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## JUSTICE NEWS

### **Assistant Attorney General Thomas E. Perez Delivers Remarks on Fair Lending and Fair Housing at the Brookings Institution**

Washington, D.C. ~ Wednesday, June 23, 2010

Thank you for inviting me here today to participate in this important conversation.

As we emerge from a housing crisis fueled in large part by risky and irresponsible lending practices that allowed too many Americans to get unsustainable or unaffordable home loans, we are faced with the epic challenges of cleaning up the mess, repairing families and communities and fixing a failed system.

More than 2.5 million foreclosures have been completed since 2007, and another 10 to 13 million are projected over the next four years. About one in four borrowers are underwater and owe more on their loans than their homes are worth.

This crisis has devastated communities of all kinds, in every state, from coast to coast. But one fact is clear; while the foreclosure crisis has touched so many communities across America, communities of color have been hit particularly hard, and have suffered greater consequences.

- A study released by the Center for Responsible Lending last week found that 17 percent of all Latino homeowners and 11 percent of all African-American Homeowners either have lost their home or are at imminent risk of losing their home. These foreclosures will drain \$273 billion from Latino and African America communities across the country.
- A study by the New York Times noted that a black household in New York City making more than \$68,000 a year was almost five times more likely to have a subprime loan than whites with similar incomes.
- Studies that have taken into account creditworthiness and other relevant factors have found that African-American and Latino borrowers were far more likely to be put in subprime loans than similar white borrowers.

Persistent segregation and re-segregation of neighborhoods played a key role in magnifying the harm to African-American and Latino communities. The more segregated a community of color is, the more

likely it is that the homeowners who live there will face foreclosure. The Reinvestment Fund, in a series of foreclosure studies, found that as a community's percentage of African-American and Latino residents increases, so does that community's overall share of foreclosures. This is in part because some of the lenders who peddled the most toxic loans targeted the residents of those communities. The result is a large number of foreclosures in close proximity to each other with devastating consequences for the community – many of the very same communities in which substantial investments have been made and that had begun to revitalize and flourish.

This crisis began as a subprime lending crisis--predicated on predatory and discriminatory loans made with little or no regulatory oversight and enforcement. Common sense consumer protection, regulation and enforcement and a sound business climate go hand in hand – they are inextricably intertwined, not mutually exclusive. In the absence of common sense consumer protection, the bad lenders, who marketed toxic products in a deceptive manner, drove the good lenders out of the market.

I have seen this crisis and its devastating impacts from the local, state and national levels, and perhaps the biggest lesson learned as a local and state official was that federal oversight and enforcement is absolutely critical to ensuring responsible, non-discriminatory lending.

President Obama recognizes this, and he has supported strong financial regulatory reform and Congress has passed it. We look forward to its final passage and working closely with the anticipated consumer financial bureau, as we do now with our banking regulatory partners, to take action against the discriminatory practices and policies that fueled this crisis and to prevent another crisis from occurring.

The President has established an array of programs to assist distressed homeowners and communities. For example, HUD's Neighborhood Stabilization Program provides critical funding to state and local communities to fight the blight of foreclosure. The administration has also made a substantial investment in housing counseling to assist homeowners.

In addition, the President has sent a strong message to all federal agencies that mortgage fraud and homeownership preservation is a top priority by establishing the Financial Fraud Enforcement Task Force. Through unprecedented collaboration on the federal, state and local level, we are working hard to identify and take action to halt emerging fraud and discrimination as the market changes.

Under President Obama's leadership, Attorney General Holder and I have made fair lending a top priority. And we have created the necessary infrastructure to support and expand our fair lending work. We have created a Fair Lending Unit in the Division's Housing and Civil Enforcement Section in order to devote more resources to these efforts.

While there are some who claim that aggressive enforcement of civil rights laws in the fair lending context will hurt the very people we are trying to help, and dampen the business climate, this has not been my experience. To the contrary, common sense consumer protection and promoting a sound climate for lending are essential to ensure a fair market place. The absence of effective consumer protections and the dearth of meaningful federal enforcement in recent years not only hurt communities across the country, but also brought about staggering losses in the industry and undermined the safety and soundness of so many lending institutions.

The operating philosophy of our fair lending work is founded on these essential principles of good

government: vigorous enforcement and clear regulation, prevention including outreach and education, and forging critical partnerships. Government must be a credible deterrent. Lenders must develop credible internal mechanisms. And private attorneys must continue to be viable enforcers of the law where government is unable or unwilling to act.

The establishment of the Fair Lending Unit, with dedicated attorneys, economists, investigators, support staff and a Special Counsel for Fair Lending, ensure that fair lending issues receive immediate attention and high priority.

The unit already has 50 matters open, including 18 investigations. We have identified large, mid-size and small lenders as targets of enforcement efforts and those targets include national, regional and local actors.

No single case will capture the full range of discriminatory conduct occurring in the mortgage market. However, what you will see is a series of cases, each one targeted at specific discriminatory lending practices.

You will see cases that address abuses at the front end of the lending process, including:

- Discrimination in the underwriting or pricing of loans, such as discretionary mark-ups and fees;
- Redlining through the failure to provide equal lending services to minority neighborhoods;
- Reverse redlining through the targeting of minority communities for predatory loans;
- Steering minority borrowers into less favorable loans;
- Marital status, gender and age discrimination in lending.

Recently we announced a settlement with two subsidiaries of AIG resolving allegations that the lenders engaged in a pattern or practice of discrimination against African-American borrowers.

The lawsuit alleged that African-American borrowers nationwide were charged higher fees on wholesale loans made by the lenders through contracted brokers. The \$6.1 million settlement marked the largest fair lending settlement ever secured by the Department of Justice. The case marked the first time the department has held a lender accountable for failing to monitor brokers' fees to ensure they are not charging discriminatory fees based on race.

We are also working with our partners to identify potential emerging abuses. We are focusing efforts to identify potential fair lending violations where much of the lending activity is occurring today – at the back-end of the process - in the loss mitigation process where mortgage modifications and servicing occur.

We have started to fundamentally reshape our relationships with other federal agencies, including the banking regulatory agencies from which we receive referrals where there is a possible pattern or practice of discrimination. We expect to see build that pipeline of referrals and increase the number and quality of those referrals.

We are working in close collaboration with HUD and other federal partners as part of our work with the President's Financial Fraud Task Force to ensure that FHA lending which is capturing an increasing share of the mortgage market is free of predatory and discriminatory lending practices.

We are invigorating our relationships with state partners, including state attorneys general. We are sharing information and leveraging our statutory enforcement tools and powers to provide a higher level of consumer protection and to detect lending abuses as they arise in the marketplace.

We are reaching out to consumers and industry alike to inform individuals about their rights and industry about their responsibilities. Industry has much to gain in policing itself and in working with enforcement to assure a level, fair playing field.

While the current crisis necessitates that much of our focus will be on mortgage lending, the unit will address discrimination in all areas of lending, including unsecured consumer lending, auto lending, and credit cards.

But we are keenly aware that, while litigation is a critical tool to right the wrongs of lending discrimination and to transform the marketplace into a level playing field, it cannot alone heal the devastation that has been wrought by this crisis.

When speaking about our restoration and transformation agenda in the Civil Rights Division, I have frequently said that we must not only restore the division's position as the nation's pre-eminent civil rights litigators. We must become the nation's civil rights problem solvers, working creatively and holistically to address the devastating impacts of discrimination. Nowhere is that more necessary than in the housing crisis.

The foreclosure crisis is about far more than families being forced from their homes and losing their most important investment. It is about how the foreclosures impact a family's wealth, a neighborhood's safety and stability, and a community's health and well-being.

A study by University of North Carolina and La Raza found that Latino families that experience foreclosure face significant harm beyond simply the loss of their home. The study found that foreclosure and the resulting multiple moves and cramped living conditions led to significant emotional distress for all family members, higher levels of conflict, and problems with academic performance for children. Foreclosure led families to curtail long-term investments that would allow future generations to build wealth, including plans to invest their children's education.

Given what we know about the personal toll of foreclosure, it is not surprising that foreclosures have also destabilized communities. A 2005 study by Dan Immergluck and Geoff Smith that looked at foreclosures in Chicago found that a foreclosure within an eighth of a mile, approximately a city block, of a single family home results in a decline in value of .9 percent to 1.1 percent.

In addition to lost property value, studies have documented a host of other problems associated with foreclosure. The Urban Institute released a report that noted a series of studies that have found that neighborhoods with higher foreclosure rates experience an increase in violent crime.

Local governments also experience direct costs, including lost property values, costs associated with securing vacant properties, as well as increased expenses for police, trash collection and other services. According to the Urban Institute and an analysis done by Bill Apgar, each foreclosure will cost a local government over \$19,000.

All of these destabilizing factors have caused devastating damage to communities, in so many cases draining decades of investment in a few short years.

Not all of our cases will be against lenders that are responsible for community-wide harm. However, when we bring a lawsuit against a lender whose conduct has caused harm to a community, whether it is a single neighborhood or a dozen cities, we must decide, how do we make people and communities whole?

As I mentioned before, litigation can be transformative in providing equal access to credit in communities that have been ravaged by foreclosures, and we intend to use it to pursue a robust fair lending agenda. But as enforcers of fair lending laws, we must be creative in how we use the tools available to leverage resources.

Our starting point will be to require the lender to fully compensate borrowers for the harm that they suffered and, to the greatest extent possible, to remedy other harms, such as requiring lenders to repair damage to borrowers' credit scores. In addition, going forward, we will require the lender to provide equal access to credit on fair and appropriate terms.

But this will not be enough to reverse the damage done to communities. In this regard, as we litigate fair lending cases with an eye toward making communities whole, there are a number of principles that we will follow in our settlements and litigation:

- We will require lenders to invest in the community that they've harmed.
  - By way of example, in September the Division reached a settlement with First United Security Bank in Alabama to resolve allegations of a pattern or practice of discrimination based on race, including redlining.
  - As part of our settlement, the bank agreed to open a new branch in an African-American neighborhood, to invest \$500,000 in a special financing program for African American borrowers and businesses and to spend more than \$100,000 on outreach to potential customers and consumer financial education.
- We will require transparency and accountability. The Justice Department will continue its practice of building accountability into agreements by requiring data collection and record keeping. But we will also now focus on setting benchmarks to measure progress, and requiring transparency so that communities can monitor the progress being made.
- We will use all our traditional fair housing tools to prevent segregation and re-segregation of communities. We will continue to use our testing resources to prevent steering and discrimination. Furthermore, we will work with our government partners to ensure that housing programs designed to revitalize these communities affirmatively further fair housing.
- And finally, we will support innovative and creative solutions by working with federal, state and local partners.

Communities around the country are already taking innovative actions to rebuild and reinvest.

Jim Rokakis from Cuyahoga County, OH, is one such innovator who is here with us today. He will discuss how his county is seizing control of the problem of foreclosed properties by establishing a land bank so his community will have a say in the disposition of foreclosed properties.

We potentially could collaborate with people like Jim in Cuyahoga County. The lender is a key player as the holder of REO properties. We could therefore explore the possibility of fair lending settlements that require lenders to work in conjunction with community partners to assure that foreclosed properties do not add greater burdens on communities already distressed by unfair lending.

As we emerge from this recession, it is critical that we not only look for ways to hold those who discriminated in the past accountable. We must also find ways to repair some of the damage done to families and to communities. We must use the power of the law to encourage innovative strategies for rebuilding, and be sure that decades of investment have not been permanently lost.

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Grants

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Forms  
Publications  
Case Highlights  
A-Z Index

---

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The Justice Blog  
Videos  
Photo Library

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Student Opportunities  
Internships

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