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January 25, 2012

The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
Washington, D.C. 20530

Dear Attorney General Holder,

I am concerned that the terms of the Justice Department's recent settlement with Countrywide Financial Corporation and certain affiliates (collectively, "Countrywide") will allow the Department to give large sums of money to individuals and organizations with questionable backgrounds or close political ties to the White House without any guidelines or oversight. If that is to be the case, this sort of backdoor funding of the president's political allies would be an abuse of the Department's law enforcement authority. Accordingly, I would like to learn more about how the Department plans to enforce certain aspects of this settlement.

On December 28, 2011, the Department entered into a settlement agreement (the "Settlement") with Countrywide pursuant to which Countrywide will deposit \$335 million into an interest-bearing escrow account to remedy alleged violations of the Equal Credit Opportunity Act and Fair Housing Act.¹ Paragraphs 7 through 9 of the Settlement empower the Department to "identify aggrieved persons with respect to race and national origin discrimination claims" and "specify the amount each allegedly aggrieved person" shall receive.² Conspicuously missing from the Settlement are any guidelines by which the Department shall determine who is an "aggrieved person" or how much he or she shall receive. In short, the only criterion for status as an "aggrieved person" is that the Department says so.

The Settlement further directs

[a]ll money not distributed to allegedly aggrieved persons from the Settlement Fund . . . shall be distributed to *qualified organization(s)* that provide services including credit and housing counseling (including assistance in obtaining loan modification and preventing foreclosure), financial literacy, and other related

¹ See generally *U.S. v. Countrywide Fin. Corp.*, No. 11-cv-10540 (C.D. Cal. Dec. 28, 2011).

² *Id.*, slip op. at 7-8.

programs targeted at African-American and Hispanic potential and former homeowners in communities where the Complaint alleges significant discrimination occurred against [those homeowners].³

Recipients of this money “may include non-profit community organizations that provide education, counseling and other assistance to low-income and minority borrowers.”⁴ The Settlement requires Countrywide to “consult with and obtain the non-objection of the United States” in selecting who shall receive these funds.⁵ The Settlement contains no guidelines for conferring “qualified organization” status on non-profit or other organizations. Again, the only apparent criterion for a non-profit community organization’s receipt of a potentially substantial amount of money is that the Department says so.

Without any criteria by which “aggrieved person” or “qualified organization” status is to be determined, I am concerned that the Settlement may provide a means by which money is doled out to heavily political organizations or to groups with close political ties to the White House. For example, had it not disbanded in the wake of allegations of corruption, would ACORN have qualified to receive money under the Settlement because of its advertised mission to assist racial minorities with housing issues notwithstanding its overt efforts to assist the president’s 2008 campaign? I would like to understand how the Department intends to identify who is an “aggrieved person” and determine which groups are “qualified organizations.” As the Settlement by its terms will be implemented in the near future, please respond to the following questions not later than February 17, 2012:

1. How will the Department determine who is an “aggrieved person” able to receive settlement money and how much that individual will receive? What procedures will DOJ employ to detect and combat fraud in the claims process?
2. How will the Department determine what organizations are “qualified organizations” able to receive settlement money and how much each will receive?
3. Does the Department agree that an organization or groups with a political mission should not be a “qualified organization” under the Settlement?

I request that, in addition to answering these questions, the Department provide the Committee a list of “qualified organizations” once the list has been determined.

³ *Id.* at 10.

⁴ *Id.*

⁵ *Id.*

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Congress should generally abstain from conducting oversight over the Department's arm's length settlement agreements with private parties except when a settlement, like this one, involves a significant public interest. Thank you for your attention to this matter and I look forward to your response.

Sincerely,



Lamar Smith
Chairman

cc: Hon. John Conyers, Jr.