

# BANK & LENDER LIABILITY

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## Expert Analysis

### The Recent Detroit Lending Discrimination Settlement

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The Department of Justice announced May 5 that it had reached a settlement with Citizens Republic Bancorp Inc. and Citizens Bank of Flint, Mich., in a lawsuit alleging a pattern or practice of lending discrimination, or “redlining,” in Detroit in violation of the Fair Housing Act and the Equal Credit Opportunity Act. *United States v. Citizens Republic Bancorp et al.*, No. 11-cv-11976, *settlement announced* (E.D. Mich. May 5, 2011). The statutes prohibit discrimination on the basis of race and color in a lending institution’s mortgage lending practices.

The lawsuit filed by the Justice Department alleged that CRBC, as the successor to Republic Bank, and Citizens Bank violated the FHA and ECOA by serving the credit needs of the residents of predominantly white neighborhoods in the Detroit metropolitan area to a significantly greater extent than the credit needs of neighborhoods with a majority of black residents.

Detroit has long had highly segregated residential housing patterns, especially for blacks. The Justice Department alleged that the lenders’ lending footprint “formed a virtual horseshoe around and excluded most majority-black census tracts in the city of Detroit” and that the lenders obtained “significantly” fewer applications from majority-black areas than from majority-white areas.

As part of the settlement, CRBC and Citizens Bank will open a loan production office in a Detroit neighborhood where the majority of residents are black, conduct fair lending training for its employees and invest \$3.6 million in Wayne County, Mich. This investment is expected to aid in neighborhood stabilization, increase the amount of credit the banks extend to majority-black areas in Wayne County and increase consumer financial education.

The settlement remains subject to approval by the U.S. District Court for the Eastern District of Michigan. The lawsuit originated with a referral to the Justice Department by the lenders’ regulator, the Federal Reserve Board.

This settlement should be seen as a precursor to additional similar actions. The Justice Department has been actively pursuing the fair-lending allegations that are referred to it by banking regulators, and under the Obama administration the agency

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has been vocal that it will aggressively pursue fair-lending claims to an extent not seen in previous years.

For instance last year the Justice Department settled a fair-lending case in which it alleged the existence of only a 0.2 percent average nationwide difference in broker fees between minority and white, non-Hispanic borrowers. The case settled for more than \$7 million.

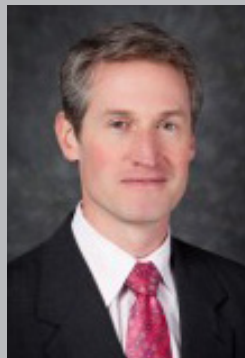
The Justice Department has established a Fair Lending Unit in its Housing and Civil Enforcement Section in order to devote more resources to fair-lending efforts. The agency, through Assistant Attorney General for Civil Rights Thomas E. Perez, has emphasized its view that minority communities have suffered inordinately from the housing crisis.

Further, the Justice Department's view is that homeowners in segregated communities, such as in Detroit, are particularly susceptible to facing foreclosure. But still, the agency does not expect any single fair-lending case to capture the full range of discriminatory conduct occurring in the mortgage market.

In the instant case Republic Bank, the purportedly more substantial misfeasor, was acquired by CRBC after the alleged discrimination had taken place. However, this factor did not dissuade the Justice Department from taking action on Republic's purported redlining.

Also, the remedies in the case are of the type the agency has stated it will pursue, with the foremost being compensating borrowers and reinvesting in the community where the harms were claimed to have taken place.

The case illustrates the perpetual tension in fair lending: balancing the need to serve traditionally underserved areas with the increased underwriting standards that are being demanded by regulators and investors. As underwriting standards become more strict, as many suspect they will under the Dodd-Frank Act, this tension may become even more acute.



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