

**The Attorney General's
2013 Annual Report to Congress
Pursuant to the Equal Credit Opportunity Act
Amendments of 1976**



Submitted by

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July 2014

The Department of Justice (DOJ or the Department) submits this report regarding its activities in 2013 to enforce the Equal Credit Opportunity Act (ECOA), as amended, 15 U.S.C. 1691, *et seq.* See 15 U.S.C. 1691f. The report also includes information about DOJ's fair lending work 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.* Within DOJ, the Civil Rights Division is responsible for enforcing the ECOA, FHA, and SCRA. Within the Division, the responsibility is handled by the Housing and Civil Enforcement Section, with its Fair Lending Unit created in 2010.

I. INTRODUCTION

In 2013, the Civil Rights Division obtained more than \$122 million in monetary relief in fair lending settlements, including the federal government's largest auto lending discrimination settlement in history. While doing so, the Division continued to develop and strengthen ties with its federal, state, and non-governmental partners across the country. In addition, the Division embarked on the ambitious plan to ensure that lenders implemented the policy and practice

Record Relief

Through June 2014, the Division has obtained more than \$1 billion in monetary relief in lending settlements since the establishment of the Fair Lending Unit in early 2010. This unprecedented figure includes enforcement actions under ECOA, FHA, and SCRA.

changes required by its recent settlements and that the money obtained in those settlements reached persons aggrieved by the past alleged discrimination. Highlights of the work in 2013 include:

▪ **Challenging Lending Discrimination in Various Markets and Products**

In 2013, the Division, together with the Consumer Financial Protection Bureau (CFPB), focused attention on discretionary pricing systems utilized by indirect auto lenders. This includes an enforcement action alleging a pattern or practice of charging higher dealer markups on interest rates on the bases of race and national origin, described below. In addition, the Division filed and settled seven cases addressing mortgage pricing discrimination, unsecured consumer lending pricing discrimination, and redlining.

▪ **Strengthening Partnerships with Other Agencies**

The Division has reached new heights of cooperation with the federal banking regulators. In

2013 alone, it initiated nine joint automobile lending investigations with the CFPB. We also filed our first joint complaint with the CFPB in a case alleging discrimination on the bases of race and national origin in residential mortgage lending. We continue to work closely with the bank regulatory agencies, the Department of Housing and Urban Development (HUD), and the Federal Trade Commission (FTC). We also partnered with the North Carolina Attorney General's office to investigate and eventually bring the Division's first case alleging reverse redlining, which is a practice where lenders target minority borrowers and charge them more than similarly-qualified non-minority borrowers, often resulting in the origination of more expensive, less advantageous loans. The 2013 referrals, detailed below, are representative of the close coordination and cooperation we enjoy with our federal and state partners.

▪ **Overseeing Compliance with Recent Settlements**

The Division dedicated considerable resources to ensuring lenders' and servicers' compliance with recent settlements under the ECOA, FHA, and SCRA. We worked closely with defendants, third party administrators, and independent consultants to locate identified victims and provide monetary compensation pursuant to the settlements in a timely manner. We also reviewed and approved defendant institutions' new policies and programs designed to remedy the past alleged violations and prevent any future violations.

Division Partners

Bank regulatory agencies

CFPB - Consumer Financial Protection Bureau

FDIC - Federal Deposit Insurance Corporation

FRB - Federal Reserve Board

NCUA - National Credit Union Administration

OCC - Office of the Comptroller of the Currency

Other partners

HUD - Dep't of Housing and Urban Development

FTC - Federal Trade Commission

II. LENDING DISCRIMINATION ENFORCEMENT UNDER ECOA AND THE FHA¹

The Division has authority to enforce ECOA and the FHA 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.

Attorney General Eric Holder speaking at the Great Hall, Robert F. Kennedy Justice Building, Washington, DC

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 mortgage market, from traditional access to credit issues like redlining to abuses like discrimination in pricing, steering, and underwriting. The Fair Lending Unit also investigates abuses in non-mortgage lending, including pricing discrimination and reverse redlining involved in auto loans, unsecured consumer loans, student loans, and credit card products.

Pricing Discrimination in Auto Lending

On December 20, 2013, the Division filed a complaint and consent decree in *United States v. Ally Financial Inc. and Ally Bank* (E.D. Mich.). The complaint alleged that Ally, one of the nation's largest auto lenders, discriminated by charging approximately 235,000 African-American, Hispanic, and Asian/Pacific Islander borrowers higher interest rates than non-

¹ In March 2014, the Department published a final rule raising the maximum civil penalties under the FHA. As part of the changes, the maximum civil penalty for a first violation under the FHA has increased from \$55,000 to \$75,000; for a subsequent violation the new maximum is \$150,000.

Hispanic white borrowers. The complaint further alleged that Ally charged higher rates to minority borrowers because of their race and national origin, rather than the borrowers' creditworthiness or other objective criteria related to borrower risk. The consent decree was entered by the court on December 23, 2013. The Division opened an investigation based on a referral from the CFPB and conducted the investigation jointly with the agency, which also filed an administrative order on December 20 to resolve its claims. This was the first joint fair lending enforcement effort by the Division and the CFPB, and the federal government's largest auto lending discrimination settlement in history.²



"Discrimination in auto lending creates unique harms. Buying a car is one of the largest and most essential financial transactions that many of us make and all qualified borrowers deserve equal access to fair and responsible lending."

Acting Assistant Attorney General for the Civil Rights Division Jocelyn Samuels' remarks announcing the *Ally Financial* settlement

The settlements resolve the agencies' claims by providing \$80 million in compensation for victims of alleged past discrimination and requires Ally to pay \$18 million to the CFPB's Civil Penalty Fund. Ally also must refund discriminatory overcharges to borrowers for the next three years unless it significantly reduces disparities in unjustified interest rate markups. This system will create a strong financial incentive to eliminate discriminatory overcharges. In addition to the \$98 million in payments for its past conduct and requirement to refund future discriminatory charges, the settlement requires Ally to improve its compliance management systems. The settlement allows Ally to experiment with different approaches to decrease disparities and requires it to regularly report to the Division and CFPB on the results of its efforts as well as discuss potential ways to improve results.

On September 4, 2013, the court entered a consent decree resolving the United States'

² The settlement is memorialized in substantively identical documents: the Division filed its proposed consent order in federal district court; the CFPB filed its consent order in its administrative process.

allegations against Union Auto Sales dealership (d/b/a Union Mitsubishi) (UAS) in the case of *United States v. Nara Bank, et al.* (C.D. Cal.). The United States alleged that UAS engaged in a pattern of discrimination on the basis of race or national origin by charging non-Asian customers, many of whom are Hispanic, higher dealer markups than similarly-situated Asian customers. The Division had previously entered into a settlement with Nara Bank. In order to remedy its part in the alleged discrimination, UAS will pay approximately \$115,000 to compensate non-Asian borrowers who have been aggrieved by the discriminatory conduct.

During 2013, the Division investigated allegations that the owners and operators of two “buy here, pay here”³ used-car dealerships violated ECOA by engaging in a pattern or practice of reverse redlining, or targeting African-American customers for unfair and predatory credit practices, in the financing of used car purchases.

On January 13, 2014, the Division filed a joint complaint in *United States and State of North Carolina, v. Auto Fare, Inc., et al.* (W.D.N.C.). The



State of North Carolina also alleges that the defendants’ actions violated the state Unfair and Deceptive Trade Practices Act. The defendants moved to dismiss the ECOA claims and on April 16, 2014, the Magistrate Judge recommended that the motion to dismiss be denied. On June 25, 2014, the District Court Judge adopted that recommendation in whole and denied the motion to dismiss. The judge’s order specifically holds that reverse redlining violates ECOA. The case is currently pending in federal district court.

Compliance Work: Implementing Consent Orders from 2009-2013

During 2013, the Division worked aggressively to oversee the implementation of consent orders entered by courts since 2009. The Division dedicated considerable resources to ensuring that individuals eligible to receive funds pursuant to these settlements were compensated in a timely manner. Division staff worked closely with defendant lenders and settlement administrators to

³ The “buy here pay here” concept generally refers to car dealerships that extend the credit for automobile purchases directly, usually at high interest rates, and often to borrowers with poor or no credit histories.

ensure they used the most effective standards to identify, locate, and communicate with identified victims of the alleged discrimination. In many cases, we alleged national origin discrimination against Hispanics, and in those instances, all communications with victims, written and oral, have been provided in both English and Spanish.

In seven of our largest cases settled between 2011 and 2013, the settlement administrators hired by defendants have identified and located more than 243,000 alleged victims, as of April 2014. This undertaking has required at times sending multiple letters and reminders to many victims, amounting to more than 1,885,000 pieces of correspondence, notices, and other information. Call centers set up for the various cases have responded to over 525,000 calls. The process of victim identification, location, and compensation in these seven cases is ongoing, but by the end of April 2014, nearly \$475 million has been disbursed to identified victims in these matters.

Many of our settlements require lenders to implement revised lending policies and practices to ensure that the past alleged discrimination does not recur. In 2013, Division staff engaged in a rigorous, detailed review of many defendant lenders' new policies and programs to determine whether past inadequacies have been corrected and to identify any new potential fair lending concerns. With the Division's guidance, these lenders continue to make improvements to their business practices to the benefit of both the institution and the people they serve.

An Accomplishment That Benefits All: In June 2011, the Division filed and settled a case against Midwest BankCentre in St. Louis, Missouri. The complaint alleged the bank had redlined majority African-American neighborhoods in metropolitan St. Louis, thereby failing to provide services on an equal basis to all residents in its service area. As part of the settlement, the bank agreed to open one full-service branch in a previously-underserved majority African-American area known as Pagedale. As of the 2010 Census, the city of Pagedale was 93% African-American. In November 2011, Midwest's Pagedale branch opened, and already it is meeting the needs of hundreds of Pagedale residents. By November 2013, the branch had grown to \$6 million in deposits and \$2.5 million in loans. Midwest says the branch has exceeded the goals it set out for the facility and is helping to spur other development in the area.

One press account about this branch can be found at:
http://www.stltoday.com/business/local/one-year-after-opening-pagedale-branch-fills-unmet-need/article_2ce0f560-200f-58da-9965-16c74470aea5.html

Beyond the Numbers

United States v. Countrywide Financial Corp. (C.D. Cal. 2011)

A Washington, DC borrower refinanced with Countrywide in 2006 after living in her home for 20 years. She didn't realize that the new loan had an adjustable rate, and in 2008 her previous monthly payment of approximately \$1,500 jumped to over \$2,000. Around the same time, she lost her job. The borrower was eventually able to modify her loan with Countrywide, but wasn't able to come up with the extra \$8,000 in fees that were added on as part of the modification. As a result, she was quickly foreclosed on and lost her home.

This borrower received approximately \$33,000 from the *Countrywide* settlement. She says she is "very, very grateful that there are people out there trying to look out for those who were taken advantage of." She recently drove by her old home and discovered it is vacant. She is thinking about contacting the current owner to find out if it is for sale.

United States v. Wells Fargo Bank, NA (D.D.C. 2012)

As required under the consent decree, Wells Fargo instituted a new homebuyer assistance program called CityLIFT to provide \$50 million in down payment assistance grants and financial education to homebuyers in jurisdictions most impacted by the housing crisis, including Baltimore, Cleveland, Chicago, Los Angeles, New York City, Philadelphia, Riverside, San Francisco, and Washington, D.C. The size of the individual grants varied by jurisdiction depending on the housing prices; the grants in most jurisdictions were \$15,000 or \$20,000. Participating homebuyers can obtain mortgage financing from any lender. Wells Fargo and NeighborWorks America, a network of local community development and fair housing groups, launched the CityLIFT program through separate events in each jurisdiction from fall 2012 through 2013. A total of 7,280 potential homebuyers attended the CityLIFT events. As of May 2014, 2,546 loans with CityLIFT grants have closed (64% of which are not Wells Fargo loans). Several hundred loans are still being processed, and 27 grants remain available. In addition, a portion of the funds allocated for Cleveland's CityLIFT program was earmarked for a separate program to repurpose vacant land, known as Reimagining Cleveland 3.0: GreenUP, which was managed by the bank and Cleveland Neighborhood Progress. The GreenUP program solicited and reviewed proposals for vacant land reuse projects and provided grants between \$10,000 to \$70,000 to nine awardees. The projects must be completed by November 2014.

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

On December 23, 2013, the Division filed a complaint and consent order in *Consumer Financial Protection Bureau & United States v. National City Bank* (W.D. Pa.), an ECOA and Fair Housing Act pattern or practice case that was the result of a joint investigation by the Division and the CFPB. PNC Bank is the successor in interest to National City Bank. The complaint

alleged a pattern or practice of discrimination on the bases of race and national origin in residential mortgage lending. The consent order, which was entered by the court on January 9, 2014, requires PNC Bank to pay \$35 million to African-American and Hispanic victims of National City Bank's discriminatory conduct. This was the second joint fair lending enforcement action by the Division and the CFPB.

On September 26, 2013, the Division filed a complaint and consent order in *United States v. Plaza Home Mortgage, Inc.* (S.D. Cal.), alleging that from 2006 to 2010, Plaza charged higher broker fees on wholesale mortgage loans made to African-American and Hispanic borrowers than to non-Hispanic white borrowers, in violation of the Fair Housing Act and ECOA. The settlement resolves the case by requiring Plaza to pay \$3 million to African-American and Hispanic victims of the alleged discrimination, develop race- and national origin-neutral policies and practices, establish a monitoring program to detect future potential fair lending violations, conduct employee training, and maintain a community enrichment program for the term of the Order. The court entered the consent order on October 1, 2013. This matter was referred to the Division by the FTC.



On October 3, 2013, the court entered a Settlement Agreement and Order in *United States v. Chevy Chase Bank, F.S.B.* (E.D. Va.). The complaint, filed on September 30, 2013, alleged a pattern or practice of discrimination on the bases of race and national origin in violation of the FHA and ECOA. Under the settlement, Capital One, N.A., the successor in interest to Chevy Chase Bank, will pay \$2.85 million to several thousand African-American and Hispanic victims of the alleged discrimination. This case was referred to the Division by the OCC.

On September 26, 2013, the Division filed a complaint and proposed consent order in *United States v. Southport Bank* (E.D. Wis.), alleging that from 2007 to 2008, Southport charged higher broker fees on wholesale mortgage loans made to African-American and Hispanic borrowers as compared to non-Hispanic white borrowers, in violation of the Fair Housing Act and ECOA. Under the settlement, Southport will pay \$687,000 to African-American and Hispanic victims of

the alleged discrimination. The court entered the decree on October 11, 2013. This matter was referred to the Division by the FDIC.

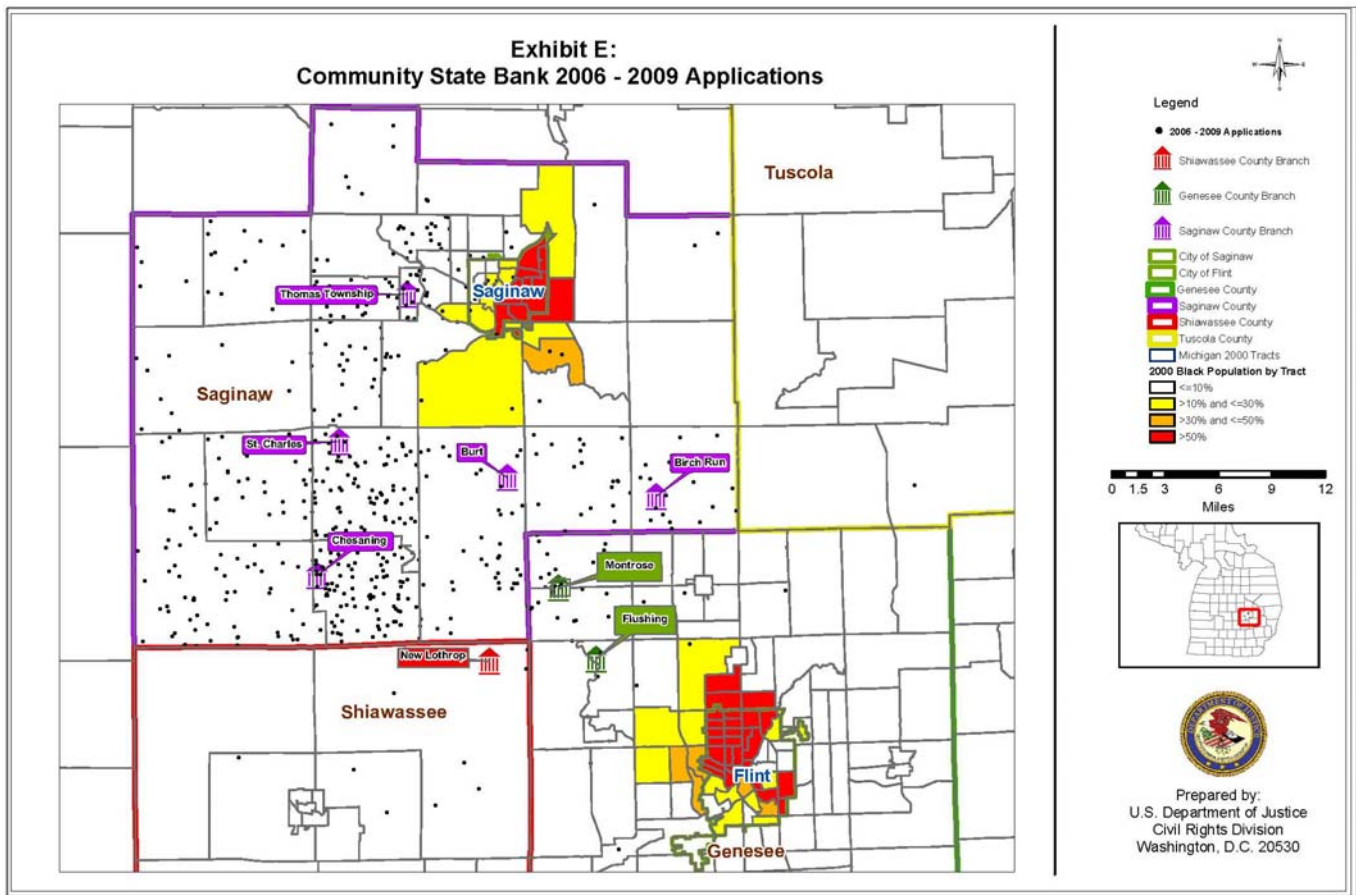
Pricing Discrimination in Unsecured Consumer Lending

On February 19, 2013, the United States filed a complaint and consent decree in *United States v. Texas Champion Bank* (S.D. Tex.). The complaint alleged that from 2006 to 2010, Texas Champion charged higher prices on unsecured consumer loans made to Hispanic borrowers than to similarly-situated non-Hispanic white borrowers through the bank's branch offices, in violation of ECOA. The consent decree requires Texas Champion to further revise its uniform pricing matrices used to price unsecured consumer and other loans offered by the bank, in order to ensure that the price charged for its loans is set in a non-discriminatory manner. The settlement also requires the bank to pay \$700,000 to Hispanic victims of the alleged discrimination, monitor its loans for potential disparities based on national origin, and provide equal credit opportunity training to its employees. The agreement also prohibits the bank from discriminating on the basis of national origin in any aspect of a credit transaction. The court entered the consent decree on March 5, 2013. This matter was referred to the Division by the FDIC.

On December 19, 2013, the Division filed and settled *United States v. Fort Davis State Bank* (W.D. Tex.), resolving allegations of lending discrimination against Hispanic borrowers of unsecured consumer loans. The complaint alleged that Fort Davis State Bank violated ECOA by charging higher prices for unsecured consumer loans to Hispanic borrowers than to similarly qualified non-Hispanic borrowers. As part of the settlement, the bank will implement uniform pricing policies, conduct employee training, and pay \$159,000 as part of a settlement to resolve allegations that it engaged in a pattern or practice of discrimination on the basis of national origin. The court entered the decree on January 2, 2014. This matter was referred to the Division by the FDIC.

Redlining: Failing to Serve Majority-Minority Areas to the Same Extent as Non-minority Areas

On January 15, 2013, the United States filed a complaint and consent order in *United States v. Community State Bank* (E.D. Mich.). The complaint alleged that from 2006 to 2009, Community State Bank redlined majority-African-American census tracts in the Saginaw and Flint, Michigan metropolitan areas, including substantial portions of the City of Saginaw. Community is an eight-branch bank that is one of the five largest banks in Saginaw County, but has never operated a branch in the City of Saginaw and made only one loan in Saginaw’s majority-African-American census tracts during the four-year period. The consent order requires Community to open a loan production office in a majority-African-American neighborhood of the City of Saginaw and to fund a \$75,000 loan subsidy program, a \$75,000 community development partnership program, and a \$15,000 advertising program to encourage and increase lending in the redlined tracts. The court entered the consent order on March 12, 2013. This matter was referred to the Division by the FDIC.



Map identifying the locations of each application received by Community State Bank from 2006 to 2009

Disability Discrimination

On April 1, 2013, the Division filed a statement of interest in *Gomez v. Quicken Loans* (C.D. Cal.), a case alleging that Quicken Loans discriminated against borrowers with disabilities by requiring that they provide a letter from a doctor as a condition of their loans, but not imposing a similar documentation burden on people without disabilities. The Division's statement, which was designed to assist the court in analyzing the plaintiffs' claims, explained that (1) the Supreme Court had not overruled decades-old precedent governing FHA claims, (2) intentional discrimination claims do not require proof of ill intent or animus toward a protected group, and (3) a plaintiff need not allege that credit was denied to state a claim under ECOA.

When the *Gomez* decision was appealed, the Division filed a brief as *amicus curiae* – or “friend of the court” – in the Ninth Circuit. That brief, filed in January 2014, argued that (1) the district court erred when it applied an exception in the ECOA to Fair Housing Act claim, (2) letters from the Social Security Administration awarding disability benefits under Social Security Disability Insurance (“SSDI”) sufficiently establish that the disability benefits are likely to continue, even though such letters do not contain expiration dates, and (3) lenders may not require SSDI recipients to provide medical documentation as additional proof that the disability benefits would continue.

Pending Discrimination Investigations

At the end of 2013, the Division had 21 open fair lending investigations and one authorized lawsuit, filed in January 2014, and described above. The subject matter of these investigations includes:

- Discrimination in the underwriting or pricing of mortgage loans, such as steering to less favorable loan products and discrimination in discretionary markups and fees;
- Discrimination in unsecured consumer loans;

- Discrimination in automobile lending based on race, national origin, or gender in the setting of discretionary pricing in indirect automobile and motorcycle lending;
- 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 disability in the underwriting of mortgage loans.

The Division expects that in 2014, a number of its pending investigations will result in contested litigation or settlements.

III. SERVICEMEMBERS' LENDING ENFORCEMENT⁴

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 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 foreclosed on and sold.

⁴ In March 2014, the Department published a final rule raising the maximum civil penalties under the SCRA. As part of the changes, the maximum civil penalty under the SCRA is \$60,000 for a first violation and \$120,000 for a second violation. The new maximums apply only to violations occurring on or after April 28, 2014.

Continuing SCRA Enforcement

During 2013, the Division investigated allegations that three separate owners or servicers of private and federally guaranteed student loans violated Section 527 of the SCRA. Based on the findings of that investigation, the Division filed a complaint and proposed consent order in May 2014 in *United States v. Sallie Mae, Inc.* (D. Del.), alleging that defendants violated the SCRA from November 28, 2005 to the present by failing to reduce to six percent the interest rates on pre-service loans held by approximately 60,000 servicemembers. The complaint also alleged that Sallie Mae violated Section 521 of the SCRA by obtaining improper default judgments against SCRA-protected servicemembers. The proposed consent order, which must be approved by the court, provides for a \$60 million settlement fund to compensate aggrieved servicemembers and a \$55,000 civil penalty, requires Sallie Mae to streamline the process by which servicemembers may obtain SCRA interest rate benefits, and requires Sallie Mae to correct negative credit entries associated with interest overcharges and improper default judgments.

Wrongful Foreclosure Cases

During 2013, under the National Mortgage Settlement, the Division reviewed and evaluated the mortgage servicers' new SCRA policies and training and monitoring programs. In addition, independent consultants conducted reviews of the nation's five largest mortgage loan servicers 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 2008.⁵ Most foreclosure victims identified through these reviews by the nation's five largest mortgage servicers



Thomas E. Perez, former Assistant Attorney General, Civil Rights Division

⁵ The National Mortgage Settlement agreements were incorporated into the historic mortgage servicer settlement reached by the United States, 49 state attorneys general, the District of Columbia, and the five servicers in *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.

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.⁶ We expect the foreclosure and interest rate reviews, which are scheduled to be completed in 2014, to result in the payment of over \$100 million to thousands of servicemembers.

In 2013, the Division also continued to ensure compliance with its 2011 settlements with Bank of America and Saxon, under which approximately \$40 million is being distributed to about 300 servicemembers, and its 2012 settlement with Capital One, under which about \$12 million has been distributed to servicemembers and about \$2 million has been donated 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 2013 and to date in 2014 have 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. In addition, the Division continued its work with the CFPB under the Memorandum of Understanding executed in 2012, which strengthens coordination and collaborative efforts between the agencies. Two matters were jointly investigated with the CFPB in 2013 that resulted in lawsuits filed in federal district court: *Consumer Financial Protection Bureau & United States v. National City Bank* was filed jointly, and *United States v. Ally Financial Inc. and Ally Bank* was filed concurrently with the CFPB's administrative process. We also filed a case in coordination with the North Carolina Attorney General's office captioned *United States and State of North Carolina, v. Auto Fare, Inc., et al.* The Division continues to investigate jointly ten other matters with that agency.



⁶ All but one of these reviews require the servicers to identify violations of the SCRA six percent rule. Six percent violations by the remaining servicer were addressed in a previously settled private lawsuit.

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 co-chaired by the Assistant Attorney General for Civil Rights.

Finally, Division representatives, led by the Assistant Attorney General, participated in 2013 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 third 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 nearly 4,000 registered participants to hear about government-wide fair lending priorities. The Division will continue these efforts in 2014 in order to strengthen and improve its enforcement of fair lending protections.

V. REFERRALS

Under ECOA, the bank regulatory agencies are required to refer matters to the Division 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 through 2013, the bank regulatory agencies, the FTC and HUD referred a total of 147 matters involving a potential pattern or practice of lending discrimination to the Justice Department. Seventy-three of the 147 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 eight of the lending discrimination cases filed by the Division in 2013 and described in Part II were the subject of referrals from the federal bank regulatory

agencies, and two of them were jointly investigated with the CFPB. One was filed jointly; the other concurrently with the CFPB's administrative action.

When the Division receives a referral from a bank regulatory agency, it must determine whether to open an investigation or defer 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 with an average of 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. We have met that goal 100% of the time with an average time to decision of 35 days.

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. On March 5, 2014, the Department made most of this guidance public by posting it on the Division's website at http://www.justice.gov/crt/about/hce/housing_ecoa.php.

The Division considers numerous factors in deciding whether to retain or return a referral. As a general matter, referrals that are most likely to be returned 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.

As a general matter, the Division retains 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.

2013 Referrals to DOJ

The 25 referrals in 2013 included the following types of alleged discrimination:

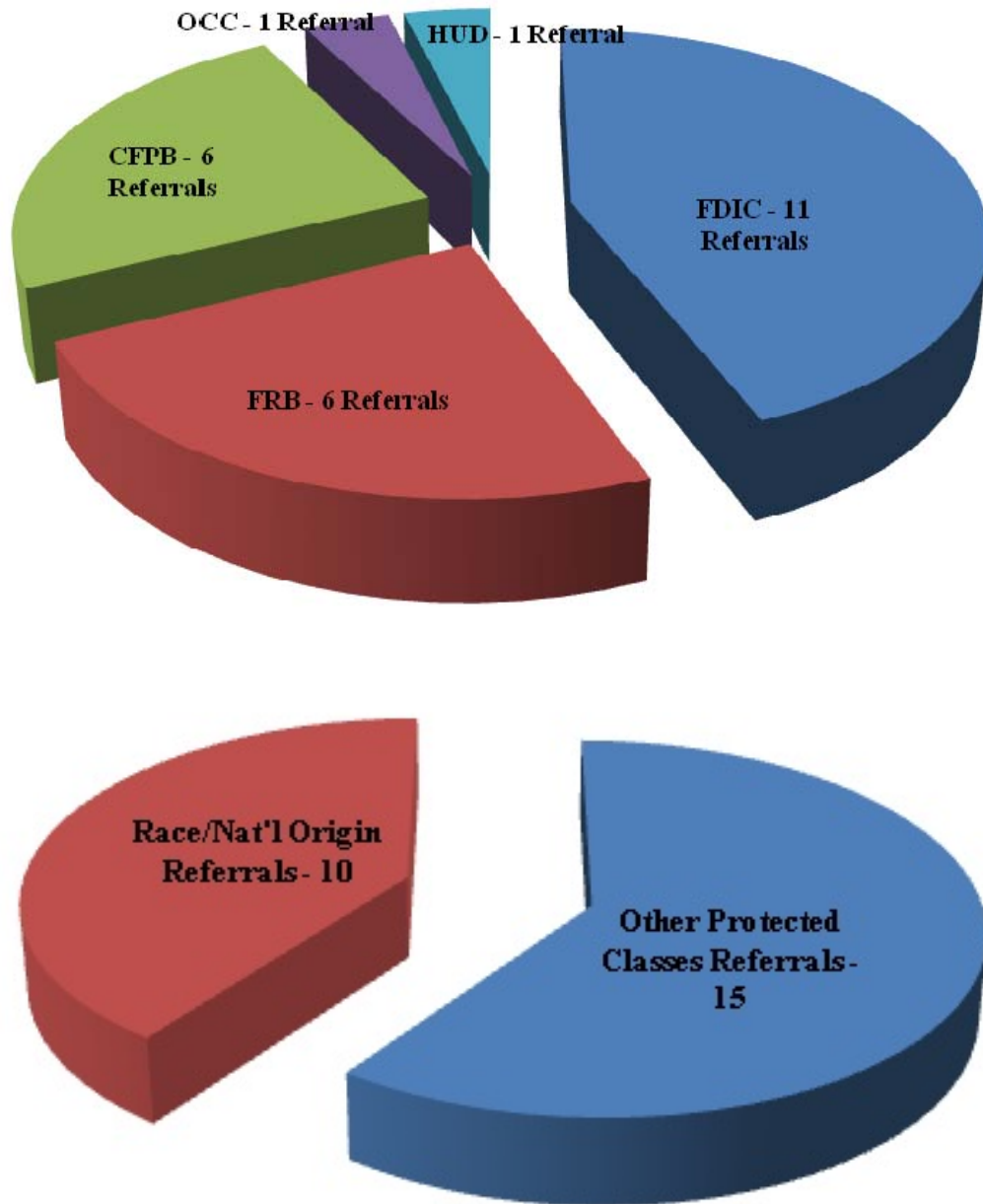
- 10 involving race or national origin;
- 10 involving marital status;
- 4 involving age;
- 4 involving source of income;
- 3 involving sex; and
- 1 involving disability.⁷

As set forth in charts immediately following Section VI of this report, the referrals involved a wide range of discriminatory conduct and various types of credit. In 2013, in addition to two referrals involving mortgage loan pricing discrimination, the Division received four referrals involving pricing discrimination in consumer lending and one referral involving pricing discrimination in auto lending.

Of the 25 referrals in 2013, the Division opened ten investigations, a rate of 40%. Eight of these

⁷ Several referrals involved multiple protected classes; therefore, the number of referrals by protected class categories totals more than 25.

investigations continued into 2014. In 15 of the referrals, we deferred to the referring agency for enforcement without opening an investigation. This is consistent with the historical rate of investigations opened based on referrals. For example, from 2010-2012, the Division opened investigations for 36% of the referrals.



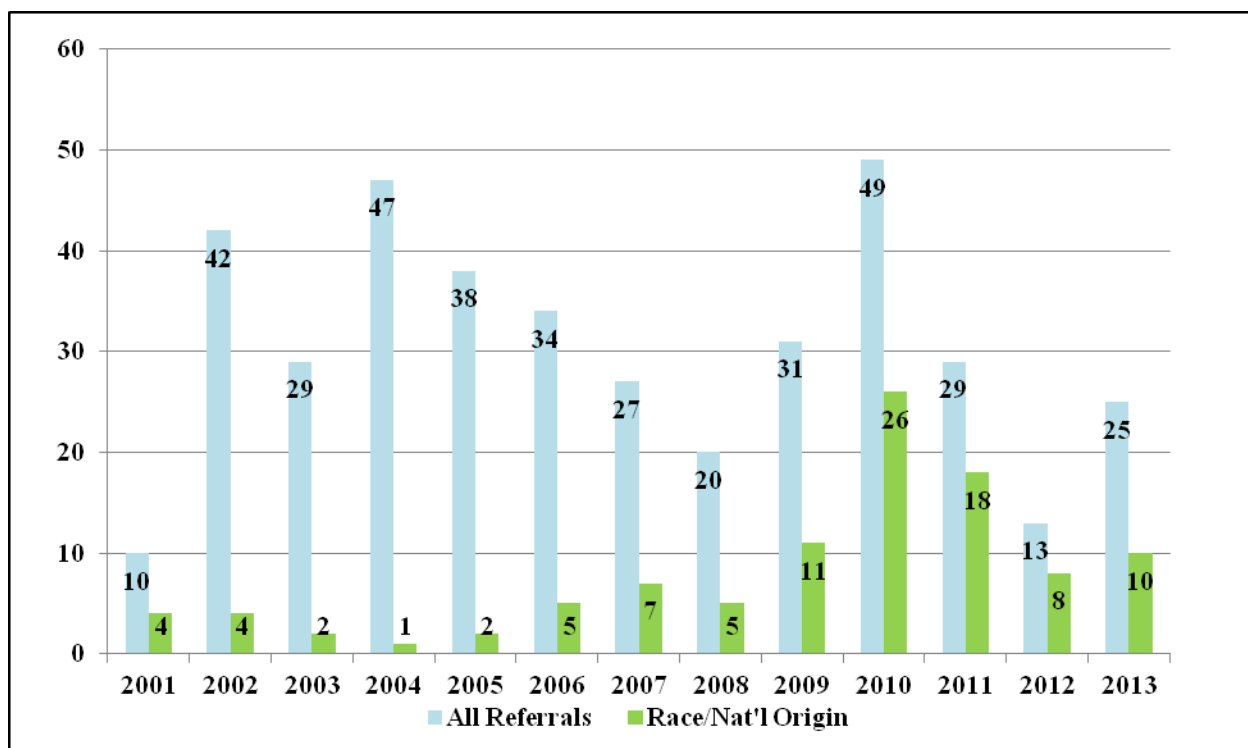
2013 Lending Referrals to DOJ,
By Agency & Protected Class

At the end of 2013, we continued to investigate three referrals received in prior years: two from the FDIC, and one from the FTC. All three of these ongoing investigations involved race and

national origin discrimination.

The referrals that were returned for administrative enforcement during 2013 are also described, by agency, in the charts following Section VI of this report. 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. During 2013, key factors for returning a referral to the referring agency, included the factors referenced in the 1996 memorandum discussed at pages 16-17, above: 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 potential victims and the magnitude of any damages they incurred. These factors are also applicable when DOJ has conducted an investigation and is making a decision on how to proceed.

2001-2013 Fair Lending Referrals to DOJ






VI. LOOKING FORWARD

The Civil Rights Division enjoyed another excellent year of fair lending enforcement in 2013, and continued its commitment to implementation of settlement terms of earlier cases. Our



collaborative relationships with the Division's federal, state, and community partners continued to flourish, and resulted in nationwide relief in cases involving mortgage, auto, and unsecured consumer 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 all areas of lending discrimination and servicemembers' rights. In the coming year, we will continue to enhance and refine the collaboration established over the last several years with our governmental partners and external stakeholders. We will strive to further repair the damage to communities distressed by unfair lending practices and to identify new potential sources of systemic discrimination. In short, we will continue our vigorous and proactive enforcement program to protect borrowers in all areas of lending.



Lending Discrimination Referrals by Other Agencies to DOJ

Bank regulatory agencies	2013 Referrals by Protected Class	2013 Referrals Resulting in DOJ Investigations	2013 Referrals Returned to Agency	Referrals Pending from Prior Years
<p>CFPB</p> 	<p><i>6 total</i></p> <p>2 race/national origin 2 marital status 1 age/source of income/marital status/sex 1 source of income/marital status/sex</p>	<p><i>2 total</i></p> <p>2 race/national origin</p> <p><i>CFPB and U.S. v. National City; U.S. v. Ally Financial</i></p>	<p><i>4 total</i></p> <p>2 marital status: credit card policies 1 age/source of income/marital status/sex: unsecured consumer lending underwriting 1 source of income/marital status/sex: unsecured consumer lending underwriting</p>	<p><i>0 total</i></p>
<p>FDIC</p> 	<p><i>11 total</i></p> <p>5 race/national origin 4 marital status 1 age 1 age/source of income⁸</p>	<p><i>4 total</i></p> <p>4 race/national origin</p>	<p><i>7 total</i></p> <p>1 national origin: unsecured consumer loan pricing 4 marital status: spousal guarantees 1 age: credit card underwriting 1 age/source of income: underwriting</p>	<p><i>2 total</i></p> <p>1 ongoing investigation and 1 investigation closed in early 2014</p> <p>2 race/national origin: mortgage steering or pricing</p>
<p>FRB</p> 	<p><i>6 total</i></p> <p>2 race/national origin 1 national origin/sex 2 marital status 1 disability/source of income⁹</p>	<p><i>3 total</i></p> <p>2 race/national origin 1 disability/source of income</p>	<p><i>3 total</i></p> <p>1 national origin/sex: unsecured consumer loan pricing 2 marital status: underwriting spousal guarantees</p>	<p><i>0 total</i></p>

⁸ This was not a mandatory referral under ECOA.

⁹ This referral involves a protected class covered only under the Fair Housing Act.

Bank regulatory agencies	2013 Referrals by Protected Class	2013 Referrals Resulting in DOJ Investigations	2013 Referrals Returned to Agency	Referrals Pending from Prior Years
NCUA 	<i>0 total</i>	<i>0 total</i>	<i>0 total</i>	<i>0 total</i>
OCC 	<i>1 total</i> 1 age	<i>0 total</i>	<i>1 total</i> 1 age: credit card underwriting	<i>0 total</i>

Other partners	2013 Referrals by Protected Class	2013 Referrals Resulting in DOJ Investigations	2013 Referrals Returned to Agency	Referrals Pending from Prior Years
FTC 	<i>0 total</i>	<i>0 total</i>	<i>0 total</i>	<i>1 total</i> 1 ongoing investigation 1 race/national origin: mortgage pricing
HUD 	<i>1 total</i> 1 disability ¹⁰	<i>0 total</i>	<i>0 total</i>	<i>0 total</i>

¹⁰ 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. This matter is currently under review.

2001-2013 All Lending Discrimination Referrals by Other Agencies to DOJ

ALL DISCRIMINATION REFERRALS	2013	2012	2011	2010	2009	2008	2007	2006	2005	2004	2003	2002	2001	Total
<i>Bank regulatory agencies</i>														
CFPB*	6	1	0	—	—	—	—	—	—	—	—	—	—	7
FDIC	11	8	14	33	21	12	15	29	35	42	29	33	5	287
FRB	6	2	7	6	6	3	9	5	2	3	0	6	1	56
NCUA	0	0	0	0	0	0	0	0	0	0	0	0	0	0
OTS*	—	—		6	4	4	3	0	0	1	0	0	1	23
OCC	1	1	1	2	0	1	0	0	0	0	0	1	3	10
<i>Other partners</i>		4												
HUD	1	1	1	2	0	0	0	0	1	1	0	2	0	9
FTC	0	0	2	—	—	—	—	—	—	—	—	—	—	2
Total	25	13	29	49	31	20	27	34	38	47	29	42	10	394

*On July 21, 2011, the CFPB launched and the Office of Thrift Supervision (OTS) was merged into the OCC.

“—” indicates there is no entry for that agency in the ECOA report for that year.

2001-2013 All Race/National Origin Lending Discrimination Referrals by Other Agencies to DOJ

RACE/NATIONAL ORIGIN DISCRIMINATION REFERRALS	2013	2012	2011	2010	2009	2008	2007	2006	2005	2004	2003	2002	2001	Total
<i>Bank regulatory agencies</i>														
CFPB*	2	0	0	—	—	—	—	—	—	—	—	—	—	2
FDIC	5	5	10	14	5	2	1	3	1	0	2	1	2	51
FRB	3	1	2	4	3	0	4	2	0	0	0	1	1	21
NCUA	0	0	0	0	0	0	0	0	0	0	0	0	0	0
OTS*	—	—		4	3	3	2	0	0	0	0	0	1	16
OCC	0	1	1	2	0	0	0	0	0	0	0	0	0	4
<i>Other partners</i>		3												
HUD	0	1	0	2	0	0	0	0	1	1	0	2	0	7
FTC	0	0	2	—	—	—	—	—	—	—	—	—	—	2
Total	10	8	18	26	11	5	7	5	2	1	2	4	4	103

*On July 21, 2011, the CFPB launched and the Office of Thrift Supervision (OTS) was merged into the OCC.

“—” indicates there is no entry for that agency in the ECOA report for that year.