

The National Commission on Fair Housing and Equal Opportunity



**Henry Cisneros
Jack Kemp
Co-Chairs**

October 24, 2008

The Honorable Henry Paulson
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Dear Secretary Paulson:

On behalf of the National Commission on Fair Housing and Equal Opportunity, we are writing to urge you to ensure that all federal lending rescue activities are carried out in a non-discriminatory way that affirmatively furthers our nation's fair housing laws. As the Department takes actions authorized by Congress, it must not waive or overlook civil rights requirements that are applicable to it and to lenders.

The Fair Housing Act and Executive Orders 11063 and 12892 prohibit illegal discrimination and require a recipient of federal funding, public or private, to affirmatively further fair housing.¹ Because funds made available through the Housing and Economic Recovery Act, the Neighborhood Stabilization Act, and the Emergency Economic Stabilization Act are federal funds, federal agencies and lending regulators – including the Department of the Treasury, the Federal Reserve Board, and the Department of Housing and Urban Development (HUD) – must comply with these requirements. In the context of the foreclosure crisis, these requirements call for these agencies and regulators to take into account the racially disproportionate impact of predatory and subprime lending and the historical role of housing segregation and lending disparities in helping exacerbate the crisis.²

Accordingly, we urge the Department, the Federal Reserve, and other federal agencies to immediately implement the following recommendations:

¹ The fair housing requirements include the obligation not to target neighborhoods or individuals for bad loans because of the race of the neighborhood or borrower. These requirements also prohibit the purchase of loans that include discriminatory terms. There is evidence that widespread discrimination has occurred in the underlying loans that are in foreclosure or heading toward foreclosure.

² HMDA data reveal that African-Americans and Latinos disproportionately received subprime loans. In addition, studies have revealed that significant numbers of consumers who received subprime loans actually qualified for prime loans. Recent analysis of loan portfolios conducted by rating agencies disclosed the tenuous nature of the overwhelming majority of subprime loan products. Subprime loans were often comprised of multiple layers of risk, such as lack of income documentation, high cumulative loan-to-value ratios, high debt-to-income ratios, complex loan terms, the existence of a closed-end second mortgage, and volatile loan payment structures. While numerous studies and analyses have pointed to the highly unregulated subprime lending system, including facets of the securitization process, as being substantial contributors to the current credit crisis, some have erroneously and irresponsibly blamed the crisis on lending associated with the Community Reinvestment Act. Many civil rights, consumer advocacy, federal entities, and mainstream financial institutions, however, have rejected this unfounded argument.

Enforcement of Civil Rights Obligations: Every asset that is acquired by a federal agency should be given an expedited review for potential civil rights violations and unfair and deceptive practices. Remedial action should include correction of any violation found. In addition, a good-faith effort should be made by lenders and federal agencies alike to renegotiate the mortgage terms in an expedited manner prior to foreclosure. Any practices that are identified as potentially discriminatory should be referred to the Department of Justice and HUD for further investigation and possible fair housing enforcement actions, as well as to lending regulators for additional review and action.

Homeownership Preservation: The Department must promote loan modification and homeownership preservation measures in each transaction that it negotiates, including any contract to infuse capital into financial institutions or purchase stock or assets of lenders. Homeownership preservation efforts and the rights of tenants must be undertaken in a non-discriminatory fashion, in a manner that affirmatively furthers fair housing, and in direct proportion to the concentration of foreclosures in particular areas.

It is critical that the Department establish performance goals and monitoring of progress. In addition, the Department's monthly report to Congress should include aggregated data on the profile of families assisted in foreclosure prevention efforts by a) the type of assistance received, b) the race and ethnicity of the borrower, and c) the geographic demographic information of the properties.

Management of REO Properties: Loans for property obtained pursuant to the Neighborhood Stabilization Act, and loans for any properties acquired by federal agencies through foreclosure, should be reviewed for discriminatory practices. Data should be aggregated and reported in the same way as suggested above to address potential areas of discrimination. This inventory must be handled and disposed of in a non-discriminatory fashion, and in a manner that affirmatively furthers fair housing laws. Furthermore, all REO properties must be marketed and managed by real estate firms and professionals who are in compliance with comprehensive fair housing training.

We believe civil rights requirements are core principles that must not be ignored in the current crisis environment. The Department has an important role to play in ensuring that federal foreclosure relief promotes equality of opportunity in housing, rather than perpetuating de facto segregation.

Thank you for your consideration of our concerns and we appreciate the enormity of the challenge. Be assured of our desire to be of assistance.

Sincerely,



Henry Cisneros
Co-Chair and Former HUD Secretary



Jack Kemp
Co-Chair & Former HUD Secretary

Commissioners

(Titles listed for identification purposes only)

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cc: Secretary Steve Preston
 Chairman Ben Bernanke