

SETTLEMENT AGREEMENT BETWEEN
UNITED STATES OF AMERICA AND
ASSOCIATES NATIONAL BANK

WHEREAS, the Office of the Comptroller of the Currency ("OCC") conducted a routine compliance examination of Associates National Bank ("ANB") beginning in March 1997;

WHEREAS, in April 1997, the OCC informed ANB that it believed ANB was violating the Equal Credit Opportunity Act ("ECOA"), 15 U.S.C. §§ 1691-1691f, by discriminating on the basis of national origin against ANB credit card holders and applicants who applied for credit cards using Spanish-language applications;

WHEREAS, in June 1998, the OCC notified the United States Department of Justice that, based on its compliance examination findings, it had reason to believe that ANB had engaged in a pattern of practice of discrimination against Hispanics, in violation of ECOA;

WHEREAS, on March 29, 1999, the United States filed a complaint in the United States District Court for the District of Delaware alleging that ANB violated ECOA;

WHEREAS, the United States asserts that ANB engaged in a pattern or practice of intentional discrimination against Hispanics, in violation of ECOA, as follows:

- a. Until April 1997, ANB designated certain credit cardholders who applied for credit cards using Spanish-language applications as "Hispanic" and excluded such cardholders from various promotional benefits, such as debt consolidation at reduced interest rates, higher credit limits, waived transaction fees on cash advances, increased cash-back rebates, and payment deferral without a late fee assessment ("Promotional Programs");
- b. Between February 21, 1996 and April 1997, ANB required certain Spanish-language applicants for its co-branded Unocal credit card to have higher minimum credit scores to obtain credit than similarly-situated English-language Unocal credit card applicants;
- c. Between February 21, 1996 and April 1997, ANB assigned lower credit limits to certain, approved Spanish-language Unocal credit card applicants than to similarly-situated English-language Unocal credit card applicants.

WHEREAS, ANB denies that it violated ECOA and asserts as follows:

- a. No one at ANB was aware of the differences in credit score requirements and credit limit assignments as between certain Spanish-language and similarly situated English-language Unocal credit card applicants;
- b. The differences in credit score requirements and credit limit assignments were the result of an inadvertent computer programming error that was corrected immediately when ANB learned of it in April 1997;
- c. Upon discovery of the differences in credit score requirements and credit limit assignments, ANB immediately notified the OCC of the problem and took full corrective action, including action to retroactively approve credit cards and increase credit limits for affected Spanish-language applicants;

WHEREAS, ANB denies that its decision to undertake targeted marketing initiatives ("Promotional Programs") that may not in all cases have included Spanish-language cardholders, as well as its employee and VIP cardholders, was in any way inconsistent with the provisions of ECOA prohibiting discrimination in the credit application process; and

WHEREAS, regardless of whether ECOA applies to the Promotional Programs, ANB began including Spanish-language credit cardholders in Promotional Programs after April 1997 and offered affected Spanish-language credit cardholders a special Promotional Program;

WHEREAS, the United States and ANB desire a complete and final resolution of this matter and, to avoid the costs and uncertainties of further litigation, agree that this controversy should be resolved voluntarily, without a final determination on the merits;

THEREFORE, in consideration of the mutual covenants and agreements contained herein, IT IS AGREED AS FOLLOWS:

1. Within twenty (20) business days after execution of this Agreement, ANB will deposit \$1,500,000 dollars into a trust account entitled "Associates National Bank Compensation Fund Trust Account" (hereinafter "Compensation Fund"). ANB will provide prompt written verification of the deposit to the Department of Justice. Pursuant to the provisions of [Attachment A](#) hereto, the funds deposited in the Compensation Fund will be distributed to three categories of ANB Spanish-language credit card applicants or cardholders as follows:

- a. **Category 1:** \$3,000 shall be paid to each Spanish-language Unocal credit card applicant who would have otherwise qualified for the Unocal credit card, but was rejected because ANB applied higher minimum credit score requirements to him or her than to similarly situated English-language Unocal credit card applicants who received the credit card;

- b. **Category 2:** For each Spanish-language Unocal credit cardholder who activated and used his or her credit card and received a lower credit line assignment than similarly situated English-language Unocal cardholders: (1) \$2,000 shall be paid to each such cardholder who, at any time between February 21, 1996 and June 1, 1997, came within \$100 of his or her assigned credit limit; (2) \$1,500 shall be paid to each such cardholder who, at any time between February 21, 1996 and June 1, 1997, came within between \$500 and \$100 of his or her assigned credit limit; and (3) \$1,000 shall be paid to each such cardholder who, at any time between February 21, 1996 and June 1, 1997, did not come within at least \$500 of his or her assigned credit limit; and

- c. **Category 3:** \$1,000 shall be paid to each Spanish-language credit cardholder who was excluded from any of the Promotional Programs because he or she applied for a credit card using a Spanish-language application.

2. Any interest that may accrue on the funds deposited into the Compensation Fund shall become part of the Compensation Fund. In the event the Compensation Fund is not sufficient to make all payments required by [Paragraph 1](#) above, ANB shall pay into the Compensation Fund any additional funds necessary to fully meet such payment requirements. In the event the Compensation Fund has any remaining funds after all claims have been paid pursuant to this Agreement, such additional funds shall be used for consumer education in Hispanic communities, as agreed between the United States and ANB.

3. The methodology for identifying, contacting and compensating individuals eligible for compensation pursuant to this Agreement is set forth in [Attachment A](#) hereto.

4. In consideration of the terms of this Agreement, the United States: (a) will, on the date this Agreement is filed with the Court, move to voluntarily dismiss with prejudice *United States v. Associates National Bank*, No. 99-196-SLR (D. Del. 1999); and (b) releases ANB and its parent, affiliates, subsidiaries and successor corporations, and all employees, officers, directors, agents, representatives, and assigns, from any and all legal and equitable claims, demands, causes of action, suits, damages or liabilities of any kind and nature whatsoever, whether known or unknown, that were or could have been asserted by the United States under ECOA in connection with that action.

5. This Agreement shall not be construed as an admission of liability by ANB, and ANB specifically denies violating ECOA.

6. This Agreement and [Attachment A](#) hereto, including [Tabs 1](#) and [2](#), contain the entire agreement between ANB and the United States, and no amendment or waiver of any terms, provisions or conditions of this Agreement shall be effective unless in writing and executed by the United States and ANB or any successor-in-interest.

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ATTACHMENT A

1. Within forty-five (45) days after the execution of this Agreement, ANB will preliminarily identify all individuals who qualify for compensation from the Compensation Fund pursuant to [Paragraph 1](#) of the Settlement Agreement and provide the following to counsel for the United States: (a) a list of all individuals who, in ANB's estimation, qualify for compensation pursuant to Paragraph 1 of the Settlement Agreement ("List A"); (b) a list of all individuals who the United States has previously identified to ANB as having qualified for compensation pursuant to Paragraph 1 of the Settlement Agreement, but who, in ANB's estimation, do not qualify for compensation pursuant to Paragraph 1 of the Settlement Agreement ("List B"); (c) an explanation of why each individual on List B does not, in ANB's estimation, qualify for compensation, including reference to all data ANB used to make such determination. All individuals on List A shall receive payment from the Compensation Fund in accordance with Paragraph 1 of the Settlement Agreement. As to the individuals appearing on List B, ANB will provide the United States with the opportunity to challenge each determination reflected on that list. ANB and the United States agree to work in good faith and make their best efforts to resolve any disputes about whether individuals on List B are entitled to compensation pursuant to the terms of

- this Agreement. Upon reasonable notice to ANB, the United States shall be allowed access to ANB's records and files to determine whether any individual on List B is entitled to payment from the Compensation Fund. The United States shall keep confidential all information obtained from ANB's records and files relating to credit card applicants. If there remains any dispute regarding whether an individual on List B is entitled to share in the Compensation Fund after the United States and ANB attempt to resolve such dispute, the United States will have final authority to determine whether the individual should receive compensation in accordance with the terms of the Settlement Agreement. Within thirty (30) days after receiving List B and all supporting explanations and data from ANB, the United States will notify ANB in writing of any individual on List B who it determines will receive payment from the Compensation Fund.
2. Within thirty (30) days after it is finally determined which individuals are entitled to compensation under the preceding paragraph, ANB shall provide notification to all such individuals in the form set forth at [Tab 1](#) hereto, accompanied by a release in the form set forth at [Tab 2](#) hereto, explaining to them this settlement and their eligibility for compensation. ^oThe notification shall be sent registered mail, return receipt requested. Upon execution of the release and its return to ANB within 60 days of the receipt of the notification, ANB will provide a copy of the release to the United States.
 3. Thirty (30) days after the mailing of the notification letters referenced in the preceding paragraph, ANB shall report to counsel for the United States those addressees for whom no return receipt card has been obtained. The United States may make all reasonable efforts during the following sixty (60) days to locate such persons, including through the use of an agreed upon locator service. If the United States locates any such person, it shall provide ANB with the person's new mailing address at the conclusion of the sixty (60) day period, and, within thirty (30) days of receiving the new address information, ANB shall again follow the notification procedures set forth in the preceding paragraph.
 4. After the United States and ANB have completely satisfied the terms of [paragraphs 2 - 3](#) above, ANB shall issue a check, drawn against the Compensation Fund, in an amount set forth in [Paragraph 1](#) of the Settlement Agreement, to each individual identified pursuant to paragraph 1 above who delivers to ANB an executed release within sixty (60) days after receipt of a notification letter. ANB shall mail each check by registered/certified mail, return receipt requested, and shall confirm the issuance, mailing, and return of a mailing receipt verification card of all checks in writing to the United States.

1. [Tabs 1](#) and [2](#) will be provided to all individuals in Spanish as well as English. The United States will be responsible for providing the translated documents to ANB.

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