



Leadership Conference on Civil Rights

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Civil Rights and the Proposed Consumer Financial Protection Agency Act of 2009

Systemic discriminatory and abusive lending practices were major contributors to the current financial crisis. Any attempt to protect consumers from unscrupulous financial products must therefore also seek to prevent and remedy illegal discrimination. As proposed, the Consumer Financial Protection Agency will significantly enhance protections for American consumers.

Racial minorities have received a disproportionately high number of high-cost subprime mortgages, and African Americans and Latinos will lose at least \$213 billion dollars in wealth as a result of the current economic downturn. A robust Consumer Financial Protection Agency will be aware of these disparities and proactively work to reduce them.

- 1) **Civil Rights Must Be Part of the Agency's Stated Mission.** The bill's mandate is to "promote transparency, simplicity, fairness, accountability, and access" in the consumer financial products and services market. The CFPA must explicitly be tasked with protecting the civil rights of consumers as a way of reducing the disparities noted above.
- 2) **Fair Lending Compliance and Enforcement Must Be Built into the Agency's Formal Structure.** Civil Rights must be prioritized as a part of the agency's formal structure. The best way to do this would be to create a Civil Rights/Fair Lending Compliance and Enforcement Office. This office should serve a dual function – first to insure that the CFPA itself operates in a manner that affirmatively furthers fair housing and second to insure that financial market players comply with fair lending statutes. The CFPA must have the appropriate power and resources to vigorously enforce the fair lending laws under its auspices - Equal Credit Opportunity Act, Home Mortgage Disclosure Act, Community Reinvestment Act, and other appropriate fair lending statutes. It must have sufficient authority and resources to conduct fair lending examinations, engage in compliance activities, and write rules. This office must be headed by a senior position who reports directly to the Director of the CFPA.
- 3) **The enforcement authority under the Fair Housing Act currently held by HUD and the Department of Justice should not be diminished.** HUD should be encouraged to write fair lending rules for the Fair Housing Act in consultation with the CFPA. The Department of Housing and Urban Development has a developed mechanism of processing individual fair lending complaints and enforcing the fair lending provisions of the Fair Housing Act.
- 4) **All agencies engaged in regulating financial institutions or enforcing civil rights and fair lending statutes must cooperate and openly share information.** Many federal agencies and departments are engaged in enforcing the fair lending laws. For instance, the Department of Justice investigates companies that have demonstrated a pattern and practice of violating ECOA or the FHA, the Department of Housing and Urban Development enforces the Fair Housing Act, and the CFPA will enforce ECOA among



many other enumerated laws. In order for each department or agency to do its work efficiently and effectively, they must cooperate with each other. Examples include:

- Consulting with each other when issuing rules, guidance, or investigation procedures.
 - CFPA, should be given authority to engage in joint investigations with HUD and the Department of Justice.
 - Regulatory and enforcement agencies should create a database of complaints received, examinations initiated, reports issued, violations found, and enforcement actions taken. Such information should be available to any federal or state consumer protection, regulatory or fair lending enforcement agency. Furthermore, the CFPA should have a mandate to refer potential FHA violations to HUD. Currently, financial regulatory agencies have this obligation as per the Equal Credit Opportunity Act.
 - HUD should be given access to the CFPA's reports of examination to facilitate its enforcement of the FHA.
- 5) **CFPA rules should be enforceable by individuals and those who violate CFPA rules must be accountable to the individuals they harm.** More specifically, the bill should include a private right of action by consumers.
- 6) **CFPA must have clear authority to impose mandates/sanctions on institutions found to be out of compliance with fair lending statutes.** It is imperative that the prudential and systemic financial regulators not be able to circumvent fair lending requirements, laws or rules even when taking emergency measures. Indeed, the CFPA should have sign off authority to certify compliance with applicable fair lending and related laws before any regulator can approve any merger, acquisition, branch opening or closing or prior to granting emergency funds or approving emergency measures.
- 7) **The CFPA Consumer Advisory Council should include persons with fair lending and civil rights expertise.**

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