Department of Justice

STATEMENT OF

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BEFORE THE

SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS, AND CIVIL LIBERTIES
COMMITTEE ON THE JUDICIARY
UNITED STATES HOUSE OF REPRESENTATIVES

ENTITLED

"PROTECTING THE AMERICAN DREAM PART II:
COMBATING PREDATORY LENDING UNDER THE FAIR HOUSING ACT"

PRESENTED

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Thomas E. Perez
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Good afternoon Chairman Nadler, Ranking Member Sensenbrenner and members of the Subcommittee. Thank you for calling this hearing on Fair Lending issues, which have become a top priority for the Civil Rights Division. I also want to thank you for the opportunity to testify before you today to tell about what the Division is doing to address these critical issues.

The nationwide housing crisis that has been a significant factor contributing to our nation's economic challenges, we now know, was fueled in large part by risky and irresponsible lending practices that allowed too many Americans to get unsustainable or unaffordable home loans. According to industry analysts between 8 and 13 million homes will be lost to foreclosure by the end of the crisis. About one in four borrowers are underwater and owe more on their loans than their homes are worth.

Communities nationwide have been devastated during the housing crisis. So many middle class Americans who worked hard to achieve the most basic building block of the American Dream – homeownership – have found themselves on the brink of disaster, facing the loss of their most important asset. The cost of foreclosures to our country is not limited just to the families that have lost their homes. Tens of millions of homeowners who have paid their mortgages on time will have their homes lose value because they are located near a home that has gone into foreclosure.[1]

[1] Center for Responsible Lending, *Soaring Spillover*, May 2009 available at http://www.responsiblelending.org/mortgage-lending/research-analysis/soaring-spillover-3-09.pdf.

This crisis has overwhelmed families and communities of all kinds, but one fact is clear; while the foreclosure crisis has touched so many communities across America, communities of color have been hit particularly hard. A study of foreclosures in the New York region by the *New York Times* that looked at neighborhoods with mortgage default rates of at least twice the regional average, found that 85 percent of those neighborhoods have a majority of black or Latino homeowners. The same study 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 or lower incomes. Home Mortgage Disclosure Act ("HMDA") data has shown that African-American and Latino borrowers were far more likely to receive a subprime loans than white borrowers. A 2004 Center for Responsible Lending study that supplemented HMDA data with data from a proprietary database concluded that African-Americans and Latinos received higher-priced subprime loans than white borrowers, even after controlling for creditworthiness and other underwriting factors. 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.

The more segregated a community of color is, the more likely it is that the homeowners who live there will face foreclosure. In part, this is because some of the lenders who made the most toxic loans, which are the loans that are failing at the highest rates, 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. I have now had the chance to see this crisis and its devastating impacts from the local, State and Federal levels.

As a member of the Montgomery County, Maryland, Council in the first half of the last decade, I saw the realities of lending discrimination at the ground level. Montgomery County, Maryland, is one of the wealthiest counties in the nation. It is also racially diverse. Even when we controlled for wealth, data showed us that African-American and Latino borrowers were disproportionately in subprime loans. The data in my home county showed that upper income African-Americans were as much as six times as likely to be in a subprime loan as upper income non-minorities.

In 2007, Governor Martin O'Malley asked me to be the Secretary of the agency that oversees financial regulation for the State of Maryland. In this position at the height of the crisis, I had the opportunity to work on solutions at the State level. We passed a sweeping package of reforms that extended the foreclosure process, cracked down on fraud, required lenders to verify a borrower's ability to repay a loan, and established a duty of care that requires brokers to offer the best products for which a borrower is eligible, rather than the one which will give the broker the highest fees. The Corporation for Enterprise Development's 2009-2010 Assets and Opportunity Scorecard cited Maryland as having the strongest law to curb predatory mortgage lending in the country, matched only by New Mexico.

Again, our reach was limited, because large, national players are not subject to State regulation. While we worked within our limited sphere of authority to combat the crisis, both at the front end, where loans were originated, and at the back end, where people were losing their homes, the Federal government was decidedly absent.

Perhaps the biggest lesson learned as a local and State official trying to address this crisis was that Federal oversight and enforcement is absolutely critical to ensuring responsible, non-discriminatory lending.

For this reason, President Obama has made mortgage fraud and homeownership preservation a top priority by establishing the Financial Fraud Enforcement Task Force and an array of programs to assist distressed homeowners and communities. To implement the President's mandate in civil rights Attorney General Holder and I have made fair lending a top priority. The Civil Rights Division is charged with enforcing the Fair Housing and Equal Credit Opportunity Acts. The Division receives referrals from banking regulatory agencies, which must refer cases to the Department when an agency believes a pattern or practice of discrimination may exist at a bank or other regulated financial institution. Today, we continue to open cases based on those referrals, but we are also making a concerted effort to take a more proactive approach to fair lending enforcement. The Division has created the necessary infrastructure to support and expand our fair lending work, begun to identify major targets for enforcement and started to fundamentally reshape our relationships with other Federal agencies and State partners, including State attorneys general.

We have created a Fair Lending Unit in the Division's Housing and Civil Enforcement Section in order to devote more resources to this critical work. Both current career attorneys and new hires will staff the unit, and we have hired several new attorneys to fill additional positions. The unit will also have three dedicated economists, a math statistician and dedicated professional staff to assist the attorneys. Initially, the unit will consist of more than 20 staff members who will devote a significant portion of their time to lending cases. Loosely modeled after the Human Trafficking Unit in the Division's Criminal section, which yielded tremendous results, this new unit will increase capacity, develop greater expertise and obtain significant results. The Division recently hired four new full-time lending attorneys to complement existing staff in the Housing Section. The Division has also hired a Special Counsel for Fair Lending, a senior career position in the Office of the Assistant Attorney General, to ensure that fair lending issues receive immediate attention and high priority.

The Fair Lending Unit is focusing its efforts on the entire range of abuses seen in the market, from traditional access to credit issues, such as redlining, to reverse redlining, pricing discrimination and other areas. 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.

For example, last month 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 Division's lawsuit alleged that the 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 amount of damages for victims in a fair lending settlement ever secured by the Department of Justice, and the case marked the first time the Department has held a lender accountable for failing to monitor brokers' fees to ensure that the fees are not being charged in a discriminatory manner.

Addressing another type of discriminatory lending abuse, in September the Division reached a settlement with an Alabama bank, First United Security Bank, to resolve allegations of a pattern or practice of discrimination based on race. The complaint alleged that the bank charged African-American borrowers higher rates on mortgage-related loans than it charged to similarly situated white borrowers, and that it engaged in redlining by failing to offer its lending products and services on an equal basis in areas that are majority African-American. 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.

Also in September, the Division filed a lawsuit against a bank and two auto dealerships in Los Angeles, alleging that they violated the Equal Credit Opportunity Act by charging non-Asian American customers higher interest rate mark-ups. One of the three defendants, Nara Bank, agreed in a settlement to pay up to $410,000 to resolve the allegations.

These cases are just the beginning of what will be a robust enforcement effort to eradicate discriminatory lending practices from all markets. We currently have 39 matters open, including 17 investigations and an authorized lawsuit against a major lender involving allegations of discrimination based on marital status. We have identified seven national lenders as targets of enforcement efforts. 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.

All of these efforts are part of a larger, Administration-wide effort to crack down on financial fraud so that we can eradicate those practices that led to the financial meltdown and ensure they don't happen again. The President's Financial Fraud Enforcement Task Force is fostering unprecedented inter-agency collaboration, a critical need in the face of an unprecedented crisis. I am a co-chair, along with HUD and the Federal Reserve, of the Task Force's Non-Discrimination Working Group, through which we are working with our partners at other agencies, as well as at the State level, to be able to address both existing and emerging issues. Last week we joined with the Illinois Attorney General, also a member of the Working Group, to host a Fair Lending Forum in Chicago to hear from experts on the ground about the issues.

Referrals from banking regulatory agencies are a key component of our fair lending enforcement program. Through the Task Force and our direct relationships with regulatory agencies we will work to ensure that we continue to receive a steady flow of referrals, and we will collaborate with these agencies so that problems identified in the referrals are resolved as expeditiously as possible.

We are also working with our partners to identify potential fair lending violations where much of the lending activity is occurring today – at the back-end of the process – in mortgage modifications. We want to be sure homeowners are not again subjected to abusive practices as they attempt to get out from under unsustainable loans. We will be getting data soon from the Home Affordable Modification Program ("HAMP"), disaggregated by race and ethnicity, and the Non-Discrimination Working Group members are collaborating on methods to analyze the HAMP data. We will also be vigilant in looking at trends in the market as we continue to emerge from the recession, and as lending occurs once again at a more robust pace.

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 go hand in hand, and are inextricably intertwined. 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.

In addition to our fair lending efforts, our lending work also extends to the Servicemembers Civil Relief Act, which ensures that servicemembers will not be subject to certain civil actions while on active duty. Under the SCRA, creditors may not take action to foreclose a lien against a servicemember on active duty without first obtaining a court order. I have recently authorized lawsuits against two national mortgage servicers for violating the SCRA by improperly foreclosing on active duty service members. We will continue to diligently enforce the SCRA and make sure that the brave men and women who protect our country enjoy the full protection of the law.

In short, the Civil Rights Division is open for business across the board, and we have become a conspicuous presence in the fair lending setting. Through our efforts and our partnerships with other Federal agencies and State partners, we will continue to ramp up fair lending enforcement to ensure that all Americans have equal access to credit. Such access is the foundation of our economy and the root of families' ability to accumulate wealth from generation to generation – without it the promise of equal opportunity remains unfulfilled. In the Civil Rights Division, we are working once again to be sure that all individuals and all families have access to those resources that will allow them to achieve the promise of our great nation.

I look forward to answering any questions that Members of the Committee may have.