

March 6, 2009

By facsimile transmission

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

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

Re: Obama Administration's Position on Whether States May Protect
Consumers Against National Banks' Predatory Lending—Brief Due
March 25, 2009, in the U. S. Supreme Court

Dear Secretary Geithner and Attorney General Holder:

President Obama has acknowledged the massive “failure of oversight and accountability” that now threatens our banking system and entire economy. The former Bush Administration openly invited that failure with regulations in 2004 designed to block states from investigating or enforcing any state anti-predatory lending laws and other state consumer protection laws against national banks and their operating subsidiaries. The undersigned consumer and civil-rights organizations write to join the request by Consumers Union that you reverse the former Bush Administration's position in the brief the United States will file in the United States Supreme Court on March 25, 2009, in *Cuomo v. The Clearing House Association, L.L.C. and Office of the Comptroller of the Currency*, No. 08-453. We urge you to stand on the side of consumers, workers, and consumer protection, not the banks and predatory lending.

Consumers, workers, and community leaders across the nation will be watching this major banking and civil-rights case. New York's Attorney General tried to investigate whether several national banks' residential mortgage-lending practices were racially discriminatory because they were issuing high-interest home mortgage loans in significantly higher percentages to African-American and Latino borrowers than to White borrowers. Rather than help, the Treasury Department's Office of the Comptroller of the Currency (OCC) and a consortium of national banks sued New York to prevent this



investigation and any subsequent enforcement of New York's civil-rights laws against national banks. They cited recent OCC regulations that purport to prevent states from enforcing state laws against national banks and their operating subsidiaries, even when the state laws are not substantively preempted. Now the case is before the Supreme Court.

For the past four years and more, the OCC has tried to block state efforts to protect consumers on mortgage and other banking issues, claiming that federal law preempts state anti-predatory lending laws and other state consumer protection laws. When states tried to monitor mortgage lending and to protect consumers, the OCC instructed the banks to contact the OCC first, and then wrote letters back to the banks and state banking agencies asserting that the states had no authority to investigate or enforce state laws against national banks and their subsidiaries.

The OCC's letters on behalf of national banks covered states like Michigan, California, Ohio, and Georgia—now among the very states with the highest foreclosure rates at the center of the mortgage crisis. Wachovia, which the OCC defended before the United States Supreme Court in 2007, subsequently found itself on the brink of collapse because of risky mortgages and was forced to sell itself to Wells Fargo. Now the mortgage crisis has exploded into a worldwide financial and credit crisis.

The stakes and long-term consequences are enormous. The national banks that the OCC regulates comprise almost three quarters (73.76% as of September 30, 2008) of the consolidated assets of the nation's large commercial banks. The nine largest national banks and their mortgage subsidiaries—regulated by the OCC—alone comprise 40 percent of all outstanding mortgages.

On March 25, 2009, the United States will file its brief in the Supreme Court. The undersigned organizations respectfully urge you to reverse the position of the former Bush Administration and stand on the side of America's consumers and workers. By doing so, you can ensure that states may lend a hand and help to protect consumers from financial discrimination and unfair or deceptive practices. This would increase substantially the efforts to monitor and enforce mortgage-lending protections, anti-discrimination laws, and other important consumer protections against the banks at the heart of the current financial crisis.



Time is short. Please act quickly to reverse the current government position and regulations against critical banking and civil-rights protections for consumers.

Respectfully yours,

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