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Negotiations & Agreements FDIC 1976-77

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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NATIONAL URBAN LEAGUE, et al.,
Plaintiffs,
v.
OFFICE OF THE COMPTROLLER OF THE CURRENCY, et al.,
Defendants.

Civil Action No. 76-0718

STIPULATION OF DISMISSAL

IT IS HEREBY STIPULATED that, in consideration of the attached Settlement Agreement, dated May 13, 1977, between Plaintiffs and Defendants Federal Deposit Insurance Corporation (FDIC), Robert E. Barnett, George A. LeMaistre, Robert Bloom as Director of FDIC and not as Comptroller of the Currency, the above-entitled action against the defendants named herein may be and is hereby dismissed.

Respectfully submitted,

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Attorneys for Plaintiffs

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General Counsel

Roger A. Hood
ROGER A. HOOD
Assistant General Counsel

Attorneys for defendants

ORDER

IT IS SO ORDERED:

This __________ day of May, 1977.

____
UNITED STATES DISTRICT JUDGE

SETTLEMENT AGREEMENT

This Agreement between Plaintiffs National Urban League, National Committee Against Discrimination in Housing, National Association for the Advancement of Coloured People, National Neighbors, Metropolitan Washington Planning and Housing Association, and National Association of Real Estate Brokers (hereinafter "Plaintiffs") and defendants Federal Deposit Insurance Corporation (hereinafter the "FDIC"), Robert E. Barnett, George A. LeMaistre, and Robert Bloom, as a director of FDIC and not as Comptroller of the Currency, (hereinafter the "Directors") is made to resolve, as to the parties hereto, without adjudication of any issue of law or fact, litigation presently pending between Plaintiffs, the FDIC and the Directors in the United States District Court for the District of Columbia entitled National Urban League, et al. v. Office of the Comptroller of the Currency, et al., (Civil Action No. 76-0718) (hereinafter "the lawsuit"). In executing this Agreement, none of the parties hereto makes any admission whatsoever as to any issue of law or fact raised in the lawsuit or which might be raised in the lawsuit. The FDIC has entered this Agreement not only to settle the lawsuit, but also to further its existing commitment to effective enforcement of its nondiscrimination policies.

Section 1. FDIC's Enforcement Program. The FDIC agrees that it will take the following actions in connection with its supervision and enforcement of the fair housing lending practices of insured State nonmember banks (including insured mutual savings banks) as governed by Title VIII of the Civil Rights Act of 1968, 42 U.S.C. § 3601, et seq. and Title VII of the Consumer Credit Protection Act, 15 U.S.C. § 1591, et seq., as they relate to home mortgage lending (hereinafter the "home mortgage lending laws"):

A. The FDIC will establish a data collection and analysis system (the "FDIC System") which will apply to written applications for loans to finance the purchase of one to four unit residential buildings in which the applicant intends to occupy one unit as a residence.

The FDIC System will make use of race/sex identification information voluntarily given by the applicant and collected by the bank pursuant to Federal Reserve Board Regulation B, and additional financial information on the applicant and the loan terms. If Regulation B is modified to not require race/sex data, FDIC will continue to require such data unless such requirement is prohibited by law. All of the financial information to be required is now included in mortgage application forms approved by FNMA or FHLMC and widely used by mortgage lenders, or the form approved by the Federal Reserve Board in Regulation B.

In the course of a regular compliance examination, the examination team will select some or all accepted and rejected mortgage loan applications which were received since March 23, 1977 or the last regular compliance examination, whichever is most recent. The personal and certain financial information on each of these forms will be forwarded to the FDIC's Washington Office for transcription to a computer based data file for analysis. If the number of such applications is small, information from all applications will be recorded. However, if the volume exceeds the cutoff point set by the FDIC in accordance with generally accepted statistical sampling principles, a sample of rejected and accepted applications will be selected in accordance with generally accepted sampling techniques. The data collected during examination will be analyzed by appropriate statistical techniques to evaluate race or sex as factors in the bank's lending decisions. The objective of this analysis will not be to establish the actual existence of discrimination, but rather to identify institutions at which sufficient evidence of discrimination exists to warrant further investigation. If race or sex appears to be a factor in the decision, a more detailed investigation will be made by specially trained examiners. A by-product of the statistical analysis will be the generation of data on applications broken down by race and sex and on approval/rejection rates by race and sex. These data will permit observation of trends over time and will permit comparison of geographic areas such as SMSA's. Within two years following implementation of the FDIC System, FDIC will give consideration to including within the System statistical data on adverse actions (as such term is defined in Regulation B) and on differential loan terms that may be associated with race or sex. If the identification rate obtained by the FDIC differs substantially in composition by race or sex from the results achieved by the Federal Home Loan Bank Board in the control study to be undertaken pursuant to its settlement of the lawsuit, the FDIC will consult with Plaintiffs about using other means of obtaining identification. Such means may include advertising, use of additional lobby posters, mandating identification by bank officials, or other means that the parties may agree upon. It is the FDIC's intent that a means of identification be used which will produce a reliable statistical sample.

The FDIC agrees to give further consideration to the inclusion of applications for secured home improvement loans in the FDIC System. The inclusion of such applications will depend, in part, upon the ease with which such loans can be segregated from loans made for purposes other than the repair or remodeling of residential property, and whether, after consultation with Plaintiffs, FDIC believes sufficient additional information relating to lending practices can be obtained to justify the additional data collection costs.

B. The FDIC will continue its current training program outlined in Exhibit "A" hereto. In addition, the FDIC will conduct programs to train selected examiners to (i) collect samples of race and sex data maintained by institutions pursuant to the home mortgage lending laws, and (ii) use the Washington Office analysis of those data in examinations for compliance with the home mortgage lending laws.

C. The FDIC will provide appropriate level personnel specially trained in fair housing lending matters who will be present in each Regional Office, and who shall be responsible in the Regional Office, among other things, for reviewing fair housing lending aspects of examination reports, advising examiners on fair housing lending matters, reviewing individual examination reports and discussing them with examiners, making recommendations for improvements in examination methods, and consulting with Regional Directors on fair housing lending enforcement recommendations.

D. The FDIC will create a position for a full-time civil rights specialist to serve as special assistant to the Director of its Office of Bank Customer Affairs. This individual will report directly to the Director of OBCA and will be responsible for reviewing the work of OBCA staff in Washington and persons referred to in paragraph C above, with respect to fair housing lending aspects of compliance examinations, disposition of complaints relating to fair housing lending, and enforcement actions involving violations of the home mortgage lending laws.

E. The FDIC will amend its current processing procedures for complaints with respect to violations of the home mortgage lending laws within 90 days after the date of this Agreement, to include time limits for actions thereunder, with exceptions for special circumstances. A copy of the current procedures is attached as Exhibit "B" hereto. The FDIC will consider all comments on such procedures Plaintiffs may submit.

F. The FDIC will, in general, apply the same procedures concerning special examinations, visitations, investigations, supervisory letters, and cease and desist orders in cases of suspected violations of home mortgage lending laws as in cases of violations of other laws.

G. FDIC will determine deviations in nonresponse rates on race/sex notation forms among the institutions examined by it, and where such deviation affects the ability of FDIC to analyze the data obtained from such institution, FDIC will inquire into the reasons for the deviation and will take such action as is necessary and appropriate to eliminate the deviation.

H. The FDIC will again advise all insured State nonmember banks (including insured mutual savings banks) about its intent to enforce the home mortgage lending laws and the various sanctions which may be used by the FDIC for this purpose. Such notice will be sent within 90 days after the date of this Agreement.

I. The FDIC is presently studying the usefulness of data available to it under the Home Mortgage Disclosure Act and will attempt to develop a system for meaningful use of this data in connection with the FDIC's enforcement of the home mortgage lending laws. Plaintiffs acknowledge that they have been advised by the FDIC's representatives that devising such a system may be unfeasible. It is understood that the FDIC has no obligation to implement such a system if it reasonably and in good faith determines that it is not feasible to implement such a system. Before the FDIC makes a final determination on feasibility, it will consult with Plaintiffs pursuant to the procedures outlined below.

The FDIC agrees that Plaintiffs will have the opportunity to comment on the FDIC's enforcement programs and the FDIC System described in this Section in order to provide the FDIC with suggestions for improvements therein. During the term of this Agreement, FDIC representatives will meet periodically (at least every six months) with representatives of Plaintiffs to discuss the programs described in this Section and to receive and consider suggestions.

from them. If so requested, Plaintiffs will receive a written explanation when their recommendations are not accepted. It is agreed by all parties to this Agreement that the responsibility for the implementation of these programs is solely the FDIC's and not the Plaintiffs', and that in conducting enforcement programs pursuant to this Agreement the FDIC may give due regard to the allocation of its financial and personnel resources among all of the duties which it carries out. Nothing in this Agreement is intended to subject the decisions of the FDIC as to the appropriate allocation of such resources to review by any person or authority not otherwise empowered by law to review such decisions.

Section 2. Disclosures to Plaintiffs. The FDIC agrees that during the term of this Agreement it will provide Plaintiffs with the following data or their equivalent at least annually, and more often if available:

A. Copies of blank race/sex data notation forms and instructions which are used in the FDIC System.

B. Description of the FDIC System and any changes in that System.

C. Copies of instructions to personnel performing collation or analysis of race/sex data collected pursuant to the FDIC System.

D. Data and analyses produced pursuant to the FDIC System and reports showing results of such analyses.

E. Data indicating nonresponse rates on race/sex notation forms, including information on whether there are deviant rates at particular institutions.

F. Data on approvals and rejections by race and sex and the results of the regression equation on each bank.

G. Examiner training materials and examination manual sections dealing with data analysis and all other aspects of home mortgage lending components of examinations.

H. Reports concerning the number of possible violations of home mortgage lending laws identified, the number of special examinations conducted, the number of supervisory letters sent, and other enforcement actions taken with respect to violations of home mortgage lending laws.

I. The number of examiners, supervisory personnel and others undergoing special training in the analysis of home mortgage lending and information showing location of such personnel within the FDIC.

J. Copies of instructions concerning procedures for investigating and resolving complaints with respect to home mortgage lending.

K. Reports as to the number of complaints received and their disposition.

L. Copies of any other instructions, regulations, guidelines, procedures or reports concerning home mortgage lending enforcement, if any, not covered by paragraphs A - K herein.

M. Copies of the FDIC's analysis of its 1976 fair housing lending survey when such analysis is available.

N. Job descriptions for persons described in Section 1, paragraphs C and D.

It is understood and agreed between the parties as follows with respect to the FDIC's undertaking to provide the foregoing information: (a) the FDIC will not provide any data which identifies or could reasonably lead to the identification of specific institutions or persons, nor will it provide confidential examination programs; (b) the FDIC will not provide copies of examination reports, examiners' workpapers, or excerpts therefrom; (c) the FDIC will not provide copies of material which deals with specific compliance matters at specific institutions or contains recommendations regarding specific enforcement actions; (d) the FDIC will not provide legal analyses, opinions and conclusions of its Legal Division or Office of Bank Customer Affairs; and (e) the FDIC will not provide data which is identical to that previously provided.

Section 3. Release. Plaintiffs agree that, in consideration for the FDIC's undertakings in this Agreement, they hereby: (a) release and forever give up any right to sue the FDIC and the Directors to obtain relief for any action taken by the FDIC or any action not taken by the FDIC in the area of home mortgage lending discrimination, from 1968 to the date of this Agreement; and (b) release and forever give up any right to sue the FDIC and the Directors on any matter within the scope of the lawsuit; Provided, that (i) during the term of this Agreement Plaintiffs shall not be barred from bringing an action alleging that the FDIC has breached this Agreement, and (ii) after the expiration of this Agreement, Plaintiffs shall not be barred from bringing an action alleging that the FDIC has failed, at any time after the expiration of this Agreement, to properly enforce the obligations of insured State nonmember banks (including insured mutual savings banks) under the then existing home mortgage lending laws. Nothing herein shall be construed to prevent Plaintiffs, in the trial of an action under (ii) above, from presenting evidence of the FDIC's enforcement activities under the home mortgage lending laws prior to the date of this Agreement, so long as such evidence is material, relevant and otherwise admissible in such trial. Nothing herein shall be construed as an admission by FDIC that Plaintiffs will have standing or a cause of action to challenge the FDIC's enforcement of such laws.

Prior to initiating any action alleging a breach of this Agreement, the Plaintiffs shall first contact the General Counsel of the FDIC and attempt, in good faith, to resolve any differences by negotiation. The parties agree that such negotiations shall continue for a period of at least sixty days, unless emergency circumstances require immediate action. In any action alleging breach or anticipatory breach of this Agreement, the party initiating the action shall attach to its complaint an affidavit of counsel setting forth the steps taken in compliance with this provision.

Section 4. Dismissal. Upon execution of this Agreement, the Plaintiffs and the FDIC will file a stipulation in the United States District Court to dismiss the lawsuit insofar as it relates to the FDIC and the Directors.

Section 5. Term. The term of this Agreement shall be three years from the date set forth below.

DATED: May 13, 1977

Counsel for Plaintiffs

Martin E. Sloane
Counsel for Plaintiffs

DATED: May 13, 1977

FEDERAL DEPOSIT INSURANCE CORPORATION

By Robert E. Barnett
Robert E. Barnett
Chairman