

**The Attorney General's
2015 Annual Report to Congress
Pursuant to the Equal Credit Opportunity Act
Amendments of 1976**



Submitted by

Vanita Gupta

**Principal Deputy Assistant Attorney General
Civil Rights Division**

August 2016

The Department of Justice (DOJ or the Department) submits this report regarding its activities in 2015 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 is responsible for enforcing ECOA, the FHA, and the SCRA. This responsibility is handled by the Division's Housing and Civil Enforcement Section.

I. INTRODUCTION

In 2015, the Civil Rights Division achieved significant results in fair lending enforcement, including filing and settling the federal government's largest redlining case in history. Since the start of 2015, the Division filed four cases addressing discriminatory patterns of pricing discrimination in the interest rate markups charged by automobile dealers to borrowers, resulting in over \$62 million in relief for victims. The Division settled two redlining discrimination cases in two different regions of the country. In addition, the United States Supreme Court sided with the DOJ in affirming the availability of disparate impact claims under the Fair Housing Act, a critical tool for the Division's fair lending enforcement.

Record Relief

From 2010 through 2014, the Division has obtained more than \$1.4 billion in monetary relief in lending settlements under ECOA, FHA, and SCRA.

Highlights of the Division's recent work include:

- **Addressing Discrimination in Indirect Auto Lending**

Together with the CFPB, the Division has opened 11 investigations of lenders since 2013 to address discrimination in dealer interest rate markups in indirect auto lending. Four of those cases have now been filed and settled. The Division and the CFPB anticipate these settlements will result in identified victims receiving over \$232 million in damages. As a result of the settlements entered since the start of 2015, three large national and regional indirect auto lenders have now agreed to reduce the maximum markup that dealers can add to interest rates. The Division expects that such reduced caps will significantly decrease discriminatory pricing disparities paid by Americans who take out auto loans from these lenders.

- **Ensuring Equal Access to Mainstream Mortgage Lending**

Many communities of color were hit particularly hard by last decade's mortgage lending excesses and the resulting collapse. Predatory and opportunistic mortgage lenders extracted a disproportionate share of those communities' housing wealth. And when these predatory lenders disappeared, it became apparent that many mainstream lenders had been engaging in an unwarranted refusal to serve the mortgage lending needs of those communities unjustified by legitimate business concerns. As a result, in 2015, the Division moved aggressively to combat mortgage redlining by entering into the largest residential mortgage redlining settlement in its history, resulting in over \$27 million in relief. Additionally, the Division has multiple redlining investigations open, which cover a wide range of geographies across the country.

▪ **Continuing and Improving Inter-Agency Collaboration**

The Division continued to strengthen its working relationship with the CFPB, and to maintain productive relationships with other bank regulatory agencies, the FTC and HUD. We also continue to seek opportunities to work in partnership with various state attorneys general. The 2015 referrals, detailed below, are representative of the close coordination and cooperation we enjoy with our partners in fair lending enforcement.

II. LENDING DISCRIMINATION ENFORCEMENT UNDER ECOA AND THE FHA

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.

The Division has authority under both statutes to challenge a pattern or practice of discriminatory conduct. The Division focuses on the range of abuses in the mortgage market, including redlining, underwriting, and pricing discrimination. The Division also investigates abuses in non-mortgage lending, including pricing discrimination and reverse redlining¹ in auto loans, unsecured consumer loans, student loans, and credit card products.

In 2015, the Division opened 18 fair lending investigations, filed eight fair lending lawsuits, and settled nine, amounting to more than \$82 million in relief.² Following is a description of the

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

¹ Reverse redlining occurs when a creditor violates ECOA or the FHA by targeting an applicant for the extension or servicing of credit on unfair and predatory terms because the applicant is a member of a protected class.

² The Division also filed and settled two other fair lending lawsuits in early 2016, resulting in over \$19 million in relief for victims, discussed below. *United States v. Evolve Bank & Trust* (W.D. Tenn.) and *United States v. Toyota Motor Credit Corp.* (C.D. Cal.).

cases filed and settled in 2015 and early 2016.³

Discrimination in Indirect Auto Lending

DOJ filed and settled, together with the CFPB, three cases each alleging a pattern or practice of discrimination against many thousands of borrowers by an indirect auto lender.⁴ On July 14, 2015, DOJ filed a complaint and consent order in *United States v. American Honda Finance Corp.* (C.D. Cal.). In this ECOA complaint, DOJ alleged that Honda engaged in a pattern or practice of discrimination by permitting automobile dealers to charge higher interest rates to borrowers on the bases of race and national origin between January 2011 and the filing date of the consent order.

Under the provisions of the consent order, Honda agreed to implement policies and procedures designed to ensure that the dealer markup on automobile loans is negotiated in a nondiscriminatory manner consistent with ECOA. Specifically, the order required Honda to change the way it prices its loans by limiting dealer markup to 125 basis points⁵ for loans of 60 months or less, and to 100 basis points for loans greater than 60 months. In addition, Honda established a \$24 million fund to compensate African-American, Hispanic, and Asian/Pacific Islander borrowers harmed by the lender's practices. The DOJ consent order also included a \$1 million fund for the operation of a consumer financial education program. The court entered the order on July 16, 2015. The CFPB filed its own administrative order containing the same claims and relief on July 14, 2015.

On September 28, 2015, DOJ filed a complaint and consent order in *United States v. Fifth Third Bank* (S.D. Ohio), another matter investigated jointly with the CFPB. The DOJ's complaint alleged that the bank engaged in a pattern or practice of discrimination on the bases of race and national origin in its indirect auto lending business in violation of ECOA between January 2010 and the filing date. The consent order includes \$18 million in restitution for harmed African-American and Hispanic borrowers, and requires the bank to change the way it prices its loans by limiting dealer markup to 125 basis points for loans of 60 months or less, and to 100 basis points for loans greater than 60 months. The court entered the consent order on October 1, 2015. The CFPB filed its own administrative order containing the same claims and relief on September 28, 2015.

³ In addition to the seven cases filed and settled in 2015 and early 2016 that are described below, last year's report detailed two fair lending cases resolved in early 2015. The first of those cases was *United States v. First United Bank* (N.D. Tex.), which arose from a FDIC referral. Its settlement, filed on January 15, 2015, provided \$140,000 to victims of the bank's alleged discrimination against Hispanic borrowers in pricing unsecured consumer loans. The second early 2015 case described in last year's report was the February 10, 2015 settlement of *United States and State of North Carolina v. Auto Fare, Inc.* (W.D.N.C), which created a \$225,000 settlement fund to victims of alleged discrimination against African-American customers of two Charlotte, North Carolina "buy here, pay here" used car dealerships.

⁴ Rather than taking applications directly from consumers, indirect auto lenders make most of their loans through auto dealerships that submit loan applications to one or more indirect auto lenders to help consumers pay for a new or used automobile.

⁵ One hundred basis points is the equivalent of one percent of the loan amount.

On February 2, 2016, the DOJ filed a complaint and consent order in *United States v. Toyota Motor Credit Corp.* (C.D. Cal.), against the nation's largest captive auto lender.⁶ The CFPB filed its administrative order the same day containing the same claims and relief. The DOJ's complaint alleged that Toyota was responsible for African-American and Asian/Pacific Islander borrowers paying higher dealer markups based on race and national origin, and not because of the borrowers' creditworthiness or other objective criteria related to borrower risk, between January 2011 and the filing date of the consent order in violation of ECOA. The consent order provides \$19.9 million in compensation for borrowers who took out loans between January 2011 and the filing date and paid higher markups based on the alleged discrimination. Additionally, Toyota will pay up to \$2 million to African-American and Asian/Pacific Islander borrowers with markup disparities while Toyota is preparing to implement new policies. The consent order also requires the defendant to implement lower dealer markup caps of 125 basis points for loans of 60 months or less, and of 100 basis points for loans greater than 60 months. The court entered a consent decree on February 11, 2016.

On May 7, 2015, the Department filed a complaint and consent order in *United States v. Evergreen Bank Group* (N.D. Ill.). The complaint, filed after an investigation arising from a referral by the FDIC, alleged that Evergreen violated ECOA by charging thousands of Hispanic and African-American borrowers higher interest rates than non-Hispanic white borrowers between January 2011 and March 2014 on loans made through motorcycle dealers that had discretion to markup interest rates. The complaint alleges that Evergreen charged borrowers higher interest rates on motorcycle loans because of their national origin or race, and not because of the borrowers' creditworthiness or other objective criteria related to borrower risk. Until March 2014, Evergreen allowed motorcycle dealers to markup interest rates.

The consent order, approved by the court on May 15, 2015, requires Evergreen to eliminate or limit the discretion it gives to motorcycle dealers, which is consistent with a policy that Evergreen voluntarily adopted in March 2014, and to pay \$395,000 to victims.

Mortgage Redlining Discrimination

The Division filed and settled two lawsuits alleging mortgage redlining in 2015.

On September 24, 2015, DOJ and the CFPB filed a joint complaint and consent order in *Consumer Financial Protection Bureau and United States v. Hudson City Savings Bank, F.S.B.* (D.N.J.), a case alleging a pattern or practice of redlining under ECOA and the FHA. The joint complaint alleged that from at least 2009 to 2013, Hudson City Savings Bank failed to provide its home mortgage lending services to majority-African-American-and-Hispanic neighborhoods on an equal basis as it provided those services to predominantly white neighborhoods, a practice commonly known as "redlining," throughout its major market areas in New Jersey, New York, Connecticut, and Pennsylvania. Under the consent order Hudson City agreed to provide \$25 million in a loan subsidy fund to increase the amount of credit the bank extends to formerly redlined neighborhoods across its market areas; open two full-service branches in these neighborhoods; invest

⁶ Captive auto lenders, like Toyota Motor Credit Corporation and American Honda Finance Corporation, are owned by an auto manufacturer and provide consumers with financing for the primary purpose of facilitating sales by the manufacturer and its associated franchised dealers.

\$2.25 million for advertising, outreach, financial education, and community partnership; increase the number of loan officers dedicated to majority-African-American-and-Hispanic neighborhoods; develop and implement a compliance management system and training curriculum to ensure compliance with fair lending obligations; and create a comprehensive long-term plan to increase lending in previously redlined areas. The court entered the consent order on November 4, 2015. This is the federal government's largest redlining settlement.

On September 29, 2015, the Department filed a complaint and consent order in *United States v. Eagle Bank & Trust Company of Missouri* (E.D. Mo.), another case alleging mortgage redlining discrimination, in this instance in predominantly African-American neighborhoods in and around St. Louis. The complaint alleged violations of ECOA and the FHA. As a result of the settlement, reached after an investigation arising from a referral by the FDIC, Eagle Bank agreed to open two new locations to serve the residents of African-American neighborhoods in northern St. Louis. The bank will also invest at least \$975,000 to provide banking and borrowing opportunities to residents and small businesses in those areas. The court entered the consent order on October 1, 2015.

Discrimination in Pricing Mortgage Loans Based on Race and National Origin

On May 28, 2015, DOJ and the CFPB filed and settled a case involving discrimination in residential mortgage lending made through a network of mortgage brokers, *United States and Consumer Financial Protection Bureau v. Provident Funding Associates* (N.D. Cal.). The complaint alleged that Provident Funding, a nationwide wholesale residential mortgage lender, discriminated on the bases of race and national origin in the total broker fees it charged to African-American borrowers between 2006 and 2011 and Hispanic borrowers between 2006 and 2009, in violation of both ECOA and the FHA.

The consent order provides for \$9 million in monetary damages to aggrieved borrowers, a requirement that Provident maintain a non-discretionary broker compensation policy, as well as training, recordkeeping, and reporting requirements. The matter was originally referred to the Division by the FTC, and we conducted the investigation jointly with the CFPB. The court entered the consent order on June 18, 2015.

On November 30, 2015, the Department filed a complaint and consent order in *United States v. Sage Bank* (D. Mass.), based on a referral from the FDIC. The complaint alleged that Sage Bank engaged in a pattern or practice of discrimination on the bases of race and national origin in the pricing of its residential mortgage loans in violation of ECOA and the FHA. Specifically, under Sage Bank's pricing policy, each of its loan officers was assigned a "target price," which was the price a loan officer was required to achieve on each home loan, regardless of a borrower's creditworthiness. The complaint alleged that those loan officers whom Sage Bank assigned higher target prices disproportionately served African-American and Hispanic borrowers. The complaint also alleged that loan officers had discretion to price loans above their target prices and did so to a greater extent for African-American and Hispanic borrowers than for white borrowers. The consent order requires Sage Bank to amend its pricing and compensation policies, establish a monitoring program, and have employees undergo fair housing and lending training, among other injunctive relief, as well as establish a settlement fund of \$1.175 million to compensate for direct and indirect damages that aggrieved borrowers suffered. The court entered the consent order on December 1, 2015.

Discrimination in Mortgage Lending Based on Disability and Receipt of Public Assistance Income

The Department filed and settled its third case since 2012 alleging disability and source of income discrimination under ECOA and the FHA on January 19, 2016. The complaint in *United States v. Evolve Bank & Trust* (W.D. Tenn.) alleged that the bank engaged in a pattern or practice of discrimination on the bases of disability and receipt of public assistance by requiring mortgage loan applicants who had disability income to provide a letter from a doctor to show that their income would continue. The consent order provides for \$86,000 to compensate 50 affected borrowers, requires the bank to issue new policies and train its employees, and provides for recordkeeping, monitoring, and reporting. This case arose from a referral from the FRB. The court entered the consent order on January 21, 2016.

Beyond the Numbers

The Department continued to monitor compliance and progress in Wells Fargo's CityLIFT program, which was created to fulfill the bank's obligation under the fair lending settlement in *United States v. Wells Fargo Bank, N.A.* (D.D.C. 2012). The CityLIFT program provides over \$50 million in direct down payment assistance to borrowers in communities around the country where the Department identified large numbers of discrimination victims and which were hard hit by the housing crisis.

The CityLIFT program has had a substantial impact in assisting traditionally underserved populations to receive affordable and sustainable mortgages. As of early 2016, the program has provided approximately 3,000 down payment assistance grants in eight metropolitan areas around the country. Out of these grants, NeighborWorks America, the program's administrator, estimates that 81% of these grants went to first-time home buyers.

NeighborWorks America provided two stories of borrowers who benefited from the CityLIFT program:

Monica M., a resident of San Bernardino, California, had tried to purchase a home, but she was not successful. She had to cancel the purchase the week before her closing was scheduled. Heartbroken, she wondered if she would ever be able to buy a home for family. "I lost my deposit. I felt like I had lost everything," she recalls.

But then Monica learned about CityLIFT. She attended the launch event on August 9, 2013, and was the first customer to reserve grant funds through the program. "I knew that God had done that for me and my children," she says. Now that Monica is a successful homeowner, she feels a sense of accomplishment and pride, and she knows she's setting a good example for her children. "I needed for my children to know they can do anything, and for my mother to know she's done well."

###

Roy W. had always dreamed of owning his own home but obstacles, including facing eviction, kept getting in his way. Being legally blind since 1976 and living on a fixed income added to his challenges.

Roy never gave up on his dream. He and his fiancée Tanya D. began collecting pennies they found on Philadelphia streets and they put them in a piggy bank to start saving for a down payment. Later, Roy used those savings to enroll in an Individual Development Account in which he saved \$2,000 that was used as part of his down payment.

If it hadn't been for CityLIFT, Roy says he wouldn't have been able to buy a home now or if ever. He reports that being a homeowner has changed his life and that he now has peace and comfort. He adds that every day of owning a home has been a joy.

Disparate Impact Standard

On June 25, 2015, the United States Supreme Court agreed with the Department's position in *Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc.* The case posed the question of whether disparate impact claims are cognizable under the Fair Housing Act, including under the provision, 42 U.S.C. 3605, which specifically refers to loans secured by residential real estate.⁷ The Department filed an *amicus* brief, and the Solicitor General personally appeared before the Supreme Court on January 21, 2015, to argue disparate impact claims are cognizable under the Fair Housing Act. The Supreme Court ruled in favor of the Department's position and held that disparate impact claims are available under the Fair Housing Act, including under the provision that specifically refers to loans secured by residential real estate.

On the day of the ruling, Attorney General Lynch issued the following statement on behalf of the Department, which noted the importance of the decision on the Department's fair lending work:

I am pleased that the Supreme Court has affirmed that the Fair Housing Act encompasses disparate impact claims, which are an essential tool for realizing the Act's promise of fair and open access to housing opportunities for all Americans. While our nation has made tremendous progress since the Fair Housing Act was passed in 1968, disparate impact claims remain an all-too-necessary mechanism for rooting out discrimination in housing and lending. By recognizing that laws, policies and practices with unjustified discriminatory effects are inconsistent with the Fair Housing Act, today's decision lends support to hardworking Americans who are attempting to find good housing opportunities for themselves and their families. Bolstered by this important ruling, the Department of Justice will continue to vigorously enforce the Fair Housing Act with every tool at its disposal – including challenges based on unfair and unacceptable discriminatory effects.

⁷ Other provisions of the Fair Housing Act also cover mortgage lending.

Pending Discrimination Investigations

At the end of 2015, the Division had 35 open fair lending investigations covering a variety of issues. The subject matter of these investigations includes:

- Discrimination based on race, national origin, gender, or age by indirect automobile lenders in the pricing of loans, including in their policies allowing for discretion in setting interest rate markups;
- Discrimination based on race, national origin, or gender by automobile dealers, including in their exercise of discretion in setting of interest rate markups;
- Discrimination based on race and national origin in the underwriting or pricing of mortgage loans, including in the setting of discretionary interest rate markups and fees and broker compensation;
- Discrimination based on race and national origin in the setting of loan officers' target prices for mortgage loans;
- Discrimination based on race and national origin in the pricing of unsecured consumer and vehicle secured loans;
- Redlining through the failure to provide equal lending services to minority neighborhoods;
- Discrimination based on national origin in the issuance and servicing of credit card products; and
- Discrimination based on familial status in refusing to consider maternity leave income in mortgage underwriting.

In six of those investigations, the parties were engaged in pre-suit negotiations.⁸

The Division expects that a number of its pending investigations will result in contested litigation or settlements in 2016.

⁸ Two of those authorized lawsuits, *United States v. Evolve Bank & Trust* and *United States v. Toyota Motor Credit Corp.*, were filed in early 2016 and were discussed earlier in this section.

III. SERVICEMEMBERS' LENDING ENFORCEMENT



The Civil Rights Division enforces several laws designed to protect the rights of members of the military, including the Servicemembers Civil Relief Act (SCRA). The SCRA postpones, suspends, terminates, or reduces the amount of certain consumer debt obligations for active duty members of the armed forces, so that they can focus their full attention on their military responsibilities without adverse consequences for themselves or their families. Among these protections are: (1) a prohibition on foreclosure of a servicemember's property without first getting approval from the court if the servicemember obtained the mortgage prior to entering military service, (2) a prohibition on repossession of a servicemember's motor vehicle without court approval if the servicemember paid a deposit or installment before entering military service, and (3) the right of 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, their cars repossessed, and their homes foreclosed on and sold in violation of the SCRA.⁹

Servicemembers and Veterans Initiative

On March 19, 2015, former Acting Associate Attorney General Delery announced the creation of the Department of Justice's Servicemembers and Veterans Initiative. The purpose of the initiative is to further the Department's existing efforts by coordinating and expanding our enforcement, outreach, and training efforts on behalf of servicemembers, veterans, and their families. The initiative addresses the unique challenges that servicemembers face while on active duty, that veterans face upon returning home, and that families face when a loved one is deployed. In addition to laws protecting servicemembers' employment and voting rights, the initiative is dedicated to protecting servicemembers' housing and financial rights under the SCRA.

On November 10, 2015, the Department submitted to Congress a legislative package of amendments to the SCRA. The proposed amendments would require parties seeking default

⁹ Last year's report detailed a SCRA case resolved in early 2015. The case was *United States v. Santander Consumer USA Inc.* (N.D. Tex.), which arose from a referral from the U.S. Army's Legal Assistance Program. Its settlement, filed on February 25, 2015, provided more than \$9 million to servicemembers who suffered alleged unlawful repossessions by the one of the nation's largest retail auto lenders.

judgments against servicemembers to check Department of Defense records to determine duty status, making it more difficult for unscrupulous creditors to take advantage of servicemembers on active duty. The amendments also would increase penalties that lenders face for violating laws designed to protect servicemembers, and would make it easier for servicemembers to take advantage of the SCRA's 6% cap on the interest charged on pre-service debt.



The Department's Servicemembers and Veterans Initiative hosted the Judge Advocate Generals Convening on October 19, 2015 to discuss legal issues currently impacting servicemembers. Participants included (from left to right): Former Acting Associate Attorney General Stuart F. Delery; Major General John R. Ewers Jr., U.S. Marine Corps; Attorney General Loretta E. Lynch; Mortimor C. Shea, Jr., U.S. Army; Vice Admiral James W. Crawford, III, U.S. Navy; Major General Dixie A. Morrow, U.S. Air Force; and Rear Admiral Steven D. Poulin, U.S. Coast Guard.

National Mortgage Settlement

On September 30, 2015, the Department announced that, under the SCRA portion of the 2012 National Mortgage Settlement ("NMS"), five of the nation's largest mortgage servicers¹⁰ will be paying \$311 million in compensation to a total of 2,413 servicemembers and their co-borrowers whose homes were unlawfully foreclosed on between January 1, 2006 and April 4, 2012. These amounts include compensation for both non-judicial foreclosures that were done without first getting approval from a court, and judicial foreclosures, where the mortgage servicer failed to file a proper affidavit with the court stating whether or not the servicemember was in military service.

¹⁰ The five mortgage servicers are JP Morgan Chase Bank N.A. (JP Morgan Chase); Wells Fargo Bank N.A. and Wells Fargo & Co. (Wells Fargo); Citi Residential Lending Inc., Citibank, NA and CitiMortgage Inc. (Citi); GMAC Mortgage, LLC, Ally Financial Inc. and Residential Capital LLC (GMAC Mortgage); and BAC Home Loans Servicing LP, formerly known as Countrywide Home Loans Servicing LP (Bank of America).

“While this compensation will provide some financial relief to more than 2,400 service members and their families, the fact is no one serving our country in the Armed Forces should ever have to worry about losing their home to an illegal foreclosure,” said former Acting Associate Attorney General Delery in announcing the payments.

	Non-Judicial		Judicial	
	Amount to be Distributed	Number of Servicemembers Eligible for Compensation	Amount to be Distributed	Number of Servicemembers Eligible for Compensation
Bank of America	\$35,369,756	286	\$63,686,567	490
Citi	\$14,880,578	126	\$24,146,544	197
GMAC Mortgage	\$13,720,588	113	\$11,516,002	89
JP Morgan Chase	\$32,488,293	188	\$27,424,558	204
Wells Fargo	\$28,290,790	239	\$59,484,334	481
TOTALS	\$124,750,005	952	\$186,258,005	1,461

Servicemembers who gave proper notice and military orders to the servicers, but were denied the full benefit of the SCRA’s 6% interest rate cap on pre-service mortgages, are also entitled to compensation under the NMS. Compensation for these violations has begun in 2016.

Helping Those Who Serve

Army Specialist Joshua Davis had just started his basic training when his car was repossessed in the middle of the night from outside his home in Casselberry, Florida. He contacted Army Legal Assistance. Specialist Davis's complaint made its way to DOJ, and the resulting investigation revealed evidence not only that the repossession of Specialist Davis's car was illegal, but that hundreds of other servicemembers had suffered similar illegal repossessions at the hands of the same lender. This led to a settlement with motor vehicle lender Santander Consumer USA, which agreed to pay more than \$9 million to over 1,000 servicemembers – the largest settlement for illegal automobile repossessions ever obtained by the United States. And it all started with a single servicemember's calling attention to conduct that was also affecting many of his peers.

###

In February 2016, the Department received an email from a servicemember in the U.S. Army who recently received money from the NMS. In that message, the servicemember wrote that the day he “packed up his tattered remains and moved out” of his home he had “built from the ground up” – a home he lost through foreclosure while in military service – was the worst day of his life. The servicemember went on to say that after receiving the settlement money, he felt as if the biggest burden of his life has been lifted, and he now knows that “behind the scenes there are representatives fighting just as hard for our rights here at home as the soldiers who travel the world trying to keep freedom a God-given right for all.”

###

We also recently received an email from an attorney in the Legal Assistance Office in the Office of the Staff Judge Advocate at Fort Polk, Louisiana. An Army soldier's spouse had come to the office bearing settlement paperwork that had been mailed to her under the NMS. Initially, both the spouse and the attorneys in the legal assistance office thought it was too good to be true; that the settlement paperwork was a scam and there was no way that this servicemember was, in fact, eligible to receive a six-figure payment. They were wrong. The settlement is very much real and is out there to compensate servicemembers for the wrongful, devastating loss of their homes. And what happened to this family? In the words of the Fort Polk attorney: “She came into the office about a month ago with a big smile on her face saying that she and her husband had received a check for over \$150,000. All of us here at the office were as excited as they were. If you could have seen us, you would have thought we all got a \$150,000 check.” This attorney added that the check “made a struggling young military couple very, very happy.”

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

When Principal Deputy Assistant Attorney General Gupta delivered the keynote address at the CRA & Fair Lending Colloquium in November 2015, she underscored the importance of using all the tools available to the Division to fight discrimination. Among those tools, she highlighted “the tool of partnerships with our sister agencies, including the Consumer Financial Protection Bureau, the Department of Housing and Urban Development, the Federal Trade Commission, U.S. Attorney’s Offices, state attorney generals and, of course, bank regulatory agencies. The close coordination and cooperation we enjoy with our federal and state partners enables us to expand our reach to root out and purge discriminatory lending practices.” Ms. Gupta also spoke about three of the Division’s most significant then-recent filings, the cases against Sallie Mae,¹¹ Hudson City Savings Bank, and American Honda Finance. All three cases were developed or filed in conjunction with the CFPB; the Sallie Mae case was developed with the cooperation of the CFPB, the FDIC and the Department of Education; and the Hudson City case was developed with the cooperation of the United States Attorney’s Office for the District of New Jersey.



“Our fair lending work is grounded in the simple, but powerful principle that all people deserve equal opportunity. In 2015 and beyond, the Division will continue to use all tools in our arsenal to vindicate this principle by ensuring that every eligible person has access to credit opportunities, free from discrimination. We will continue to hold financial institutions accountable for every practice that prevents this vision from becoming a reality.”

- Principal Deputy Assistant Attorney General, Vanita Gupta, delivering opening keynote address at the Community Reinvestment Act & Fair Lending Colloquium

The Division continues to participate 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 over the past several years in cases involving alleged race or national origin discrimination.

¹¹ As noted in last year’s report, in 2014 the Department filed its first SCRA lawsuit against servicers and owners of student loans in *United States v. Sallie Mae, Inc.* (D. Del.). The complaint alleged that Sallie Mae violated the SCRA when it failed to reduce to 6% the interest rates on pre-service loans held by approximately 60,000 servicemembers. The complaint also alleged that Sallie Mae violated the SCRA by obtaining improper default judgments against protected servicemembers.

As in prior years, Division representatives participated 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 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 2015, Division staff participated in 29 outreach events focused on our fair lending and SCRA enforcement. For the fifth year in a row, the Division and all other federal fair lending enforcement agencies participated in a webinar hosted by the FRB. The webinar enabled over 6,000 participants to hear about government-wide fair lending priorities. The Division will continue outreach efforts in 2016 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 2015, the bank regulatory agencies, the FTC and HUD referred a total of 182 matters involving a potential pattern or practice of lending discrimination to the Justice Department. Ninety-eight of those referrals involved race or national origin discrimination. In striking contrast, during the preceding six-year period, from 2003 through 2008, the Division received only 22 race and national origin discrimination referrals.

The Division received 17 referrals in 2015: eight from the CFPB, four from the FDIC, four from the FRB, and one from HUD.¹² The Division opened 11 investigations regarding referred matters. In addition, all eight lawsuits the Division filed in 2015 were based in part on referrals:

- Four of the lawsuits arose from joint investigations with and referrals from the CFPB:
 - *United States and CFPB v. Provident Funding Associates*
 - *United States v. American Honda Finance Corp.*
 - *United States v. Fifth Third Bank*, and
 - *CFPB and United States v. Hudson City Savings Bank*.
- Four others arose from referrals from the FDIC:
 - *United States v. First United Bank*
 - *United States v. Evergreen Bank Group*
 - *United States v. Eagle Bank & Trust Company of Missouri*, and
 - *United States v. Sage Bank*.

These cases, and the two filed in early 2016,¹³ are discussed earlier in this report.

¹² The HUD matter is not a mandatory referral under ECOA; nevertheless, we include it in this report as it involves discrimination in lending.

¹³ *United States v. Evolve Bank & Trust* and *United States v. Toyota Motor Credit Corp.*

As explained in prior reports, 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. 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 shortening our review time to 60 days starting with 2013 referrals. To date we have met and exceeded our goal resoundingly: from 2013 to 2015, we have met our new goal 100% of the time with an average time to decision of 35, 24, and 38 days, respectively.

Factors Considered By DOJ When Evaluating Referrals

In 1996, upon the recommendation of the General Accountability 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. The guidance is posted on the Division's website at <https://www.justice.gov/sites/default/files/crt/legacy/2014/03/05/regguide.pdf>.

Under this guidance, 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 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.

These factors are also applicable when DOJ has conducted an investigation and is making a decision whether the facts warrant a lawsuit.

2015 Referrals to DOJ

The 17 referrals in 2015 included the following types of alleged discrimination:

- 13 involving race or national origin;
- 3 involving source of income;
- 3 involving marital status;
- 1 involving sex;
- 1 involving age; and
- 1 involving familial status.¹⁴

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, including mark ups in the pricing of automobile loans, redlining, underwriting, overt policies that discriminate on the bases of marital status and receipt of public assistance income, and discrimination based on familial status.

As noted earlier, the Division opened 11 investigations based on the 17 referrals in 2015.¹⁵ Additionally, at the end of 2015, we continued to investigate nine referrals (including four in which we have authorized lawsuits) received in prior years: six from the CFPB, two from the FRB, and one from the FDIC.¹⁶ Seven of these nine ongoing investigations involve race and national origin discrimination.

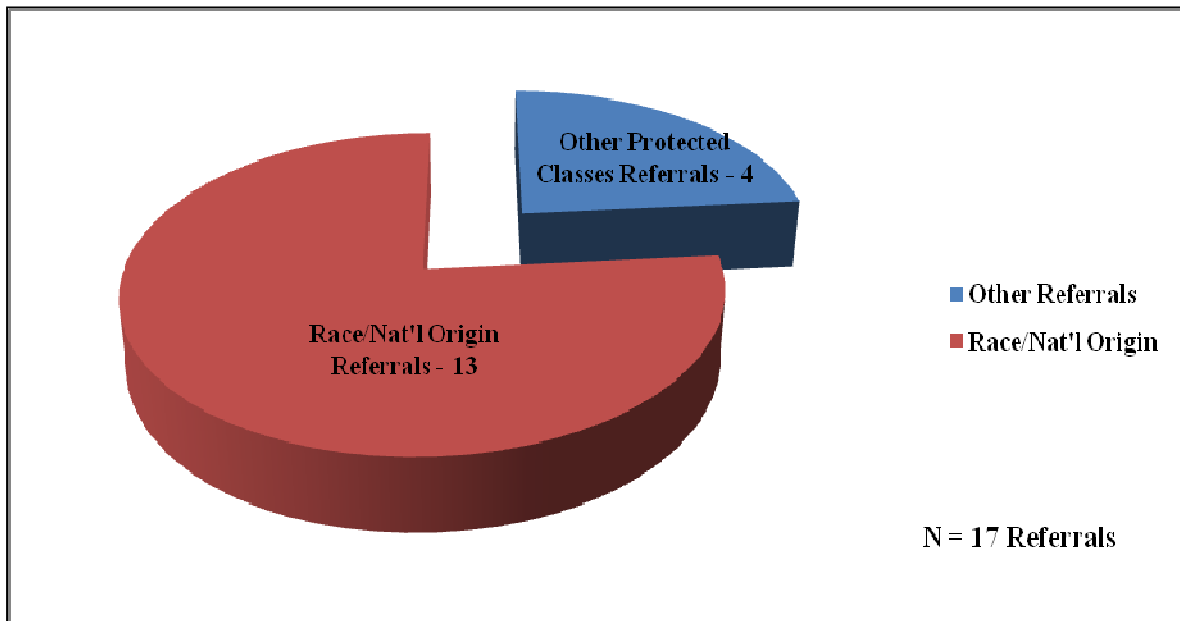
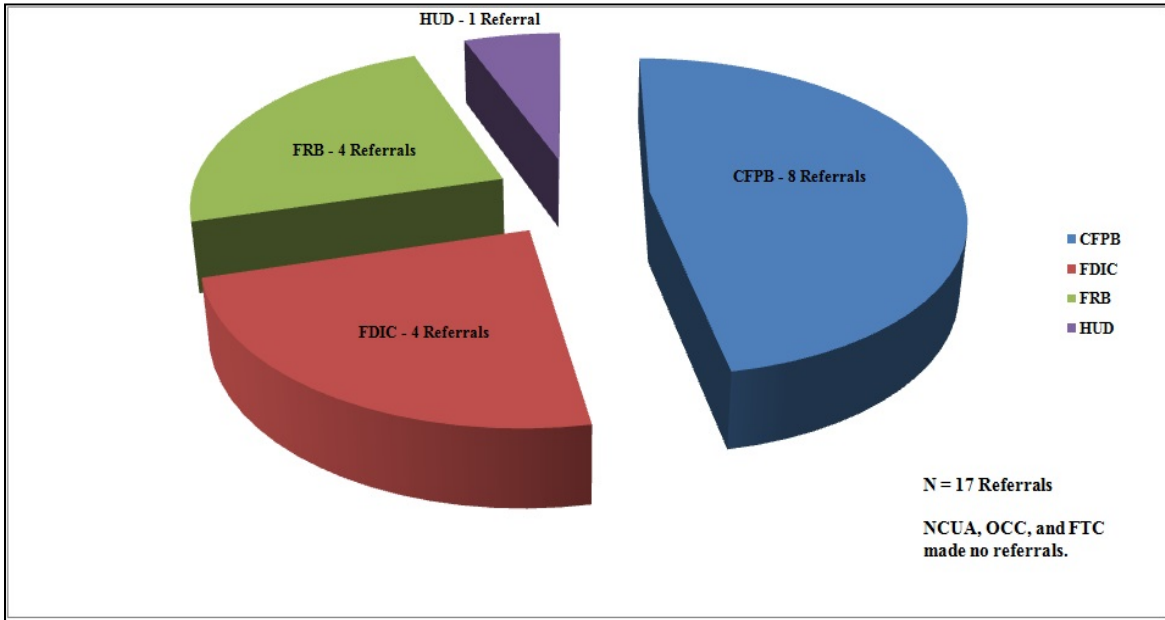
For six of the 17 referrals in 2015, we returned the matter to the referring agency for enforcement without opening an investigation, including in referrals where the referring agency specifically requested we defer to it for administrative enforcement. The referrals that were returned for administrative enforcement during 2015 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 2015, key factors for returning a referral to the referring agency included the factors referenced in the 1996 memorandum discussed earlier in this section: 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.

¹⁴ Several referrals involved multiple protected classes; therefore, the number of referrals by protected class categories totals more than 17.

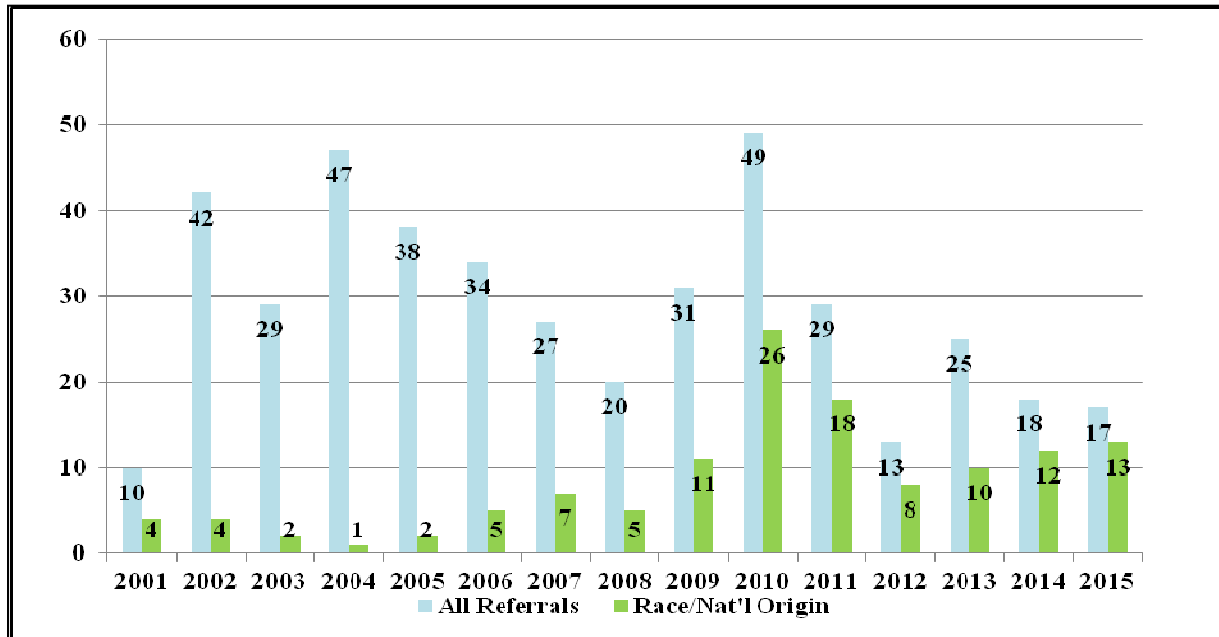
¹⁵ As explained elsewhere in this report, the Division has authority to enforce ECOA and the FHA on its own without a referral from another agency, and some of the 11 investigations had been opened prior to receipt of the referral on the same lender.

¹⁶ This includes two investigations that resulted in lawsuits filed in early 2016: *United States v. Evolve Bank & Trust* and *United States v. Toyota Motor Credit Corp.*

2015 Lending Referrals to DOJ by Agency & Protected Class





2001-2015 Fair Lending Referrals to DOJ








VI. LOOKING FORWARD

The Civil Rights Division will continue its long-standing commitment to robust fair lending enforcement in the years ahead. The Division will continue to investigate and take enforcement action to combat redlining and discrimination in the pricing of mortgages, auto loans, and consumer loans throughout the country. At the same time, the Division will investigate and address any new areas where lending discrimination may occur in the upcoming years. We strive to cover all aspects of credit transactions that touch the lives of consumers – from loans for major purchases, such as homes and automobiles, to smaller, but no less important credit transactions such as credit cards and unsecured personal loans. And in doing so, we intend to hold accountable all parties responsible for discriminatory lending. We also continue our commitment to enforce vigorously the rights of servicemembers who serve our nation so faithfully for all types of credit within our jurisdiction, including mortgages, auto loans, student loans, and credit cards.

Lending Discrimination Referrals by Other Agencies to DOJ

Bank regulatory agencies	2015 Referrals by Protected Class	2015 Referrals Resulting in DOJ Investigations	2015 Referrals Returned to Agency	Referrals Pending from Prior Years
<p>CFPB</p> 	<p><i>8 total</i></p> <p>5 race/national origin 1 race 1 race/national origin/source of income/marital status/age/sex 1 source of income</p>	<p><i>6 total</i></p> <p>4 race/national origin 1 race 1 race/national origin/source of income/marital status/age/sex</p> <p>Filed 2015 referral:</p> <p><i>CFPB and U.S. v. Hudson City Savings Bank</i></p>	<p><i>2 total</i></p> <p>1 race/national origin 1 source of income</p>	<p><i>9 total</i></p> <p><i>6 ongoing investigations</i></p> <p>5 race/national origin: pricing 1 source of income/sex/marital status/age: underwriting</p> <p>Filed:</p> <p><i>* U.S. and CFPB v. Provident Funding Associates</i> <i>* U.S. v. American Honda Finance Corporation</i> <i>* U.S. v. Fifth Third Bank</i></p>
<p>FDIC</p> 	<p><i>4 total</i></p> <p>1 race/national origin 2 national origin 1 marital status/source of income</p>	<p><i>3 total</i></p> <p>1 race/national origin 2 national origin</p>	<p><i>1 total</i></p> <p>1 marital status/source of income</p>	<p><i>5 total</i></p> <p><i>1 ongoing investigation</i></p> <p>1 national origin: pricing</p> <p>Filed:</p> <p><i>* U.S. v. First United Bank</i> <i>* U.S. v. Evergreen Bank Group</i> <i>* U.S. v. Eagle Bank and Trust Company of Missouri</i> <i>* U.S. v. Sage Bank</i></p>

Bank regulatory agencies	2015 Referrals by Protected Class	2015 Referrals Resulting in DOJ Investigations	2015 Referrals Returned to Agency	Referrals Pending from Prior Years
FRB 	<i>4 total</i> 1 race/national origin 2 national origin 1 marital status	<i>1 total</i> 1 race/national origin	<i>3 total</i> 2 national origin 1 marital status	<i>2 total</i> <i>2 ongoing investigations</i> 1 national origin: mortgage pricing 1 source of income: underwriting
NCUA 	0	0	0	0
OCC 	0	0	0	0

Other partners	2015 Referrals by Protected Class	2015 Referrals Resulting in DOJ Investigations	2015 Referrals Returned to Agency	Referrals Pending from Prior Years
FTC 	0	0	0	1 total Filed: * U.S. and CFPB v. Provident Funding Associates
HUD 	1 total 1 familial status	1 total 1 familial status	0	0

2001-2015 All Lending Discrimination Referrals by Other Agencies to DOJ

ALL REFERRALS	2015	2014	2013	2012	2011	2010	2009	2008	2007	2006	2005	2004	2003	2002	2001	Total
<i>Bank regulatory agencies</i>																
CFPB*	8	15	6	1	0	—	—	—	—	—	—	—	—	—	—	30
FDIC	4	3	11	8	14	33	21	12	15	29	35	42	29	33	5	294
FRB	4	0	6	2	7	6	6	3	9	5	2	3	0	6	1	60
NCUA	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
OTS*	—	—	—	—	4	6	4	4	3	0	0	1	0	0	1	23
OCC	0	0	1	1	1	2	0	1	0	0	0	0	0	1	3	10
<i>Other partners</i>																
HUD	1	0	1	1	1	2	0	0	0	0	1	1	0	2	0	10
FTC	0	0	0	0	2	—	—	—	—	—	—	—	—	—	—	2
Total	17	18	25	13	29	49	31	20	27	34	38	47	29	42	10	429

*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.

2001-2015 All Race/National Origin Lending Discrimination Referrals by Other Agencies to DOJ

Race/Nat'l Origin	2015	2014	2013	2012	2011	2010	2009	2008	2007	2006	2005	2004	2003	2002	2001	Total
<i>Bank regulatory agencies</i>																
CFPB*	7	10	2	0	0	—	—	—	—	—	—	—	—	—	—	19
FDIC	3	2	5	5	10	14	5	2	1	3	1	0	2	1	2	56
FRB	3	0	3	1	2	4	3	0	4	2	0	0	0	1	1	24
NCUA	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	0	0	0	1	1	2	0	0	0	0	0	0	0	0	0	4
<i>Other partners</i>																
HUD	0	0	0	1	0	2	0	0	0	0	1	1	0	2	0	7
FTC	0	0	0	0	2	—	—	—	—	—	—	—	—	—	—	2
Total	13	12	10	8	18	26	11	5	7	5	2	1	2	4	4	128

*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.