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Predatory Lenders' Partner in Crime

How the Bush Administration Stopped the States From Stepping In to Help Consumers

By Eliot Spitzer

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Several years ago, state attorneys general and others involved in consumer protection began to notice a marked increase in a range of predatory lending practices by mortgage lenders. Some were misrepresenting the terms of loans, making loans without regard to consumers' ability to repay, making loans with deceptive "teaser" rates that later ballooned astronomically, packing loans with undisclosed charges and fees, or even paying illegal kickbacks. These and other practices, we noticed, were having a devastating effect on home buyers. In addition, the widespread nature of these practices, if left unchecked, threatened our financial markets.

Even though predatory lending was becoming a national problem, the Bush administration looked the other way and did nothing to protect American homeowners. In fact, the government chose instead to align itself with the banks that were victimizing consumers.

Predatory lending was widely understood to present a looming national crisis. This threat was so clear that as [New York](#) attorney general, I joined with colleagues in the other 49 states in attempting to fill the void left by the federal government. Individually, and together, state attorneys general of both parties brought litigation or entered into settlements with many subprime lenders that were engaged in predatory lending practices. Several state legislatures, including New York's, enacted laws aimed at curbing such practices.

What did the Bush administration do in response? Did it reverse course and decide to take action to halt this burgeoning scourge? As Americans are now painfully aware, with hundreds of thousands of homeowners facing foreclosure and our markets reeling, the answer is a resounding no.

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Not only did the Bush administration do nothing to protect consumers, it embarked on an aggressive and unprecedented campaign to prevent states from protecting their residents from the very problems to which the federal government was turning a blind eye.

Let me explain: The administration accomplished this feat through an obscure federal agency called the [Office of the Comptroller of the Currency](#) (OCC). The OCC has been in existence since the Civil War. Its mission is to ensure the fiscal soundness of national banks. For 140 years, the OCC examined the books of national banks to make sure they were balanced, an important but uncontroversial function. But a few years ago, for the first time in its history, the OCC was used as a tool against consumers.

In 2003, during the height of the predatory lending crisis, the OCC invoked a clause from the 1863 National Bank Act to issue formal opinions preempting all state predatory lending laws, thereby rendering them inoperative. The OCC also promulgated new rules that prevented states from enforcing any of their own consumer protection laws against national banks. The federal government’s actions were so egregious and so unprecedented that all 50 state attorneys general, and all 50 state banking superintendents, actively fought the new rules.

But the unanimous opposition of the 50 states did not deter, or even slow, the Bush administration in its goal of protecting the banks. In fact, when my office opened an investigation of possible discrimination in mortgage lending by a number of banks, the OCC filed a federal lawsuit to stop the investigation.

Throughout our battles with the OCC and the banks, the mantra of the banks and their defenders was that efforts to curb predatory lending would deny access to credit to the very consumers the states were trying to protect. But the curbs we sought on predatory and unfair lending would have in no way jeopardized access to the legitimate credit market for appropriately priced loans. Instead, they would have stopped the scourge of predatory lending practices that have resulted in countless thousands of consumers losing their homes and put our economy in a precarious position.

When history tells the story of the subprime lending crisis and recounts its devastating effects on the lives of so many innocent homeowners, the Bush administration will not be judged favorably. The tale is still unfolding, but when the dust settles, it will be judged as a willing accomplice to the lenders who went to any lengths in their quest for profits. So willing, in fact, that it used the power of the federal government in an unprecedented assault on state legislatures, as well as on state attorneys general and anyone else on the side of consumers.

The writer is governor of New York.

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