

**The Attorney General's
2018 Annual Report to Congress
Pursuant to the Equal Credit Opportunity Act
Amendments of 1976**



Submitted by

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The Department of Justice (DOJ or the Department) submits this report regarding its activities in 2018 to enforce the Equal Credit Opportunity Act (ECOA), 15 U.S.C. 1691, *et seq.* See 15 U.S.C. 1691f. The report also includes information about DOJ's lending work under the Fair Housing Act (FHA), 42 U.S.C. 3601, *et seq.*, and the Servicemembers Civil Relief Act (SCRA), 50 U.S.C. 3901, *et seq.* Within DOJ, the Civil Rights Division (Division) is responsible for enforcing ECOA, the FHA, and the SCRA. The Division's Housing and Civil Enforcement Section handles this responsibility.

I. INTRODUCTION

In 2018, the Civil Rights Division attained substantial relief for victims of lending discrimination in two settlements addressing discrimination in mortgage lending under ECOA and the FHA, and relief for servicemembers in three settlements involving unlawful repossessions, foreclosures, and vehicle lease terminations.

II. LENDING DISCRIMINATION ENFORCEMENT UNDER ECOA AND THE FHA

The Division has authority to enforce ECOA and the FHA on its own initiative 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, or 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 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. The Division investigates abuses in the mortgage market, including redlining and discriminatory underwriting and pricing. The Division also investigates allegations of unlawful conduct in non-mortgage lending, including discrimination in auto loans, unsecured consumer loans, student loans, and credit card products.

In 2018, the Division opened five fair lending investigations, filed one lawsuit alleging fair lending violations, and settled two matters, obtaining over \$1.6 million in relief.

Civil Rights 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

FTC - Federal Trade Commission

HUD - Dep't of Housing and Urban Development

2018 Filings and Settlements

On May 8, 2018, the Division entered into a settlement agreement resolving *United States v. KleinBank* (D. Minn.) (“KleinBank”). As detailed in last year’s report, the 2017 complaint alleged that from at least 2010 to 2015, KleinBank’s redlining practices denied residents of majority-minority neighborhoods equal opportunity to obtain residential real-estate-related loans. The complaint alleged that KleinBank carved out its service area to exclude urban areas with high proportions of minority populations, located all branches and loan officers in majority-white neighborhoods, excluded majority-minority neighborhoods from marketing efforts, and originated few mortgage loans in majority-minority areas. A United States Magistrate Judge denied KleinBank’s motion to dismiss because the complaint’s allegations could support an inference of discriminatory intent and therefore satisfied pleading requirements under ECOA and FHA. The court further rejected KleinBank’s arguments that the Attorney General was precluded from bringing a case for practices not flagged by a bank’s regulator during its examination processes. The Attorney General has independent authority to initiate ECOA and FHA actions, even without referrals from bank regulatory agencies.



Assistant Attorney General
Eric S. Dreiband,
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Under the settlement agreement, KleinBank agreed to take steps to meet the credit needs of residents in majority-minority neighborhoods and expand banking services to such areas. To do so, it will invest \$300,000 in a loan subsidy fund and \$300,000 in advertising, outreach, financial education, and credit repair. KleinBank also agreed to open a new branch in a majority-minority area, employ a community development officer to oversee lending development, and conduct fair lending and redlining training for employees and officers. Compliance is ongoing.

On July 18, 2018, the Division entered into a settlement agreement with Pacific Mercantile Bank (“PMB”). The Federal Reserve found reason to believe that PMB engaged in a pattern or practice of pricing discrimination on the basis of national origin and referred the matter to the Department. After further review, the United States alleged that between 2011 and 2013, PMB violated ECOA and the FHA by charging disproportionately higher discretionary prices to African American and Hispanic borrowers based on both race and national origin. PMB, which has not engaged in retail mortgage lending since 2013, agreed to a \$1 million relief fund for affected borrowers. Compliance is ongoing.

On October 18, 2018, the Division and the United States Attorney’s Office for the Middle District of Florida filed a complaint in *United States v. Advocate Law Groups of Florida, P.A., et al.* (M.D. Fla.) alleging that Advocate Law Groups and two of its officers (collectively “ALG”) targeted Hispanic homeowners for predatory mortgage loan modification and foreclosure rescue service schemes.



Promoting itself as “the community’s law firm,” ALG targeted Hispanic homeowners using Spanish-language advertisements that falsely promised to reduce mortgage payments in exchange for thousands of dollars of upfront and continuing fees. The complaint alleged that ALG placed its clients’ homes at risk of foreclosure by doing little to obtain actual loan modifications, by instructing clients to stop making monthly mortgage payments and cease communication with lenders, and by offering to convey homes to lenders without their clients’ consent or without first translating such offers to their clients.

On December 28, 2018, ALG filed a motion to dismiss, arguing that the United States’ allegations did not state a plausible claim under the FHA. In its response, the United States argued that the complaint states plausible claims under the FHA, and argued that the alleged conduct of intentionally targeting Hispanic borrowers (1) constitutes reverse redlining¹, (2) makes housing and housing-related transactions unavailable to Hispanic borrowers, and (3) discriminates in terms, conditions, and services in connection with housing. The matter is pending with the court. Litigation is ongoing; a jury trial is set for February 2021.

During 2018, the Division entered into four separate settlement agreements with individual defendants in *United States v. The Home Loan Auditors, LLC, et al.*, another case alleging a predatory mortgage rescue scheme. Settlement negotiations continued into 2019 and on July 30, 2019, the Division entered into the final of seven settlement agreements. The lawsuit was filed in 2016 and discussed in the 2016 report. The complaint alleged that The Home Loan Auditors, LLC, as well as several affiliated entities and seven individuals, targeted Hispanic homeowners facing foreclosure with unnecessary “forensic loan audits” and other loan modification services. The defendants used Spanish-language marketing and other tactics to persuade clients with limited-English-proficiency to pay the defendants thousands of dollars in up-front fees, to sign legal documents in English without sufficient translation, to stop making mortgage payments, and to avoid communicating with the lender. Hundreds of households—mostly in and around Modesto, California—fell prey to this scheme before the defendants suddenly closed and left the homeowners with few options. Under the settlement agreements, the defendants will pay a total of \$148,000 into a restitution fund that will be used to partially refund fees to defendants’ clients. The defendants also will pay an additional \$91,000 in damages to two HUD complainants and their counsel. Compliance is ongoing.

The Division litigated *United States v. Hatfield* (W.D.N.C) throughout 2018, and on April 12, 2019, entered into a settlement agreement to resolve the matter. Robert N. Hatfield (“Hatfield”) ran a real estate business in Wilkes County, North Carolina involving the sale, rental, and financing of residential properties. Filed on July 13, 2017, the complaint alleged that Hatfield violated ECOA and the FHA by engaging in a pattern or practice of sexually harassing current or prospective female residents. Conduct included unwelcome sexual comments and advances, groping, offering

¹ “Reverse Redlining” is the targeting of a protected class for unfair and predatory loan practices and terms.

to reduce or eliminate payments in exchange for sexual favors, and taking adverse action against residents who objected. Because part of the conduct involved the extension of credit, this case was brought under ECOA as well as the FHA. In addition to barring Hatfield from participating in the rental, sale, or financing of residential properties, the settlement agreement secured \$550,000 in damages to 17 actual or prospective residents and a \$50,000 civil penalty. Compliance is ongoing.

Ongoing Discrimination Investigations

At the end of 2018, the Division had seven open fair lending investigations covering a variety of issues.² These investigations were predicated on possible violations including:

- Redlining discrimination by providing unequal access to credit because of racial or ethnic demographics of the neighborhoods in which consumers live;
- Discriminatory lending and collection practices in connection with the purchase of manufactured housing;
- Targeting of minority borrowers for predatory financing of previously repossessed homes in poor condition; and
- Discrimination in mortgage lending on the basis of disability.

III. SERVICEMEMBERS' LENDING ENFORCEMENT



The Civil Rights Division enforces a number of laws designed to protect the rights of members of the military, including the Servicemembers Civil Relief Act (SCRA). The SCRA provides civil protections and temporary suspension of certain judicial and administrative proceedings related to housing and credit for individuals in military service, so that they can focus their attention on their military responsibilities without adverse consequences for themselves or their families. The SCRA's benefits and protections include: a 6% interest rate cap on financial obligations that were incurred prior to military service; the ability to postpone civil court proceedings; protections in connection with default judgments; protections in connection with residential and motor vehicle lease terminations; and protections in connection with evictions, mortgage foreclosures, and installment contracts, such as auto loans.

Enforcing these rights is an important priority of the Division. Members of the military who have

² As explained elsewhere in this report, the Division has independent authority to enforce ECOA and the FHA without a referral from another agency. Accordingly, not all of these investigations represent referrals.

made great personal sacrifices on behalf of this country should not return from military service to find their credit ruined, their cars repossessed, or their homes foreclosed on in violation of the SCRA.

Servicemembers and Veterans Initiative

Established in December 2014, the Servicemembers and Veterans Initiative (“Initiative”) coordinates with Department components and other federal agencies to build a comprehensive legal support and protection network focused on servicemembers, veterans, and their families.

Outreach Efforts

During 2018, the Department gave presentations on the SCRA and the Initiative’s work at 14 events nationwide. These events, attended by thousands of servicemembers and legal professionals across the country, reached all five branches of the military. At these events, SVI provided substantive trainings on the SCRA for legal professionals (including military attorneys) and provided information about the statute’s protections to servicemembers and outside groups and state agencies that work with servicemembers and veterans. Many of these events relied on the support and participation of the Civil Rights Division’s Housing and Civil Enforcement and Employment Litigation Sections, and U.S. Attorney’s Offices from across the country.



The Servicemembers and Veterans Initiative Hosts the United States Army War College’s Class of 2018 during their May National Security Staff Ride

Filings Related to Motor Vehicle Lease Terminations

On February 22, 2018, the Division obtained over \$2 million for servicemembers in its first case involving a motor vehicle lessor’s failure to refund pre-paid lease amounts to servicemembers who exercised their SCRA rights to terminate their leases early after receiving military orders. The settlement agreement in *United States v. BMW Financial Services* (D.N.J.) requires BMW Financial Services to pay \$2,165,518.84 to 492 servicemembers and \$60,788 to the United States Treasury. The agreement also includes changes in BMW Financial Services’ lease termination policies to ensure that required refunds are provided and employees receive proper training. Individuals who lease vehicles from BMW Financial Services often contribute an up-front monetary amount at lease

signing, in the form of a cash payment, credit for a trade-in vehicle, or rebate or other credit. A portion of this up-front amount can be applied to the first month of the lease and certain up-front costs such as licensing and registration fees. The remainder, which is called the “capitalized cost reduction (CCR) amount,” operates to reduce the monthly payment the lessee must make over the term of the lease.

The Division received complaints from two servicemembers who were denied refunds of pre-paid CCR amounts by BMW Financial Services. The agreement requires BMW Financial Services to refund portions of the pre-paid CCR amount to each servicemember. In addition, BMW Financial Services will pay indirect damages to each servicemember.

Filings Related to Home Foreclosures

The SCRA protects servicemembers and their families from having their property foreclosed on without a court order. On September 26, 2018, the Division resolved its first case under this provision against a foreclosure trustee company in *United States v. Northwest Trustee Services, Inc.* (W.D. Wash.) (“Northwest”). The complaint, which the United States filed on November 9, 2017, and amended on January 8, 2018, alleges that the company violated the SCRA by foreclosing on at least 28 homes owned by servicemembers without obtaining the required court orders. The Division launched its investigation into Northwest’s practices after a United States Marine Corps veteran from Vancouver, Washington submitted a complaint to the Department’s Servicemembers and Veterans Initiative in May 2016. Northwest had foreclosed on the veteran’s home in August 2010, less than two months after he was released from active duty in Operation Iraqi Freedom. The United States’ complaint alleged that Northwest had unlawfully foreclosed on other SCRA-protected servicemembers since 2010. The settlement agreement requires Northwest Trustee, which has gone out of business and is in state receivership proceedings, to pay up to \$750,000 to aggrieved servicemembers.

Filings Related to Illegal Auto Repossessions

On November 2, 2018, the Division filed a complaint and entered into a settlement agreement in *United States v. Hudson Valley Federal Credit Union* (S.D.N.Y.). The complaint alleged that the Hudson Valley Federal Credit Union, headquartered in Poughkeepsie, New York, violated the SCRA by repossessing protected servicemembers’ motor vehicles without obtaining the necessary court orders. The settlement agreement requires Hudson Valley to provide \$10,000 in compensation to each of six servicemembers whose motor vehicles it repossessed, and \$5,000 to one servicemember who faced repossession but had his vehicle returned within 24 hours. The settlement agreement also requires Hudson Valley to provide SCRA training to its employees,

Servicemembers are willing to fight to defend our freedom and our great country at enormous personal sacrifice. The Civil Rights Division will work tirelessly to ensure that the rights of the brave men and women of our nation’s armed forces, and the veterans who have served our country in the past, are protected.

Eric Dreiband, Assistant Attorney General for the Civil Rights Division, May 27, 2019.

report to the United States on any SCRA complaints received, and pay a civil penalty of \$30,000 to the United States Treasury.

On March 28, 2018, the Division filed a complaint in *United States v. California Auto Finance* (C.D. Cal.), alleging that California Auto Finance, a subprime auto lender in Orange County, California, violated the SCRA by repossessing protected servicemembers' motor vehicles without obtaining the necessary court orders. On June 14, 2018, the Division filed an amended complaint to include a related entity called 3rd Generation, Inc. as a defendant. The consent order, which was entered by the court on March 12, 2019, requires the defendants to adopt new repossession policies, pay a U.S. Army Specialist \$30,000 in damages and pay a civil penalty of \$50,000 to the United States Treasury.



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

The Division continues its collaborative work with other federal partners, including its participation in the Federal Interagency Fair Lending Task Force. The Task Force's discussions often center on topics such as consistency in approaches among the Division and the other agencies, common issues that result in referrals to the Division, and investigatory issues that can arise across the various agencies, allowing the participants to benefit from other agencies' perspectives and experience.

As in prior years, Division representatives participated in conferences, training programs, and meetings involving lenders, compliance officials, industry experts, enforcement and regulatory agencies, consumer groups, and others interested in fair lending throughout the country, in order to inform critical stakeholders about the Division's enforcement activities. In 2018, Division staff participated in four such events, and for the eighth year in a row, Division staff as well as other federal fair lending enforcement agencies participated in a national webinar hosted by the FRB.

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 of lending matters are also made under ECOA by the FTC, and under the FHA by HUD and certain bank regulatory agencies. From 2001 through 2018, the bank regulatory agencies, the FTC, and HUD referred a total of 467 matters involving a potential pattern or practice of lending discrimination to the Justice Department. One hundred forty-eight of those referrals involved race or national origin discrimination.

The Division received three ECOA and FHA lending referrals in 2018: one each from the FDIC, the NCUA, and the OCC. In addition to the three referrals from bank regulators, the Division also received a referral from HUD which resulted in a lawsuit discussed above. As explained in prior

reports, when the Division receives a referral from a regulatory agency, it determines whether to open an investigation or defer the matter to the regulator for administrative enforcement. Starting in 2013, we made a commitment to the regulators to shorten our review time to 60 days as part of our continuing effort to increase the effectiveness and efficiency of our fair lending enforcement. To date we have met our goal 100% of the time, including an average of 38 days to decision in 2018.³

Factors Considered By DOJ When Evaluating Referrals

In 1996, based on the recommendation of the Government Accountability Office, DOJ provided a summary to the federal bank regulatory agencies on pattern or practice referrals. The summary describes the factors that DOJ would consider in determining which matters it would return to the agency for administrative resolution and which ones it would pursue for potential litigation. The summary is posted on the Division's website at <https://www.justice.gov/sites/default/files/crt/legacy/2014/03/05/regguide.pdf>.

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; examples of such violations may involve spousal signature violations and minor price breaks for certain age groups not entitled to preferential treatment; and
- There were either few potential victims or *de minimis* harm to 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.

These factors are also applicable when DOJ has conducted an investigation and is making a decision

³ One referral was received on November 28, 2018 and was in review during the lapse in appropriations between December 22, 2018 and January 25, 2019. The calculation is based on days when the government was operating normally.

whether the facts warrant a lawsuit.

2018 Referrals to DOJ

The 4 referrals in 2018 included the following types of alleged discrimination: ⁴

- 3 involving race or national origin;
- 1 involving marital status; and
- 1 involving gender.

As set forth in charts immediately following this report, the referrals involved various types of credit and a range of alleged discriminatory conduct, including discriminatory underwriting, overt policies that discriminate on the bases of marital status and receipt of public assistance income.

As noted earlier, the Division filed one lawsuit from the four referrals in 2018, *United States v. Advocate Law Groups of Florida, P.A., et al.*, discussed at pp. 3-4, above. Additionally, in 2018, we continued to litigate one referral received in a prior year, *U.S. v. The Home Loan Auditors, et al. (N.D. Cal.)*, discussed at p. 4 above.

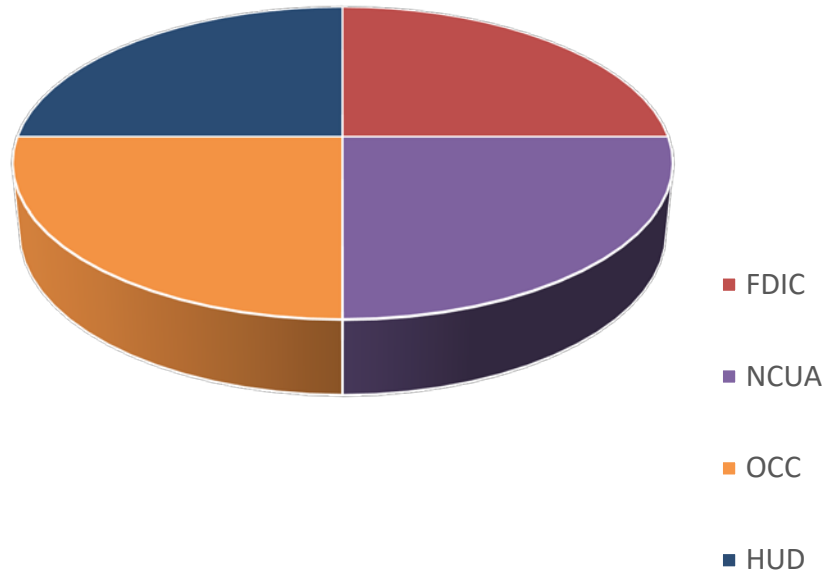
For three of the four referrals in 2018, we returned the matter to the referring agency for enforcement without opening an investigation; this number includes referrals where the referring agency specifically requested we defer to it for administrative enforcement. The referrals that were returned for administrative enforcement during 2018 are also described, by agency, in the charts following 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.

VI. CONCLUSION

In 2018 the Civil Rights Division continued to successfully enforce the fair lending protections of ECOA, the FHA, and the SCRA. Through its fair lending enforcement and compliance efforts, the Division seeks to create a level playing field by making sure that qualified borrowers who are similarly situated in terms of credit score and other credit characteristics have the same access to credit on the same terms. In addition, the Division is committed to enforcing the rights of servicemembers and insuring that they are afforded the protections provided by law.

⁴ Because individual referrals can involve more than one protected class, referrals detailed by protected class exceed the total number of referrals.

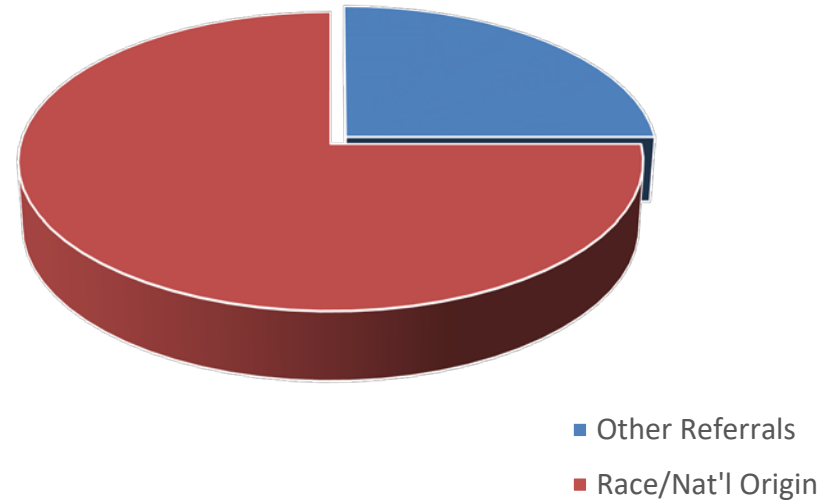
2018 Lending Referrals to DOJ by Agency



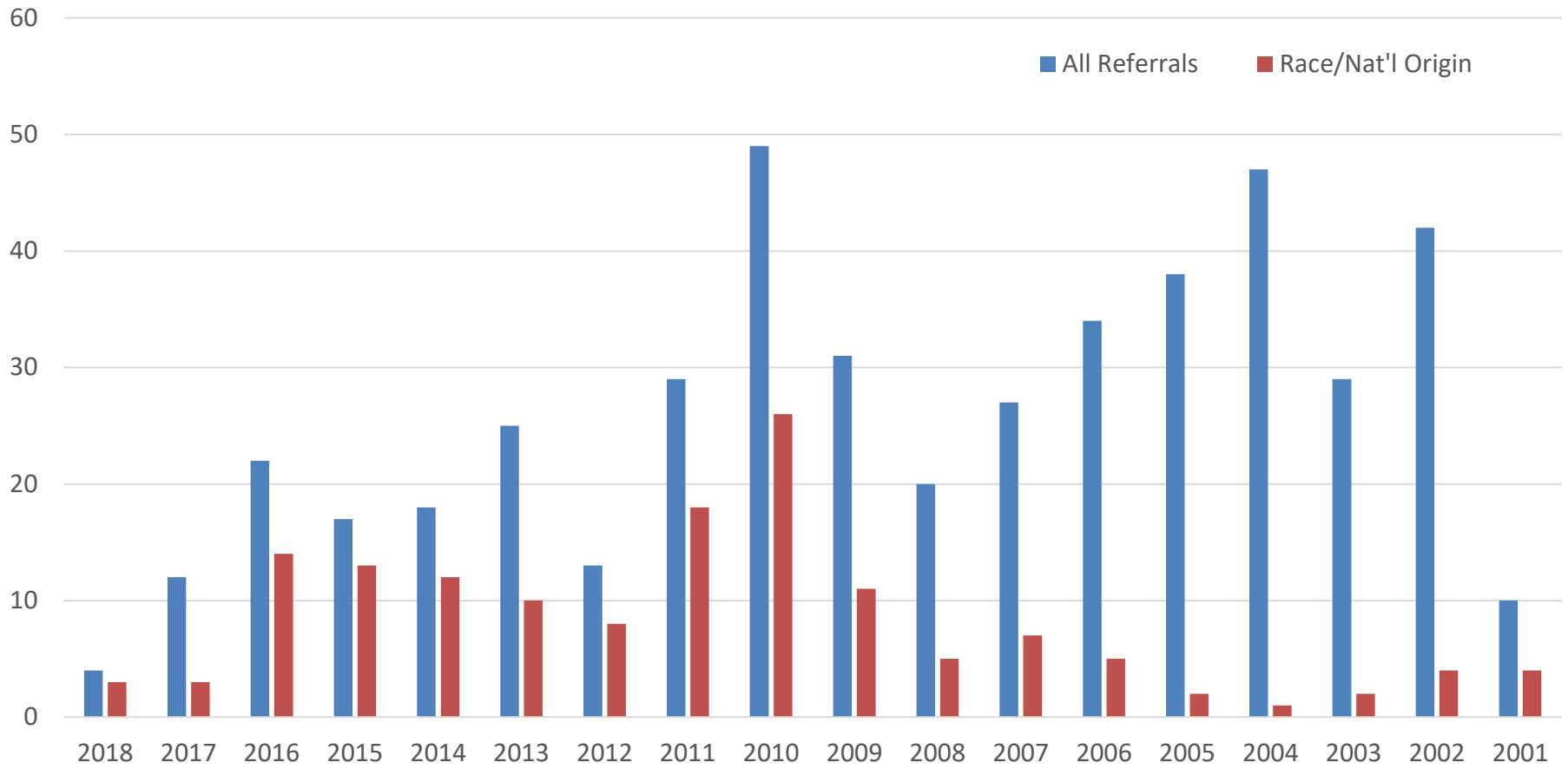
N = 4 referrals

CFPB, FRB, and FTC made no referrals






2018 Referrals by Protected Class





Historical Fair Lending Referrals to DOJ



Lending Discrimination Referrals by Other Agencies to DOJ

Bank regulatory agencies	2018 Referrals by Protected Class	2018 Referrals Resulting in DOJ Investigations	2018 Referrals Returned to Agency	Referrals Pending from Prior Years as of December 31, 2018
CFPB 	0	0	0	0
FDIC 	1 total 1 national origin:pricing	0	1 total 1 national origin:pricing	0
FRB 	0	0	0	0
NCUA 	1 total 1 marital status: underwriting	0	1 total 1 marital status: underwriting	0
OCC 	1 total 1 race/national origin/gender:pricing ⁵	0	1 total 1 race/national origin/gender:pricing	0

⁵ This referral was made under the FHA only.

Other partners	2017 Referrals by Protected Class	2017 Referrals Resulting in DOJ Investigations	2017 Referrals Returned to Agency	Referrals Pending from Prior Years
FTC 	0	0	0	0
HUD 	<i>1 total</i> 1 national origin: foreclosure rescue schemes	<i>1 total</i> 1 national origin: foreclosure rescue schemes Filed: <i>U.S. v. Advocate Law Groups of Florida, P.A., et al. (M.D. Fla.)</i>	0	<i>1 total</i> 1: national origin: predatory loan modification services Filed: <i>U.S. v. The Home Loan Auditors, et al. (N.D. Cal.)</i>

2001 – 2018 All Lending Discrimination Referrals by Other Agencies to DOJ

ALL REFERRALS	2018	2017	2016	2015	2014	2013	2012	2011	2010	2009	2008	2007	2006	2005	2004	2003	2002	2001	Total
<i>Bank regulatory agencies</i>																			
CFPB	0	2	8	8	15	6	1	0	--	--	--	--	--	--	--	--	--	--	40
FDIC	1	4	4	4	3	11	8	14	33	21	12	15	29	35	42	29	33	5	303
FRB	0	3	7	4	0	6	2	7	6	6	3	9	5	2	3	0	6	1	70
NCUA	1	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	3
OTS*	--	--	--	--	--	--	--	4	6	4	4	3	0	0	1	0	0	1	23
OCC	1	1	1	0	0	1	1	1	2	0	1	0	0	0	0	0	1	3	13
<i>Other partners</i>																			
HUD	1	0	2	1	0	1	1	1	2	0	0	0	0	1	1	0	2	0	13
FTC	0	0	0	0	0	0	0	2	--	--	--	--	--	--	--	--	--	--	2
Total	4	12	22	17	18	25	13	29	49	31	20	27	34	38	47	29	42	10	467

2001 – 2018 Race/National Origin Lending Discrimination Referrals by Other Agencies to DOJ

Race/Nat'l Origin	2018	2017	2016	2015	2014	2013	2012	2011	2010	2009	2008	2007	2006	2005	2004	2003	2002	2001	Total
<i>Bank regulatory agencies</i>																			
CFPB	0	1	7	7	10	2	0	0	--	--	--	--	--	--	--	--	--	--	27
FDIC	1	1	2	3	2	5	5	10	14	5	2	1	3	1	0	2	1	2	60
FRB	0	0	3	3	0	3	1	2	4	3	0	4	2	0	0	0	1	1	27
NCUA	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
OTS*	--	--	--	--	--	--	--	3	4	3	3	2	0	0	0	0	0	1	16
OCC	1	1	0	0	0	0	1	1	2	0	0	0	0	0	0	0	0	0	6
<i>Other partners</i>																			
HUD	1	0	2	0	0	0	1	0	2	0	0	0	0	1	1	0	2	0	10
FTC	0	0	0	0	0	0	0	2	--	--	--	--	--	--	--	--	--	--	2
Total	3	3	14	13	12	10	8	18	26	11	5	7	5	2	1	2	4	4	148

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

"--" indicates there is no entry for that agency in the ECOA report for that year