



Leadership Conference on Civil Rights

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The Honorable Timothy F. Geithner, Secretary
U.S. Department of Treasury
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220-0002

The Honorable Eric H. Holder, Jr., Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001

Re: Administration position in *Cuomo v. The Clearing House Ass'n, L.L.C.*

Dear Secretary Geithner and Attorney General Holder:

On behalf of the Leadership Conference on Civil Rights (LCCR) and the undersigned civil rights, human rights, labor, and consumer organizations, we respectfully request that you reverse the Bush administration's position in *Cuomo v. The Clearing House Ass'n, L.L.C.*, currently pending before the U.S. Supreme Court.¹

As you know, President Obama has acknowledged that there was a massive "failure of oversight and accountability" in our government that now threatens our banking system and entire economy. A major contributor to that failure was the 2004 adoption of regulations, by the Office of the Comptroller of Currency (OCC), blocking states from investigating or enforcing any state anti-discrimination laws and other state consumer protection laws against national banks and their operating subsidiaries.

As the foreclosure crisis erupted, the New York Attorney General tried to investigate whether several national banks and their subsidiaries in New York were engaging in racially discriminatory mortgage lending practices by issuing high-interest loans in significantly higher percentages to African-American and Latino borrowers than to White borrowers. Several studies have already shown that, on a nationwide, industry-wide level, such racial and ethnic disparities did in fact exist – disparities that cannot be explained away by credit scores, income, or other legitimate factors.²

¹ Consumers Union has already sent a similar request. Gail Hillebrand, Consumers Union, *Letter to Hon. Timothy Geithner*, Feb. 4, 2009 (at <http://www.consumersunion.org/pdf/Geithner-Ltr-209.pdf>).

² See, e.g. Debbie Gruenstein Bocian, Keith S. Ernst, and Wei Li, *Unfair Lending: The Effect of Race and Ethnicity on the Price of Subprime Mortgages*, at 19 (available at http://www.responsiblelending.org/pdfs/rr011-Unfair_Lending-0506.pdf), May 2006; National Community Reinvestment Coalition, *Income is No Shield Against Racial Differences in Lending: A Comparison of High-Cost Lending in America's Metropolitan Areas* (available at <http://ncrc.org/pressandpubs/documents/NCRC%20metro%20study%20race%20and%20income%20disparity%20July%2007.pdf>), July 10, 2007; Rich Brooks and Ruth Simon, "Subprime Debacle Traps Even Very Credit-Worthy," *Wall Street Journal*, December 3, 2007 at A1.



Rather than help, however, the OCC joined a consortium of national banks to sue New York, to prevent Attorney General Cuomo's investigation and any subsequent enforcement of New York's anti-discrimination laws against national banks. Relying on the 2004 OCC regulations, the OCC and banks have argued that states cannot enforce their own state laws against national banks and their operating subsidiaries, even when those state laws are not substantively preempted.

In the years since the OCC blocked New York and other states from enforcing their anti-discrimination laws with respect to national banks and their subsidiaries, it is painfully clear that federal regulators did little to fill the void. The OCC has a very poor record of enforcing state laws; indeed, the OCC had brought *no* enforcement actions based on violations of state law, and it has failed to train its bank examiners on state laws. The OCC even has a very poor record of enforcing *federal* fair lending laws, both in its regulatory oversight and in its referring matters to the Department of Justice or HUD for enforcement. It is also important to note that federal fair housing and fair lending laws (such as the Fair Housing Act and the Equal Credit Opportunities Act) envision an important state role in anti-discrimination enforcement, something that the OCC's regulatory interpretation completely ignores, resulting in the elimination of any state role in fighting lending discrimination.

On March 25, 2009, the United States will file its brief in the Supreme Court in *Cuomo v. The Clearing House Ass'n, L.L.C.* We sincerely hope that you will reverse the Bush administration's position in this case. While we are confident in your administration's commitment to the enforcement of fair, responsible, non-discriminatory lending practices, it is clear that state regulators play a profoundly important role in protecting borrowers and that their efforts must be allowed to continue.

Thank you very much for your consideration. We would welcome the opportunity to discuss this matter with you further. If you have any questions, please contact Rob Randhava, LCCR Counsel, at 202-466-6058.

Sincerely,

Wade Henderson
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Leadership Conference on Civil Rights

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