

## Recent Developments in Reverse Redlining Litigation

“Reverse redlining” refers to the practice of targeting predatory loans at urban, minority communities that in the past were denied the ability to obtain credit.<sup>1</sup> According to a study from the Department of Housing and Urban Development, the largely unregulated growth of the subprime mortgage market provided a “fertile ground” for such practices, especially in underserved communities with inexperienced borrowers.<sup>2</sup>

While the concept of “reverse redlining” is not new, a spate of recent litigation has drawn attention to allegedly discriminatory lending practices. In late February, Jesse Jackson called for a response from the Department of Justice and state prosecutors, claiming that almost 40% of subprime loans go to African American or Hispanic borrowers.<sup>3</sup>

Most claims of reverse redlining have been brought as class actions; however, in January the city of Baltimore filed a Complaint based on reverse redlining, seeking both damages and injunctive relief. Recent Complaints allege violations of the Fair Housing Act, the Equal Credit Opportunity Act, or the Civil Rights Act. Cases involving reverse redlining allegations, organized by filing date, include:

### July 11, 2007:

*National Association for the Advancement of Colored People v. Ameriquest Mortgage Company, et al.*, Docket No. 8:07-cv-00794-AG-AN (C.D. Cal.): The NAACP has filed a class-action Complaint against more than a dozen lenders, alleging violations of the Fair Housing Act, Equal Credit Opportunity Act, and Civil Rights Act. According to the Complaint, the lenders allegedly directed African American borrowers toward subprime loans, while steering Caucasians toward lower-cost options. The Complaint alleges that, in addition to higher interest rates, African American borrowers were burdened with undisclosed fees and prepayment penalties. The plaintiffs seek injunctive relief and attorneys’ fees.

### July 12, 2007:

*Miller et al. v. Countrywide Bank, N.A., et al.*, Docket No. 1:07-cv-11275-RGS (D. Mass): Four African American homeowners have filed class and individual actions against Countrywide, Summit Mortgage, LLC, and Residential Homes Mortgage Corp. The plaintiffs allege that Countrywide mortgage lenders used an undisclosed discretionary pricing policy to increase the financing charges and interest payments of African American borrowers in violation of the Equal Credit Opportunity Act and Fair Housing Act.

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<sup>1</sup> Complaint at 2, *Mayor and City Council of Baltimore v. Wells Fargo Bank, N.A.*, Docket No. 1:08-cv-00062-BEL (D. Md. filed Jan. 8, 2008). The term “redlining” refers to a practice that began in the 1930s of drawing red lines on maps around the areas ineligible for credit. The areas denied credit were generally urban, minority communities that experienced urban decay as a result. “Reverse redlining” represents the opposite problem; the extension of excessive credit to these communities. See <http://en.wikipedia.org/wiki/Redlining>.

<sup>2</sup> See U.S. Department of Housing and Urban Development, *Unequal Burden: Income & Racial Disparities in Subprime Lending in America* (2000), available at <http://www.huduser.org/publications/fairhsg/unequal.html>.

<sup>3</sup> Martha Neil, *Jesse Jackson Cites ‘Reverse Redlining,’ Calls for Gov’t Intervention*, ABA JOURNAL, Feb. 21, 2008, available at [http://www.abajournal.com/news/jesse\\_jackson\\_cites\\_reverse\\_redlining\\_calls\\_for\\_govt\\_intervention](http://www.abajournal.com/news/jesse_jackson_cites_reverse_redlining_calls_for_govt_intervention).

The plaintiffs seek injunctive relief, disgorgement, actual and punitive damages, and their costs and fees.

In September, Countrywide filed a Motion to Dismiss, arguing that the plaintiffs had not alleged that any discrimination was purposeful, and had failed to assert a viable disparate impact claim. Countrywide also stated that the claims of one plaintiff were time-barred.

#### **January 8, 2008:**

*Mayor and City Council of Baltimore v. Wells Fargo Bank, N.A.*, Docket No. 1:08-cv-00062-BEL (D. Md.): The city of Baltimore claims that Wells Fargo targeted predatory lending practices at African American neighborhoods, was irresponsible in underwriting loans that borrowers could not afford, and adopted pricing practices with a discriminatory impact on African American residents. The city alleges that Wells Fargo's discrimination cost it tens of millions in lost property tax revenue and increased expenditures on crime prevention, city services, and the rehabilitation of vacant properties. The city seeks injunctive relief, compensatory and punitive damages, and costs and fees incurred due to Wells Fargo's alleged violations of the Fair Housing Act.<sup>4</sup>

#### **January 25, 2008:**

*Lopez et al. v. GE Money Bank, et al.*, 2:08-cv-00479-R-FFM (C.D. Cal.): The named plaintiffs in this class action, who speak only Spanish, allege that the defendants used a discretionary pricing policy to subject them to hidden rate mark-ups. The *Lopez* plaintiffs allege that the discrimination against them was intentional. They claim that the discretionary policy at issue was designed to encourage lending agents to obtain higher rates from minority borrowers, while at the same time insulating the defendants themselves from any charges of discrimination. The plaintiffs bring causes of action for violation of the Equal Credit Opportunity Act and the Fair Housing Act. They seek injunctive relief, disgorgement, actual and punitive damages, and their costs.

#### **February 1, 2008:**

*Barrett, Jr. et al. v. H&R Block, Inc., et al.*, 1:08-cv-10157-RWZ (D. Mass.): In the plaintiffs' amended complaint, they attack a discretionary pricing policy similar to that at issue in *Miller et al. v. Countrywide Bank, N.A., et al.* The plaintiffs allege that this policy was communicated to loan officers in "rate sheets" and that additional interest charges resulted in an increase in the income earned by the defendants.

The plaintiffs take special issue with one type of adjustable-rate mortgage, the 2/28 ARM, which is possessed by each named plaintiff. Even if interest rates remain the same, this ARM has a built-in 29% "shock payment" increase and a potential actual increase as high as 48%. According to the Complaint "[t]he Center for Responsible Lending estimates that 2.2 million such subprime loans have ended or will end in foreclosure, a rate of 19%."

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<sup>4</sup> At least one other complaint, *Brown, et al. v. Wells Fargo Bank, N.A.*, 3:08-cv-00492-MMC, (N.D. Cal. filed Jan. 23, 2008) includes similar allegations regarding Wells Fargo's discretionary pricing policy.

The plaintiffs seek injunctive relief, disgorgement, actual and punitive damages, and costs and fees due to the alleged violations of the Equal Credit Opportunity Act and the Fair Housing Act.