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Center for National Policy Review

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MEMORANDUM

TO: Vernon Jordan
FROM: William Taylor *Bill*
RE: Litigation against banking agencies

Background

In 1971 the Urban League, together with 12 other organizations, filed petitions with the four federal financial regulatory agencies asking them to enforce the Fair Housing laws through the regular processes of bank examination and supervision. A key element of the enforcement program we urged was requiring banks to note the race of mortgage applicants to enable the supervisory agency to detect discriminatory rejection patterns. The only significant action which the Fed took in response was to participate in a four-agency six-month pilot survey in 1974, which revealed that black applicants were rejected two to three times as often as white applicants -- even when factors such as applicant income were held constant.

Lacking further action, the Urban League, the NAACP, the National Association of Real Estate Brokers and several other organizations filed suit against the four agencies in April, 1976. During 1977, settlement agreements were reached with the Federal Home Loan Bank Board, the FDIC and the Office of the Comptroller of the Currency, all on substantially the same terms. In summary, the agreements provide that each agency will:

- require collection of race and sex data on mortgage applicants, will computer-analyse the data to detect discriminatory patterns at individual banks, and will conduct in-depth civil rights examinations of suspected offenders.
- step up their examiner training and provide improved instructions to examiners on detection of Fair Housing violations.
- appoint a full-time civil rights specialist at a policy level in Washington to oversee the enforcement program, and appoint a part-time specialist in each regional office.
- establish procedures for thorough and prompt investigation and disposition of discrimination complaints.

- apply the same sanctions against Fair Housing violators that are used against violators of other federal laws and regulations, and advise member banks of the agency's intention to do so.

Status of litigation against the Fed

On behalf of the plaintiffs, we have offered the Fed the same terms as agreed to by the three other agencies. The Fed has refused them and has not even met with us to talk settlement for over a year. The Justice Department is representing them; the basis for their defense at this stage is that the plaintiffs lack legal "standing" to sue the Fed for failure to enforce the Fair Housing laws. If this defense fails, they will presumably defend on the ground that their current enforcement program is adequate. These are the most important substantive issues:

- Although race/sex data is now available on most mortgage applicants (pursuant to a requirement imposed by the Fed's "Regulation B", adopted under the Equal Credit Opportunity Act*), the Fed refuses to make appropriate use of the data. While the other three agencies will subject the data to computerized analysis on a nation-wide basis to "flag" banks with discriminatory patterns, the Fed relies on individual bank examiners to detect discrimination by reviewing a sample of loan files at individual banks without the aid of any statistical analysis.
- The Fed has no employee whose specific job is civil rights enforcement. Rather, civil rights is dealt with by the office and personnel responsible for "Consumer Affairs" -- such as Truth in Lending, the Real Estate Settlement Procedures Act, interest rate limitations, and the like. The Fed evidently does not see a distinction between disclosure laws and other consumer protection measures on the one hand, and racism and its fall-out on the other.
- The Fed has no procedures for investigation of complaints. Its practice in the past has generally been to inquire of the bank and accept the bank's explanation without further investigation -- without, for example, any contact with the complainant.

What William Miller can do

Fed member Philip Jackson is chairman of the Board's Consumer Affairs Committee and is hostile to settlement. Miller can take a personal interest in Fair Housing enforcement and ask the staff to re-open settlement talks. Specifically, he can ask the staff to settle on the terms agreed to by the other three agencies or give him specific reasons why certain of those terms are unacceptable.

* This law bars discrimination in all forms of credit. Its focus is consumer credit. Originally it barred discrimination based on sex and marital status; effective in 1976, it was amended to bar race discrimination as well.

1 period of making that information until it is down to 30 days.

2 I understand that there is -- this is secondhand --
3 members of the FOMC feel that disclosure earlier than that could
4 give advantage to the sophisticated large traders in govern-
5 ment securities and to the disadvantage of the system and the
6 welfare of everyone.

7 Senator Heinz. Very well.

8 Mr. Miller, thank you.

9 Mr. Chairman, I think you have been very generous with
10 the -- in my case with the time -- I think you have been a very
11 fair chairman to all of the members of the committee and
12 to Mr. Miller in conducting this hearing and for my part I
13 want to thank you very much.

14 I thank you also, Mr. Miller, for your responses. They
15 have been very helpful to me.

16 The Chairman. I will be as brief as I can.

17 I do have a number of questions. Maybe I can abbreviate
18 the questions and you can abbreviate the responses and we can
19 move along.

20 I want to discuss fair housing activities of the Fed.
21 They are important. Here is an area where I think the Fed
22 has not done well.

23 In 1971 and '72 the Federal Bank Regulatory Agency^{ies} at the
24 prodding of HUD conducted two surveys to determine the rate
25 of discrimination in urban lending.

1 If confirmed would you urge the Board to join the other
2 banking agencies in finally attacking mortgage discrimination?

3 Mr. Miller. I am opposed to racial discrimination.
4 I do not know of the facts of this case. I learned of it in
5 the last couple of days.

6 All I can do is to review it and see if there is a way
7 for the Fed to join in to an amicable settlement of it.

8 The Chairman. I am glad to hear you feel strongly about
9 racial discrimination. There is nowhere where the practice
10 has been more conspicuous and outrageous than with respect
11 to mortgage lending.

12 We have had it on the books outlawed since 1968, 10
13 years. The blacks are still waiting for the kind of justice
14 the law promises.

15 We have a chart up here, the tangled web of bank regula-
16 tion. I brought that in not because it is an attractive
17 color but because it represents a serious problem.

18 There are three federal agencies regulating commercial banks,
19 Fed, Controller and FDIC.

20 The chart shows the original structure to be helter-
21 skelter. It fosters incompetence because banks can choose
22 who will regulate them.

23 The regulations of the banks end up flabby and permissive.
24 The Government Operations Committee has strongly recommended
25 that banks be regulated by a single agency.

1 The results of the surveys are startling. Not only did
2 nonwhites experience rejection rates higher than whites, but
3 many of the institutions admitted they considered the racial
4 ethnic makeup of neighborhoods and people in giving loans.

5 Nonwhites suffered a nearly two to one rejection rate over
6 whites and this was even true when they had qualifying income.

7 In short, the federal banking agencies have had in their hands
8 since 1971 concrete, irrefutable evidence of widespread racial
9 discrimination in mortgage lending.

10 All four agencies denied petition by civil rights agencies
11 that they institute nondiscriminatory agencies.

12 This action would further the goals of the 1969 Fair Hous-
13 ing Act. In desperation 11 civil rights and fair housing
14 groups filed suit against the four agencies in July of '76
15 alleging indifference, neglect and mortgage discrimination.

16 Since then each of the agencies except the Fed has
17 settled its suit agreeing to antidiscriminatory regulations,
18 require record keeping and especially train its examiners
19 in detecting discrimination.

20 The Fed has refused to do likewise.

21 In addition, the Fed has fought the suit for the last
22 year and a half on the technical grounds that the groups have
23 no right to sue.

24 I would like to know what your view of this lawsuit is
25 and what you think of the Board's refusal to settle.