EMORY
SCHOOL OF
LAW

Frank S. Alexander
Professor of Law
Director, Project of Affordable Housing and Community Development
Founding Director, Center for the Study of Law and Religion

September 28, 2008

The Honorable Dennis J. Kucinich
Chairman, Domestic Policy Subcommittee
Committee on Governmental Oversight and Reform
U.S. House of Representatives
2157 Rayburn House Office Building
Washington, DC 20515-6143

RE: Emergency Economic Stabilization Act of 2008

Dear Representative Kucinich:

As the text of the Emergency Economic Stabilization Act of 2008 approaches final negotiations and a possible vote in Congress, I want to share my concern over the lack of any clear connection between the Troubled Asset Relief Program, and the provisions of this legislation that appear to relate to Homeownership Preservation.

This legislation, in its most recent form as of Sunday evening, September 28th, has many provisions that make it far superior to the bill that was submitted on behalf of Secretary Paulson eight days ago. The two dominant purposes of the current draft of this legislation appear to be first the desire to enhance financial market liquidity through the acquisition (or insurance) of Trouble Assets, and second the desire to facilitate home preservation through loan modifications. The problem is that that there is, quite simply, no clear or necessary connection between the Troubled Assets that may be purchased by the Secretary, and the capacity of the Secretary to engage in or facilitate loan modification or foreclosure avoidance strategies.

As presently drafted, the Secretary will engage in a program of acquisition (or insurance) of Troubled Assets, the purchase of which "promotes financial market stability". The liquidity crisis primarily stems from mortgage backed securities, or derivatives of mortgage backed securities, which contain or are perceived to contain mortgages with high rates of delinquencies or defaults. Mortgage related securities that are composed of a single class of prime mortgages are not illiquid, and are not likely to be the target of acquisition by the Secretary. Instead, the illiquid securities are most frequently those that are highly subdivided and fractured into separate classes or tranches, and often further securitized by derivatives.

Emory University
Gambrell Hall
1301 Clifton Road
Atlanta, Georgia 30322

Tel 404.727.6982
Fax 404.727.3374
falexander@law.emory.edu

. The problem is that when and if the Secretary elects to acquire the mortgage related asset of any single financial institution, the Secretary will not be acquiring a portfolio of whole loans, or even a controlling interest in a securitization of loans.

If the Secretary acquires a partial interest or whole interest in a given tranche of mortgage backed securities, or in a derivative of a mortgage back security, the Secretary will lack the authority to authorize, require or even permit a program designed to encourage or facilitate homeownership preservation or foreclosure avoidance actions. As an owner of a minority interest in a securitization or security derivative, there is little if anything that the Secretary will be able to do to accomplish the professed goals of Homeownership Preservation in this legislation.

If in fact this legislation is to have as one of its goals that of homeownership preservation, then the Troubled Asset Relief Program should have, at a minimum, as one of its goals thet acquisition by the Secretary of Troubled Assets which will provide the Secretary will a controlling or majority interest in the underlying pool of whole mortgage loans. In such a context the Secretary will be in a position to implement the Homeownership Preservation goals of this legislation.

The most direct way to modify the current text of the Emergency Economic Recovery Act of 2008 to create the necessary tie between market liquidity and homeownership preservation is to modify Section 101(d)(5) to add the following:

> "(5) Priority acquisition of troubled assets when such acquisition provides the Secretary with a controlling or majority interest in the underlying pool of whole mortgage loans."

In the absence of any functional tie between Troubled Asset acquisition and control with respect to modifications of the underlying residential mortgages, there is likely to be very little significance to the homeownership preservations provisions of this legislation.

Sincerely,

Frank S. Alexander
Professor of Law
Director, Project on Affordable
Housing & Community Development