

April 21, 2010

Phil Angelides  
Financial Crisis Inquiry Commission  
1717 Pennsylvania Avenue, NW, Suite 800  
Washington, D.C. 20006-4614

Re: Financial reform and the duty to affirmatively further fair housing

Dear Mr. Angelides:

Thank you for your important work on the causes of the financial crisis. We appreciate the extent of your commitment to investigating the multiple points of failure. We applaud the Commission's focus on systemic failure, as the restructuring of the GSEs, regulating derivatives, protecting consumers, etc., are not discrete issues. Any hope for protection against a similar crisis in the future must include all components of our financial system, and how these components interact with each other.

Therefore, we were dismayed to learn that of your twenty-two areas of interest, not one is focused on fair housing - including the well documented problems of discriminatory credit markets, mortgage redlining, predatory lending targeted to communities of color, or the like. This is a troubling oversight, given that the subprime crisis originated in the targeted financial exploitation of underserved communities of color, and has disproportionately affected those communities. The subprime and foreclosure crisis that has resulted in this Great Recession provides compelling evidence that we cannot sustain racially disparate policies and practices in our provision of housing and credit. To avoid another crisis like this one, the ability of financial markets to profit from targeted racial exploitation must be curtailed.

As you are aware, the work of the Financial Crisis Inquiry Commission, and the GSEs themselves, are governed by the Fair Housing Act's requirement that

All executive departments and agencies shall administer their programs and activities relating to housing and urban development (including any Federal agency having regulatory or supervisory authority over financial institutions) in a manner affirmatively to further the purposes of this subchapter and shall cooperate with the Secretary to further such purposes.

42 USC § 3608. To accomplish this goal, the FCIC must look to the potentially discriminatory effects of the government's past, current, and planned policies, including the potential impact on racial segregation of such policies.

Public policies must also encourage healthy, sustainable credit and housing market options, and must protect consumers, particularly the most vulnerable. People should be able to make and

implement meaningful choices regarding their home buying and finance options. For this to happen, they must have a range of options, and only an affirmative commitment to fair housing and fair credit will make these options materialize. We look forward to submitting a fuller discussion of these issues in response to Secretary Geithner's call for public comment on the future of housing finance.

In the meantime, as your commission continues its investigation of the crisis – and in particular as it reviews the intersection of subprime lending, securitization and the GSEs, we encourage you to consider the following:

- The GSEs should not be meeting their fair housing goals by purchasing predatory loans, securitized or otherwise, or by ‘creaming’ mortgages from other affordable housing purveyors like the FHA.
- HUD should ensure that the GSE underwriting and purchase criteria comply with the Fair Housing Act – including the prohibition on purchasing discriminatory loans set out in 42 USC §3605(b).
- Discrimination in the secondary mortgage market is prohibited, but is likely occurring, in terms of how individual loan characteristics affect how loans are pooled, rated, and priced, yet the SEC is not investigating potentially discriminatory activity.
- The SEC must be involved in fair lending oversight – and even more so in the private securitization market, which is outside even nominal public market regulation.
- The GSEs should be evaluated with respect to fair lending performance, just like banks. Exams should look at practices and outcomes, and be followed by enforcement.
- In terms of enforcement, HUD, the DOJ, the FHFA & the SEC should all be robustly and collaboratively enforcing the Fair Housing Act.
- The government should know if GSE activities, including the purchase or issuance of securitized loans and investment in LIHTC properties, reinforce segregation or allow access to opportunity, and whether or not they improve access to fair credit, especially for people of color, who have historically been denied this access.
- Better data collection is always useful. Your preliminary staff reports confirm that we lack much of the data we need to determine even basic questions about mortgage lending and the intersection with public policy goals and financial markets.

Regardless of how the GSEs are ultimately restructured and of the extent to which certain financial practices are curtailed or regulated, it is incumbent upon Congress to maintain an affirmative commitment to promoting fair credit options on appropriate terms to underserved communities, and making sure those communities are ensured not only protection from exploitation, but affirmative opportunity for financial and neighborhood security.

To further elaborate these points, the Kirwan Institute has prepared a policy brief (attached) and commissioned two detailed papers on GSEs and the duty to affirmatively further fair housing – these can be accessed at [www.prrac.org/GSEs&fairhousing.php](http://www.prrac.org/GSEs&fairhousing.php). We have also developed a list of potential hearing witnesses on fair housing for the Commission's consideration (attached). We urge you to place fair housing squarely back on the agenda in your continuing deliberations.

Sincerely,

john powell

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cc: Hon. Barney Frank  
Hon. Paul E. Kanjorski  
William Apgar, HUD