

**THE ATTORNEY GENERAL'S
2011 ANNUAL REPORT TO CONGRESS
PURSUANT TO THE
EQUAL CREDIT OPPORTUNITY ACT
AMENDMENTS OF 1976**



**Submitted by
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This report is submitted pursuant to Section 1691f of the Equal Credit Opportunity Act (ECOA), as amended, 15 U.S.C. § 1691, *et seq.*, regarding the activities of the Department of Justice (DOJ or the Department) under the statute, which is enforced by the Department's Civil Rights Division. This report covers the 2011 calendar year and includes information about all of the Division's fair lending work, including its activities under the Fair Housing Act (FHA), as amended, 42 U.S.C. § 3601 *et seq.*, and the Servicemembers Civil Relief Act (SCRA), as amended, 50 U.S.C. App. § 501 *et seq.*

I. INTRODUCTION

In the wake of the housing and foreclosure crisis, the President and the Attorney General have made fair lending enforcement a top priority. In early 2010, the Attorney General established a dedicated Fair Lending Unit in the Civil Rights Division's Housing and Civil Rights Enforcement Section. In 2011, the Division produced unprecedented results, filing a record eight lending-related federal lawsuits and obtaining eight settlements providing for more than \$350 million in relief to the victims of illegal lending practices. This

The Division has achieved extraordinary results. In the approximately 24 months since the Fair Lending Unit was established, the Division has either filed or resolved 16 lending matters. In the 16-year period from 1993 through 2008, the Division filed or resolved only 37 lending matters (25 in the period from 1993-2000 and 12 from 2001-2008), or a little more than 2 cases per year.

successful year of fair lending enforcement is the result of the Division's sustained efforts throughout 2009 and 2010 to prioritize fair lending enforcement and to strengthen its relationships with governmental and community partners across the country. Almost all of the Division's lending cases in 2011 involved collaborative work with other government agencies and other offices within the Department of Justice. Highlights from 2011 include:

- **Breaking New Ground with the Largest Fair Lending Case in DOJ History.** The Division filed and settled its largest fair lending lawsuit ever, obtaining \$335 million in monetary relief for more than 200,000 victims of discrimination. The Division's lawsuit against Countrywide Financial Corporation alleged that, for more than four years during the height of the mortgage boom, Countrywide systematically discriminated against qualified Hispanic and African-American borrowers in violation of ECOA and the FHA. The lawsuit alleged – for the first time ever by the Department – that the mortgage lender “steered” Hispanic and African-American borrowers by systematically placing them in subprime loans, while placing white borrowers with similar creditworthiness in prime loans.
- **Standing Up for Servicemembers against Wrongful Foreclosure.** The Division obtained more than \$20 million in financial compensation for victims in two cases involving alleged violations of the SCRA by servicers that foreclosed on active duty servicemembers without a court order. The Division also entered into an out-of-court

settlement with a major credit card lender to resolve claims that it charged active duty servicemembers interest in excess of six percent, in violation of their rights under the Act.

- **Fighting Discrimination against Women on Maternity Leave.** In its first-ever discrimination case involving sex and familial status discrimination in mortgage insurance, the Division sued the nation's largest mortgage insurance company and two of its underwriters for requiring women on paid maternity leave to return to work before the company would agree to insure their mortgages, in violation of the FHA.
- **Strengthening Partnerships with Other Agencies.** The Division continued to strengthen its relationships with the federal banking regulators, including the new Consumer Financial Protection Bureau, and also with the Department of Housing and Urban Development and the Federal Trade Commission. These agencies referred 109 matters to DOJ between 2009 and 2011. Nearly half of those referrals (55) involved race or national origin discrimination – more than the previous eight years combined.

No one case can rectify the multitude of unlawful practices in the housing and lending market that contributed to the nationwide housing and foreclosure crisis, but the Division's fair lending work represents an important piece of the Department's comprehensive efforts to address it. As the 2011 enforcement record illustrates, the Division's Fair Lending Unit uses every possible tool to address the range of abuses seen in the market, in both mortgage and non-mortgage lending.

The Division anticipates another strong year in 2012, as it continues working with a wide range of partners to investigate, litigate, and resolve cases involving important issues of fair and equal access to credit. This year the Division already has filed settlements under the Servicemembers Civil Relief Act with the nation's five largest servicers. In addition, six additional lawsuits – five lending discrimination and one servicemember lending case – have been authorized and are in various stages of pre-suit negotiations.

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, and the Division's Fair Lending Unit focuses on the range of abuses seen in the market, from traditional access to credit issues such as redlining, to emerging issues involving pricing

discrimination, steering, reverse redlining, and mortgage insurance discrimination. The Fair Lending Unit also investigates abuses in non-mortgage lending, including discrimination involved in unsecured consumer loans, auto loans, student loans, business loans, and credit card products. Cases and investigations brought by the Fair Lending Unit in 2011 are described in detail below.

In addition to these cases, in 2011 the Division's Disability Rights Section reached a settlement agreement under Title III of the Americans with Disabilities Act with Wells Fargo & Company to ensure equal access for individuals with disabilities to Wells Fargo's services nationwide, including its nearly 10,000 retail banking, brokerage and mortgage stores, over 12,000 ATMs, and its telephone and website services. Wells Fargo also agreed to pay up to \$16 million to compensate aggrieved individuals.

Landmark Fair Lending Case: *United States v. Countrywide*

On December 21, 2011, the Division filed and settled, for \$335 million in monetary relief for victims of discrimination, its largest fair lending lawsuit ever. The complaint in *United States v.*

Countrywide Financial Corporation, et al. (C.D. Cal.), alleged discrimination in residential mortgage lending on the basis of race, national origin, and marital status by Countrywide Financial Corporation and its subsidiaries Countrywide Home Loans and Countrywide Bank.

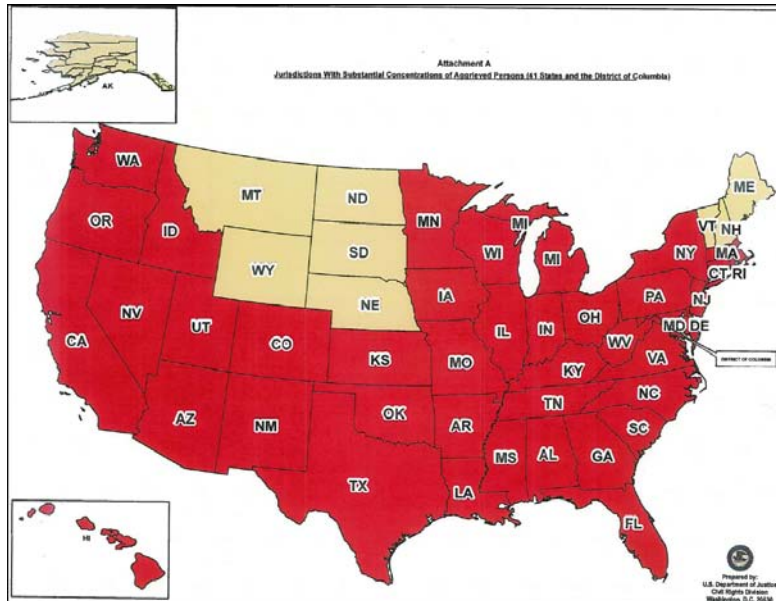
The Division alleged that Countrywide's systemic discrimination violated both ECOA and the FHA, and that it persisted from 2004 to 2008, when Countrywide was the largest residential mortgage lender in the

country. The Division alleged that Countrywide discriminated against more than 12,000 qualified Hispanic and African-American wholesale borrowers across the country by systematically placing those borrowers into subprime loans, while placing non-Hispanic white borrowers with similar creditworthiness into prime loans. As a result of being placed in the more expensive subprime loans, thousands of Hispanic and African-American borrowers were exposed to greater risk of default and foreclosure. This marks the first time that DOJ has obtained relief for qualified borrowers who were steered into subprime loans based on race or national origin. The Division also alleged that Countrywide discriminated against more than



Attorney General Holder speaks at the December 21, 2011, press conference announcing the *Countrywide* settlement. He is joined by Department of Housing and Urban Development Secretary Shaun Donovan, U.S. Attorney for the Central District of California André Birotte Jr., and Federal Reserve Governor Sarah Bloom Raskin.

200,000 Hispanic and African-American borrowers by systematically charging higher discretionary fees and markups to those borrowers than to white borrowers, and that it discriminated on the basis of marital status by encouraging non-applicant spouses to forfeit their property rights when their spouse obtained a Countrywide loan.



This map shows in red the jurisdictions -- 41 States and the District of Columbia -- with substantial concentrations of aggrieved persons in the *Countrywide* case.

The \$335 million settlement fund will be distributed to victims of Countrywide's discrimination by an independent settlement administrator, after the Department determines the appropriate allocation of damages. The consent order, which was entered on December 28, 2011, also requires that if Countrywide reenters the business of home mortgage lending, it must adopt fair lending policies and procedures that will be subject to review by the Division.

The *Countrywide* case resulted from referrals by two federal partner agencies – the Board of

Governors of the Federal Reserve System and the Office of Thrift Supervision. The Division also worked collaboratively on this matter with an important state partner – the Illinois Attorney General's Office.

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

The Division filed and resolved two additional pricing discrimination cases in 2011, both against smaller lending institutions.

Pricing Discrimination Against Hispanic Borrowers in Unsecured Consumer Loans. In *United States v. Nixon State Bank* (W.D. Tex.), the Division alleged that the bank charged higher prices on unsecured consumer loans made to Hispanic borrowers than to non-Hispanic borrowers because of their national origin. The consent order, entered on June 21, 2011, requires Nixon to revise its new uniform rate matrices for pricing unsecured consumer and other loans offered by the bank to ensure that the price charged for its loans is set in a non-discriminatory manner. The settlement also requires the bank to pay nearly \$100,000 to Hispanic victims of discrimination; to monitor its loans for potential disparities based on national origin; and to provide equal credit opportunity training to its employees. This case was referred by the Federal Deposit Insurance

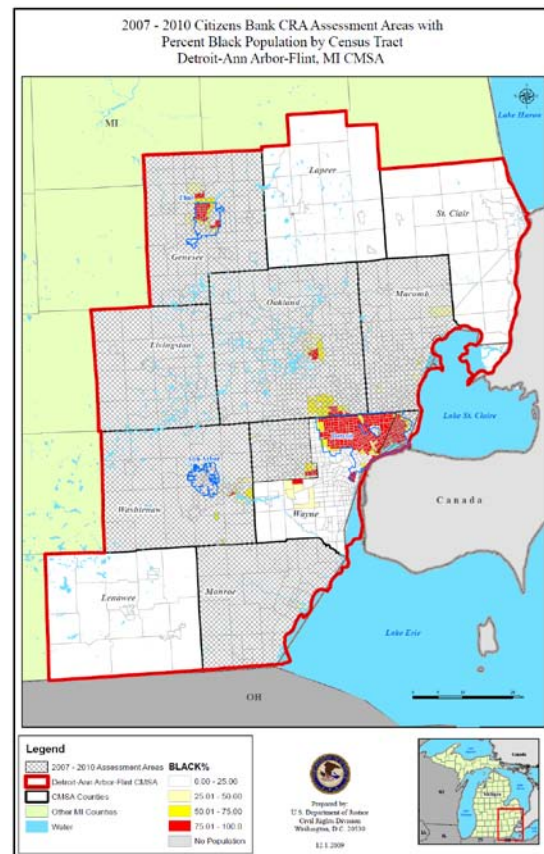
Corporation under ECOA and was the Department's first pricing discrimination case involving unsecured consumer loans in more than 10 years.

Pricing Discrimination Against Minority Borrowers in Home Mortgage Loans. In *United States v. C&F Mortgage Corporation* (E.D. Va.), the Division challenged C&F's policy of giving its employees wide discretion in setting interest rate markups (overages) and discounts (underages) on home mortgage loans, without establishing objective guidelines. The Division alleged that the policy had a disparate impact on African-American and Hispanic borrowers, who paid more for their mortgage loans than comparable white borrowers, in violation of ECOA and the FHA. The consent order, entered on October 4, 2011, requires C&F to pay \$140,000 to African-American and Hispanic victims of discrimination; to implement and maintain newly developed uniform policies for all aspects of its loan pricing; and to phase out the practice of charging overages to home mortgage borrowers. This case was referred by the Federal Deposit Insurance Corporation under ECOA and the FHA.

Redlining: Failing to Provide Services to Residents of Minority Neighborhoods on an Equal Basis as White Neighborhoods

The Division in 2011 also brought two cases alleging redlining in majority-minority areas of two Midwestern cities. In a redlining case, a lender does not provide its lending services on an equal basis in a neighborhood because of the race, color, or national origin of the people who live in the neighborhood, thereby denying residents of those communities equal access to residential, consumer, or small business credit.

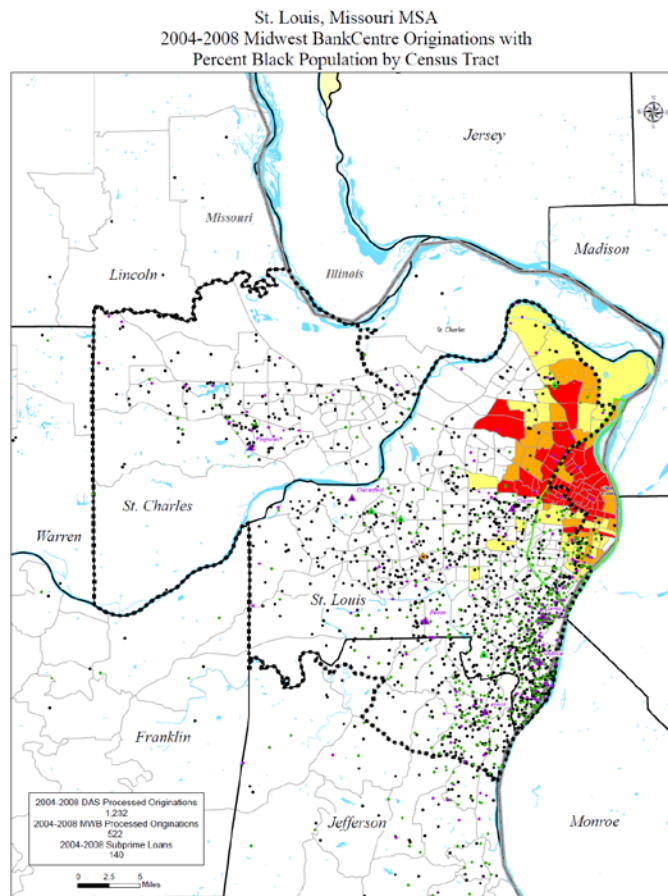
Redlining in Detroit. In *United States v. Citizens Republic Bancorp, Inc.* (E.D. Mich.), the Division alleged that Citizens Republic Bancorp, Inc. (CRBC), as the successor to Republic Bank, and Citizens Bank failed to provide home mortgage lending services to the residents of majority African-American neighborhoods on an equal basis as those services were provided to residents of predominantly white neighborhoods in the Detroit metropolitan area. The Division obtained a settlement agreement on June 23, 2011, requiring CRBC and Citizens Bank to open a loan production office in an African-American neighborhood in the City of Detroit and to hire two community lenders there. It also requires CRBC to invest in the formerly redlined majority African-American areas of Wayne County by



This map shows the area Citizens Bank identified for determining whether it was serving its community under the Community Reinvestment Act, so that it could avoid serving the predominantly African-American neighborhoods in Wayne County.

providing \$1.5 million in a special financing program to increase the amount of credit the bank extends in those areas; by partnering with the City of Detroit to provide \$1.625 million in matching grants of up to \$5,000 to existing homeowners for exterior improvements; and by spending \$500,000 for advertising, marketing, and consumer financial education targeted to those areas. This case, brought under ECOA and the FHA, was referred by the Board of Governors of the Federal Reserve System.

Redlining in St. Louis. In *United States v. Midwest BankCentre* (E.D. Mo.), the Division alleged that the bank failed to provide its home mortgage lending services to residents of majority African-American neighborhoods on an equal basis as it provided those services to residents of predominantly white neighborhoods in the Missouri portion of the St. Louis metropolitan area. Pursuant to the settlement agreement, entered on June 28, 2011, Midwest will open a full-service branch in an African-American neighborhood and invest in the formerly redlined areas of St. Louis by providing \$900,000 in a special financing program to increase the amount of credit the bank extends in those areas; by spending \$300,000 for consumer education and credit repair programs; and by spending \$250,000 for outreach to potential customers and promotion of their products and services. The case was brought under ECOA and the FHA and was originally brought to the Department's attention by the Metropolitan St. Louis Equal Housing Opportunities Council and referred by the Board of Governors of the Federal Reserve System.



The dots on this map shows loans made by Midwest from 2004-2008. Areas with higher percentages of African-American population are shaded, with red indicating the highest. The map illustrates the lack of loans by Midwest in majority African-American neighborhoods.

Discrimination against Women on Paid Maternity Leave

In *United States v. Mortgage Guaranty Insurance Corp.* (W.D. Pa.), the Division made history when it sued the nation's largest mortgage insurance company and two of its underwriters for discrimination on the basis of sex and familial status when they required women on paid maternity leave to return to work before the company would agree to insure their mortgages. The case was referred by the Department of Housing and Urban Development under the FHA

after it received and investigated a complaint from a homeowner. The case was filed on July 5, 2011, and is currently in litigation.

Discrimination in Auto Lending

The Division continues its litigation in an auto lending case previously described in the Attorney General's 2009 and 2010 ECOA reports. The Division's complaint in *United States v. Union Auto Sales, et al.* (C.D. Cal.) asserted a disparate-impact discrimination claim under ECOA. The district court dismissed the complaint as insufficient under two recent Supreme Court cases – *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007) and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009). The Division has appealed the case to the Ninth Circuit Court of Appeals, which heard oral argument on February 10, 2012. The decision should clarify the proper legal standard for evaluating lending discrimination complaints filed in court.

Pending Discrimination Investigations

In addition to the cases described above, the Division ended the year with 30 open fair lending investigations and five authorized lawsuits. These enforcement efforts continue to focus on the following forms of lending discrimination:

- Discrimination in the underwriting or pricing of loans, such as discretionary markups and fees;
- Redlining through the failure to provide equal lending services to minority neighborhoods or reverse redlining through the targeting of minority communities for predatory loans;
- Steering qualified minority borrowers into less favorable loans; and
- Marital status, sex, and age discrimination in lending.

For the first time in its history, the Department in 2011 brought a case under the FHA to address discrimination against women on paid maternity leave who were prevented from refinancing their mortgages. The Fair Lending Unit continues to investigate allegations of sex discrimination and discrimination based on familial status.

Of the 30 pending investigations, 21 were opened in 2011, including:

- Fourteen pricing discrimination investigations (12 based on referrals), including two opened pursuant to DOJ's independent pattern-or-practice authority to determine whether lenders adversely considered the fact that borrowers resided on an Indian reservation when underwriting or pricing auto loans;
- Three redlining investigations (one based on a referral);

- One investigation of allegations that a bank marketed its lending services in a manner that discriminates based on national origin (based on a referral);
- One reverse redlining investigation, which the Division is conducting jointly with a state attorney general, to determine whether a “buy here, pay here” car dealership targeted African-American used auto purchasers with abusive lending practices;
- One reverse redlining and steering investigation into whether African-American and Hispanic borrowers were being steered into abusive loan products; and
- One underwriting investigation (based on a referral), into whether a major lender’s maternity leave policy discriminated against women.

The investigations based on referrals are detailed in the charts immediately following Section VII of this report.

The Division expects that in 2012, many of these pending investigations, particularly those in which lawsuits have been authorized, will likely result in contested litigation or settlements.

III. SERVICEMEMBERS’ LENDING ENFORCEMENT



Assistant Attorney General Thomas E. Perez speaks to soldiers at Fort Knox last Fall. (Photo courtesy of Fort Knox Garrison Public Affairs.)

“We will continue to aggressively enforce the law to protect all homeowners from unlawful lending practices, and to protect the rights of servicemembers who put their lives on the line on our behalf. They have our backs, and they need to know that we have theirs.”

-Assistant Attorney General Thomas E. Perez
at Fort Knox

The Civil Rights Division enforces several laws designed to protect the rights of members of the military, including the 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 is (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, and (2) the right for a servicemember to have his or her interest rate lowered to six percent on debt that was acquired before entering military service.

Enforcing these rights is a priority of the Division. Members of the military who have made

great personal sacrifices on behalf of this country should not be required to transition to civilian life only to find their credit ruined and their homes sold off because of their willingness to serve in the armed forces.

Wrongful Foreclosure Cases

On May 26, 2011, the Division filed and resolved two SCRA wrongful foreclosure cases, including a case against Bank of America – the largest SCRA case in DOJ history.

Bank of America Case. In *United States v. BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, LP* (C.D. Cal.), the Division alleged that the mortgage servicer (a Bank of America subsidiary) foreclosed without court orders on the pre-service residential mortgages of individuals who were in military service or were otherwise protected by the SCRA in states that allowed for non-judicial foreclosure, and that the bank failed to check consistently for the military status of borrowers prior to foreclosure.

Under the consent order, entered on May 31, 2011, Bank of America is in the process of paying \$20 million to 157 servicemembers who were illegally foreclosed on between 2006 and the middle of 2009, with each servicemember receiving a minimum of \$116,785 plus compensation for any equity lost due to the bank’s alleged violation of the SCRA. The consent order also requires Bank of America to compensate any additional victims wrongfully foreclosed on from mid-2009 through December 31, 2010, at the same level as the already-identified victims. In addition, Bank of America will not pursue any remaining amounts owing under the mortgages; will take steps to remedy negative credit reporting directly resulting from the foreclosures of affected servicemembers’ loans; and will implement enhanced measures including monitoring, training, and checking loans against the Defense Department’s Defense Manpower Data Center’s database during the foreclosure process. Finally, Bank of America must perform an audit of its compliance with the provision of the SCRA limiting the interest rate to six percent on mortgages.

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

The Department secured more than \$22 million in relief for the 175 servicemembers whose homes were illegally foreclosed on by a Bank of America subsidiary or Saxon Mortgage Services.

Saxon Case. In *United States v. Saxon Mortgage Services, Inc.* (N.D. Tex), the Division alleged that Saxon foreclosed without court orders on the pre-service residential mortgages of individuals who were protected by the SCRA, and that Saxon consistently failed to check the military status of borrowers prior to foreclosure. Under the consent order, Saxon agreed to pay \$2.35 million to 18 servicemembers on whose mortgages were unlawfully foreclosed. Each victim will receive

\$130,356 in monetary damages. The consent order also requires Saxon to compensate any additional servicemembers foreclosed on from mid-2009 through December 31, 2010. In addition, Saxon will not pursue any remaining amounts owed under the mortgages; will take steps to remedy negative credit reporting directly resulting from the foreclosures of affected servicemembers' loans; and will implement enhanced measures including monitoring, training, and checking loans against the Defense Manpower Data Center's database during the foreclosure process. The Division initiated this case in response to an inquiry from counsel for Sergeant James Hurley of the United States Army, who resolved his claims against Saxon earlier in 2011 in a confidential settlement.

Charging Interest in Excess of Six Percent

In 2011, the Division also resolved the United States' claims that Bank of America violated the SCRA by failing to lower the interest rate on servicemembers' credit card loans to six percent, or to maintain the reduced interest rate through the entire period of military service, after those servicemembers sent in military orders and requested a reduction in the interest rate. On May 26, 2011, the same day the Division resolved the wrongful foreclosure claims, the Division executed a memorandum of agreement with the bank requiring that it provide \$86,023 to compensate nine servicemembers who appeared to have been charged interest in excess of six percent on their credit card loans. The Bank will also make changes to its policies and procedures to ensure future compliance with the SCRA's six-percent rule, including training employees, verifying active duty information with the Defense Manpower Data Center's database before raising a servicemember's credit card interest rate, and designating a call-in telephone number for servicemembers with questions about SCRA benefits.

2012 Settlements

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



The vast majority of all foreclosures against servicemembers will soon be subject to court ordered review. (Photo courtesy of defenseimagery.mil).

Foreclosure victims identified through these reviews by the nation's five largest mortgage servicers will be compensated a minimum of \$116,785 each plus any lost equity with interest, and victims of violations of the SCRA six-percent rule identified through these reviews will be compensated by the amount wrongfully charged in excess of six percent, plus triple the amount refunded, or \$500, whichever is larger.¹ These agreements were incorporated into an historic mortgage servicer settlement between the United States and 49 state attorneys general and these five servicers, which 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 settlement.

IV. COLLABORATION WITH FEDERAL AND STATE PARTNERS

The Division's ability to bring a record number of enforcement actions is a direct result of close collaboration with federal and state partners. Almost all of the Division's lending discrimination cases in 2011 involved collaborative work with other government agencies and other offices within the Department, including the U.S. Attorneys' offices. For example, the Division opened a joint investigation with the Department of Housing and Urban Development on a pricing discrimination matter that was originally referred by the Federal Deposit Insurance Corporation. In addition, several joint or parallel investigations that originated in prior years remained ongoing in 2011.

The Division's collaborative work was bolstered in July 2011 by the addition of the Consumer Financial Protection Bureau (CFPB). The CFPB is a critical partner, which has supervisory and enforcement authority under ECOA over all banking institutions with assets of more than \$10 billion, as well as certain non-bank lenders. In addition, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 granted rulemaking authority under ECOA to the CFPB.



Much of the Division's enforcement is done through the President's Financial Fraud Enforcement Task Force, particularly its Non-Discrimination Working Group, which is co-chaired by the Assistant Attorney General for Civil Rights. The Task Force, led by Attorney General Holder, was designed to wage an aggressive, coordinated, and proactive effort to investigate and prosecute illegal financial activity. The Task Force includes representatives from the highest levels at the Department, federal law enforcement agencies, regulatory authorities, inspectors general, state attorneys general, and local law enforcement who, working together,

¹ To ensure consistency with an earlier settlement, JP Morgan Chase will provide any servicemember who was a victim of a wrongful foreclosure as a result of a violation of the SCRA either (1) his or her home free and clear of any debt plus compensation for additional harm, or (2) the cash equivalent of the full value the home at the time of sale plus compensation for additional harm. In addition, JP Morgan Chase had already agreed to compensate servicemembers charged interest in excess of six percent on their mortgage through the private settlement approved by the District of South Carolina on January 10, 2012.

identify synergies between mortgage fraud and lending discrimination enforcement activities in order to increase effective enforcement in both areas. The Division also 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 below, much of that work has resulted in a steady increase of referrals from those agencies, particularly referrals of matters involving race or national origin discrimination.

The Division is also working closely with state attorneys general. The *Countrywide* case was

In *USAA Federal Savings Bank v. Pennsylvania Human Rights Commission*, the Division argued that a state agency certified by the Department of Housing and Urban Development to enforce a state fair housing law substantially equivalent to the FHA is authorized under the FHA to investigate a lending discrimination complaint.

done in coordination with the Illinois Attorney General's office and two of the Division's current active investigations are collaborations with state attorneys general. In its friend-of-the-court brief in *USAA Federal Savings Bank v. Pennsylvania Human Rights Commission* (E.D. Pa.), the Division stated the importance of state fair lending enforcement by arguing that federal banking law does not preempt state agencies enforcing state fair housing laws from investigating a complaint of lending discrimination by a federally chartered bank.

Finally, Division representatives, led by the Assistant Attorney General, participated in 2011 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 will continue these efforts in 2012 in order to strengthen and improve its enforcement of fair lending protections.

V. LENDING DISCRIMINATION REFERRALS FROM OTHER FEDERAL AGENCIES

Under ECOA, the bank regulatory agencies and the CFPB are required to refer matters to the Department when they have reason to believe a lender has engaged in a pattern or practice of discrimination. Referrals are also made under ECOA by the FTC, and under the FHA by HUD. In the past three years, the Division has received

Many Partners, Many Acronyms

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

an unprecedented number of referrals from our federal partners. From 2009-2011, the bank regulatory agencies, the FTC, and HUD referred to DOJ a total of 109 matters involving a potential pattern or practice of lending discrimination. Fifty-five of the 109 matters involved

race or national origin discrimination, a combined total that is far higher than the 30 race and national origin discrimination referrals the Division received from 2001-2008. All six of the lending (or mortgage insurance) discrimination cases filed by the Division in 2011 and described in Section II were the subject of referrals from the federal bank regulatory agencies or HUD.

When the Division receives a referral, it must determine whether to file a lawsuit in federal court or return the matter to the regulator for administrative enforcement. Shortly after the creation of the new Fair Lending Unit two years ago, 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 within 90 days of receiving a complete referral either to defer for administrative enforcement or open a DOJ investigation for further review. In 2011, the Division met this internal goal for all but one referral, for which an initial decision was made in 92 days. It was a priority for the Division to evaluate referrals as quickly as possible: the average time required for the initial decision to defer or open an investigation upon referral in 2011 was 50 days.

In 2011, the average time the Division required to make an initial decision to defer or open an investigation based on a referral was 50 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.

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

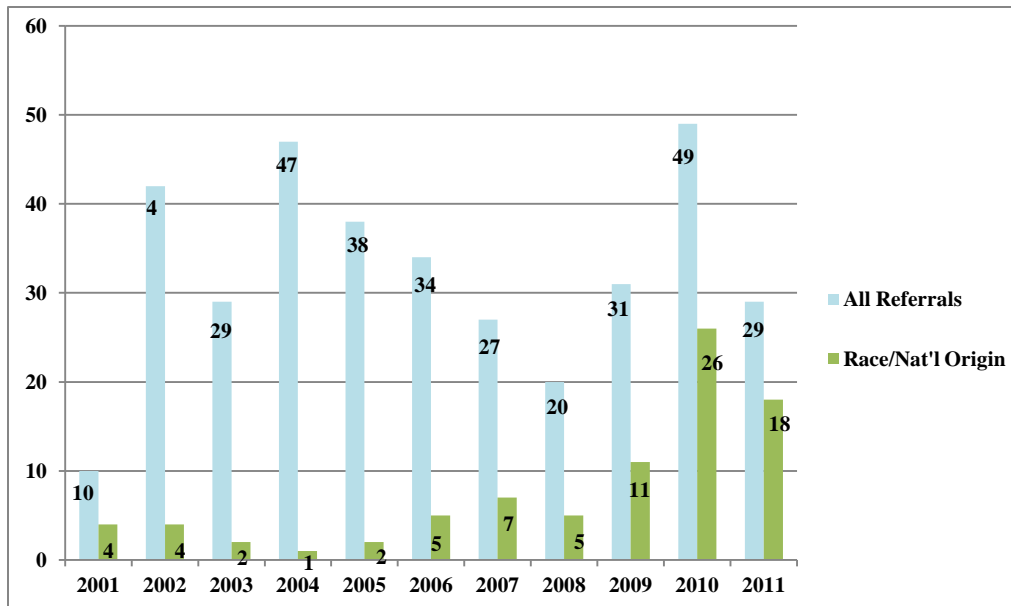
- The practice has ceased and there is little chance that it will be repeated;
- The violation may have been accidental or arose from ignorance of the law's more technical requirements, such as spousal signature violations and minor price breaks for certain age groups not entitled to preferential treatment; and
- There either were few potential victims or *de minimis* harm to any potential victims.

Referrals that would likely be considered for litigation by the Department are referrals that do not meet the criteria set forth above, and have one or more of the following characteristics:

- The practice is serious in terms of its potential for either financial or emotional harm to members of protected classes (for example, discrimination in underwriting, pricing, or provision of lender services);
- The practice is not likely to cease without court action;

- The protected class members harmed by the practice cannot be fully compensated without court action;
- Damages for victims, beyond out-of-pocket losses, are necessary to deter the lender (or others like it) from treating the cost of detection as a cost of doing business; or
- The agency believes the practice to be sufficiently common in the lending industry, or raises an important issue, so as to require action to deter lenders.

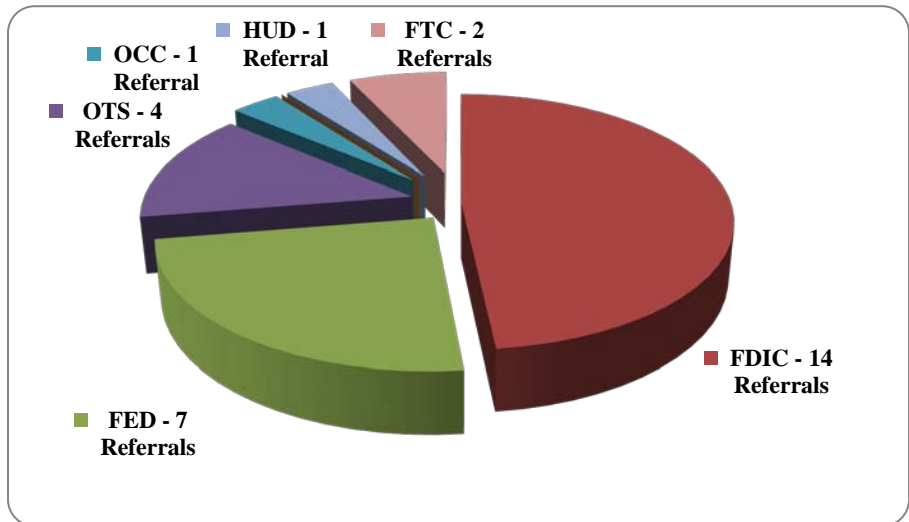
2001-2011 Lending Discrimination Referrals to DOJ



This bar chart compares all referrals with referrals involving race or national origin discrimination from 2001 to 2011. More information can be found in the last chart following Section VII of this report.

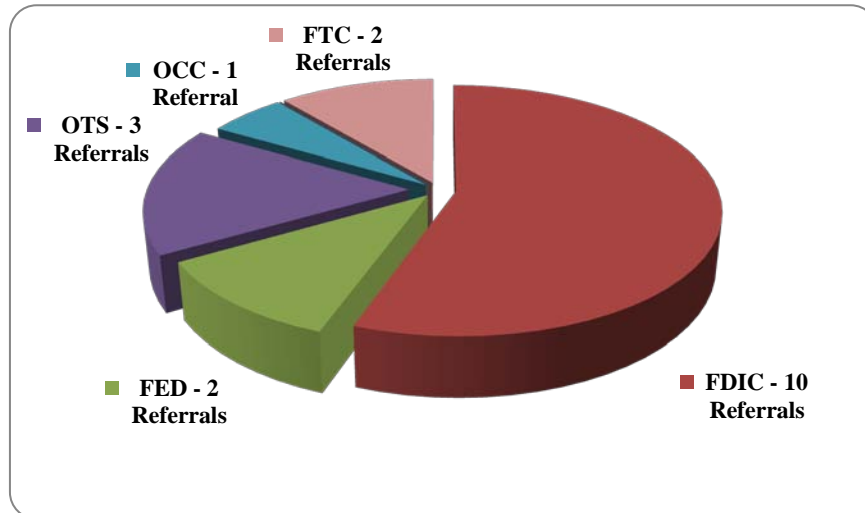
2011 Lending Discrimination Referrals to DOJ

In 2011, DOJ received 29 fair lending referrals involving potential lending discrimination claims from the bank regulatory agencies and HUD. Referrals were made by all agencies except the CFPB, which did not have the authority to examine the depository institutions under its supervision until July 21, 2011, and the NCUA.



This pie chart shows the number of referrals made by each agency in 2011.

For the second year in a row, more than one-half of these referrals (18) involved discrimination based on race or national origin.



This pie chart shows the number of referrals involving race or national origin discrimination made by each agency in 2011.

Overall, the 2011 referrals included the following types of alleged discrimination:

- 18 involving race or national origin;
- 5 involving marital status;
- 4 involving age;
- 4 involving sex;
- 1 involving source of income;
- 1 involving disability; and
- 1 involving familial status.²

As set forth in charts immediately following Section VII of this report, the 2011 referrals involved a wide range of discriminatory conduct and various types of credit. The most common issue in these referrals continues to be pricing discrimination based on race or national origin. In 2011, the Division received a notable number of pricing discrimination referrals involving non-mortgage loans, including three referrals involving unsecured consumer loan pricing discrimination from the FDIC, one involving student loan pricing discrimination from the FDIC, and one involving auto loan pricing discrimination from the FRB. In addition, one referral from the FDIC and one from the OTS involved pricing discrimination in consumer loans based on sex. The Division also received in 2011 its first referral involving discrimination against female borrowers in the mortgage underwriting process, from the FRB.³

² Several referrals involved multiple protected classes; therefore, the number of referrals by protected class categories totals more than 29.

³ As discussed above, we also received a case from HUD involving discrimination in mortgage insurance against female borrowers on maternity leave that was referred as an election case under the FHA.

At the end of 2011, the Division continued to investigate 11 referrals received in prior years: three each from the FDIC and the Fed, two each from the OTS and the OCC, and one from HUD. Ten of these ongoing investigations involved race and national origin discrimination and one involved discrimination based on sex.

The Division returned 18 of the 2011 referrals to the referring agency for administrative enforcement. For each of the referrals returned to the agencies, the Division evaluated the facts and circumstances of the matter in light of the factors described above. Key factors for returning a referral to the bank agency during 2011 included: the nature of the violation; whether the bank had revised the relevant lending policies and practices; whether the bank had taken, or expressed willingness to take, appropriate corrective action for any persons who were aggrieved by the discriminatory policy; and the number of and magnitude of any damages for potential victims.

VI. RECOMMENDATIONS FOR LEGISLATIVE ACTION

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



- Grant civil investigative demand authority to the Attorney General to compel the production of existing documents in investigations under the SCRA, FHA, and ECOA;
- Double the amount of civil penalties currently available under the SCRA and the FHA;
- Codify the rule that a party seeking a default judgment against a servicemember must check Department of Defense records to determine whether the servicemember is in active duty, including in non-judicial foreclosures; and
- Clarify retroactive application of provisions establishing a private right of action and authority of the Attorney General to enforce the SCRA.

The Department urges Congress to act on these proposals.

VII. LOOKING FORWARD

Based on the groundwork laid in 2009-2010, the Department of Justice Civil Rights Division produced a successful year of fair lending enforcement in 2011. Enhanced collaborative relationships with the Division's federal, state and community partners produced a record number of lawsuits filed, including landmark cases in the areas of mortgage lending discrimination and servicemembers' rights. The flow of referrals from the other agencies and ongoing outreach should produce continued growth in the Division's ability to enforce fair lending laws and to combat lending discrimination.





Assistant Attorney General Thomas E. Perez speaks at the Attorney General's press conference on December 21, 2011, announcing the Department's unprecedented settlement with Countrywide.





"We are using every tool in our law enforcement arsenal, including some that were dormant for years, to go after institutions of all sizes that discriminated against families solely because of their race or national origin."

-Assistant Attorney General
Thomas E. Perez

In the coming year, the Division will continue its efforts to provide justice to those families who were harmed by discriminatory conduct during the mortgage boom and to hold lenders responsible for their actions. The Division also will focus on the challenges in the current market, including access to mortgage credit on fair and non-discriminatory terms, discrimination in auto lending, and discrimination in student lending. In short, the Division will continue to seek to ensure that all Americans have equal access to credit and to the opportunity to achieve the American dream.

Lending Discrimination Referrals by Other Agencies to DOJ

Agency	2011 Referrals by Protected Class	2011 Referrals Resulting in Ongoing DOJ Investigations	2011 Referrals Returned to Agency	Referrals Pending from Prior Years
<p align="center">FDIC</p> 	<p><i>14 Total</i></p> <ul style="list-style-type: none"> 10 - race/national origin 2 - age 1 - marital status 1 - sex 	<p><i>6 Total</i></p> <ul style="list-style-type: none"> 5 - race/national origin <ul style="list-style-type: none"> ➤ 2 pricing of unsecured loans ➤ redlining ➤ marketing ➤ student loan pricing 1 - sex <ul style="list-style-type: none"> ➤ unsecured consumer loan pricing 	<p><i>8 Total (includes 2 referrals returned in early 2012)</i></p> <ul style="list-style-type: none"> 5 - race/ national origin <ul style="list-style-type: none"> ➤ mortgage pricing ➤ unsecured consumer loan pricing 2 - age <ul style="list-style-type: none"> ➤ credit card underwriting 1 - marital status <ul style="list-style-type: none"> ➤ refund anticipation loan underwriting 	<p><i>12 Total</i></p> <p><u>2 filed lawsuits</u></p> <ul style="list-style-type: none"> 1 - race/national origin mortgage pricing (<i>United States v. C&F Mortgage Corp.</i>) 1 - national origin unsecured consumer loan pricing (<i>United States v. Nixon State Bank</i>) <p><u>3 ongoing investigations</u></p> <ul style="list-style-type: none"> 2 - race/national origin <ul style="list-style-type: none"> ➤ unsecured consumer loan pricing ➤ mortgage steering & pricing 1 - sex <ul style="list-style-type: none"> ➤ unsecured consumer loan pricing <p><u>7 returned to agency</u></p> <ul style="list-style-type: none"> ➤ 5 - race/national origin ➤ 1 - sex ➤ 1 - age & sex
<p align="center">FRB</p> 	<p><i>7 Total</i></p> <ul style="list-style-type: none"> 2 - race/national origin 2 - marital status 1 - age & marital status 1 - sex & marital status 1 - sex & familial status 	<p><i>1 Total</i></p> <ul style="list-style-type: none"> 1 – sex & familial status <ul style="list-style-type: none"> ➤ mortgage underwriting 	<p><i>6 Total (includes 1 referral that was investigated)</i></p> <ul style="list-style-type: none"> 2 –race/national origin <ul style="list-style-type: none"> ➤ mortgage pricing ➤ automobile pricing 2 - marital status <ul style="list-style-type: none"> ➤ spousal signatures 1 - age & marital status <ul style="list-style-type: none"> ➤ underwriting/consumer loans 1 – sex & marital status <ul style="list-style-type: none"> ➤ credit reporting practices 	<p><i>7 Total</i></p> <p><u>3 filed lawsuits</u></p> <ul style="list-style-type: none"> 1 - race redlining (<i>United States v. Citizens Bank</i>) 1 - race redlining (<i>United States v. Midwest BankCentre</i>) 1 - race/national origin mortgage pricing (<i>United States v. Countrywide Financial Corp., et al.</i>) <p><u>3 ongoing investigations</u></p> <ul style="list-style-type: none"> 3 - race/national origin <ul style="list-style-type: none"> ➤ mortgage pricing ➤ redlining <p><u>1 returned to agency</u></p> <ul style="list-style-type: none"> 1 - race/national origin

Agency	2011 Referrals by Protected Class	2011 Referrals Resulting in Ongoing DOJ Investigations	2011 Referrals Returned to Agency	Referrals Pending from Prior Years
 <p>OTS</p>	<p>4 Total</p> <p>2 - race/national origin 1 - national origin & age 1 - sex</p>	<p>1 Total</p> <p>1 - race/national origin ➤ mortgage pricing</p>	<p>3 Total (includes 1 referral that was investigated)</p> <p>1- race/national origin ➤ mortgage underwriting 1 - national origin & age ➤ manufactured home loans underwriting 1 - sex ➤ consumer loan pricing</p>	<p>5 Total</p> <p><u>2 ongoing investigations</u> 2 - race/national origin ➤ mortgage underwriting ➤ mortgage pricing</p> <p><u>3 returned to agency</u> ➤ 2 - race/national origin ➤ 1- age & sex</p>
 <p>OCC</p>	<p>1 Total</p> <p>1 - race/national origin</p>	<p>0 Total</p>	<p>1 Total</p> <p>1-race/national origin ➤ redlining</p>	<p>2 Total</p> <p><u>2 ongoing investigations</u> 2 - race/national origin ➤ mortgage pricing ➤ mortgage steering</p>
 <p>FTC</p>	<p>2 Total</p> <p>2 - race/national origin</p>	<p>2 Total</p> <p>2 - race/national origin ➤ wholesale mortgage pricing</p>	<p>0 Total</p>	<p>0 Total</p>
 <p>HUD</p>	<p>1 Total</p> <p>1 - disability & source of income*</p>	<p>0 Total</p>	<p>0 Total</p>	<p>2 Total</p> <p><u>1 on-going investigation</u> 1 - race/national origin ➤ mortgage pricing</p> <p><u>1 returned to agency</u> 1 - race/national origin</p>

*HUD continued to investigate the underlying complaints after making this pattern-or-practice referral, and the Division deferred taking action while HUD completed its investigation and attempted conciliation. HUD issued a charge based on those complaints in January 2012. In February 2012, one of the parties elected to have the case heard in federal court, so the case came to the Department pursuant to 42 U.S.C. § 3612(o). Because this new referral is based on the same facts, the Division closed the pattern-or-practice referral without further action.

No referrals were made by NCUA or CFPB.

2001-2011 Lending Discrimination Referrals by Other Agencies to DOJ

ALL REFERRALS	2011	2010	2009	2008	2007	2006	2005	2004	2003	2002	2001	Total
CFPB*	0	—	—	—	—	—	—	—	—	—	—	0
FDIC	14	33	21	12	15	29	35	42	29	33	5	268
FRB	7	6	6	3	9	5	2	3	0	6	1	48
OTS*	4	6	4	4	3	0	0	1	0	0	1	23
OCC*	1	2	0	1	0	0	0	0	0	1	3	8
NCUA	0	0	0	0	0	0	0	0	0	0	0	0
FTC	2	—	—	—	—	—	—	—	—	—	—	2
HUD	1	2	0	0	0	0	1	1	0	2	0	7
Total	29	49	31	20	27	34	38	47	29	42	10	356

RACE/NATIONAL ORIGIN REFERRALS	2011	2010	2009	2008	2007	2006	2005	2004	2003	2002	2001	Total
CFPB*	0	—	—	—	—	—	—	—	—	—	—	0
FDIC	10	14	5	2	1	3	1	0	2	1	2	38
FRB	2	4	3	0	4	2	0	0	0	1	1	15
OTS*	3	4	3	3	2	0	0	0	0	0	1	16
OCC*	1	2	0	0	0	0	0	0	0	0	0	3
NCUA	0	0	0	0	0	0	0	—	—	—	—	0
FTC	2	—	—	—	—	—	—	—	—	—	—	2
HUD	0	2	0	0	0	0	1	1	0	2	—	6
Total	18	26	11	5	7	5	2	1	2	4	4	80

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

Dash (“—”) means there is no entry in the ECOA report that year for that particular agency.