



Department of Justice

**STATEMENT OF
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**BEFORE THE
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE**

**ENTITLED
“EXAMINING LENDING DISCRIMINATION PRACTICES
AND FORECLOSURE ABUSES”**

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**Statement of
Thomas E. Perez
Assistant Attorney General
Department of Justice**

**Before the
Committee on the Judiciary
United States Senate**

**At a Hearing Entitled
“Examining Lending Discrimination Practices
And Foreclosure Abuses”
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Good morning, Chairman Leahy, Ranking Member Grassley, and members of the Committee. Thank you for calling this hearing on discrimination in lending. It is a great privilege to appear before you today to tell you about what the Civil Rights Division is doing to address this critical issue.

The promise of equal opportunity represents the foundation of the American dream – from the opportunity to learn, to the opportunity to earn, to the opportunity to gain fair access to credit, to live where one chooses and move up the economic ladder – and homeownership has been its most basic building block. Our job as an Administration is to enforce the law so that every eligible person has access to equal credit opportunity free from discrimination.

While many communities nationwide have been devastated during the housing crisis, African-American and Hispanic families and their communities have been hit especially hard. Through our enforcement actions we have found that all too often African-American and Hispanic families paid more for loans because of their race or national origin, not based on their credit qualifications. All too often African-American and Hispanic families were steered to more expensive and risky subprime loans based on race or national origin, not based on their credit qualifications. And regrettably, some lenders have refused to lend in minority communities, making assumptions and reaching conclusions about communities based on the race of the residents rather than their individual credit qualifications.

If all of America’s working families are to have a fair chance to realize the American dream, fair lending laws must be vigorously enforced. That is why, in the wake of the housing and foreclosure crisis, the President and the Attorney General have made fair lending enforcement a top priority. The Civil Rights Division plays a critical role in ensuring a level playing field through our enforcement of three fair lending laws: the Equal Credit Opportunity Act (ECOA), the Fair Housing Act (FHA), and the Servicemembers Civil Relief Act (SCRA).

To ensure that the Division is in the best position to enforce these laws, 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's Fair Lending Unit has achieved extraordinary results. In the approximately 24 months since the Unit was established, the Division has either filed or resolved 16 lending matters.¹ In contrast, in the 16 year period from 1993 through 2008, the Division filed or resolved 37 lending matters (25 in the period from 1993-2000² and 12 from 2001-2008) or a little over 2 cases per year.

In 2011, the Civil Rights Division produced unprecedented results, filing a record eight lending-related federal lawsuits and obtaining eight settlements providing for more than \$350 million in relief to the victims of illegal lending practices. This includes the Department's settlement with Countrywide Financial Corporation, the largest lending discrimination case ever brought by the U.S. Department of Justice, as well as a record settlement under the SCRA.

The vast majority of lending institutions comply with our fair lending laws. However, it is the stubborn persistence of race or national origin as a factor in the lending process, even after accounting for relevant creditworthiness factors, that we seek to address through our enforcement actions. According to the Center for Responsible Lending, even after accounting for credit score, African-American and Hispanic borrowers with credit scores over 660, which are those borrowers considered to have good credit scores, received risky, high-cost loans three times as often as white borrowers. And the disparity grows as you move up the credit score ladder, with the largest disparities for African-American and Hispanic borrowers who have the highest credit scores. All too frequently, equal credit opportunity remains elusive for minorities, even upper income minorities who are the most creditworthy.

My testimony today highlights the accomplishments of the dedicated career staff of the Civil Rights Division in combating unlawful lending discrimination over the past two years in several key areas.

COORDINATION WITH STATE AND FEDERAL PARTNERS

The Division's ability to bring a record number of enforcement actions is a direct result of close collaboration with our federal and state partners. Much of our enforcement is done through the President's Financial Fraud Enforcement Task Force, particularly its Non-Discrimination Working Group, which I co-chair. The Task Force, led by Attorney General Holder, was

¹ The Department also settled two lending cases in 2009 before the Fair Lending Unit was established.

² This includes four FHA cases referred by HUD and filed on behalf on individual complainants.

established to wage an aggressive, coordinated, and proactive effort to investigate and prosecute illegal financial activity. The Task Force includes representatives from the highest levels at the U.S. Department of Justice, federal law enforcement agencies, regulatory authorities, and inspectors general, state attorneys general, and local law enforcement who, working together, constitute a powerful force of criminal and civil enforcement personnel.

Among the federal agencies with fair lending enforcement authority, the Justice Department's role is unique. Under the FHA and the Equal Credit Opportunity Act (ECOA), the Department is the agency charged with broad authority to bring pattern or practice lawsuits against any lender that has engaged in illegal discrimination.

Under ECOA or FHA, for example, the bank regulatory agencies – Federal Deposit Insurance Corporation, Federal Reserve Board, Office of Thrift Supervision, Office of the Comptroller of the Currency, Federal Trade Commission (FTC), Department of Housing and Urban Development (HUD), National Credit Union Administration, and the Consumer Finance Protection Bureau – refer matters to the Department when they have reason to believe a lender has engaged in a pattern or practice of discrimination. In the past three years, the Division has received an unprecedented number of referrals from our federal partners. From 2009 through 2011, the bank regulatory agencies, the FTC and HUD referred a total of 109 matters involving a potential pattern or practice of lending discrimination to the Justice Department. Fifty-five of the 109 matters 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 through 2008.

Almost all of the Division's lending cases in 2011 involved collaborative work with other government agencies and other offices within the Department of Justice. And the government-wide fair lending enforcement efforts were bolstered in 2011 by the Consumer Financial Protection Bureau (CFPB), a new and critical partner for the Division that has its own strong enforcement authority under ECOA.

The Division has also worked closely with state attorneys general. The *Countrywide* case was done in coordination with the Illinois Attorney General's office and two of our current active investigations are collaborations with state attorneys general. In addition, in 2011 the Division demonstrated the value it places on state fair lending enforcement by filing a statement of interest as amicus arguing that federal banking law does not preempt state agencies enforcing state fair housing laws from investigating a complaint of lending discrimination by a federally chartered bank.

LENDING DISCRIMINATION ENFORCEMENT

No one case can rectify the multitude of unlawful practices in the housing and lending market that contributed to the foreclosure crisis, but the Civil Rights Division's fair lending work represents an important piece of the Administration's comprehensive efforts to address the nationwide housing crisis. As the 2011 enforcement record illustrates, the Division's Fair Lending Unit focuses on the entire range of discriminatory abuses seen in the market, from traditional access to credit issues -- such as redlining -- to pricing, steering, reverse redlining, mortgage insurance discrimination, denial of credit-related rights to servicemembers and other areas. While most of our recent cases involve mortgage lending, the Fair Lending Unit addresses discrimination in all areas of lending, including unsecured consumer lending, auto lending, and credit card products.

The *Countrywide* case, with its landmark product steering claim, and its pricing discrimination claims that involved an unprecedented number of victims, marks a major step forward in the Department's efforts to address a wide range of discriminatory practices by lenders, brokers, and other players in the mortgage market that contributed to our nation's housing crisis. During 2011, the Department filed two additional pricing discrimination cases, two cases alleging redlining, and one case involving discrimination by a mortgage insurance company against women on paid maternity leave.

United States v. Countrywide Financial Corp.

The Division's complaint against Countrywide alleged that its systemic discrimination from 2004 to 2008 violated both ECOA and the Fair Housing Act and affected more than 200,000 African-American and Hispanic families. The \$335 million settlement was more than 50 times larger than the Division's next largest lending discrimination settlement. The *Countrywide* case resulted from referrals by the Board of Governors of the Federal Reserve System and the Office of Thrift Supervision (OTS), and the Division worked collaboratively with the Illinois Attorney General's office on this matter.

At the core of the allegations in the complaint was a simple story: If you were African-American or Hispanic and you went to Countrywide for a loan, and qualified for a Countrywide loan, you likely paid more simply because of the color of your skin. You likely paid more than a similarly-qualified white borrower if you were African-American or Hispanic and received your loan from a Countrywide loan officer, or from Countrywide's mortgage brokers. And if you were African-American and Hispanic you were far more likely to be steered into an expensive and risky subprime loan than a similarly-qualified white borrower. More than 200,000 African-American and Hispanic victims were identified in the complaint, which alleged that they were charged higher prices or steered into more risky products because of the color of their skin rather

than the content of their creditworthiness.

Countrywide built a business based, in large part, on the trust they earned from families as they guided them through the most important financial transaction of their lives. They understood marketing and how to build trust. But, as our complaint outlines, they exploited that trust. It was Countrywide's business strategy to target local African-American and Hispanic markets in order to expand its mortgage lending business and ultimately gain market dominance in making residential loans in those communities.

But once those borrowers walked into Countrywide's door, they did not receive fair and equal provisions; they received discriminatory terms. And the victims had no idea they were being victimized. They were thrilled to have gotten a loan and realize the American dream. They had no idea that they could have, and should have, gotten a better deal. That was discrimination with a smile.

This was one of the most extensive investigations in our history. We reviewed data on over 2.5 million loans, including data on loan terms and information on each borrower's creditworthiness.

The Countrywide lawsuit marks the first time the Department has obtained relief for borrowers who were steered into subprime loans based on race or national origin. The complaint alleged that from 2004 to 2008, Countrywide discriminated against more than 12,000 Hispanic and African-American wholesale borrowers across the country by systematically placing those borrowers into subprime loans while placing non-Hispanic white borrowers with similar creditworthiness into prime loans. Minority borrowers who were steered into these loans paid, on average, thousands of dollars more and experienced additional harm as a result of increased risk of prepayment penalties, credit problems, default and ultimately foreclosure.

The complaint also alleged that Countrywide discriminated against more than 200,000 Hispanic and African-American borrowers by systematically charging higher discretionary fees and markups to those borrowers than to white borrowers. This was by far the most pervasive pattern of lending discrimination ever alleged by the Department. The complaint further alleged that the defendants discriminated on the basis of marital status by encouraging non-applicant spouses to forfeit their property rights as part of their spouse obtaining a Countrywide loan.

There were more than 200,000 victims identified in our complaint. Two thirds were Hispanic and one third were African Americans. While the complaint spans virtually every corner of the country, California, which was the corporate headquarters for Countrywide, was clearly the epicenter of discriminatory activity in this area. Roughly 30 percent of the victims were in California. The 200,000 borrowers represent families – many of whom may not know they were victims of discrimination. Especially in the case of steering, this discrimination harms not only borrowers and their families but also communities as well.

Nothing can undo the damage that hard-working, responsible families suffered as a result of these outrageous practices. However, the \$335 million in relief for victims of discrimination will not only address their financial loss, it will make it abundantly clear that this kind of behavior will not be tolerated. As such, the *Countrywide* case, with its landmark product steering claims and its price discrimination claims on an unprecedented scale, marks a major step forward in the Justice Department's efforts to tackle a wide range of discriminatory practices that are harming families and devastating our communities.

Pricing Discrimination: Charging Borrowers More Because Of Their Race Or National Origin

In addition to the *Countrywide* case, the Division has brought four other pattern or practice pricing discrimination cases since the Fair Lending Unit was established.

These cases include multi-million dollar settlements with AIG Federal Savings Bank and PrimeLending, as well as the first unsecured consumer lending pricing case brought by the Division in at least a decade. The cases involved discrimination against African-Americans and Hispanics and covered lending through brokers, as well as lending by the banks' own employees. These cases were brought as the result of referrals from the FDIC, the Federal Reserve, and the Office of Thrift Supervision.

There are certain common elements that underlie most of these cases: discretion to a loan originator coupled with a lack of guidelines for how to set fees or interest rates, inadequate documentation explaining differences in prices, and a lack of fair lending compliance policies and monitoring. The predictable result was that minorities paid more for the same loan product than similarly qualified white borrowers.

Many of the Division's pricing cases have relied, in part, on disparate impact analysis to show a violation of law. This approach has been unanimously accepted by the courts, and I have made clear that, under my leadership, the Civil Rights Division is using all of the tools in our arsenal to root out discrimination and ensure a level playing field, including utilizing both disparate treatment and disparate impact analysis when supported by the facts.

Redlining: Failing to Provide Services to Residents of Minority Neighborhoods On An Equal Basis As White Neighborhoods

In a redlining case, a lender does not provide its lending services on an equal basis in a neighborhood because of the race, color, or national origin of the people who live there. In 2011, the Fair Lending Unit settled two cases of redlining in mortgage lending, which is a significant issue in the current tightened credit market. The Unit also currently has multiple ongoing investigations.

Redlining is a regrettably long-standing practice that is discriminatory and illegal. Its destructive impact is exacerbated by the fact that many of the communities that were “redlined” had seen considerable investment in the years leading up to the boom but those investments have all too often been lost in the crisis – collateral community damage wrought by discrimination. Access to credit is a fundamental building block for healthy communities. When qualified homebuyers are denied the opportunity to access credit on the same basis as other qualified homebuyers simply because of their race or national origin, or because they live in a minority neighborhood, they are denied the opportunity to build wealth and create stable communities.

In 2011, the Civil Rights Division settled two redlining cases, one against Citizens Bank of Flint, Michigan and the other against Midwest Bankcentre of St. Louis. In both cases, the pattern of redlining was easily recognized because the Detroit metro area and the St. Louis metro area have long histories of highly-segregated residential housing patterns. The Citizens Bank of Flint case was a referral from the Federal Reserve and the Midwest Bankcentre was a referral from the Metropolitan St. Louis Equal Housing Opportunity Council, a HUD Fair Housing Initiatives Program grantee. Both banks, when compared to peer banks, trailed their peer lenders by a statistically significant amount in serving majority black census tracts. And, in both cases, we alleged that the banks’ Community Reinvestment Act assessment area was drawn to avoid African-American communities. In short, the evidence showed that the banks were judging communities and individuals in those communities by the color of their skin rather than their creditworthiness.

Under the settlement, Citizens agreed to open a loan production office in an African-American neighborhood in Detroit, to engage in affirmative marketing, and to invest approximately \$3.6 million in Wayne County and the City of Detroit. Midwest agreed to similar provisions including opening a branch and investing approximately \$1.45 million in African-American neighborhoods in St. Louis.

The Civil Rights Division has worked to include in recent settlements several innovative provisions to address the full scope of damage experienced by communities. For example, in the Citizens settlement there is a provision to help stabilize neighborhoods by providing home improvement grants to current homeowners living in neighborhoods hard hit by foreclosures. This measure is an acknowledgement that the failure of a bank to fully provide its services to a community impacts not only those denied credit to purchase homes in the community, but its current residents as well. In Midwest, the consent decree includes several provisions to help residents repair their credit and provide access to low-cost checking accounts. This will not only help remedy the harm resulting from the bank’s failure to serve the community, but is also good for the bank’s business by helping to build relationships with new customers in an untapped market.

While our settlements seek to expand opportunities for minority communities and individuals to access credit in areas where a lender had previously denied such services,

our settlements never require a lender to make a loan to unqualified borrowers. The Department's settlement agreements repeatedly refer to the extension of credit to "qualified applicants" only. Further, the Department makes clear that no provision in any redlining settlement agreement, including the special loan program or loan subsidy fund commitment, requires the bank to make any unsafe or unsound loan.

The Justice Department, through its settlements, simply ensures that all qualified home buyers have equal access to sustainable credit without being subject to illegal discrimination, as is required by law. And our redlining settlements have been very successful in achieving this goal of equal access. The consent orders in our redlining cases have consistently resulted in increased lending in previously redlined majority-minority areas. For example, as a result of the consent order in *United States v. First American Bank* (N.D. Ill. 2004), the proportion of the bank's lending in the majority-minority areas of the Chicago and Kankakee metropolitan areas more than quadrupled and the bank performed as well or better than other similar banks in making residential loans in those majority-minority areas.

Fair and equal access to credit is a critical issue for small businesses as well. Although many of our recent cases have involved discrimination in home mortgage lending, lending discrimination also affects minority entrepreneurs. The Department has brought suit against banks where it has found statistically significant evidence of discrimination in the banks' business lending in majority minority communities and among minority businesses.³

Discrimination Against Women On Paid Maternity Leave

Another area of our fair lending work involves discrimination against women on paid maternity leave. In 2011, the Department brought its first Fair Housing Act case alleging discrimination on the basis of sex and familial status in mortgage insurance against the nation's largest mortgage insurance company and two of its underwriters. The complaint against Mortgage Guaranty Insurance Corp. alleges that the defendants discriminated by requiring women on paid maternity leave to return to work before the company would agree to insure their mortgages. The case was referred by the Department of Housing and Urban Development (HUD). The case is currently in litigation.

³ *United States v. First United Security Bank* (S.D. Ala. 2009) included a redlining claim regarding the bank's home mortgage lending and small business lending services. The complaint alleged that the bank engaged in a race-based pattern of locating or acquiring branch offices, by aiming to serve fully the banking and credit needs of the residents of, and small businesses located in, majority-white counties and census tracts, but not those of residents of or businesses located in majority-black counties or census tracts. As part of its settlement, First United agreed to invest \$500,000 in a special financing program for small business and residential loans. See also *United States v. Centier Bank* (N.D. Ind. 2006); *United States v. First American Bank* (N.D. Ill. 2004); *United States v. Old Kent financial Corporation and Old Kent Bank* (E.D. Mich. 2004).

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ENFORCEMENT TO PROTECT THE RIGHTS OF OUR SERVICEMEMBERS

In addition to our traditional fair lending work, we have stepped up efforts to protect the rights of our servicemembers through enforcement of the Servicemembers Civil Relief Act (SCRA). The SCRA provides additional, critical consumer and other protections to the men and women serving our nation in the military; it reflects a recognition that those who are making great sacrifices to protect us deserve to know they have our full support at home.

The law postpones, suspends, terminates or reduces the amount of certain consumer debt obligations so that members of the armed forces can focus their full attention on their military duties without adverse consequences for themselves or their families. It allows our servicemembers to focus on the critical role they play in protecting our nation.

Among these protections is a prohibition on foreclosure of a servicemember's property without first getting approval from the court, if the servicemember purchased the property prior to entering military service. And if a foreclosure is filed in court, it requires the servicer to notify the court that a servicemember is on active duty. Finally, the SCRA provides that a servicemember can have his or her interest rate lowered to six percent on debt that was acquired before entering military service.

Wrongful Foreclosures

The Civil Rights Division has moved aggressively to protect servicemembers whose homes were foreclosed on in violation of the SCRA. As a result of our six settlements with national servicers, the vast majority of all foreclosures against servicemembers will be under court ordered review.

Last year, the Division announced two multi-million dollar settlements under SCRA, including a \$20 million settlement with Bank of America.⁴ As a result of the consent order, Bank of America is in the process of paying \$20 million to 156 servicemembers who were illegally foreclosed on between 2006 and the middle of 2009, with each servicemember receiving a minimum of \$116,785 plus compensation for any equity lost due to the bank's alleged violation of the SCRA. The consent order also requires Bank of America to compensate any additional victims through December 31, 2010 at the same level as the already-identified victims. As a result, the total settlement in the Bank of America case will be well in excess of \$20 million. This is the Department's largest SCRA settlement ever reached.

⁴ The SCRA settlement negotiated with Bank of America in 2011 was with BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans, LP.

The Division initiated the investigation in this case based on a referral from the United States Marine Corps on behalf of a servicemember whose home Bank of America was scheduled to sell at a trustee's sale in three days despite having received a copy of his military orders. The servicemember was deployed to Iraq at the time. The Department of Defense provided critical assistance in identifying the servicemembers whose rights were violated and has been a critical partner in our SCRA enforcement efforts.

In 2011, the Division also reached a similar settlement with Saxon Mortgage Services. Under that consent order, Saxon agreed to pay \$2.35 million to 18 servicemembers who were illegally foreclosed on and to compensate any additional servicemembers foreclosed on from middle of 2009 through December 31, 2010. Both Saxon and Countrywide/Bank of America agreed not to pursue any remaining amounts owing under the mortgages, take steps to remedy negative credit reporting directly resulting from the foreclosures of affected servicemembers' loans, and implement enhanced measures including monitoring, training, and checking loans against the Defense Manpower Data Center's SCRA database during the foreclosure process.

The 2011 Bank of America and Saxon consent orders, which resolved claims of non-judicial foreclosures that violated the SCRA, provided the template for agreements the Department reached in February 2012 with Bank of America, JPMorgan Chase & Co., Wells Fargo & Company, Citigroup Inc. and Ally Financial Inc. (formerly GMAC). The Department's 2012 SCRA agreements were incorporated into the Department's broader mortgage servicer consent order between the federal and state attorneys general and these five servicers. The mortgage servicer settlement provides for \$25 billion in relief based on the servicers' illegal mortgage loan servicing practices. The financial compensation to servicemembers for SCRA violations is in addition to the \$25 billion settlement.

Under the SCRA settlements, the nation's five largest mortgage loan servicers will conduct full reviews to determine whether any servicemembers were foreclosed on either judicially or non-judicially in violation of the SCRA since 2006. Any foreclosure victims identified through these SCRA reviews will be compensated a minimum of \$116,785 each plus any lost equity with interest.⁵ All five servicers agreed to numerous other measures, including SCRA training for employees and agents and developing SCRA policies and procedures to ensure compliance with the law. The servicers will also repair any negative credit report entries related to the allegedly wrongful foreclosures and will not pursue any remaining amounts owed under the mortgages.

⁵ To ensure consistency with an earlier private settlement, JPMorgan Chase will provide any servicemember who was a victim of a wrongful foreclosure either his or her home free and clear of any debt or the cash equivalent of the full value of the home at the time of the sale. In addition, servicemembers will receive compensation for any additional harm suffered.

Charging Interest in Excess of 6%⁶

In the SCRA agreements filed with the mortgage servicer settlement, Bank of America, Citigroup, Wells Fargo, and Ally Financial also agreed to conduct a thorough review, overseen by the Division, to determine whether any servicemember – from January 1, 2008, to the present – was charged interest in excess of 6 percent on his or her mortgage in violation of the SCRA. Servicers will be required to provide any servicemember who was wrongfully charged interest in excess of 6 percent a refund of the amount charged in error plus triple the amount refunded or \$500, whichever is larger.

We will continue to aggressively enforce the law to protect all homeowners from unlawful lending practices, including servicemembers who put their lives on the line on our behalf.

LOOKING FORWARD

Based on the groundwork laid in 2009 and 2010, the Fair Lending Unit produced a banner year of fair lending enforcement in 2011. Enhanced collaborative relationships with our federal, state and community partners produced a record number of cases filed, including landmark cases in the areas of mortgage lending discrimination and servicemembers' rights.

A few days ago, we submitted to Congress our annual report on our lending enforcement efforts. That report includes detailed information about the broad range of possible discriminatory conduct under investigation by the Division. In the coming year, we will continue our efforts to provide justice to those families who were harmed by discriminatory conduct during the mortgage boom and to hold lenders responsible for their actions. We also will focus on the challenges in the current market, including access to mortgage credit on fair and non-discriminatory terms, discrimination in auto lending, and discrimination in student lending. In short, we will continue to enforce the laws that seek to ensure that all Americans have equal access to credit and to the opportunity to achieve the American dream.

Congress can also improve our existing fair lending laws. On September 20, 2011, the Department transmitted to Congress a package of legislative proposals that would significantly strengthen the protections afforded to servicemembers and their families under existing civil rights laws, including the SCRA, the FHA, and ECOA. We propose to strengthen enforcement of the SCRA by, among other things, doubling the civil penalties currently available and authorizing the Attorney General to issue civil investigative demands to obtain documents in SCRA investigations. We also recommend parallel changes to the Fair Housing Amendments Act and the Equal Credit Opportunity Act. Safeguarding the civil rights of all Americans is a top

⁶ JP Morgan Chase had already agreed to compensate servicemembers charged interest in excess of 6% on their mortgage through the earlier private settlement approved by the District of South Carolina on January 10, 2012, in *Rowles v. Chase Home Finance, LLC*.

priority for this Administration. I urge Congress to enact these proposed improvements and would welcome the opportunity to discuss these proposals with members of this Committee.

Thank you for the opportunity to testify before you today about the fair lending work of the Division. I look forward to answering your questions.