

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

UNITED STATES OF AMERICA,)	
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)	
Plaintiff,)	CIVIL ACTION NO. SA-11-CV-488
)	
v.)	
)	
)	
NIXON STATE BANK,)	
)	
)	
Defendant.)	
_____)	

COMPLAINT

The United States of America alleges:

1. This action is brought by the United States to enforce the provisions of the Equal Credit Opportunity Act, 15 U.S.C. §§ 1691-1691f (“ECOA”).
2. This Court has jurisdiction of this action pursuant to 28 U.S.C. § 1345 and 15 U.S.C. § 1691e(h). Venue is appropriate pursuant to 28 U.S.C. § 1391.
3. Defendant Nixon State Bank (“Nixon” or “the bank”) is an independent community bank based in Nixon, Texas. Chartered in 1906, Nixon is the seventh oldest state-chartered institution in Texas. In addition to its location in Nixon, the bank operates two additional branches located in La Vernia, Texas and China Grove, Texas. Nixon offers a wide range of loan products, including mortgage loans, consumer loans, commercial loans, and agriculture loans. The bank originates its loans through loan officers at its three branches.

4. As of September 30, 2009, the bank had total assets of \$68.88 million and total equity capital of \$6.65 million. Nixon is subject to the regulatory authority of the Federal Deposit Insurance Corporation (“FDIC”).

5. Nixon is subject to federal laws governing fair lending, including ECOA and the regulations promulgated thereunder. ECOA prohibits financial institutions from discriminating on the basis of, *inter alia*, national origin in their lending practices. Charging higher prices for loans on the basis of national origin, including charging higher rates of interest, is one of the discriminatory lending practices prohibited by ECOA. Nixon is a “creditor” within the meaning of section 702(e) of ECOA, 15 U.S.C. § 1691a(e).

6. Beginning in 2008, the FDIC conducted an examination of the lending practices of Nixon to evaluate compliance with ECOA. Based on analysis of the average rates of interest that Nixon charged in 2007 and 2008 for unsecured consumer loans, the FDIC found reason to believe that Nixon had displayed a pattern or practice of discrimination on the basis of national origin against Hispanic borrowers. On April 14, 2010, following the examination described above, the FDIC referred the lending practices of Nixon to the United States Department of Justice pursuant to 15 U.S.C. § 1691e(g).

7. After receiving the referral from the FDIC, the United States analyzed the interest rates that Nixon charged between 2007 and 2010 on unsecured consumer loans. The United States also reviewed Nixon’s loan policies and procedures from 2006 to 2010.

8. Prior to mid- to late- 2009, Nixon did not have a written loan pricing guideline for its unsecured consumer loans. The bank did not require a written application or credit report; utilize a uniform pricing system such as a matrix or rate sheet; or document loan denials.

Instead, Nixon's loan officers were granted broad discretion in handling all aspects of the unsecured consumer loan transaction.

9. Nixon has been aware of the flaws with its unsecured consumer lending policies and procedures since at least 2006. In April 2006, an independent auditor recommended to Nixon that an application and a current credit report be obtained for all unsecured consumer loan applicants. The auditor also recommended that an analysis should be documented in the loan file for applications denied due to excessive debt-to-income. As a result of the auditor's report, bank management made a recommendation to the Board of Directors to amend the bank's loan policy to define how often an application and credit report should be obtained for unsecured loans. Around the same time, Nixon's Training and Controls Monitoring Committee resolved to (1) define the meaning of an application; (2) define the meaning of a recent application; and (3) determine how often a credit report is needed.

10. The bank failed to implement any changes to address its discretionary loan pricing procedures from 2006 to mid-2009. In June 2008, the FDIC criticized Nixon for failing to include applications, financial statements, credit reports, and other documentation in its loan files. In May 2009, another independent auditor of the bank detected some inconsistencies with bank-wide pricing and recommended that the bank become structured in its pricing strategies.

11. In mid-2009, Nixon's CEO acknowledged the following issues in a memorandum to all employees: (1) inconsistent and sometimes non-existent loan underwriting; (2) inconsistency in loan administration; (3) inconsistency in loan pricing; and (4) inconsistency in following loan pricing. After this memorandum was issued, Nixon introduced new policies and procedures to improve its overall fair lending program, including: (a) new loan procedures for

obtaining loan applications, financial statements, and credit reports; (b) revision of loan worksheets to assist loan officers in underwriting and pricing criteria; (c) a new filing system to ensure that loans are fully and consistently documented; (d) a monitoring system for each loan to be reviewed and noted for deficiencies; (e) fair lending training for the bank's loan officers; and (f) development of a uniform loan pricing matrix for unsecured consumer loans.

12. Between at least 2007 and 2009, Nixon charged higher loan prices to Hispanic borrowers for unsecured consumer loans, as measured through rates of interest, than it charged to non-Hispanic borrowers. The differences in interest rates charged to Hispanic borrowers and those charged to non-Hispanic borrowers cannot be explained fully by factors unrelated to national origin.

13. From at least 2007 to 2008, Nixon charged interest rates that were 207 basis points¹ higher to Hispanic borrowers who obtained unsecured consumer loans than the rates charged to non-Hispanic borrowers. In 2009, Nixon charged interest rates to Hispanic borrowers that were 118 basis points higher, on average, than the rates charged to non-Hispanic borrowers. These disparities are statistically significant.

14. After accounting for credit risk factors such as loan term, credit score, and the branch office from which the loan originated, Nixon charged interest rates to Hispanic borrowers from 2007 to 2008 that were 198 basis points higher, on average, than the rates charged to similarly-situated non-Hispanic borrowers. In 2009, Nixon charged interest rates to Hispanic borrowers that were 84 basis points higher, on average, than the rates charged to similarly-situated non-Hispanic borrowers, after controlling for the same credit risk factors. These disparities are statistically significant.

¹ One basis point represents one hundredth of a percentage point (0.01%).

15. The higher rates of interest that Nixon charged to Hispanic borrowers for unsecured consumer loans are a result of Nixon's policy or practice of giving its employees broad subjective discretion in every aspect of the unsecured consumer loan transaction, from the information collected at the application stage to setting the interest rate. Information as to each applicant's national origin was available and known to the bank's loan officers, who personally handled each loan transaction at one of Nixon's three branch offices. Nixon did not properly instruct its loan officers regarding their obligation to treat prospective customers without regard to national origin, and the bank has failed to supervise or monitor the performance of its loan officers to ensure compliance with fair lending laws.

16. Nixon's policy or practice of giving its employees broad subjective discretion in handling every aspect of the unsecured consumer loan transaction has had a disparate impact on Hispanic borrowers compared to similarly-situated non-Hispanic borrowers and is not justified by business necessity or legitimate business interests.

17. Nixon's actions, policies and practices, as alleged herein, constitute discrimination against applicants with respect to credit transactions on the basis of national origin in violation of ECOA.

18. Nixon's actions, policies and practices, as alleged herein, constitute a pattern or practice of resistance to the full enjoyment of rights secured by ECOA.

19. Persons who have been victims of Nixon's discriminatory actions, policies and practices are affected persons as defined in ECOA, 15 U.S.C. § 1691e, and have suffered injury and damages as a result of Nixon's violation of ECOA.

20. Nixon's pattern or practice of discrimination has been intentional and willful, and has been implemented with reckless disregard for the rights of Hispanic borrowers.

WHEREFORE, the United States prays that the Court enter an ORDER that:

(1) Declares that the policies and practices of the Defendant constitute violations of the Equal Credit Opportunity Act, 15 U.S.C. §§ 1691-1691f;

(2) Enjoins the Defendant, its agents, employees, and successors, and all other persons in active concert or participation with it, from:

(a) Discriminating on the basis of national origin against any person with respect to any aspect of a credit transaction;

(b) Failing or refusing to take such affirmative steps as may be necessary to restore, as nearly as practicable, the victims of the Defendant's unlawful conduct to the position they would have been in but for the discriminatory conduct; and

(c) Failing or refusing to take such actions as may be necessary to prevent the recurrence of any such discriminatory conduct in the future.

(3) Awards monetary damages to all the victims of the Defendant's discriminatory policies and practices for the injuries caused by the Defendant, pursuant to 15 U.S.C. § 1691e(h).

The United States further prays for such additional relief as the interests of justice may require.

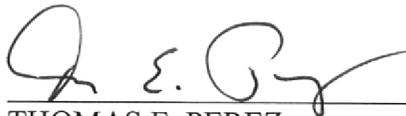
Dated: _____, 2011

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Respectfully submitted,

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