



FEDERAL

TRADE

COMMISSION

WASHINGTON, D. C. 20580

FOR RELEASE AFTER 7:30 p. m. (CST), 8:30 p. m. (EST)

IN THE CONSUMER'S INTEREST:

FTC'S ENFORCEMENT OF THE EQUAL CREDIT OPPORTUNITY ACT

AN ADDRESS BY

ELIZABETH HANFORD DOLE

COMMISSIONER, FEDERAL TRADE COMMISSION

BEFORE

THE NATIONAL ASSOCIATION OF WOMEN LAWYERS

**SATURDAY
AUGUST 6, 1977**

CHICAGO, ILLINOIS

I'M DELIGHTED TO JOIN ALL OF YOU TONIGHT FOR YOUR ANNUAL MEETING AND TO SEE SO MANY OLD FRIENDS AND ACQUAINTANCES IN THE AUDIENCE.

AS A MEMBER OF THE BAR, I AM ALSO PARTICULARLY GRATIFIED TO SEE THAT THE RANKS OF WOMEN LAWYERS CONTINUE TO GROW. WHEN I COMPLETED LAW SCHOOL IN 1965, WOMEN WERE ONLY A TINY FRACTION OF THE LEGAL FRATERNITY, BUT THIS PAST YEAR I UNDERSTAND THAT THERE WERE 29,000 WOMEN ENROLLED IN LAW SCHOOLS ACROSS THE COUNTRY. THERE WERE ALMOST AS MANY WOMEN IN SCHOOL, I WOULD VENTURE, AS THERE WERE PRACTICING BEFORE THE BAR. THIS IS A TIDAL CHANGE, AND IT AUGURS WELL NOT ONLY FOR YOUR ASSOCIATION BUT FOR THE FUTURE OF THE ENTIRE LEGAL COMMUNITY, AND OUR SOCIETY AS A WHOLE.

WE'RE STILL TRYING TO OVERCOME MANY BARRIERS, OF COURSE. STANDING HERE BEFORE YOU, I AM REMINDED THAT FOR MANY YEARS WOMEN WERE PUT DOWN AS PUBLIC SPEAKERS. IT WAS SAMUEL JOHNSON WHO REPORTEDLY ONCE SAID OF A WOMAN SPEAKER, YOU DON'T EXPECT HER TO DO IT WELL; AND YOU'RE LUCKY IF SHE CAN DO IT AT ALL.

THIS IS NOT EXACTLY THE IDEAL FORUM IN WHICH TO CHALLENGE DR. JOHNSON. AS I TOLD MY STAFF BEFORE LEAVING WASHINGTON, A SATURDAY NIGHT ADDRESS BEFORE A CHAMBER FULL OF LAWYERS WOULD BE A FORMIDABLE TASK FOR PERICLES HIMSELF. BUT I'LL DO WHAT I CAN TO HELP ERASE THE MYTH -- AND I WELCOME ANY HELP YOU WANT TO GIVE.

ANOTHER, MORE SERIOUS BARRIER THAT WOMEN -- AS WELL AS MANY OTHERS IN OUR SOCIETY -- ARE STILL TRYING TO OVERCOME IS ONE TOUCHED UPON BY DR. JOHNSON IN ANOTHER CONTEXT. "NATURE," HE SAID, "HAS GIVEN WOMEN SO MUCH POWER THAT THE LAW HAS VERY WISELY GIVEN THEM LITTLE."

FORTUNATELY, THE LAW HAS RAPIDLY CHANGED IN RECENT YEARS HERE IN THE UNITED STATES -- NOT AS MUCH, PERHAPS, AS SOME WOULD LIKE, BUT CERTAINLY DRAMATIC BY PREVIOUS STANDARDS. AND WHAT I WOULD LIKE TO TALK ABOUT WITH YOU TONIGHT IS A VERY SPECIFIC NEW LAW, THE EQUAL CREDIT OPPORTUNITY ACT, AND WHAT WE AT THE FEDERAL TRADE COMMISSION INTEND TO DO IN COMING MONTHS TO ENSURE THAT THE LAW IS FAITHFULLY OBSERVED.

THE EQUAL CREDIT OPPORTUNITY ACT HAS A VERY SIMPLE PURPOSE: TO PREVENT CREDITORS FROM DISCRIMINATING AGAINST POTENTIAL BORROWERS ON THE BASIS OF RACE, COLOR, SEX, AGE, NATIONAL ORIGIN, RELIGION, MARITAL STATUS OR RECEIPT OF PUBLIC ASSISTANCE. IT IS NOT, STRICTLY SPEAKING, A LAW AIMED SOLELY AT THE PROTECTION OF WOMEN'S RIGHTS; IT IS MUCH BROADER THAN THAT, FOR IT HAS LONG

BEEN RECOGNIZED THAT RACIAL DISCRIMINATION AND OTHER FORMS OF DISCRIMINATION ARE AT LEAST AS PERNICIOUS AS SEXUAL DISCRIMINATION. THE EQUAL CREDIT OPPORTUNITY LAW IS, IN FACT, ONE THAT ALL AMERICANS HAVE AN INTEREST IN ENFORCING.

BEFORE MAKING MY ANNOUNCEMENT OF THE FTC'S PLANS, LET ME SKETCH IN SOME OF THE BACKGROUND.

A CENTRALLY ACCEPTED FACT OF OUR TIME IS THAT JUST AS AMERICA BEGAN RUNNING ON WHEELS EARLIER IN THIS CENTURY, IT NOW RUNS ON CREDIT. STATISTICS COMPILED IN 1970 INDICATE THAT CONSUMER CREDIT WAS THEN BEING USED IN ROUGHLY 40% OF ALL PERSONAL CONSUMPTION EXPENDITURES AND, EXCLUDING SERVICE CREDIT, ABOUT 48% OF ALL RETAIL PURCHASES. ANOTHER POLL, CONDUCTED TWO YEARS EARLIER BY THE MICHIGAN SURVEY OF CONSUMER FINANCES, REPORTED THAT TWO-THIRDS OF NEW CAR PURCHASES AND OVER A THIRD OF ALL HOUSEHOLD DURABLE GOODS WERE CREDIT-FINANCED. FOR THOSE WHO WISH TO PURCHASE A NEW HOME -- AND THE DESIRE FOR A PERSONAL HOME HAS GROWN TREMENDOUSLY IN RECENT YEARS -- IT IS A FOREGONE CONCLUSION THAT ONE OF YOUR FIRST STOPS MUST BE AT A MORTGAGE BANK, A SAVINGS AND LOAN ASSOCIATION, OR SOME OTHER CREDIT INSTITUTION.

IN RECENT YEARS, WE HAVE PILED UP AN ASTRONOMICAL AMOUNT OF DEBT. THIS JUNE, THE COMMERCE DEPARTMENT ANNOUNCED THAT NET PUBLIC AND PRIVATE DEBT DURING 1976 REACHED THE FIGURE OF 3.4 TRILLION DOLLARS. THAT AMOUNTS TO \$15,400 FOR EVERY

MAN, WOMAN AND CHILD IN THE COUNTRY. FURTHERMORE, BOTH GOVERNMENT DEBT AND PRIVATE DEBT WERE RISING AT THE RATE OF BETTER THAN 10 PERCENT A YEAR. THE HARD TRUTH IS THAT CREDIT HAS BECOME ALMOST AS IMPORTANT TO US AS REAL CURRENCY.

WITH CREDIT SUCH A PERVASIVE FORCE IN OUR SOCIETY, IT IS CLEAR THAT ANYONE WHO SUFFERS CREDIT DISCRIMINATION IS AUTOMATICALLY RELEGATED TO THE BACK OF THE BUS -- A SECOND CLASS CITIZEN.

FOR YEARS IT WAS WELL-KNOWN THAT WOMEN, BLACKS AND OTHERS HAD A MORE DIFFICULT TIME OBTAINING RETAIL AND MORTGAGE CREDIT THAN DID WHITE MALES, BUT THE FACTS HAD NOT BEEN WELL-VERIFIED NOR HAD THE ISSUE BEEN WELL-VENTILATED. THEN IN MAY OF 1972, A BREAKTHROUGH OCCURRED WHEN THE NATIONAL COMMISSION ON CONSUMER FINANCE HELD HEARINGS ON THE AVAILABILITY OF CREDIT TO WOMEN. FROM THOSE HEARINGS EMERGED SOME DEFINITE CONCLUSIONS:

-- SINGLE WOMEN HAD MORE TROUBLE OBTAINING CREDIT THAN DID SINGLE MEN, ESPECIALLY MORTGAGE CREDIT;

-- CREDITORS GENERALLY REQUIRED A WOMAN WHO ALREADY HAD CREDIT TO REAPPLY FOR CREDIT WHEN SHE MARRIED, THOUGH MEN WERE NOT FORCED TO DO SO;

-- CREDITORS WERE OFTEN UNWILLING TO EXTEND CREDIT TO A WOMAN IN HER OWN NAME;

-- WOMEN WHO WERE DIVORCED OR WIDOWED HAD TROUBLE REESTABLISHING CREDIT;

-- AND CREDITORS WERE OFTEN UNWILLING TO COUNT THE WIFE'S INCOME WHEN A MARRIED COUPLE APPLIED FOR A LOAN, ESPECIALLY A MORTGAGE.

THOSE 1972 HEARINGS AND THE CONCLUSIONS THEY REACHED WERE A POWERFUL CATALYST FOR REFORM. NEITHER THE COUNTRY NOR THE CONGRESS COULD CONTINUE TO IGNORE THE UNEQUAL STATUS OF WOMEN, AND ON OCTOBER 28, 1974, THE EQUAL CREDIT OPPORTUNITY ACT WAS SIGNED INTO LAW BY PRESIDENT FORD. THAT FIRST STATUTE PROHIBITED ANY CREDITOR IN ANY ASPECT OF A CREDIT TRANSACTION FROM DISCRIMINATING AGAINST AN APPLICANT ON THE BASIS OF SEX OR MARITAL STATUS. WASHINGTON SOON RECOGNIZED THAT THE LAW DID NOT GO FAR ENOUGH, AND IN THE SPRING OF 1976, THE CONGRESS AMENDED THE ACT, EXTENDING THE PROTECTION FROM CREDIT DISCRIMINATION TO RACE, COLOR, RELIGION, NATIONAL ORIGIN, ADVANCING AGE, RECEIPT OF PUBLIC ASSISTANCE, AND THE EXERCISE OF RIGHTS UNDER THE CONSUMER CREDIT PROTECTION ACT. THUS, CREDIT DISCRIMINATION WAS OUTLAWED BY THE CONGRESS, WITH CIVIL PENALTIES TO BE IMPOSED BY THE FEDERAL COURTS UPON THOSE WHO VIOLATED THE STATUTE.

ADMINISTRATIVE RESPONSIBILITY FOR CARRYING OUT THIS LAW WAS CHARGED TO SEVERAL REGULATORY AGENCIES WHICH HAD GENERAL SUPERVISORY POWERS OVER CREDITORS. ONE WAS THE FEDERAL TRADE COMMISSION. ANOTHER WAS THE FEDERAL RESERVE BOARD, WHICH

WAS CALLED UPON TO WRITE STANDARD REGULATIONS TO ENSURE CONSISTENT ENFORCEMENT ACROSS THE COUNTRY. EVEN THE PREPARATION OF THOSE STANDARDS WAS A SOURCE OF SOME CONTROVERSY, BUT THE FEDERAL RESERVE BOARD EVENTUALLY PUBLISHED A FULL SET OF STANDARDS -- KNOWN NOW AS REGULATION B.

WE HAVE NOT YET HAD MUCH EXPERIENCE UNDER THE NEW LAW. THAT PORTION OF REGULATION B PERTAINING TO DISCRIMINATION ON THE BASIS OF SEX OR MARITAL STATUS BECAME EFFECTIVE ON OCTOBER 28, 1975 -- ONLY TWO YEARS AGO -- AND THAT PORTION PERTAINING TO DISCRIMINATION ON OTHER BASES SUCH AS RACE BECAME EFFECTIVE ONLY LAST MARCH. IN ADDITION, THERE IS ONE OTHER IMPORTANT SECTION IN THE ACT WHICH BECAME EFFECTIVE ON JUNE 1 OF THIS YEAR. THAT SECTION REQUIRES CREDITORS TO ESTABLISH INDIVIDUAL CREDIT HISTORIES ON HUSBANDS AND WIVES WHO SHARE THE SAME ACCOUNT. FOR ANY FAMILY OPENING A JOINT ACCOUNT AFTER JUNE 1, THE CREDITOR MUST BE ABLE TO REPORT ON THE CREDIT HISTORY OF THE HUSBAND AND WIFE; FOR PRE-EXISTING ACCOUNTS, THE CREDITOR IS SUPPOSED TO REPORT CREDIT HISTORIES IN THE NAME OF BOTH SPOUSES. THIS IS A VITAL CHANGE IN THE LAW FOR WOMEN, AND I HOPE THAT YOU WILL ASSIST US IN ENSURING THAT CONSUMERS ARE AWARE OF THEIR NEW RIGHTS.

AS I SAY, EXPERIENCE UNDER THE EQUAL CREDIT OPPORTUNITY ACT IS STILL LIMITED. NONETHELESS, THERE IS NOW ENOUGH INFORMATION COMING IN FROM THE FIELD AND THERE IS ENOUGH INFORMATION BUILDING UP ON THE PUBLIC RECORD TO RAISE SERIOUS DOUBTS WHETHER THE LAW IS BEING FULLY CARRIED OUT ACROSS THE COUNTRY. SINCE EQUAL ACCESS TO CREDIT HAS BECOME SUCH A FUNDAMENTAL NEED OF THE AMERICAN PEOPLE, IT IS VITAL THAT ALL DOUBTS ABOUT CREDIT DISCRIMINATION BE QUICKLY AND FAIRLY RESOLVED.

THEREFORE, I AM PLEASED TO ANNOUNCE TO YOU HERE THIS EVENING THAT THE FEDERAL TRADE COMMISSION, IN ITS ROLE AS ONE OF THE AGENCIES RESPONSIBLE FOR FULL AND VIGOROUS ENFORCEMENT OF THE LAW, HAS VOTED TO UNDERTAKE TWO IMPORTANT NEW INVESTIGATIONS OF CREDIT PRACTICES.

MEETING IN CLOSED SESSION A FEW DAYS AGO, WE DIRECTED OUR STAFF TO CONDUCT INDUSTRYWIDE INVESTIGATIONS OF THE MORTGAGE CREDIT PRACTICES OF NON-DEPOSITORY LENDING INSTITUTIONS AND THE PRACTICES OF MAJOR CREDIT CARD ISSUERS, INCLUDING OIL COMPANIES, RETAILERS, AND CERTAIN TRAVEL AND ENTERTAINMENT CARD COMPANIES. IN AID OF THESE INVESTIGATIONS, WE HAVE ALSO AUTHORIZED THE USE OF SUBPOENAS AND OTHER MEANS TO COMPEL,

WHEN NECESSARY, THE PRODUCTION OF DOCUMENTS AND INFORMATION RELEVANT TO THE LINES OF INQUIRY WE WILL BE FOLLOWING.

LET ME FIRST EXPLAIN OUR INVESTIGATION INTO MORTGAGE LENDING PRACTICES. UNDER THE LAW, THE FEDERAL TRADE COMMISSION HAS ENFORCEMENT JURISDICTION OVER ALL NON-DEPOSITORY LENDING INSTITUTIONS WHICH MAKE LOANS -- NAMELY, MORTGAGE BANKERS AND OTHER INSTITUTIONAL LENDERS IN THE SECONDARY MORTGAGE MARKET SUCH AS INSURANCE COMPANIES AND PENSION FUNDS. WE ALSO HAVE ENFORCEMENT RESPONSIBILITIES FOR MORTGAGE GUARANTEE AND MORTGAGE INSURANCE COMPANIES.

AMONG ALL OF THESE INSTITUTIONS, THE MORTGAGE BANKING COMPANIES ARE OF PRIME INTEREST TO US BECAUSE OF THE VOLUME OF THEIR BUSINESS AND THEIR CENTRAL ROLE IN HELPING PEOPLE PURCHASE HOMES. MANY OF YOU HAVE PROBABLY COME INTO CONTACT WITH THEM IN YOUR PRACTICE OR YOUR PRIVATE LIFE. A MORTGAGE BANKER WORKS LIKE A BROKER: HE BRINGS TOGETHER PEOPLE WHO ARE WILLING TO PART WITH THEIR MONEY -- INVESTORS -- WITH THOSE WHO ARE LOOKING FOR MONEY -- OR, POTENTIAL HOME PURCHASERS. THE MORTGAGE BANKER'S PRIMARY SOURCE OF INCOME IS DERIVED FROM "SERVICING" THE LOAN; FOR EXAMPLE, HE COLLECTS THE MONTHLY MORTGAGE PAYMENT, AND MAINTAINS AN ESCROW ACCOUNT FOR PAYMENT OF PROPERTY TAXES. THE MORTGAGE BANKER CAN ATTRACT INVESTORS BECAUSE HE CAN PROVIDE SERVICES AT A LOWER COST THAN WOULD

BE POSSIBLE THROUGH DIRECT INVESTMENT. AS A SOCIAL MATTER, MORTGAGE BANKERS ALSO PROVIDE A VALUABLE SERVICE BECAUSE THEY HELP TO DISTRIBUTE MONEY FROM AREAS OF HIGH FINANCIAL CONCENTRATION SUCH AS CHICAGO OR NEW YORK INTO LOCAL AREAS WHERE THAT MONEY CAN BE USED FOR RESIDENTIAL CONSTRUCTION.

IN 1975, THE MORTGAGE BANKING INDUSTRY ORIGINATED ABOUT ONE-FIFTH OF ALL RESIDENTIAL MORTGAGES IN THE UNITED STATES, RANKING BEHIND SAVINGS AND LOAN ASSOCIATIONS BUT AHEAD OF COMMERCIAL BANKS. OVERALL, THE MORTGAGE BANKING INDUSTRY WAS RESPONSIBLE FOR ABOUT \$20 BILLION WORTH OF NEW MORTGAGE LOANS IN THAT YEAR.

FOR MOST BORROWERS, THIS MORTGAGE SYSTEM WORKS EFFICIENTLY AND EFFECTIVELY, BUT IF YOU ARE BLACK, IF YOU ARE A WOMAN, IF YOU ARE ENTERING RETIREMENT, OR EVEN IF YOU JUST LIVE IN A MINORITY NEIGHBORHOOD, YOU MAY FIND THAT MORTGAGES ARE NOT A PASSPORT BUT AN IMPOSSIBLE OBSTACLE TO A BETTER LIFE. OVER THE YEARS, HEARINGS BEFORE THE NATIONAL COMMISSION ON CONSUMER FINANCE AND BEFORE CONGRESSIONAL COMMITTEES HAVE REVEALED SUBSTANTIAL EVIDENCE OF CREDITORS REFUSING TO GRANT MORTGAGE CREDIT TO WOMEN WITHOUT A CO-SIGNER, REFUSING TO GRANT CREDIT TO WOMEN OF CHILDBEARING AGE, AND REFUSING TO CONSIDER THE INCOME OF A MARRIED WOMAN IN EVALUATING A MORTGAGE LOAN APPLICATION FROM MARRIED COUPLES. RACIAL DISCRIMINATION MAY POSE EVEN GREATER HARDSHIP BECAUSE IT MAY BE MORE WIDELY PRACTICED AND ITS EFFECT IS TO DENY TOTAL ACCESS TO BETTER HOUSING.

NOT LONG AGO, THE U.S. COMMISSION ON CIVIL RIGHTS ISSUED A REPORT NOTING THAT IN 1968, THE FEDERAL FAIR HOUSING LAW HAD PROHIBITED DISCRIMINATION AGAINST MINORITIES IN OBTAINING MORTGAGE FINANCING. "YET," AS OF THE MID-70s, THE REPORT SAID, "REAL ESTATE BROKERS AND MORTGAGE LENDERS STILL TREAT MINORITY HOME BUYERS DIFFERENTLY FROM WHITE PURCHASERS."

IN OUR INVESTIGATION AT THE FEDERAL TRADE COMMISSION, WE WANT TO DETERMINE WHETHER THAT DISCRIMINATION CONTINUES TODAY AT ESSENTIALLY THREE POINTS IN THE MORTGAGE PROCESS: IN THE WAY THAT LOANS ARE GRANTED, IN THE WAY THEY ARE ADMINISTERED, AND IN THE WAY THEY ARE FORECLOSED. IT IS NOT GOOD ENOUGH IF A CREDITOR SIMPLY DECIDES TO LOAN MONEY TO A BORROWER. DISCRIMINATION MAY ALSO ENTER THE PICTURE IF A CREDITOR, FOR RACIAL, SEXUAL OR OTHER REASONS, IMPOSES MORE STRINGENT CONDITIONS ON THE TERMS OF CREDIT OR IF HE DECIDES TO FORECLOSE THE MORTGAGE PREMATURELY.

IN OUR INVESTIGATION, WE SPECIFICALLY WANT TO ASK WHETHER, AMONG OTHER PRACTICES, NON-DEPOSITORY MORTGAGE LENDING INSTITUTIONS UNDER OUR JURISDICTION:

(A) DENY LOANS TO OTHERWISE QUALIFIED NON-WHITE FAMILIES BECAUSE OF THEIR RACE;

(B) IMPOSE MORE STRINGENT CONDITIONS ON LOANS FOR NON-WHITE FAMILIES BECAUSE OF THEIR RACE;

(C) REFUSE TO MAKE LOANS TO OTHERWISE QUALIFIED NON-WHITE FAMILIES FOR PURCHASE OF HOMES IN PREDOMINANTLY WHITE NEIGHBORHOODS;

(D) REFUSE TO MAKE MORTGAGE LOANS TO OTHERWISE QUALIFIED FAMILIES HEADED BY FEMALES;

(E) DISCOUNT ALL OR A SUBSTANTIAL PART OF A WIFE'S INCOME BECAUSE OF HER SEX IN DETERMINING THE ELIGIBILITY OF THE FAMILY FOR MORTGAGE LOANS (I MIGHT NOTE THAT SINCE A HIGHER PROPORTION OF WIVES IN BLACK FAMILIES THAN IN WHITE FAMILIES HOLD JOBS, THIS PRACTICE ALSO HAS A RACIAL IMPACT);

(F) MAKE ASSUMPTIONS ABOUT THE CONTINUITY OF THE INCOME OF A MARRIED WOMAN OF CHILDBEARING AGE;

(G) REQUIRE FLUENCY IN THE ENGLISH LANGUAGE AS A PREREQUISITE FOR OBTAINING A LOAN; OR,

(H) REFUSE TO MAKE LOANS TO OTHERWISE QUALIFIED FAMILIES, WHITE OR NON-WHITE, FOR THE PURCHASE OF HOMES IN RACIALLY INTEGRATED OR PREDOMINANTLY NON-WHITE NEIGHBORHOODS BECAUSE OF THE RACIAL COMPOSITION OF SUCH NEIGHBORHOODS.

REDLINING

WE ARE PARTICULARLY INTERESTED IN THE PRACTICE KNOWN AS "REDLINING" -- OR THE REFUSAL TO GRANT CREDIT TO PEOPLE BECAUSE THEY RESIDE WITHIN CERTAIN AREAS OF A CITY. IT IS UNDERSTANDABLE THAT A CREDITOR MIGHT BE HESITANT TO GRANT A LOAN TO A FAMILY BECAUSE HE THOUGHT THEIR HISTORY MADE THEM A BAD RISK OR BECAUSE HE THOUGHT THE HOME, LOCATED IN A DETERIORATING NEIGHBORHOOD, REPRESENTED POOR COLLATERAL. THAT'S PART OF THE CREDIT BUSINESS. BUT IT WOULD BE A MATTER OF GREAT CONCERN TO US IF THE CREDITOR'S ASSESSMENT OF RISK WERE BASED ON A CONCLUSION THAT THE RACIAL OR ETHNIC COMPOSITION OF A GEOGRAPHIC AREA CONSTITUTES AN ADVERSE INFLUENCE. THIS IS KNOWN AS RACIAL REDLINING, AND IT IS STRICTLY PROHIBITED BY LAW. OUR INVESTIGATION WILL SEEK TO DETERMINE WHETHER CERTAIN CREDITORS APPRAISE THEIR RISK, IN WHOLE OR IN PART, BASED ON THE RACIAL OR ETHNIC COMPOSITION OF A GEOGRAPHIC AREA IN WHICH THE HOME IS LOCATED. I SHOULD EMPHASIZE THAT OUR INQUIRY WILL ENCOMPASS A SUBSTANTIAL SEGMENT OF THE MORTGAGE BANKING INDUSTRY; WE HAVE NOT IDENTIFIED PARTICULAR MORTGAGE BANKERS WHO MAY BE ENGAGING IN DISCRIMINATORY PRACTICES.

INVESTIGATION OF CREDIT CARD ISSUERS.

OUR SECOND INVESTIGATION, AS I HAVE MENTIONED, FOCUSES ON THE CREDIT GRANTING PRACTICES OF MAJOR CREDIT CARD ISSUERS.

ALL OF US ARE WELL AWARE THAT AMERICA HAS BECOME A CREDIT-CARD SOCIETY. A YEAR AGO, THERE WERE 196 MILLION CREDIT ACCOUNTS AT RETAIL ESTABLISHMENTS IN THE UNITED STATES AS WELL AS 97 MILLION CREDIT ACCOUNTS ISSUED BY OIL COMPANIES AND ANOTHER 20 MILLION BY RENTAL CAR COMPANIES, TRAVEL, ENTERTAINMENT AND OTHER ENTERPRISES.

THESE FIGURES SUGGEST THAT THE PUBLIC HAS A VITAL INTEREST IN NON-DISCRIMINATORY CREDIT. ALL SEGMENTS OF OUR SOCIETY HAVE COME TO DEPEND UPON ACCESS TO CREDIT AS A WAY OF OPENING THE DOOR OF OPPORTUNITY.

WITH THESE THOUGHTS IN MIND, THE COMMISSIONERS AT THE FTC HAVE AUTHORIZED THE STAFF TO DETERMINE WHETHER THE CREDIT CARD INDUSTRY MAY BE UNLAWFULLY DISCRIMINATING IN SEVERAL IMPORTANT WAYS.

(1) RACE DISCRIMINATION

IT HAS COMMONLY BEEN ASSUMED THAT RACIAL DISCRIMINATION MAY BE PREVALENT IN MORTGAGE CREDIT AND OTHER TYPES OF LOANS REQUIRING PERSONAL INTERVIEWS BUT THAT VERY LITTLE RACIAL DISCRIMINATION TAKES PLACE IN OPEN-END, RETAIL CREDIT TRANSACTIONS WHERE THE APPLICATION IS USUALLY SUBMITTED BY MAIL.

BASED UPON INFORMATION GATHERED AT THE FTC, HOWEVER, IT NOW APPEARS THAT RACIAL DISCRIMINATION IN RETAIL CREDIT MAY BE MUCH MORE WIDESPREAD THAN WAS PREVIOUSLY SUSPECTED.

TO ASSESS THIS POSSIBILITY, WE WILL BE PARTICULARLY INTERESTED IN THE WAY THAT ZIP CODES ARE BEING USED IN CREDIT SCORING SYSTEMS AND HOW VALUES ARE ASSIGNED TO THEM. BY COMPARING SUCH ZIP CODE INFORMATION WITH CENSUS TRACTS, WE MAY FIND THAT THE USE OF ZIP CODES AS A CREDIT SCORING SYSTEM RESULTS IN A DISPROPORTIONATELY LARGER NUMBER OF REJECTIONS FOR BLACKS THAN FOR WHITE APPLICANTS. UNDER THE EQUAL CREDIT OPPORTUNITY ACT IF A CREDITOR'S POLICY, NEUTRAL ON ITS FACE, HAS DISPROPORTIONATE ADVERSE EFFECTS ON MEMBERS OF A PROTECTED CLASS, IT MAY VIOLATE THE LAW UNLESS THE CREDITOR HAS A COMPELLING BUSINESS NECESSITY FOR THE POLICY AND NO OTHER, LESS DISCRIMINATORY METHOD IS AVAILABLE TO ACHIEVE THE SAME OBJECTIVE.

(2) SEXUAL DISCRIMINATION

OUR INVESTIGATION WILL ALSO PROBE FOR REPRESENTATIVE TYPES OF PRACTICES THAT DISCRIMINATE ON SEXUAL GROUNDS. FOR INSTANCE, DO CREDIT CARD COMPANIES GIVE DIFFERENT TREATMENT TO THE SAME OCCUPATIONS BASED UPON SEXUAL DIFFERENCES? ARE WAITERS GIVEN BETTER TREATMENT THAN WAITRESSES? DO CREDITORS USE DIFFERENT STANDARDS IN WRITING CREDIT HISTORIES FOR MEN AND WOMEN? ARE MARRIED WOMEN IN COMMUNITY PROPERTY STATES RECEIVING LESS THAN EQUAL TREATMENT? ALL OF THIS AND MORE MUST BE EXPLORED.

(3) AGE DISCRIMINATION

STILL A THIRD AREA OF SCRUTINY MUST BE DISCRIMINATION AGAINST THE ELDERLY. ALL OF US ARE FAMILIAR WITH COMPLAINTS OF ELDERLY PEOPLE WHO HAVE BEEN DENIED CREDIT BECAUSE THEY ARE IN THEIR RETIREMENT OR BECAUSE THEY ARE INELIGIBLE FOR CREDIT LIFE INSURANCE, DESPITE THE FACT THEY MAY HAVE UNBLEMISHED CREDIT RECORDS. SUCH PRACTICES HAVE BEEN PROHIBITED; YET, BASED UPON CONSUMER COMPLAINTS SINCE THE EFFECTIVE DATE OF THE AMENDED ACT, IT APPEARS THAT SUCH POLICIES MAY STILL BE IN USE BY SOME CREDITORS.

(4) DISCRIMINATION AGAINST RECIPIENTS OF PUBLIC ASSISTANCE

UNTIL RECENTLY, MANY CREDITORS IMPOSED A FLAT REQUIREMENT THAT ALL INCOME MUST BE DERIVED FROM EMPLOYMENT, BUT THE NEW LAW HAS BANNED THAT PRACTICE, REQUIRING THAT PEOPLE RECEIVING SOCIAL SECURITY CHECKS, DISABILITY INCOME AND THE LIKE HAVE SUCH INCOME CONSIDERED AS PART OF THEIR CREDIT EVALUATION. WHAT OUR STAFF MUST DETERMINE IS WHETHER CURRENT PRACTICE NOW CONFORMS WITH THE LAW.

(5) DISPARATE TREATMENT OF PROTECTED CLASSES

MOST CREDITORS UNDERSTAND THAT REGULATION B PROHIBITS DIRECT, INTENTIONAL DISCRIMINATION IN THE EXTENSION OF CREDIT, BUT IT MAY NOT BE AS CLEARLY UNDERSTOOD AS IT SHOULD BE THAT

INDIRECT, UNINTENTIONAL DISCRIMINATION IS ALSO BANNED. IN LEGAL TERMS, THIS MIGHT BE CALLED THE "EFFECTS TEST" DOCTRINE, AND IT MEANS THAT CREDITORS MAY NOT USE CRITERIA THAT, EVEN THOUGH THEY MAY SOUND NEUTRAL, HAVE A DISPROPORTIONATELY ADVERSE EFFECT UPON MEMBERS OF A PROTECTED CLASS. LET ME GIVE YOU AN EXAMPLE, IN ADDITION TO THE ONE ON ZIP CODES. LET'S SUPPOSE THAT ONE OF THE FACTORS A CREDITOR USED IN EVALUATING CREDIT WORTHINESS WAS WHETHER THE APPLICANT HAD A TELEPHONE LISTED IN HIS OR HER NAME. ON THE SURFACE, THAT MIGHT SOUND REASONABLE. TELEPHONE LISTINGS ARE EQUALLY AVAILABLE TO EVERYONE. ALSO, IN COLLECTING DEBTS, MANY CREDITORS MAY WANT TO BE SURE THAT AN APPLICANT CAN BE REACHED BY PHONE. THE EFFECT OF SUCH CRITERIA, HOWEVER, MAY BE DISCRIMINATORY AGAINST MARRIED WOMEN BECAUSE IN MANY INSTANCES TELEPHONES IN THE HOMES OF MARRIED COUPLES ARE LISTED ONLY IN THE NAME OF THE HUSBAND. ACCORDINGLY, ASKING WHETHER A TELEPHONE IS LISTED IN THE APPLICANT'S NAME MAY BE DISCRIMINATORY; CREDITORS MAY ONLY ASK WHETHER THERE IS A TELEPHONE IN THE HOME OF THE APPLICANT -- A CRITERIA THAT IS NEUTRAL WITH REGARD TO SEX AND MARITAL STATUS. OUR INTENTION AT THE FTC IS TO EVALUATE THE CRITERIA THAT CREDITORS ARE USING TO DETERMINE WHETHER THEY ARE DISCRIMINATORY IN THEIR EFFECT.

INDUSTRY AND CONSUMER EDUCATION

A FINAL COMPONENT OF THE COMMISSION'S EQUAL CREDIT OPPORTUNITY ACT ENFORCEMENT PROGRAM WILL INVOLVE AN EFFORT ON OUR PART TO EDUCATE CONSUMERS AS WELL AS INDUSTRY ON THEIR RIGHTS AND OBLIGATIONS UNDER THE LAW. WE BELIEVE THAT CREDIT SHOULD BE AVAILABLE TO CREDITWORTHY CONSUMERS ON A NONDISCRIMINATORY BASIS, AND ONLY IF CONSUMERS ARE AWARE OF THEIR RIGHTS AND INDUSTRY IS COGNIZANT OF ITS RESPONSIBILITIES WILL THE NATIONAL POLICY REFLECTED IN THE EQUAL CREDIT OPPORTUNITY ACT ACHIEVE ITS FULL POTENTIAL.

TO PARAPHRASE MARGARET GATES, WHO HAS WRITTEN WIDELY ON THIS SUBJECT, "ONLY A STRONG, WELL ENFORCED FEDERAL LAW, ACCOMPANIED BY EFFORTS TO EDUCATE CONSUMERS AND THE CREDIT INDUSTRY, CAN BE EXPECTED TO OVERCOME A TRADITION OF DISCRIMINATION..."

WE RECOGNIZE THAT THIS LAW IS COMPLEX AND ITS IMPLEMENTING REGULATIONS ARE TECHNICAL. AS MEMBERS OF THE BAR, YOU ARE IN A UNIQUE POSITION TO ASSIST US IN EDUCATING INDUSTRY IN WHAT THE LAW REQUIRES OF THEM AND IN EDUCATING CONSUMERS IN WHAT THEY MAY EXPECT FROM BUSINESS.

AT THE FEDERAL TRADE COMMISSION, WE HAVE MADE A STRONG
COMMITMENT TO ENSURE THAT THE GOALS OF THIS IMPORTANT
LEGISLATION ARE ACHIEVED. AND WITH A UNITED EFFORT --
OURS AS PRACTITIONERS IN THE GOVERNMENT, YOURS AS PRACTITIONERS
BEFORE THE PRIVATE BAR -- I BELIEVE THAT OUR GENERATION CAN
BE THE FIRST TO SEE THAT COMMITMENT -- INDEED, THAT DREAM --
FULFILLED.

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