

The Attorney General's 2021 Annual Report to Congress on Fair Lending Enforcement





Message from the Assistant Attorney General for Civil Rights

For American families, homeownership remains the principal means of building wealth. But the systematic deprivation of access to mortgage lending services for families of color has contributed to staggering wealth disparities today. Indeed, the homeownership gap between white and Black families is larger today than it was in 1960. These grim facts must motivate us to act. The Department of Justice is taking bold, new steps to eradicate redlining and enforce the fair lending laws.

This report covers the work of the department in 2021 under the Equal Credit Opportunity Act, as well as other important lending work under the Fair Housing Act and the Servicemembers Civil Relief Act. I am proud to report this year on the launch of the Attorney General's Combatting Redlining Initiative and the two redlining cases that the department resolved this year. These two cases will expand access to credit in Houston and Memphis, providing a pathway for families to achieve homeownership.

The department's partnerships with the federal bank regulatory agencies, United States Attorneys' offices, and offices of state attorneys general across the country have been invaluable to the expansion of our fair lending work. I look forward to working together with these partners as we continue to identify bad actors in the lending industry and hold them to account.

A handwritten signature in black ink that reads "Krista Clarke". The signature is written in a cursive, flowing style.

Assistant Attorney General for Civil Rights

I. COMBATTING REDLINING INITIATIVE

Lending discrimination runs counter to fundamental promises of our economic system. When people are denied credit simply because of their race or national origin, their ability to share in our nation's prosperity is all but eliminated.

Attorney General Merrick B. Garland
October 22, 2021

Redlining is not a problem of the past: it is a persistent form of discrimination that endures to this day. In 2022, families of color lag far behind white families in homeownership rates and net worth. Redlining has contributed directly to these stark inequalities.

In the 1930s, the federal government and private sector formalized a system now known as redlining that denied access to credit and limited homeownership opportunities for communities of color. This made it extremely difficult for people of color to accumulate wealth through the purchase, refinance, or repair of their homes, resulting in large homeownership disparities by race and national origin. Today, the median wealth of a Black family is about \$24,000, whereas the median wealth of a white family is about \$188,000. A white family is 30% more likely than a Black family to own a home. The homeownership gap between Black and white families is larger today than it was in the 1960s, before the passage of the Fair Housing Act (FHA) or the Equal Credit Opportunity Act (ECOA).

The Department of Justice is confronting this problem head-on through the [Combatting Redlining Initiative](#), launched in October 2021. This initiative represents our most aggressive and coordinated effort to date to address redlining. In partnership with United States Attorneys' Offices across the country, the Civil Rights Division's Housing and Civil Enforcement Section is harnessing its enforcement authority under the FHA and ECOA to address lending discrimination on a broader geographic scale than ever before.

The Combatting Redlining Initiative builds on the Department of Justice's longstanding efforts to make mortgage credit and homeownership accessible to all Americans on the same terms. The initiative engages United States Attorneys' Offices as force multipliers and capitalizes on their community expertise and knowledge of local housing markets. It also is expanding the Justice Department's enforcement efforts to include non-

depository lenders, who now make the majority of mortgage loans in the United States. And the initiative is strengthening the Justice Department's partnerships with sister agencies and state attorneys general, promoting coordination and increasing referrals of potential fair lending violations.

In 2021, the Civil Rights Division resolved two redlining matters, resulting in over \$9 million in monetary relief and significant institutional improvements and reforms. In addition, the Justice Department has numerous investigations underway. We expect that the Combatting Redlining Initiative will yield many more resolutions to tackle the national problem of redlining, in 2022 and beyond.

II. FAIR LENDING ENFORCEMENT

The Equal Credit Opportunity Act 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 Fair Housing Act 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.

The Department of Justice has authority to challenge a pattern or practice of discrimination under both ECOA and the FHA on its own initiative or upon referral from another federal agency. This authority extends to discrimination in the mortgage market, including redlining and discriminatory underwriting and pricing, as well as discrimination in non-mortgage lending contexts like auto loans, unsecured consumer loans, student loans, and credit card products.

In 2021, the Justice Department opened 10 fair lending investigations, and filed and settled two redlining cases.

2021 Filings, Settlements, and Compliance Monitoring

When the Justice Department announced the launch of the Combatting Redlining Initiative on October 22, 2021, we also announced the filing and settlement of a redlining lawsuit, [*United States and CFPB v. Trustmark National Bank*](#). The *Trustmark* case alleged redlining discrimination in predominantly Black and Hispanic neighborhoods in Memphis, Tennessee. The case originated from a referral from the

Office of the Comptroller of the Currency, and was filed jointly with the Consumer Financial Protection Bureau.

The complaint alleged that Trustmark National Bank violated the FHA and ECOA through redlining by avoiding certain neighborhoods in Memphis because of the race, color, and national origin of the people living in, or seeking credit for properties in, those neighborhoods. The complaint also alleged that Trustmark's branches were concentrated in majority-white neighborhoods, its loan officers did not serve the credit needs of majority-Black and Hispanic neighborhoods, its outreach and marketing avoided those neighborhoods, and its internal fair-lending policies and procedures were inadequate to ensure that the bank provided equal access to credit to communities of color.

Under the consent order entered by the court, Trustmark will:

- invest \$3.85 million in a loan subsidy fund to increase credit opportunities for current and future residents of predominantly Black and Hispanic neighborhoods in the Memphis area;
- dedicate at least four mortgage loan officers or community lending specialists to these neighborhoods;
- open a loan production office in a majority-Black and Hispanic neighborhood in Memphis;
- devote \$400,000 to developing community partnerships to provide services to residents of majority-Black and Hispanic neighborhoods in Memphis that increase access to residential mortgage credit; and
- devote at least \$200,000 per year for a period of five years to advertising, outreach, consumer financial education and credit repair initiatives in and around Memphis.

The Justice Department also filed and resolved [*United States v. Cadence Bank, N.A.*](#), another redlining case, on August 30, 2021. The complaint alleged that, from 2013 to 2017, Cadence Bank violated ECOA and the FHA through redlining by avoiding predominantly Black and Hispanic neighborhoods in Houston, Texas, because of the race, color, and national origin of the people living in those neighborhoods. The complaint also alleged that Cadence's branches were concentrated in majority-white neighborhoods, its loan officers did not serve the credit needs of majority-Black and Hispanic neighborhoods, and its outreach and marketing avoided those neighborhoods. As with the Trustmark case, the Cadence investigation was opened based on a referral from the Office of the Comptroller of the Currency.

The terms of the settlement are similar to those discussed above: Cadence Bank will invest \$4.17 million in a loan subsidy fund for residents of predominantly Black and Hispanic neighborhoods in the Houston area; allocate \$750,000 for development of community partnerships to provide services that increase access to residential mortgage credit in those neighborhoods; spend at least \$625,000 over a period of five years on advertising, outreach, consumer financial education, and credit repair initiatives; dedicate at least four mortgage loan officers to majority-Black and Hispanic neighborhoods in Houston; and open a new branch in one of those neighborhoods. Cadence will also employ a director of community lending and development who will oversee these efforts and work in close consultation with the bank's leadership.

“Ensuring that lenders comply with fair lending laws is not just good law enforcement. The relief awarded in these cases expands financial opportunities for historically underserved residents in communities of color and also improves lenders’ compliance management systems, creating new lending opportunities and often leading to increased profits for the banks. That is a win for residents in redlined areas and for financial institutions.”

Assistant Attorney General
Kristen Clarke, October 21, 2021

In addition, the Division continued monitoring compliance with settlements in *United States v. First Merchants Bank* (S.D. Ind.), *United States v. American Honda Finance Corporation* (C.D. Cal.), *United States v. Hatfield* (W.D.N.C.), *United States v. Hudson City Savings Bank* (D.N.J.), *United States v. The Home Loan Auditors* (N.D. Cal.), and *United States v. Toyota Motor Credit Corporation* (C.D. Cal.).

Ongoing Discrimination Investigations

At the end of 2021, the Division had 12 open fair lending investigations into possible violations of ECOA and the FHA, including redlining, pricing discrimination, and underwriting discrimination.

III. REFERRALS

Under ECOA, the bank regulatory agencies are required to refer matters to the Civil Rights Division when they have reason to believe a lender has engaged in a pattern or practice of discrimination. The FTC also refers lending matters to the Civil Rights Division under ECOA. A number of agencies, including HUD, refer similar matters to the Civil Rights Division under the FHA. From 2001 through 2021, the bank regulatory agencies, the FTC, and HUD referred a total of 496 matters involving a potential pattern or practice of lending discrimination to the Justice Department. Of these referrals, 163 involved discrimination on the basis of race or national origin.

In 2021, the Department of Justice received seven ECOA and FHA lending referrals: two each from the CFPB, the FDIC and NCUA; and one from the FRB. When the Justice Department receives a referral from a regulatory agency, it determines whether to open an investigation or return the matter to the regulator for administrative enforcement.

Factors Considered When Evaluating Referrals

The Department of Justice considers numerous factors in deciding whether to retain or return a referral. As a general matter, referrals that are most likely to be returned have the following characteristics:

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

As a general matter, the Justice Department 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 considerations also apply to matters originating under the Justice Department's independent authority to initiate investigations.

2021 Referrals

Of the seven fair lending matters referred to the Department of Justice in 2021, five involved discrimination on the basis of race or national origin, and two involved age discrimination. As set forth in the charts appended to this report, the referrals involved various types of credit and a range of alleged discriminatory conduct, including redlining, discriminatory underwriting, and pricing discrimination.

The Justice Department returned three of the seven referrals to the referring agency for enforcement without opening an investigation. This number includes one or more matters where the agency specifically requested we defer to it for administrative enforcement. For each returned referral, the Justice Department evaluated the facts and circumstances of the matter in light of the factors described above. The returned referrals are also described, by agency, in the charts following this report.

IV. LENDING RIGHTS OF MILITARY SERVICEMEMBERS



Upholding the rights of those who serve our nation in the military is a priority of the Department of Justice and Civil Rights Division. The Servicemembers Civil Relief Act (SCRA) protects the housing and credit rights of servicemembers so they can focus

their full attention on their military responsibilities without adverse consequences for themselves or their families. The SCRA's benefits and protections include: a six percent interest rate cap on financial obligations that were incurred prior to military service; the ability to postpone civil court proceedings; protections related to default judgments; protections related to residential and motor vehicle lease terminations; and special requirements related to evictions, mortgage foreclosures, and installment contracts, including auto loans.

The Civil Rights Division's enforcement of the SCRA provides critical protections to the servicemembers who make great personal sacrifices on behalf of our country. No one should return from military service to find their credit ruined, their car repossessed, or their home loan foreclosed in violation of the SCRA.

Servicemembers and Veterans Initiative

In 2014, the Justice Department established the Servicemembers and Veterans Initiative (SVI) to coordinate and expand our efforts to protect servicemembers, veterans, and their families. In December 2020, Congress passed the SVI Act, which legislatively established the initiative within the Civil Rights Division and expanded its mission and responsibilities. The SVI now conducts outreach and training, supports policy development, coordinates with federal partners, and works to ensure that servicemembers and their families understand their rights and how to protect them.

In 2021, the SVI coordinated 22 events, meetings, and training sessions nationwide. These presentations reached members of all five branches of the military, reserve components, and the National Guard, as well as military families, state and federal agencies, and outside advocacy groups supporting the military community. The SVI also provided substantive trainings on the SCRA for legal professionals (including military attorneys), know-your-rights presentations for enlisted servicemembers, and presentations for law school clinics and outside legal assistance organizations. Many of these events relied on the support and participation of the Civil Rights Division's Housing and Civil Enforcement and Employment Litigation Sections, as well as United States Attorney's Offices across the country.

Auto Loans and Leases

On October 6, 2021, the Department of Justice resolved [*United States v. American Honda Finance Corporation*](#). American Honda Finance Corporation (AHFC) is based in California and provides financing to consumers purchasing or leasing Honda and Acura motor vehicles. The complaint alleged that AHFC violated the SCRA by adopting

and implementing a policy of refusing to refund certain pre-paid lease amounts to servicemembers who lawfully terminated their motor vehicle leases upon receipt of qualifying military orders. The consent order requires AHFC to pay over \$1.5 million to 714 servicemembers and a civil penalty to the United States, make changes to its lease termination and SCRA interest rate benefit policies, and provide employee training.

Student Loans

Under the SCRA, if a lender files a civil lawsuit against a borrower and then seeks a default judgment, the lender must notify the court of the borrower's military status. Lenders can easily verify an individual's military status by searching the [Defense Manpower Data Center's](#) (DMDC) free, publicly available website or by reviewing their files to see if there are applications, military leave and earnings statements, or military orders indicating military status. If the borrower is in military service, the court cannot enter judgment until it appoints an attorney to represent the borrower, and the court must, in most circumstances, postpone the proceedings for at least 90 days.

“Congress enacted the Servicemembers Civil Relief Act to protect those who risk their lives serving our nation. The Department of Justice will continue enforcing the Act vigorously to protect servicemembers and to ensure that all covered industries, including providers of student loans, comply fully with the law.”

Assistant Attorney General
Kristen Clarke. September 20, 2021

On September 20, 2021, the U.S. Attorney's Office for the District of New Jersey and the Civil Rights Division filed a consent order in [United States v. New Jersey Higher Education Student Assistance Authority](#) resolving allegations that the New Jersey Higher Education Student Assistance Authority (HESAA) violated the SCRA by obtaining unlawful court judgments against two servicemembers who had co-signed student loans. The complaint alleged that HESAA had failed to properly disclose the servicemembers' military status, as required by the SCRA. Under the court-approved order, HESAA paid \$15,000 each to those servicemembers, paid a civil penalty of \$20,000 to the United States, provided SCRA training to its employees and outside counsel, and agreed to comply with new policies and procedures consistent with the SCRA. This matter originated as a referral from Coast Guard legal assistance attorneys to the U.S. Attorney's Office in New Jersey.

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

In 2021, the Department of Justice continued to collaborate with federal and state partners through interagency engagement, joint investigations, and outreach efforts. For instance, the Civil Rights Division is an active participant in the federal Interagency Task Force on Fair Lending. This task force meets bimonthly to discuss emerging fair lending issues, share methods of identifying potential violations, and coordinate approaches on fair lending issues. These meetings further consistency among agencies and address common issues that arise in referrals to the Justice Department, allowing the participants to benefit from other agencies' perspectives and experience.

Civil Rights Division representatives also regularly participate in conferences, training programs, and meetings involving lenders, compliance officials, industry experts, enforcement and regulatory agencies, consumer groups, and more. These programs provide an important opportunity to inform stakeholders and interested parties about the Justice Department's fair lending enforcement activities. In 2021, Civil Rights Division staff participated in eleven such events. Additionally, in 2021, the Justice Department participated, for the eleventh year in a row, in a national webinar hosted by the Federal Reserve Board.

Civil Rights Division Partners

Bank regulatory agencies

- CFPB - Consumer Financial Protection Bureau
- FDIC - Federal Deposit Insurance Corporation
- FRB – Federal Reserve Board
- NCUA – National Credit Union Administration
- OCC – Office of the Comptroller of the Currency

Other partners

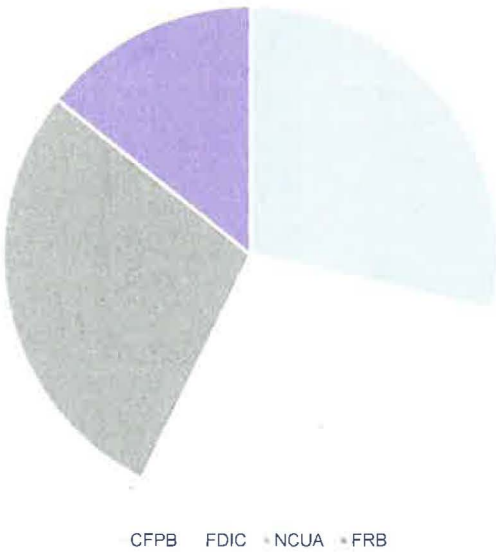
- FTC - Federal Trade Commission
- HUD – Department of Housing and Urban Development

VI. CONCLUSION

The Department of Justice submits this report to Congress pursuant to 15 U.S.C. § 1691f. The Justice Department is fully committed to addressing fair lending issues that span the breadth of our enforcement authority. As our new Combatting Redlining Initiative and our reinvigorated Servicemembers and Veterans Initiative demonstrate, the Justice Department will work to root out discrimination throughout the lending process, across credit markets, and around the nation.

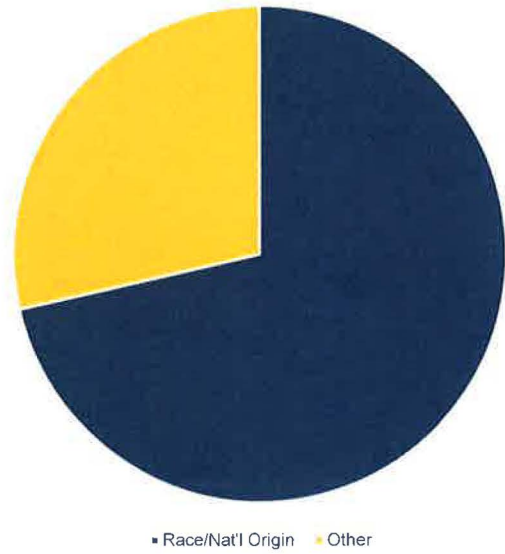
2021 Fair Lending Referrals to DOJ

Referrals by Agency

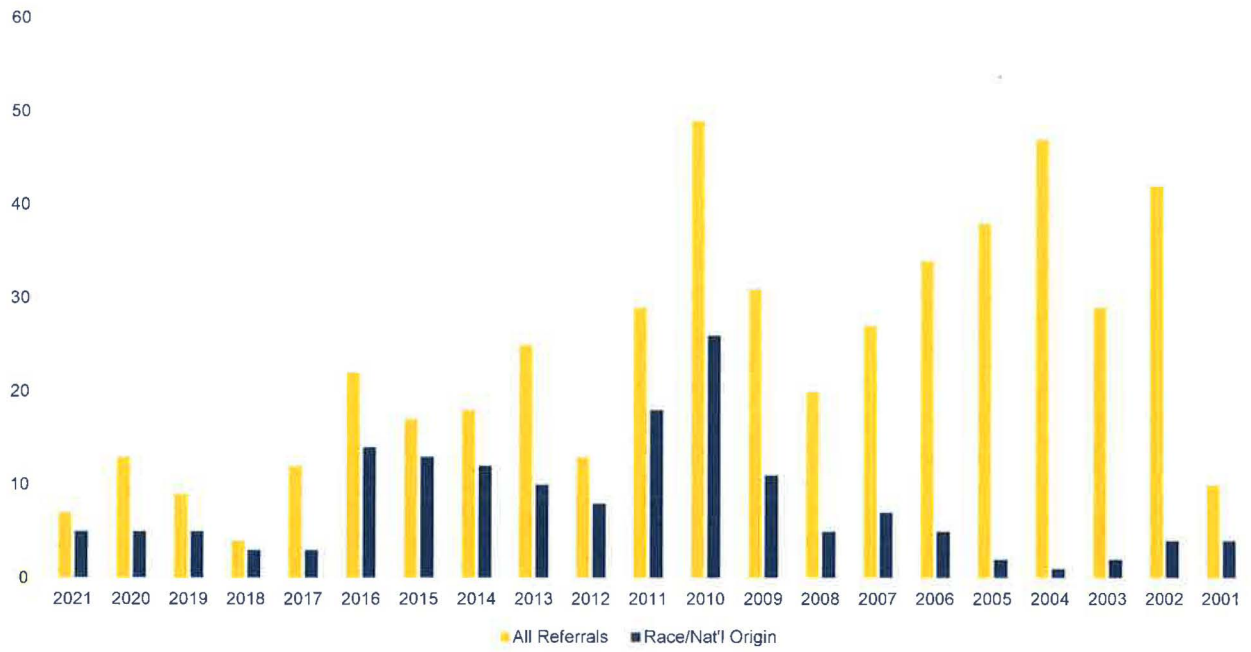


Total of 7 referrals
OCC, FTC and HUD made no referrals

Referrals by Protected Class



Historical Fair Lending Referrals to DOJ




2021 Fair Lending Referrals to DOJ

Federal Agency	2021 Referrals by Protected Class	2021 Referrals Resulting in DOJ Investigations	2021 Referrals Returned to Agency	Referrals Pending from Prior Years as of December 31, 2021
CFPB 	<i>2 total</i> 1 race/national origin: pricing 1 race: underwriting	<i>1</i> 1 race/national origin: pricing	<i>1</i> 1 race: underwriting	<i>2</i> 1 race/gender: pricing 1 race/national origin: redlining <i>CFPB and U.S. v. Trident Mortgage Company LP</i> <i>Filed July 27, 2022</i>
FDIC 	<i>2 total</i> 1 race: redlining 1 race: underwriting	<i>2</i> 1 race: redlining 1 race: underwriting	<i>0</i>	<i>0</i>
FRB 	<i>1 total</i> 1 race/national origin: redlining*	<i>1</i> 1 race/national origin: redlining	<i>0</i>	<i>2</i> 1 race/national origin/gender: pricing 1 race/national origin: redlining

* This referral was made under the FHA only.

2021 Fair Lending Referrals to DOJ

Federal Agency	2021 Referrals by Protected Class	2021 Referrals Resulting in DOJ Investigations	2021 Referrals Returned to Agency	Referrals Pending from Prior Years as of December 31, 2021
NCUA 	<i>2 total</i> 2 age: underwriting	0	2 2 age: underwriting	0
OCC 	0	0	0	0
FTC 	0	0	0	0
HUD 	0	0	0	0

Fair Lending Referrals to DOJ 2001-2021 All Referrals

ALL REFERRALS	2021	2020	2019	2018	2017	2016	2015	2014	2013	2012	2011	2010	2009	2008	2007	2006	2005	2004	2003	2002	2001	TOTAL
<i>Bank Regulatory Agencies</i>																						
CFPB	2	4	3	0	2	8	8	15	6	1	0	-	-	-	-	-	-	-	-	-	-	49
FDIC	2	3	2	1	4	4	4	3	11	8	14	33	21	12	15	29	35	42	29	33	5	310
FRB	1	2	1	0	3	7	4	0	6	2	7	6	6	3	9	5	2	3	0	6	1	74
NCUA	2	3	1	1	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	9
OTS*	-	-	-	-	-	-	-	-	-	-	4	6	4	4	3	0	0	1	0	0	1	23
OCC	0	1	2	1	1	1	0	0	1	1	1	2	0	1	0	0	0	0	0	1	3	16
<i>Other Partners</i>																						
HUD	0	0	0	1	0	2	1	0	1	1	1	2	0	0	0	0	1	1	0	2	0	13
FTC	0	0	0	0	0	0	0	0	0	0	2	-	-	-	-	-	-	-	-	-	-	2
TOTAL	7	13	9	4	12	22	17	18	25	13	29	49	31	20	27	34	38	47	29	42	10	496

*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.

Fair Lending Referrals to DOJ 2001-2021 Race/National Origin Referrals

Race/Nat'l Origin	2021	2020	2019	2018	2017	2016	2015	2014	2013	2012	2011	2010	2009	2008	2007	2006	2005	2004	2003	2002	2001	TOTAL
<i>Bank Regulatory Agencies</i>																						
CFPB	2	3	2	0	1	7	7	10	2	0	0	-	-	-	-	-	-	-	-	-	-	34
FDIC	2	0	0	1	1	2	3	2	5	5	10	14	5	2	1	3	1	0	2	1	2	62
FRB	1	1	1	0	0	3	3	0	3	1	2	4	3	0	4	2	0	0	0	1	1	30
NCUA	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
OTS*	-	-	-	-	-	-	-	-	-	-	3	4	3	3	2	0	0	0	0	0	1	16
OCC	0	1	2	1	1	0	0	0	0	1	1	2	0	0	0	0	0	0	0	0	0	9
<i>Other Partners</i>																						
HUD	0	0	0	1	0	2	0	0	0	1	0	2	0	0	0	0	1	1	0	2	0	10
FTC	0	0	0	0	0	0	0	0	0	0	2	-	-	-	-	-	-	-	-	-	-	2
TOTAL	5	5	5	3	3	14	13	12	10	8	18	26	11	5	7	5	2	1	2	4	4	163

*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.