency, it must determine whether to file a lawsuit in federal court or return the matter to the regulator for administrative

enforcement. Shortly after the creation of the new Fair Lending Unit and in response to feedback from industry groups, lenders, and regulatory agencies, the Division made it a priority to review and make an initial decision to either defer for administrative enforcement or open a DOJ investigation for further review within 90 days of receiving a complete referral under ECOA. In 2012, the Division met this goal 100% of the time. The average time required for the initial decision to defer or open an investigation for 2012 referrals from the federal bank regulatory agencies was approximately 60 days. In December 2012, as part of our continuing effort to increase the effectiveness and efficiency of our fair lending enforcement, we made a new commitment to the regulators that, starting with 2013 referrals, our goal for the initial review time will be 60 days from the date of receiving a complete referral.

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. That guidance described the factors that DOJ would consider in determining which matters it would return to the agency for administrative resolution and which it would pursue for potential litigation.

While numerous factors are considered, referrals that are most likely to be returned generally have the following characteristics:

- The practice has ceased and there is little chance that it will be repeated;
- 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
- 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:

- 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);
- The practice is not likely to cease without court action;

- The protected class members harmed by the practice cannot be fully compensated without court action;
- 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
- 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.

2012 Referrals to DOJ

Overall, the 2012 referrals included the following types of alleged discrimination:

- 8 involving race or national origin;
- 3 involving marital status;
- 2 involving age;
- 1 involving gender.²

As set forth in charts immediately following Section VII of this report, the 2012 referrals involved a wide range of discriminatory conduct and various types of credit. The most common issue in these referrals continues to be pricing discrimination based on race or national origin. In 2012, in addition to two referrals involving mortgage loan pricing discrimination, the Division received four referrals involving pricing discrimination in consumer lending.

Overall, the Division opened four investigations based on the 2012 referrals, three involving pricing discrimination and one involving underwriting discrimination; all based on FDIC referrals.³ These investigations continued in 2013. In eight of the 12 bank regulatory agency 2012 referrals, we deferred to the appropriate regulatory agency for enforcement without opening an investigation.⁴ This is consistent with the historical rate of investigations opened based on a referral. For example from 2010-2012, 36% of referrals resulted in a formal open investigation and 64% were immediately returned to agencies for resolution.

² One referral involved multiple protected classes; therefore, the number of referrals by protected class categories totals more than 13.

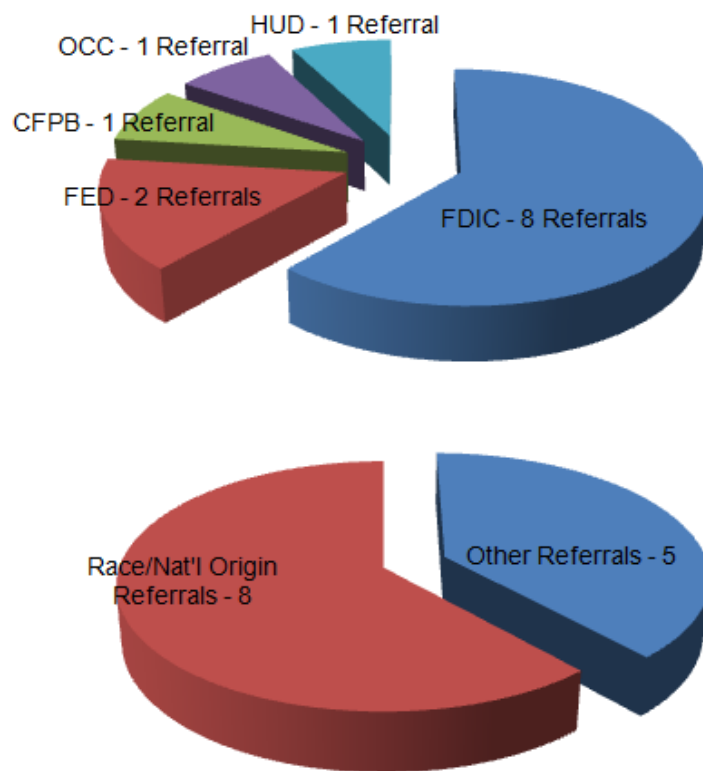
³ One of these investigations was opened in early 2013, based on a referral received in December 2012.

⁴ The 13th referral was from HUD.

At the end of 2012, we continued to investigate seven referrals received in prior years: three from the FDIC, one from the Fed, one from the OCC and two from the FTC. Six of these ongoing investigations involved race and national origin discrimination and one involved discrimination based on gender and familial status.

The referrals that were returned for administrative enforcement during 2012 are also described in the charts following Section VII of this report, by agency. For each of the referrals we returned to the agencies, the Division evaluated the facts and circumstances of the matter in light of the factors described above. Key factors for returning a referral to the referring agency during 2012 included: the nature of the violation; whether the bank had revised the relevant lending policies and practices; 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 and magnitude of any damages for potential victims.

*2012 Lending Referrals to DOJ,
By Agency & Discriminatory Conduct*



In 2012, DOJ received 13 fair lending referrals involving potential lending discrimination claims from the bank regulatory agencies and HUD (top chart). For the second year in a row, more than one-half of the referrals DOJ received (8) involved discrimination based on race or national origin (bottom charts).

2001-2012 Fair Lending Referrals to DOJ



VI. RECOMMENDATIONS FOR LEGISLATIVE ACTION

In September 2011, the Department transmitted to Congress a package of legislative proposals designed to strengthen enforcement of laws that protect the rights of servicemembers and their families, as well as other, related civil rights laws. Title I of the package focuses exclusively on fair lending and contains a number of amendments to strengthen enforcement of the SCRA, the FHA, and ECOA. These proposals, if passed, would:

- Grant civil investigative demand authority to the Attorney General to compel the production of existing documents in investigations under the SCRA, FHA, and ECOA;
- Double the amount of civil penalties currently available under the SCRA and the FHA;
- Codify the rule that a party seeking a default judgment against a servicemember must check Department of Defense records to determine whether the servicemember is on active duty; and



- Clarify retroactive application of provisions establishing a private right of action and authority of the Attorney General to enforce the SCRA.




Several of the Department's proposals were included in bills introduced in the last session of Congress, and we will continue to work with Congress to identify areas where legislative changes would improve enforcement of the SCRA, the FHA, and ECOA.



VII. LOOKING FORWARD

The Civil Rights Division produced another banner year of fair lending enforcement in 2012, building on groundwork laid in 2009-2010 and the unprecedented enforcement of 2011. Our collaborative relationships with the Division's federal, state, and community partners continued to flourish, with cases producing nationwide relief in mortgage lending discrimination and servicemembers' rights. The Division and its partners, including the Consumer Financial Protection Bureau, enhanced joint investigative efforts and improved our information sharing procedures, all of which will assist us in further expanding enforcement in the areas of mortgage lending discrimination and servicemembers' rights. In the coming year, we will continue our efforts to identify and eradicate lending practices that harm consumers in all areas of lending, working to ensure that non-discriminatory terms are available to all borrowers, in many areas including mortgages, consumer, auto, and student lending. In short, we will continue to seek to ensure that all Americans have equal access to credit and to the opportunity to achieve the American dream.

Lending Discrimination Referrals by Other Agencies to DOJ

Agency	2012 Referrals by Protected Class	2012 Referrals Resulting in Ongoing DOJ Investigations	2012 Referrals Returned to Agency	Referrals Pending from Prior Years
CFPB 	<i>1 total</i> 1 – age	<i>0 total</i>	<i>1 total</i> 1 – age credit card underwriting	<i>0 total</i>
FDIC 	<i>8 total</i> 5 – race/national origin 1 – age/marital status 1 – marital status 1 – sex	<i>4 total</i> 3 – race/national origin 1 – sex	<i>4 total</i> 1 – race/national origin mortgage marketing 1 – race/national origin auto lending 1 – age/marital status credit card underwriting 1 – marital status mortgage underwriting	<i>11 total</i> <u>2 filed lawsuits</u> 2 – race/national origin <ul style="list-style-type: none"> ▪ mortgage pricing (<i>United States v. Community State Bank</i>, filed in January 2013) ▪ unsecured consumer loan pricing (<i>United States v. Texas Champion Bank</i>, filed in February 2013) <u>2 on-going investigations</u> 2 – national origin <ul style="list-style-type: none"> ▪ 1 – unsecured consumer loan pricing ▪ 1 – mortgage steering & pricing <u>7 returned to agency</u> 5 – race/national origin <ul style="list-style-type: none"> ▪ 1 – consumer loan pricing ▪ 1 – student loan pricing ▪ 2 – mortgage pricing ▪ 1 – marketing 2 – gender unsecured consumer loan pricing

Agency	2012 Referrals by Protected Class	2012 Referrals Resulting in Ongoing DOJ Investigations	2012 Referrals Returned to Agency	Referrals Pending from Prior Years
 FRB	<i>2 total</i> 1 – race/national origin 1 – marital status	<i>0 total</i>	<i>2 total</i> 1 – race/national origin consumer loan pricing 1 – marital status home equity underwriting	<i>4 total</i> <u>1 filed lawsuit</u> 1 – race/national origin <ul style="list-style-type: none"> ▪ mortgage pricing ▪ (<i>United States v. SunTrust Mortgage</i>) <u>1 on-going investigation</u> 1 – gender/familial status mortgage underwriting <u>2 returned to agency</u> 2 – race/national origin <ul style="list-style-type: none"> ▪ mortgage pricing ▪ redlining
 OCC	<i>1 total</i> 1 – race/national origin	<i>0 total</i>	<i>1 total</i> 1 – race/national origin mortgage pricing	<i>2 total</i> <u>1 filed lawsuit</u> 1 – race/national origin <ul style="list-style-type: none"> ▪ steering, mortgage pricing ▪ (<i>United States v. Wells Fargo</i>) <u>1 on-going investigation</u> 1 – race/national origin mortgage pricing
 OTS*	--	--	--	<i>3 total</i> <u>1 filed lawsuit</u> 1 – race/national origin <ul style="list-style-type: none"> ▪ mortgage underwriting (<i>United</i>

Agency	2012 Referrals by Protected Class	2012 Referrals Resulting in Ongoing DOJ Investigations	2012 Referrals Returned to Agency	Referrals Pending from Prior Years
				<i>States v. Luther Burbank Bank</i>) <u>2 returned to agency</u> 2 – race/national origin mortgage pricing
FTC 	0 total	0 total	0 total	2 total <u>2 ongoing investigations</u> 2 – race/national origin mortgage pricing
HUD 	1 total 1 – race/national origin**	0 total	1 total 1 – race/national origin mortgage underwriting	3 total <u>2 filed lawsuits</u> 1 – race/national origin ▪ mortgage pricing (<i>United States v. GFI Mortgage Bankers, Inc.</i>) 1 – disability/source of income ▪ mortgage underwriting (<i>United States v. Bank of America</i>) <u>1 settlement of lawsuit filed in 2011</u> 1 – sex/familial status ▪ mortgage underwriting (<i>United States v. Mortgage Guaranty Insurance Corp., et al.</i>)

*The Office of Thrift Supervision was merged into the Office of the Comptroller of the Currency as of July 21, 2011. Accordingly, the OTS ceased to make referrals effective that date.

** HUD issued a charge regarding this matter, and it was referred to the Division when the complainants elected to have the case heard in federal court. Subsequent to the election, the complainants and respondents reached a settlement of the dispute, so the matter became moot and the referral was returned to HUD.

2001-2011 Lending Discrimination Referrals by Other Agencies to DOJ

ALL REFERRALS	2012	2011	2010	2009	2008	2007	2006	2005	2004	2003	2002	2001	Total
CFPB*	1	0	—	—	—	—	—	—	—	—	—	—	1
FDIC	8	14	33	21	12	15	29	35	42	29	33	5	276
FED	2	7	6	6	3	9	5	2	3	0	6	1	50
OCC	1	1	2	0	1	0	0	0	0	0	1	3	9
NCUA	0	0	0	0	0	0	0	0	0	0	0	0	0
FTC	0	2	—	—	—	—	—	—	—	—	—	—	2
HUD	1	1	2	0	0	0	0	1	1	0	2	0	8
OTS*	--	4	6	4	4	3	0	0	1	0	0	1	23
Total	13	29	49	31	20	27	34	38	47	29	42	10	369

RACE/NATIONAL ORIGIN REFERRALS	2012	2011	2010	2009	2008	2007	2006	2005	2004	2003	2002	2001	Total
CFPB*	0	0	—	—	—	—	—	—	—	—	—	—	0
FDIC	5	10	14	5	2	1	3	1	0	2	1	2	46
FED	1	2	4	3	0	4	2	0	0	0	1	1	18
OCC	1	1	2	0	0	0	0	0	0	0	0	0	4
NCUA	0	0	0	0	0	0	0	0	—	—	—	—	0
FTC	0	2	—	—	—	—	—	—	—	—	—	—	2
HUD	1	0	2	0	0	0	0	1	1	0	2	—	7
OTS*	--	3	4	3	3	2	0	0	0	0	0	1	16
Total	8	18	26	11	5	7	5	2	1	2	4	4	88

*On July 21, 2011, CFPB launched and OTS was merged into OCC.

“--” indicated there is no entry for that agency in the ECOA report for that year.