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STATEMENT OF
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HEARING ON
COMMUNITY AND CONSUMER ADVOCATES' PERSPECTIVES ON THE OBAMA ADMINISTRATION'S FINANCIAL REGULATORY REFORM PROPOSALS

COMMITTEE ON FINANCIAL SERVICES
UNITED STATES HOUSE OF REPRESENTATIVES

JULY 16, 2009

Chairman Frank, Ranking Member Bachus, and members of the Committee: I am Nancy Zirkin, Executive Vice President of the Leadership Conference on Civil Rights (LCCR). Thank you for inviting LCCR to become a part of your Committee's incredibly important discussion on improving consumer protections in the financial services industry.

LCCR is the nation's oldest and most diverse coalition of civil and human rights organizations. Founded in 1950 by Arnold Aronson, A. Philip Randolph, and Roy Wilkins, LCCR seeks to further the goal of equality under law through legislative advocacy and public education. LCCR consists of more than 200 national organizations representing persons of color, women, children, organized labor, people with disabilities, older Americans, LGBT Americans, and major religious groups. On behalf of LCCR, I am privileged to represent the civil and human rights community in submitting testimony for the record to the Committee.

Incidentally, LCCR itself recently became a member of another sizeable coalition, Americans for Financial Reform. Organized in response our nation's worst financial crisis since the Great Depression, Americans for Financial Reform is a coalition of nearly 200 national, state and local consumer, employee, investor, community and civil rights organizations that have come together to spearhead a campaign for real reform in our banking and financial system.

Why LCCR Favors a Very Different Approach to Consumer Protection

Because this is my first opportunity to speak before your Committee, I would like to begin by explaining what has brought LCCR to the table today, and why we believe that the creation of a Consumer Financial Protection Agency would be such an important step forward in protecting the civil rights of the communities that we represent. Much of LCCR's interest in the proposal relates squarely back to what has always been one of the key goals of the civil rights movement: expanding and preserving the right to the American Dream of homeownership.

Homeownership, I am sure you can agree, is vital because it is the means by which most Americans build wealth and improve their own lives and the lives of their families, and because it is essential to the development of stable, healthy communities that make all Americans proud. With this in mind, for decades, the civil rights community has struggled to break down the barriers to fair housing, as well as the barriers to the credit that most Americans need to obtain housing. Despite the considerable progress that we have witnessed since the enactment of the Fair Housing Act more than four decades ago, the resistance that racial and ethnic minority communities have faced in the effort to obtain fair and sustainable mortgage loans – from the practice of redlining to the scourge of predatory lending that emerged in its place – lies very much at the root of the financial and economic crisis in which we now find ourselves today.

For years, LCCR, our member organizations, and our allies argued that the modern system of mortgage lending was profoundly flawed. While we have long believed that *responsible* subprime lending serves a valuable role in creating opportunities for many people who might otherwise never own a home or obtain credit, we grew increasingly concerned throughout the past decade that much of the financial services industry had essentially thrown the "responsible" part of "responsible subprime lending" out the window. We saw that countless numbers of irresponsible and abusive loans were being made, not only in the communities that we represent but throughout our nation, with terms that were virtually guaranteed to strip borrowers of wealth and plunge them deeper into debt. Moreover, we also saw that mortgage loans were often extended in a discriminatory fashion, with racial and ethnic minority borrowers being two to three times more likely to be steered into higher-cost subprime loans than white borrowers – and with strong disparities persisting *even after* credit factors were taken into account.[1]

To make matters worse, however, our alarm in recent years over rampant predatory and discriminatory lending practices was matched only by our immense frustration in trying to get policymakers to actually do something about it. Indeed, until the national housing boom had already turned into a national foreclosure epidemic, we were unable to get most policymakers to even acknowledge the existence of a problem.

The efforts of civil rights and consumer advocacy organizations to enlist the help of federal banking regulators fell on deaf ears[2] – which, of course, is essentially why we are here today. In

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[1] *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.

[2] Federal regulatory agencies were equally dismissive of the warnings of individual federal and state regulators. See, e.g., Edmund L. Andrews, "Fed Shrugged as Subprime Crisis Spread," *New York Times*, Dec. 18, 2007 ("Edward M. Gramlich, a Federal Reserve governor . . . warned nearly seven years ago that a fast-growing new breed of lenders was luring many people into risky mortgages they could not afford. But when Mr. Gramlich privately urged Fed examiners to investigate mortgage lenders affiliated with national banks, he was rebuffed by Alan Greenspan, the Fed chairman."); Atty. Gen. Lisa Madigan (IL), Hearing on "Federal and State Enforcement of Financial Consumer and Investor Protection Laws," House Committee on Financial Services, Mar. 20, 2009 "(I remember meeting with my consumer fraud lawyers and being told that this terrible wave of foreclosures was coming – years before it made the headlines. I also recall attending a meeting with federal regulators two years ago at which I voiced my concerns about the oncoming crisis. At that time, however, Wall Street was still making money on mortgage-backed securities. The federal regulators did not share my concerns.").

particular, even though the Federal Reserve Board had been equipped by Congress since 1994 with the legal authority[3] to eliminate predatory subprime lending practices, it inexplicably refused to exercise that authority until July 2008 – well after many subprime lenders had already collapsed, others were in the process of exiting the market, and countless numbers of Americans had already lost their homes because they were stuck in mortgage loans that they had no hope of repaying.

Two other key federal bank regulators, the Office of Thrift Supervision (OTS) and the Office of the Comptroller of the Currency (OCC) also repeatedly failed to use the regulatory and enforcement tools at their disposal. From 1987 to the present, for example, the OCC brought only four formal enforcement actions under the Equal Credit Opportunity Act (ECOA)[4] and its implementing regulations, and from 2000 through 2008, it did not refer a single case under ECOA to the U.S. Department of Justice on matters involving racial or national origin discrimination in mortgage lending.[5] Likewise, the OTS made no referrals for racial or national origin discrimination in mortgage lending from 2000 through 2006, even though the Department of Justice filed its own complaint in 2002 against Mid America Bank, an OTS-regulated thrift, in such a case.[6]

At the same time that the OTS and OCC failed to enforce laws to protect consumers and eliminate discrimination in the lending practice, they also went far out of their way to prevent state regulators from picking up the slack – which is particularly troubling given the federal government's proud history of usually taking the lead in protecting civil rights. Most notably, the OCC in 2005 blocked the New York Attorney General from trying to investigate whether federal banks violated that state's civil rights laws, a move that was thankfully just rejected by the U.S. Supreme Court.[7] In another instance, the OCC's preemption rules stopped the West Virginia Attorney General from investigating allegations of abusive credit card practices by Capital One, after it converted into a national bank in 2008 – even though the investigation had begun in 2005 and was limited solely to the years before Capital One's conversion.[8]

I could provide additional examples where federal regulators failed to enforce antidiscrimination or predatory lending laws while preventing other entities from doing the same. Instead, I have attached to my statement, to be included as part of my testimony, a policy brief by the Center for Responsible Lending that goes into far greater detail, very appropriately entitled "Neglect and

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[3] The Home Ownership and Equity Protection Act of 1994 (HOEPA) states that the Federal Reserve "shall prohibit" mortgage loans that are "unfair, deceptive or designed to evade the provisions" of HOEPA, or that "are associated with abusive lending practices, or that are otherwise not in the interest of the borrower." 15 U.S.C. §1639(l)(2).
[4]Center for Responsible Lending, "Neglect and Inaction: An Analysis of Federal Banking Regulators' Failure to Enforce Consumer Protections," July 13, 2009, at 4 (attached).
[5] Information on OCC's enforcement actions is contained in annual reports that the U.S. Attorney General provides to Congress. *See* U.S. Attorney General, Annual Report to Congress Pursuant to the Equal Credit Opportunity Act, available at http://www.usdoj.gov/crt/housing/housing_special. php.
[6] *See* http://www.usdoj.gov/crt/housing/documents/midamericacomp.php.
[7] *Cuomo v. Clearing House Ass'n, L.L.C.*, 2009 U.S. LEXIS 4944 (2009).
[8] *Capital One Bank (USA), N.A. v. McGraw*, 563 F. Supp. 2d 613 (S.D. W.Va. 2008). While ruling in favor of Capital One, the court noted that West Virginia's investigation was "hijacked" by the conversion and added that "it is questionable whether the OCC will be as motivated or as effective in protecting the consumers of West Virginia as is the West Virginia Attorney General. Nevertheless, it is my duty to apply the law as it is, not as I would have it be." *Id.* at 622-3.

Inaction: An Analysis of Federal Banking Regulators' Failure to Enforce Consumer Protections." I should note that the Center for Responsible Lending is far from alone in finding that federal bank regulators have been asleep at the switch. As the Committee is surely aware, for example, the Department of Treasury's Inspector General concluded that the OTS' supervision of IndyMac Bank FSB "failed to prevent a material loss to the Deposit Insurance Fund" and that "the thrift's high-risk business strategy warranted more careful and much earlier attention."[9]

While LCCR has been particularly focused in recent years on the problems associated with discriminatory and predatory mortgage lending, our concerns with inadequate federal regulation certainly extend to other financial products and services as well, such as abusive credit card practices and payday lending. Travis Plunkett of the Consumer Federation of America, in his testimony before the Senate Banking Committee earlier this week,[10] provided an excellent review in his written statement of the consequences of inadequate or nonexistent federal regulation of those areas of consumer finance, and I very much share his concerns.

The problem with relying on federal bank regulators to protect our communities is fairly simple; it lies in the basic structure of our current regulatory system. It is a structure that is virtually designed to fail consumers. When regulators are financially dependent on the institutions they are tasked with policing, particularly in the case of extraordinarily powerful ones that always have the option of seeking more friendly police, the resulting relationship will inherently be too close to make room for the interests of other parties.

I see no reason to believe that the dynamics of this relationship will change, especially because the mainstream financial services industry lobby has not expressed any serious interest in changing them. On that note, I would remind the Committee that this is the very same lobby that, for years, insisted to Congress that predatory lending was not a widespread problem in its industry, and that any additional regulation would undermine "access to credit." It is the same lobby that insisted to Congress that the problems would be "contained" to the subprime sector, when it was surely in a position to know what lay ahead. And as home foreclosure rates skyrocketed, to the point where it brought our entire financial system to its knees in the process, it is the same lobby that insisted to Congress that the industry didn't need legislation to keep borrowers in their homes. Everyone should be far more skeptical of the industry lobby this time around. It is time to let others call the shots when it comes to protecting American consumers.

Safeguarding Civil Rights in the Consumer Finance Protection Agency

Given the obvious inability of the existing financial regulatory system to adequately look out for the interests of our communities, LCCR strongly believes that the only option is to create a new regulator that will. Your new legislation, the "Consumer Financial Protection Agency Act of 2009" (H.R. 3126), will move the responsibility for enforcing most consumer protection laws into an agency whose sole mission is, simply put, to protect consumers. While that appears to be

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[9] Office of Inspector General, Audit Report: "Safety and Soundness: Material Loss Review of IndyMac Bank, FSB," U.S. Dept. of Treasury, Feb. 26, 2009, at 3.
[10] Travis Plunkett, Consumer Federation of America, Hearing: "Creating a Consumer Financial Protection Agency: A Cornerstone of America's New Economic Foundation," Senate Committee on Banking, Housing, and Urban Affairs, July 14, 2009

a radical concept to some, LCCR very much appreciates all of the efforts that you and President Obama are making to turn it into a reality.

Because systemic racial and ethnic discrimination was such a significant underlying cause of our nation's financial crisis, LCCR believes that the proposed Consumer Financial Protection Agency (CFPA) needs to be set up in a way that makes effective civil rights enforcement a key part of its mission. To that end, I am happy to provide the following recommendations:

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. In addition, we believe the CFPA must explicitly be tasked with protecting the civil rights of consumers as a way of reducing the disparities I have 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 structure. The best way to do this would be to create a Civil Rights/Fair Lending Compliance and Enforcement Office. Such an office should serve a dual function – first, to ensure that the CFPA itself operates in a manner that affirmatively furthers fair housing; and second, to ensure that financial market players comply with fair lending statutes. The CFPA must also have the appropriate power and resources to vigorously enforce the fair lending laws under its auspices – the Equal Credit Opportunity Act (ECOA), the Home Mortgage Disclosure Act, and other appropriate fair lending statutes. It should have sufficient authority and resources to conduct fair lending examinations, engage in compliance activities, and write rules. In addition, this office needs to 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.** The Department of Housing and Urban Development (HUD) should be encouraged to write fair lending rules for the Fair Housing Act in consultation with the CFPA. HUD's already developed mechanism for processing individual fair lending complaints and enforcing the fair lending provisions of the Fair Housing Act should be left intact.

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 the ECOA or the FHA, HUD enforces the Fair Housing Act, and the CFPA will enforce the ECOA (among many other enumerated laws). In order for each department or agency to do its work efficiently and effectively, it is vital that they are able to cooperate with each other. For example:

   - The agencies should consult with each other when issuing rules, guidance, or investigation procedures.

- The CFPA should be given authority to engage in joint investigations with HUD and the Department of Justice.

- Regulatory and enforcement agencies should create a shared 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. In addition, the CFPA should have a mandate to refer potential FHA violations to HUD. Currently, financial regulatory agencies have this obligation under the ECOA.

- HUD should be given access to the CFPA's reports of examinations, 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) **The 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 financial regulators not be able to circumvent fair lending requirements, laws, or rules, even when taking emergency measures. Indeed, the CFPA should be given sign-off authority to certify compliance with applicable fair lending and other related laws, before any regulator can approve a merger, acquisition, branch opening or closing, or prior to granting emergency funds or approving emergency measures.

7) **The CFPA Consumer Advisory Council should include individuals with fair lending and civil rights expertise.**

LCCR's Fair Housing Task Force is currently in the process of finalizing proposed language that would incorporate these recommendations into H.R. 3126. We look forward to following up with your staff on our suggestions.

Before I conclude, I want to briefly point out one key difference between President Obama's CFPA proposal and H.R. 3126. President Obama's legislation would transfer jurisdiction over the Community Reinvestment Act of 1977 (CRA) to the CFPA, while H.R. 3126 would not. I know that there have been discussions with a number of stakeholders over whether such a move would be practical. Regardless of where jurisdiction over the CRA is ultimately placed, LCCR believes that strengthening the law is absolutely vital to ensuring that our communities have access to fair, responsible sources of credit. For this reason, we support H.R. 1479, the "Community Reinvestment Modernization Act of 2009," and we look forward to working with you toward its enactment.

Again, thank you for inviting me to testify today. I would be happy to answer any questions you may have.

NEGLECT and INACTION
An Analysis of Federal Banking Regulators' Failure to Enforce Consumer Protections

CRL Policy Brief **July 13, 2009**

INTRODUCTION

For too long the responsibility for protecting consumers has been fragmented among various federal regulators whose primary focus was the safety and soundness of the banking system. Consumer protection often went neglected, if anything, an afterthought or a box to check. Federal regulators' failure to restrain abuses that led to today's credit crisis demonstrates the need for a single agency focused on protecting consumers to ensure financial institutions flourish in a sustainable way. To succeed in protecting consumers, this agency must have the complete set of tools necessary, which are now spread across different agencies. This agency will need: the power to write rules, the ability to examine all financial institutions to ensure they are complying with the rules, and the power to enforce the law when those rules are violated. A consolidated single agency focused on consumer protection will also benefit financial institutions. Financial institutions will be able to rely on a single baseline of protections for all providers, which will eliminate regulatory arbitrage on one hand and a race to the bottom to compete with the worst lenders on the other.

Congress is considering creating such an agency, the Consumer Financial Products Administration (CFPA).

The Three Agencies That Failed to Protect Consumers

The failure of the bank regulators to protect consumers is a systematic problem that has stretched over at least several decades. The fix must involve a complete overhaul of the existing system for protecting consumers. Two of the frontline federal bank regulators, the Office of Thrift Supervision (OTS) and the Office of the Comptroller of the Currency (OCC), have come to view banks as customers rather than entities to be regulated. Regulators at these agencies, which rely on fees from the banks they charter and regulate, have been reluctant to take actions that could cause an institution to switch to another charter and regulator, thereby taking their fees with them. In this classic race to the bottom, each agency has defended practices that hurt consumers. Worse, the regulators not only failed to act, they intervened to prevent state authorities from acting to stop such practices.

The Federal Reserve, which is the primary writer of rules to protect consumers, has a similar record. It waited more than 14 years to implement rules Congress gave it to address unfair and deceptive trade practices in the mortgage lending market and has missed many opportunities to act on behalf of consumers to prevent abusive financial practices in other areas.

Frederic Mishkin, former Fed Board governor who recently testified before Congress, has acknowledged that the demands of systemic regulators and those of consumer protection regulators need to be separate to ensure that both needs are adequately met, stating "The skills and mindset required to operate as a consumer protection regulator is fundamentally different from those required by a systemic regulator."[1]

Analysis of Banking Regulators' Failures in Enforcing Consumer Protections

The following analysis provides examples of federal regulators' failure to enforce existing consumer protection regulations. The results, as even a quick reading of news headlines over the last 18 months shows, have been devastating for millions of Americans, stripping families of hundreds of billions of dollars of wealth and, thus, denying them the financial security necessary to send a child to college, start a small business, or retire.

The examples below are hardly an exhaustive list. Rather, they are representative of the regulatory lapses that have nearly broken our financial system. Though the Federal Reserve played a major role in this grim record, we have focused on examples from the OCC and the OTS as the two agencies that most aggressively blocked state officials from passing and enforcing laws to protect their residents from unfair and deceptive financial practices.

Failures on Rules and Exam Guidance

The agencies failed to enact rules and exam guidance on predatory mortgage lending and when they did act, those rules were often too late or not enforced.

Subprime lending, and the abuses that accompanied it, began in the 1990s and peaked from 2005-07. However, regulators were slow to act with respect to the mortgage market despite an epidemic of weakened underwriting standards for all loans, particularly subprime and nontraditional loans.

- A 2005 OCC survey of credit underwriting practices found a "clear trend toward easing of underwriting standards as banks stretch for volume and yield," and the agency commented that "ambitious growth goals in a highly competitive market can create an environment that fosters imprudent credit decisions." In fact, 28% of the banks eased standards, leading the 2005 OCC survey to be its first survey where examiners "reported net easing of retail underwriting standards."[2]

- Despite the 2005 survey, the agencies took an additional two years to issue interagency guidance on underwriting or purchasing subprime loans. The agencies issued joint guidance on underwriting nontraditional loans in late September 2006, a full nine months after they first solicited comments on proposed guidance on that topic.[3] It is unclear to what degree the nontraditional guidance was enforced as lax underwriting standards continued in the nontraditional market until the market collapse.[4] While the agencies explicitly required lenders to evaluate a borrower's ability to repay a nontraditional loan based on the fully indexed rate and based on a fully amortizing repayment schedule, they did not implement similar explicit rules for subprime loans for another 10 months, finally issuing parallel guidance on underwriting subprime loans in July 2007.[5]

- Even without the new guidance, the regulators could have used rules already in place to at least mitigate the impact of subprime lending, but failed to act. The agencies did issue guidance as early as 1999 on subprime lending,[6] with a second guidance in 2001 that explicitly described predatory lending as including: "Making unaffordable loans based on the assets of the borrower rather than on the borrower's ability to repay an obligation…"[7] Despite these guidances, however, there is little evidence of cases where the agencies prevented lenders from devising new products that failed to evaluate the borrowers' ability to repay the loan.[8]

- Under the OCC's watch, national banks moved aggressively into risky "Alt-A" low-documentation and no-documentation loans during the housing boom.[9] A 2004 OCC rule prohibiting the origination of unaffordable mortgages "was vague in design and execution, allowing lax lending to proliferate at national banks and their mortgage lending subsidiaries through 2007," law professor Patricia McCoy has testified.[10] Big national banks continued rolling up huge volumes of poorly underwritten subprime loans and low- and no-documentation loans. For example, in 2006 more than 62 percent of the first-lien home purchase mortgages made by National City Bank and its OCC-supervised subsidiary, First Franklin Financial, were high-priced subprime loans. As these loans began to go bad in large numbers in 2007 and 2008, National City Corp. reported five straight quarters of net losses. It was saved from receivership only by a "shotgun marriage" to PNC Financial Services Group.[11]

- Fourteen years ago, Congress required the Federal Reserve Board (the Board) to prohibit mortgage lending acts and practices for all originators that are abusive, unfair or deceptive, but the Board took no action until July 2008 — even though borrowers, state regulators, and advocates repeatedly raised concerns about abuses in the subprime market, and hard evidence demonstrated the destructive results of abusive practices.[12]

<u>Failures to Enforce Consumer Protection and Fair Lending Laws</u>

The OCC and the OTS have failed, again and again, to use the regulatory and enforcement tools available to it to rein in bad practices and irresponsible lending.

- ***Fair lending enforcement inaction.***

- From 1987 to the present, the OCC brought only four formal enforcement actions under Equal Credit Opportunity Act, 15 U.S.C. § 1691c(a)(1)(A), and its implementing regulation, and from 2000 to 2008, the OCC made no referrals under ECOA to the U.S. Department of Justice of matters involving race or national origin discrimination in mortgage lending.[13]

- OCC inaction is even more troubling given the evidence of potential discrimination among national banks. For example, studies show national banks routinely originated a disproportionate number of subprime loans among minority borrowers. For example, one study found that national banks were 4.15 times more likely to make higher-cost refinance loans to African-Americans than they were to make higher-cost loans to white borrowers.[14] In addition, two former Wells Fargo employees have signed declarations that the bank's sales staffers steered minorities into high-cost subprime loans.[15]

- Although the OTS has recently increased the number of ECOA referrals to the DOJ, from 2000 to 2006 the OTS made no referrals for race or national origin discrimination in mortgage lending. Despite the lack of referrals, in 2002 DOJ filed a complaint alleging that Mid America Bank, an OTS-regulated bank, engaged in a pattern or practice of redlining on the basis of race. Among the allegations made by DOJ was that 34-branch Mid America had never opened a full-service branch office in a census tract with a majority African-American or majority African-American/Hispanic population. The complaint also alleged that the bank made nearly $6 billion in single-family residential real-estate loans between 1996 and 2000, but that only 1% of that amount went to census tracts with majority African American populations.[16]

• ***Consumer protection enforcement inaction***.

- The OCC did not exercise its consumer protection authority to address unfair and deceptive practices under the FTC Act for *twenty-five years.*[17] The OCC's first action using its power to go after banks' unfair and deceptive practices came only after a decade in which the target bank "had been well known in the … industry as the poster child of abusive consumer practices" and after the OCC was "embarrassed … into taking action" by a California prosecutor.[18]

- Between 2000 and 2008, as the mortgage market grew wildly and abusive practices against homeowners flourished, the OCC took exactly *two* public enforcement action against banks for unfair and deceptive practices in mortgage lending – both against small Texas banks.[19]

- The OCC's enforcement record is also thin when it comes to credit cards, bank accounts and other consumer concerns. From 1997 to 2007, the

Federal Reserve Board reported just nine formal enforcement actions against banks by the OCC under TILA.[20] An academic researcher found that most OCC actions regarding violations of consumer lending laws have targeted small national banks – even though "ten large banks accounted for four-fifths of all complaints" received by the OCC's Customer Assistance Group in 2004.[21] The Customer Assistance Group receives roughly 70,000 complaints and inquiries each year on consumer issues.[22] Despite the hundreds of thousands of complaints and inquiries it fielded between 2000 and 2008, the OCC took just *a dozen* public enforcement actions during this span for unfair and deceptive practices relating to home mortgages, credit cards and other consumer loans.[23]

- ***Ignoring servicing abuses.*** A Louisiana bankruptcy judge has issued a series of rulings that Wells Fargo violated the law in a "systematic" manner in how it handles consumers' mortgage accounts by failing "to notify borrowers of the assessment of fees, costs, or charges at the time they are incurred." She also found that Wells' mortgage servicing operations charged unjustifiable fees, including multiple late fees based on a single late payment, and misapplied consumers' monthly payments by deducting late fees before applying payments to principal and interest.[24] While the Federal Trade Commission has recognized the abuses present in mortgage servicing and taken enforcement actions in recent years to crack down on such abuses by the non-bank entities it regulates, the OCC has done little to address such abuses, even though the Louisiana federal court rulings make it clear national banks are not immune from such improper behavior.

- ***Case study: A First Union borrower's story.*** The case of Dorothy Smith, a 67-year-old homeowner is East St. Louis, Ill., illustrates the OCC's lack of concern for consumers. As described in a 2007 article in the *Wall Street Journal*, Ms. Smith, who was living on $540 month in government benefits, was taken in by a home repair contractor and a mortgage broker who landed her in a mortgage from First Union National Bank. The loan contract required her to pay two-thirds of her income – $360 a month – for 15 years, followed by a balloon payment of more than $30,000. After receiving Ms. Smith's complaint about First Union, the OCC brushed her off, saying that it couldn't intercede in a "private party situation regarding the interpretation or enforcement of her contract. . . . The OCC can provide no further assistance."[25]

- ***Ignoring abusive preacquired account marketing programs.*** Numerous national banks have taken part in abusive "preacquired account marketing programs," in which banks provide third-parties, such as telemarketers, with personal information about credit card or mortgage account holders and their accounts to use in targeted marketing for usually low-value, high-margin add-on products. In addition, such programs potentially leave account holders vulnerable to unauthorized withdrawals from their accounts by unscrupulous vendors. State attorneys general have pursued these unfair and deceptive practices vigorously against all the participants in these schemes, including major OCC-regulated national banks Chase, Citi, and First USA-Bank One.[26] The OCC, by contrast, not only failed to uncover such abuses in its supervision of these entities, but affirmatively went to court in 2001 to try to prevent states from protecting consumers against such abuses by national banks.[27]

- ***Weak response to bank that aided telemarketing fraud.*** Evidence came to light in late 2006 as part of a Department of Justice prosecution of telemarketing fraud that Wachovia might be facilitating the fraud by turning a blind eye to highly questionable "remotely created checks" that the fraudsters were depositing.[28] Wachovia continued to do business with the fraudsters despite a huge rate of charge-backs (a fraud red-flag), and warnings by its own risk management staff (advising the bank to sever the relationship despite the loss of a revenue-generating customer), by other banks, and even by the Social Security Administration.[29] OCC examiners apparently did not discover Wachovia's extensive relationships with the fraudsters during their own investigation, but only pursued an expanded inquiry after being informed of the extensive relationships by private attorneys for the fraud victims and prosecutors.[30] Additionally, the OCC's initial settlement with Wachovia provided a cumbersome and lengthy claims process that would have left many harmed consumers without restitution and would have allowed Wachovia to retain any unclaimed funds. Only after lawyers for the victims, joined by three members of Congress as amici, went to court objecting to this settlement did the OCC amend the settlement to provide for direct restitution payments to the victims.[31]

- The OCC has repeatedly defended its thin public record of enforcement by claiming, in essence, that it takes care of problems in the privacy of the home. Indeed, the OCC conceives of secrecy, rather than transparency, as a virtue of its consumer protection efforts.[32] Far from providing the kind of transparency that brings accountability, the agency's message instead is to tell consumers, in short: "Trust Us."[33]

Aggressive Preemption of State Law and State Law Enforcement

In contrast to their lack of consumer protection and fair lending enforcement, the OCC and OTS have been aggressive in preempting state law and preventing state attorneys general from enforcing non-preempted state laws against national banks and thrifts. The two agencies' general pronouncements on preemption are well known. Below are specific examples of how their conduct has undermined consumer protection.

- The OCC did more than allow National City's aggressive expansion into risky lending (see above), it also shielded National City from state law enforcement. At the request of National City Mortgage, the OCC stopped a Washington State inquiry into its mortgage practices in 2002.[34] The following year the parent, National City Bank and its subprime operating subsidiary First Franklin, successfully sought an OCC ruling exempting national banks from state anti-predatory mortgage lending laws.[35] Six years later First Franklin made the OCC's own list of the "Worst Ten in the Worst Ten"—the originators with the largest number of foreclosures in the metropolitan areas with the highest foreclosure rates.[36]

- Rather than enforcing the fair lending laws, the OCC has expended substantial resources in preventing state attorneys general from enforcing state civil rights against national banks and has consistently intervened in lawsuits on behalf of its financial institutions rather than borrowers.[37]. A lending discrimination investigation initiated in 2005 by the New York Attorney General, was still being blocked by the OCC until this June when the Supreme Court ruled that the OCC could no longer prevent New York from enforcing its civil rights laws.

- As a product of the OCC's pronouncements on preemption, a multi-year investigation conducted by the West Virginia Attorney General into abusive credit card practices of Capital One was stopped dead in its tracks in 2008 by the conversion of Capital One into a national bank. A federal district judge determined that the OCC's regulations left him no choice but to block the Attorney General from continuing the investigation—even if the investigation was limited to the time before Capital One became a national bank—although he recognized that Capital One sought "to usurp West Virginia's power to investigate whether national banks have violated West Virginia consumer protection law" and that the West Virginia's Attorney General's "lawful investigation was hijacked by Capital One's conversion to a national bank."[38] The decision forced the West Virginia Attorney General to tell consumers who had complained about Capital One that he was powerless to address their concerns.

- The OCC has encouraged national banks to disregard simple requests about mortgage delinquency and modification rates from state officials seeking to address the foreclosures crises in their jurisdictions.[39] Such data is essential to formulating solutions that keep borrowers in their homes.

Failures on Safety and Soundness Are Linked to Consumer Protection Failures

The OCC and the OTS's desire to protect the institutions they regulate and their reluctance to enforce rules and regulations was not limited to consumer protection. In safety and soundness and other areas, there have been similar lapses. In some instances these lapses also illustrate how a more focused consumer protection agency could have mitigated the scope of the crisis.

- Defenders of the OCC and the OTS have argued that the banks and thrifts under their supervision were largely victims of unforeseeable market downturns. This argument is belied by the superior performances of banking institutions overseen by other regulators. State-chartered thrifts and banks performed significantly better during the crisis in terms of loan quality than OTS-supervised national thrifts and OCC-supervised national banks, FDIC data shows. As of Sept. 30, 2008, the rate of 1-4 family residential loans from national banks that were past due or in "nonaccrual status" was *twice* that of state banks; federal thrifts' rate was *more than four times* that of state thrifts.[40]

- ***Countrywide: A three-part failure.*** The implosion of the nation's largest mortgage lender is instructive, given that three of the main federal regulators – the OCC, the OTS and the Federal Reserve – shared responsibility for overseeing Countrywide Financial and Countrywide Bank. Investigations by CRL and law-enforcement authorities produced compelling evidence that Countrywide targeted borrowers for unfair and unsafe loans that have left many struggling to save their homes.[41] Under the watch of the OCC and, later, the OTS, the company boosted its loan volume by making large numbers of poorly unwritten pay option ARM mortgages and home equity lines of credit—loans that were approved with little scrutiny of borrowers' long-term ability to stay current as monthly payments began to rise.[42] A single agency with oversight over consumer protection in all of Countrywide's entities, including the non-federally regulated lender, would have been much more effective in preventing harm to consumers and the market in general.

- ***Inspector general rebukes.***

    - Reports by the Treasury Department's inspector general have supported the conclusion that the OCC did a poor job of making sure that banks underwrote loans responsibly. ANB Financial failed in 2008 due to risky lending, unsound underwriting and other problems; the inspector general found that the OCC identified most of ANB's problems in 2005, but it "took no forceful action" until 2007, when it was too late to save the bank.[43] The inspector general found a similar pattern in the 2008 failures of FNB Nevada and First Heritage Bank; the OCC knew about problems as early as 2002, and found additional problems in 2005, 2006 and 2007, but failed to take timely and aggressive action to curb the affiliated institutions' risky practices.[44]

    - In 2008, the OTS presided over a flurry of unprecedented financial meltdowns. Five thrifts with assets totaling $354 billion collapsed, led by Washington Mutual Savings Bank, the largest banking failure in American history. Seven others holding assets totaling another $350 billion have been sold or were caught up in their parent companies' bankruptcies. The failures of these institutions – and the harm they caused consumers – were the fruits of years of inaction by the OTS.[45] The OTS turned a blind eye as WaMu, IndyMac Bank and other thrifts engaged in a spree of unsafe, abusive lending.[46] A series of inspector general reports have concluded that the OTS failed to rein in reckless lending practices at the institutions it oversaw. The reports cited serious supervisory shortcomings leading up to the failures of Superior Bank[47] in 2001, NetBank[48] in 2007 and IndyMac[49] and Downey Financial[50] in 2008. The reports criticized the OTS for moving too slowly to respond to obvious problems at the thrifts and for failing to quell the institutions' breakneck lending strategies.

- The inspector general also found that the OTS so pliable in its supervision that it allowed some thrifts to hide the consequences of their imprudent business strategies by falsifying financial reports. The OTS expressly allowed two institutions to backdate capital infusions, and took no action against four others that did so without permission. [51]

- In 2005, a group of senior risk managers crafted a plan requiring that loan officers document that borrowers could afford the full monthly payment on option ARMs. A former bank official told the Washington Post that the OTS signed off on the plan, but "never said anything" after top bank executives rejected the plan.[52]

- ***Weak enforcement on money laundering.*** In another example highlighting the OCC's elastic style of law enforcement, Treasury's inspector general found that agency had failed to take aggressive action against Wells Fargo despite five years of "numerous and recurring deficiencies" in the bank's anti-money-laundering controls. Top OCC officials overruled examiners who recommended tougher action against the bank. The inspector general concluded that "OCC's failure to take formal enforcement action against Wells sent the wrong message to the banking industry about OCC's resolve to ensure that banks comply" with the Bank Secrecy Act's provisions against money laundering.[53]

CONCLUSION

The OTS and the OCC aren't consumer protection agencies. No amount of tinkering with their policies and procedures will change that. Their cultures, their funding streams and their organizational structures make it inevitable that they will tend to side with the institutions they oversee rather than with average consumers or simply focus on issues they view as a higher priority than consumer protection. An agency with a consumer protection mission, accountable to the public, and with the tools to succeed, is the only way to ensure that we do not repeat the mistakes of the past.

About the Center for Responsible Lending

The Center for Responsible Lending (CRL) is a national nonprofit, nonpartisan research and policy organization dedicated to protecting home ownership and family wealth by working to eliminate abusive financial practices. CRL is affiliated with Self-Help, one of the nation's largest community development financial institutions.

For additional information, please visit our website at **www.responsiblelending.org**.

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[1] Subcommittee on Domestic Monetary Policy and Technology Hearing, *Regulatory Restructuring: Balancing the Independence of the Federal Reserve in Monetary Policy with Systemic Risk Regulation*, July 9, 2009, *available at* http://www.house.gov/apps/list/hearing/financialsvcs_dem/mishkin_testimony.pdf.

[2] Office of the Comptroller of the Currency, National Credit Committee, *Survey of Credit Underwriting Practices 2005*; see also Fitch Ratings, 2007 Global Structured Finance Outlook: Economic and Sector-by-Sector Analysis (December 11, 2006).

[3] Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Office of Thrift Supervision, National Credit Union Administration, "Interagency Guidance on Nontraditional Mortgage Product Risks," 71 Fed. Reg. 58609 (Oct. 4, 2006), *available at* http://www.federalreserve.gov/boarddocs/srletters/2006/SR0615a2.pdf

[4] See *In Re Washington Mutual, Inc. Securities Litigation*, No. 2:08-MD-1919 MJP (W.D. Wash) (Former employees allege in the court documents that, well into 2007, WaMu underwrote pay option ARM loans based on the borrowers' ability to afford the low "teaser" payment—and not the full payment that inevitably would cause borrowers' monthly obligations to skyrocket).

[5] Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Office of Thrift Supervision, National Credit Union Administration, "Statement on Subprime Mortgage Lending," 72 Fed. Reg. 37569 (July 10, 2007).

[6] Interagency Guidance on Subprime Lending (Mar. 1, 1999), *available at* http://www.fdic.gov/news/news/financial/1999/FIL9920a.html.

[7] 2001 Interagency Expanded Guidance for Subprime Lending Programs (Feb. 2, 2001), *available at* http://files.ots.treas.gov/25137.pdf.

[8] On March 7, 2007, the FDIC did enter a cease and desist order against Fremont Bank that, in part, addressed the lack of underwriting involved in Fremont's subprime loans. The FDIC's action was the rare instance of a regulator taking aggressive action against a subprime lender. Unfortunately, it came after much of the damage by Fremont's loans had already been done. See http://www.fdic.gov/bank/individual/enforcement/2007-03-00.pdf

[9] See *Consumer Protections in Financial Services: Past Problems, Future Solutions: Hearing Before the S. Comm. on Banking, Housing and Urban Affairs*, 111th Cong. (2009) (statement of Patricia A. McCoy, Professor of Law, Univ. of Conn.), *available at* http://banking.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=40666635-bc76-4d59-9c25-76daf0784239.

[10] Id.

[11] Id.

[12] See, e.g. Edmund L. Andrews, Fed Shrugged as Subprime Crisis Spread, N.Y. Times (Dec. 18, 2007), available at http://www.nytimes.com/2007/12/18/business/18subprime.html.

[13] Information on OCC's enforcement actions is contained in annual reports that the U.S. Attorney General provide to Congress. See U.S. Attorney General, Annual Report to Congress Pursuant to the Equal Credit Opportunity Act, *available at* http://www.usdoj.gov/crt/housing/housing_special. php.

[14] Cal. Reinvestment Coal., *Who Really Gets Higher-Cost Home Loans?* 3, 18 (2005).

[15] Affidavits by Elizabeth M. Jacobson and Tony Paschal in *Mayor and City Council of Baltimore v. Wells Fargo Bank*, No. 1:08-cv -00062-BEL (D. Md.), Documents 74-16 and 74-17.

[16] See http://www.usdoj.gov/crt/housing/documents/midamericacomp.php
[17] See Julie L. Williams & Michael L. Bylsma, *On the Same Page: Federal Banking Agency Enforcement of the FTC Act to Address Unfair and Deceptive Practices by Banks*, 58 Bus. Law. 1243, 1244, 1246 & n.25, 1253 (2003) (conceding that "[a]n obvious question is why it took the federal banking agencies more than twenty-five years to reach consensus on their authority to enforce the FTC Act").
[18] Duncan A. MacDonald (former General Counsel, Citigroup Inc.'s Europe and North American card business), Letter to the Editor, *Comptroller Has Duty to Clean Up Card Pricing Mess*, Am. Banker, Nov. 21, 2003, at 17; *see also* Frontline, *Secret History of the Credit Card*, Transcript at 16-17, http://www.pbs.org/wgbh/pages/frontline/shows/credit/etc/script.html.
[19] In 2005, the OCC required that Laredo National Bank set aside $14 million to cover refunds to borrowers who'd been harmed by the bank's home loan practices. In 2003, it required Clear Lake National Bank to provide $100,000 in restitution to borrowers who'd received tax-lien mortgage loans and to review a portfolio of mortgage loans to determine if similar violations existed. See *Improving Federal Consumer Protection in Financial Services: Hearing Before the H. Comm. on Fin. Servs.*, 110th Cong. 18 (2007) (statement of John C. Dugan, Comptroller of the Currency).; cf. *Credit Card Practices: Current Consumer and Regulatory Issues: Hearing Before the Subcomm. on Fin. Insts. and Consumer Credit of the H. Comm. on Fin. Servs.*, 110th Cong. 14-15, 18 (2007).
[20] Information on OCC's enforcement actions is contained in annual reports that the Federal Reserve Board provides to Congress. See Board of Governors of the Federal Reserve System, Annual Report, *available at* http://www.federalreserve.gov/ boarddocs/rptcongress/ .
[21] Arthur E. Wilmarth, Jr., *The OCC's Preemption Rules Exceed the Agency's Authority and Present a Serious Threat to the Dual Banking System and Consumer Protection*, 23 Ann. Rev. Banking & Fin. L. 225, 237-52 (2004).
[22] See *Improving Federal Consumer Protection in Financial Services: Hearing Before the H. Comm. on Fin. Servs.*, 110th Cong. 18 (2007) (statement of John C. Dugan, Comptroller of the Currency).
[23] See OCC, Consumer Protection News: Unfair and Deceptive Practices, http://www.occ.gov/Consumer/Unfair.htm.
[24] See *In re Stewart*, 391 B.R. 327 (Brank. E.D. La. 2008); *In re Jones*, 366 B.R. 584 (Bankr. E.D. La. 2007)
[25] Greg Ip & Damian Paletta**,** *Lending Oversight: Regulators Scrutinized In Mortgage Meltdown --- States, Federal Agencies Clashed on Subprimes As Market Ballooned*, Wall Street Journal (Mar.ch 22, 2007).
[26] For instance, Chase entered into a settlement with California and other state attorneys general in 2006 to repay victims of such a scheme $14.5 million. See *People v. Chase Bank USA, N.A.*, No. GIC850483 (Cal. Super. Ct. Dec. 2006), *available at* http://ag.ca.gov/cms_attachments/press/pdfs/2006-12-11_Chase_Settlement_Judgment.pdf.
[27] See *Minnesota v. Fleet Mortgage Co.*, 181 F. Supp. 2d 995 (D. Minn. 2001).
[28] See *United States v. Payment Processing Ctr., LLC*, 461 F. Supp.2d 319, 330 n.11 (E.D. Pa. 2006).
[29] See Charles Duhigg, *Bilking the Elderly, With a Corporate Assist*, N.Y. Times, May 20, 2007, at 1; Charles Duhigg, *Papers Show Wachovia Knew of Thefts*, N.Y. Times, Feb. 6, 2008, at C1.
[30] See Plaintiffs' Memorandum in Support of the Petition for Approval of the Agreed Attorneys' Fees and Costs, *Faloney v. Wachovia Bank*, No. 07-1455 (E.D. Pa.) and *Harrison v. Wachovia Bank*, No. 08-755 (E.D. Pa.) at 3-4, 12, 15.
[31] See Motion and Brief of Representatives Barney Frank, Edward Markey and Joseph Sestak, in support of the Intervenor Faloney Plaintiff's Motion for an Injunction Under the All Writs Act, *USA v. Payment Processing Center, LLC*, No. 06-0725 (E.D. Pa. May 29, 2008); Press Release, OCC, Wachovia Enter Revised Agreement to Reimburse Consumers Directly (Dec. 11, 2008), *available at* http://www.occ.gov/ftp/ release/2008-143.htm.
[32] See *Improving Federal Consumer Protection in Financial Services: Hearing Before the H. Comm. on Fin. Servs.*, 110th Cong. 131-32 (2007) (written statement of John C. Dugan, Comptroller of the Currency) (explaining OCC primarily ensures consumer protection through "behind the scenes" supervision).
[33] See Stephanie Mencimer, *No Account*, The New Republic, Aug. 27, 2007, at 14.
[34] See Eric Nalder, *Mortgage System Crumbled While Regulators Jousted*, Seattle Post-Intelligencer, Oct. 11, 2008, at A1.
[35] See 68 Fed. Reg. 46,264 (Aug. 5, 2003).

[36] See Letter from John Dugan, Comptroller of the Currency, to Elizabeth Warren, Chair, Congressional Oversight Panel (Feb. 12, 2009) (listing First Franklin and two other significant subprime lenders under OCC's supervision on the list).
[37] See, e.g., *Cuomo v. The Clearing House Association and the* OCC, 129 S. Ct. 1695 (2009).
[38] *Capital One Bank (USA), N.A. v. McGraw*, 563 F. Supp. 2d 613 (S.D. W. Va. 2008).
[39] See State Foreclosure Prevention Working Group, *Analysis of Subprime Mortgage Servicing Performance: Data Report No. 1*, at 7 (Feb. 2008), *available at* http://www.csbs.org/Content/NavigationMenu/Home/StateForeclosurePreventionWorkGroupDataReport.pdf.
[40] See McCoy, testimony, *supra*.
[41] See, e.g., *The People of the State of California v. Countrywide Financial Corp.*, Los Angeles Superior Court, June 24, 2008. Available, *available at* http://ag.ca.gov/cms_attachments/press/pdfs/n1588_firstamendedcomplaint.pdf#xml=http://search.doj.ca.gov:8004/AGSearch/isysquery/d9682d50-f6f7-4c18-9b74-dd03bca6cf28/2/hilite/ . Seehttp://ag.ca.gov/cms_attachments/press/pdfs/n1588_firstamendedcomplaint.pdf#xml=http://search.doj.ca.gov:8004/AGSearch/isysquery/d9682d50-f6f7-4c18-9b74-dd03bca6cf28/2/hilite/; see also *Unfair and Unsafe: How Countrywide's irresponsible practices have harmed borrowers and shareholders***,** CRL Issue Paper (Feb. 7, 2008). Available at http://www.responsiblelending.org/mortgage-lending/research-analysis/unfair-and-unsafe-countrywide-white-paper.pdf .), *available at* http://www.responsiblelending.org/mortgage-lending/research-analysis/unfair-and-unsafe-countrywide-white-paper.pdf .
[42] Countrywide Financial Corporation, Q3 2007 Earnings Call, Oct. 26, 2007. See; see also Gretchen Morgenson, I*nside the Countrywide Spending Spree*, N.YY. Times (August. 26, 2008)); Gretchen Morgenson & Geraldine Fabrikant, *Countrywide's Chief Salesman and Defender*, N.Y. Times (Nov. 11, 2007).
[43] Office of Inspector General, Department of the Treasury, *Material Loss Review of ANB Financial, National Association* (Nov. 25, 2008) OIG-09-013.
[44] Office of Inspector General, Department of the Treasury, *Material Loss Review of First National Bank of Nevada and First Heritage Bank, National Association* (February 27, 2009) OIG-09-033.
[45] In 2004, as warning signs of dangerous practices in the mortgage market grew, then-OTS director James Gilleran made it clear his agency was determined to keep a pliable attitude toward policing the home lenders: "Our goal is to allow thrifts to operate with a wide breadth of freedom from regulatory intrusion." Between 2001 and 2004, the OTS slashed its staff by 25% and changed its examination structure to emphasize having lenders do "self-evaluations" of their compliance with consumer protection laws. By 2005, the OTS had a new director, John Reich, but the message was similar. When concerns were raised about lenders' lack of concern for borrowers' ability to repay their loans, Reich cautioned that regulators should not interfere with thrifts that "have demonstrated that they have the knowhow to manage these products through all kinds of economic cycles." See Binyamin Appelbaum & Ellen Nakashima, *Banking Regulator Played Advocate Over Enforce*r, Wash. Post (Nov. 23, 2008).
[46] For more details on OTS's regulatory failures, see Michael Hudson and Jim Overton, *The Second S&L Scandal: How OTS allowed reckless and unfair lending to fleece homeowners and cripple the nation's savings and loan industry*, Center for Responsible Lending (Jan. 2009), *available at* http://www.responsiblelending.org/mortgage-lending/policy-legislation/regulators/the-second-s-l-scandal.pdf.
[47] See, e.g., *The People of the State of California v. Countrywide Financial Corp.*, Los Angeles Superior Court, June 24, 2008, *available at* http://ag.ca.gov/cms_attachments/press/pdfs/n1588_firstamendedcomplaint.pdf#xml=http://search.doj.ca.gov:8004/AGSearch/isysquery/d9682d50-f6f7-4c18-9b74-dd03bca6cf28/2/hilite/ ; see also *Unfair and Unsafe: How Countrywide's irresponsible practices have harmed borrowers and shareholders***,** CRL Issue Paper (Feb. 7, 2008), *available at* http://www.responsiblelending.org/mortgage-lending/research-analysis/unfair-and-unsafe-countrywide-white-paper.pdf.
[48] Office of Inspector General, Department of the Treasury, *Material Loss Review of NetBank, FSB* (Apr. 23, 2008) OIG-08-032.
[49] Office of Inspector General, Department of the Treasury, *Material Loss Review of IndyMac*

Bank, FSB (Feb. 26, 2009) OIG-09-032.
[50] Office of Inspector General, Department of the Treasury, *Material Loss Review of Downey Savings and Loan FA* (June 15, 2009) OIG-09-039.
[51] The inspector general discovered, for example, that OTS's western regional director had allowed IndyMac to count money it received from its bank holding company in May 2008 in a quarterly report outlining its financial condition as of March 31, 2008. See Binyamin Appelbaum and Ellen Nakashima, *Regulator Let IndyMac Falsify Report*, Washington Post (December 23, 2008) and Cheyenne Hopkins, *Treasury IG Faults OTS For Allowing Backdating***,** American Banker (May 22, 2009).
[52] Appelbaum & Nakashima, *Banking Regulator Played Advocate Over Enforcer, supra*.
[53] Office of Inspector General, Department of the Treasury, *Bank Secrecy Act: OCC Did Not Take Formal Enforcement Action Against Wells Fargo Bank for Significant BSA Deficiencies* (Aug. 18, 2006) OIG-06-034.