

UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

TITLE VIII

CONCILIATION AGREEMENT

Between

U.S. Department of Housing and Urban Development

Assistant Secretary for the Office of Fair Housing and Equal Opportunity

(Complainant)

And

Cornerstone Mortgage Company, d/b/a Cornerstone Home Lending and Cornerstone

Home Lending, Inc.

(Respondent)

A. PARTIES

Complainant

Assistant Secretary
Office of Fair Housing and Equal Opportunity
U.S. Department of Housing and Urban Development
451 Seventh Street, S.W., Room 5241
Washington, DC 20410

Respondent

Cornerstone Mortgage Company, d/b/a Cornerstone Home Lending and Cornerstone Home Lending, Inc.
1177 West Loop South #200
Houston, TX 77027

B. STATEMENT OF POSITIONS

1. Complainant's Position

The Complainant, the Assistant Secretary for the Office of Fair Housing and Equal Opportunity (the "Assistant Secretary") of the U.S. Department of Housing and Urban Development ("HUD" or "Department") is filing a Secretary-initiated complaint pursuant to 42 U.S.C. § 3610(a)(1)(A)(i), continuing a previous preliminary investigation (the "Investigation") to determine if the Respondent, Cornerstone Mortgage Company, d/b/a Cornerstone Home Lending and Cornerstone Home Lending, Inc. ("Cornerstone"), violated the Fair Housing Act (the "Act") by utilizing discriminatory mortgage lending practices and making discriminatory statements. The complaint formalizing the investigation alleges that Cornerstone's policies and procedures regarding persons on pregnancy or maternity leave unlawfully discriminated against persons on the basis of sex and/or familial status (pregnant women) with respect to making residential mortgage loans available and in terms and conditions.

This conciliation agreement is entered into jointly by the parties following the preliminary investigation and is filed simultaneously with the Complaint. The complaint alleges that Cornerstone initially approved a female applicant for a conventional mortgage loan. When Cornerstone learned the applicant was on maternity leave, Cornerstone changed the status of her application. The borrower was notified by e-mail stating that Cornerstone was not aware of her pending maternity leave and indicating that when a borrower is on maternity leave, the borrower's

income could not be considered for purposes of qualifying for a loan. The complaint further alleges that approval of the applicant's loan was conditioned and she eventually returned early from maternity leave as a result of Cornerstone's actions.

Under 42 U.S.C. § 3604(c) (Section 804(c) of the Act), it is illegal "[t]o make, print, or publish, or cause to be made, printed, or published, any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, handicap, familial status, national origin, or an intention to make any such preference, limitation, or discrimination." In addition, 42 U.S.C. § 3604(a) makes it unlawful to "otherwise make unavailable or deny" a dwelling because of sex and/or familial status and 42 U.S.C. § 3605 makes it unlawful to discriminate against any person in making available a real estate-related transaction, such as a loan, and to discriminate in the terms and conditions of such a loan because of sex and/or familial status.

2. Cornerstone's Position

Cornerstone denies that it has discriminated in violation of the Act, and contends that it has engaged in prudent loan underwriting consistent with all legal requirements. The incident cited by HUD arose because a loan applicant failed to disclose in the course of her loan application that she would be on leave from her employment. The leave status was discovered when Cornerstone informed the applicant that the loan application was approved.

Consistent with nondiscriminatory underwriting standards applicable to all applicants who are not active employees, Cornerstone was required to evaluate the applicant's level of and continuity of income. At no point was the application ever denied. Cornerstone completed the necessary analysis of income within one day confirming that the applicant would be paid by her employer while on leave and reaffirmed the decision to approve the loan application. The loan closed without any delay from the previously established schedule. Cornerstone did not impose any condition that the borrower return to work at any particular time and the date for return to work was solely an issue between the borrower and her employer. Cornerstone enters this agreement for the purpose of avoiding the additional expense of investigation, while contending that all of its actions have been legally and prudentially sound.

3. Conciliation

HUD has not reached a final determination regarding the complaint pursuant to 42 U.S.C. § 3610(g). Nonetheless, the Assistant Secretary and Cornerstone have continued discussions in an effort to resolve the matter voluntarily. Although the parties have differing views of the operative facts, they have been able to reach an agreement that meets the interest of each party and thus enter this conciliation agreement (“Agreement”).

C. TERM OF AGREEMENT

This Agreement shall be in effect for a period of one (1) year from the effective date of the Agreement, unless an extension is necessary to complete the actions mandated by the Agreement.

D. EFFECTIVE DATE

The parties expressly agree that this Agreement constitutes neither a binding contract under state or federal law nor a conciliation agreement pursuant to the Act, unless and until such time as it is approved by Cornerstone and the Assistant Secretary, or his or her designee.

This Agreement shall become effective on the date on which it is signed by Cornerstone and the Assistant Secretary, or his or her designee.

E. GENERAL PROVISIONS

1. The parties acknowledge that this Agreement is a voluntary and full settlement of all issues related to the Department’s Investigation and the disputed Complaint. The parties affirm that they have read and fully understand the terms set forth herein. No party has been coerced, intimidated, threatened or in any way forced to become a party to this Agreement.
2. Cornerstone acknowledges that the Act makes it unlawful to retaliate against any person because that person has made a complaint, testified, assisted or participated in any manner in a proceeding under the Act. Cornerstone further acknowledges that any subsequent retaliation or discrimination constitutes both a material breach of this Agreement and a statutory violation of the Act.

3. The parties to this Agreement agree that, after it has been approved by Cornerstone and the Assistant Secretary, or his or her designee, it is binding upon them, their employees, heirs, successors and assigns and all others in active concert with them in the ownership or operation of their respective organization's services.
4. It is understood that, pursuant to Section 810(b)(4) of the Act, upon approval of this Agreement by Cornerstone and the Assistant Secretary, or his or her designee, it is a public document.
5. This Agreement does not in any way limit or restrict the Department's authority to investigate any other complaint involving Cornerstone made pursuant to the Act, or any other complaint within the Department's jurisdiction. This Agreement does resolve all issues that the Assistant Secretary has raised or could have raised in the complaint regarding Cornerstone's treatment of female applicants who were on, or scheduled to be on, pregnancy or maternity leave. However, this Agreement does not preclude the Assistant Secretary from performing the normal duties under the Fair Housing Act relating to investigating individual complaints alleging discrimination.
6. No amendment to, modification of, or waiver of any provisions of this Agreement shall be effective unless: (a) all signatories or their successors to the Agreement agree in writing to the amendment, modification or waiver; (b) the amendment, modification or waiver is in writing; and (c) the amendment, modification or waiver is approved and signed by Cornerstone and the Assistant Secretary, or his or her designee.
7. The parties agree that the execution of this Agreement may be accomplished by separate executions of consent to this Agreement, and that the original executed signature pages attached to the body of the Agreement constitute one document.

F. SETTLEMENT TERMS

1. Within 30 days after the date of entry of this Consent Decree, Cornerstone shall pay to Dr. Lihua Budde the sum of \$15,000.00 in full settlement of any and all claims that Dr. Budde could bring arising out of the allegations underlying the Investigation or presented in the Complaint. Such payment shall be by check. Cornerstone shall send a copy of the

check to the Assistant Secretary, or his or her designee. Upon receipt of the check, the Assistant Secretary, or his or her designee, shall send to Cornerstone a release executed by Dr. Budde of all claims, legal or equitable, that Dr. Budde may have against Cornerstone relating to the allegations underlying the Investigation or claims asserted in the Complaint. The release of all claims shall be in the form included hereto in Appendix C.

2. Cornerstone shall deposit in an interest-bearing escrow account the total sum of \$750,000.00 which will be available to pay damages to any female borrower who may have been injured by the alleged violations of the Act regarding the treatment of persons on, or scheduled to be on, pregnancy or maternity leave (“Compensation Fund”). Cornerstone shall provide written verification of the deposit within thirty (30) days of approval of the Agreement addressed to the Assistant Secretary, or his or her designee. Any interest that accrues shall become part of the Compensation Fund and be utilized and disposed of as set forth herein.
 - (a) Cornerstone agrees to provide the sum described above in Paragraph 2, in the form of a certified or cashier’s check, to the Compensation Fund to be administered by an independent third party administrator (the “Administrator”). All costs associated with the administration of the Compensation Fund shall be borne by Cornerstone. Any person filing a claim with the Administrator (“Claimant”) shall, upon the Administrator making a finding in accordance with Paragraph 2(f) of the Agreement, receive a payment of \$7,500.00 dollars from the Compensation Fund. In the event that the Compensation Fund is insufficient to pay \$7,500.00 for each Claim approved by the Administrator, the total sum available in the Compensation Fund shall be divided equally among them.
 - (b) That Administrator shall mail a Notice to Potential Victims of Housing Discrimination (“Notice”), attached as Appendix A, informing them of the availability of compensatory funds. Within thirty (30) days of the execution of the Agreement, the Administrator shall mail a copy of the Notice to the last-known address (as provided by Cornerstone) of all female borrowers or co-borrowers who

were approved for and received a residential mortgage loan from Cornerstone within the two (2) year period prior to approval of the Agreement (“Borrower(s)”). For purposes of this paragraph, Cornerstone shall include any approved loan with an action date between June 1, 2009 and May 31, 2011.

- (c) Within forty-five (45) days of entry of this Agreement, Cornerstone shall provide a certification to the Assistant Secretary, or his or her designee, and to the Administrator, that it has sent, through the Administrator, the Notice to all Borrowers in accordance with Paragraph 2(b).
- (d) Borrowers shall have 60 days after receipt of the Notice to submit a Claim to the Administrator. The date of receipt shall be the date of mailing plus an additional 5 calendar days.
- (e) Within ten (10) days after the conclusion of the sixty (60) day period referenced in Paragraph 2(d), the Administrator shall provide Cornerstone and the Assistant Secretary, or his or her designee, a list of all Claims and shall refund to Cornerstone any portion of the Fund in excess of that amount that would be necessary to pay each received Claim (assuming for purposes of this refund analysis only that each Claim satisfied the conditions in Paragraph 2(f)). For example, if the Administrator received ten (10) Claims, the Administrator shall refund to Cornerstone \$675,000.00 (i.e., assuming each of the ten (10) Claims evidenced discrimination in accordance with Paragraph 2(f) of the Agreement, the total potential amount that would be distributed from the Fund would be \$75,000.00).
- (f) For each Claim, the Administrator shall make an initial determination as to whether the Claimant is entitled to a payment from the Compensation Fund. To authorize a payment the Administrator must document in writing each of the following:
 - (i) That the Claimant was pregnant and on, planning to be on, scheduled to be on, or expected to be on pregnancy or maternity leave at the time of the Claimant’s loan application with Cornerstone.

- (ii) That the Claimant's loan application was impacted detrimentally because of her pregnancy or maternity leave status. Such detrimental impact might be established by demonstrating that a Cornerstone official told a Claimant that she was not eligible for, or would be subjected to different terms and conditions of, a mortgage loan because she was on pregnancy or maternity leave, or that she would have to return to work before she would be considered eligible for a mortgage loan, or that the loan application was delayed unreasonable because of the pregnancy or maternity leave status.

A Claimant shall not be entitled to payment merely because Cornerstone acted to document the level and continuity of income before, during and after pregnancy or maternity leave as necessary and appropriate to qualify the borrower for the mortgage loan in a nondiscriminatory manner. It is recognized that income documentation is an important part of the loan underwriting process. A lender must evaluate income received while on leave, and determine whether the applicant intends to return to work at the previous level of pay. If conducted in a non-discriminatory fashion, these actions do not entitle a Complainant to a payment from the Compensation Fund.¹

- (g) Cornerstone may provide any information Cornerstone has within its possession or control that the Administrator needs to consider a Claim.
- (h) If the Administrator concludes, and documents in writing, that the standards required under Paragraph 2(f) are satisfied, the Administrator shall tentatively approve an Applicant's Claim.
- (i) Within one hundred-twenty (120) days of Cornerstone sending the Notice to all Applicants, the Administrator shall provide to Cornerstone and to the Assistant Secretary, or his or her designee, a list of all Claims the Administrator has received and specify those Claims that the Administrator has tentatively approved in accordance with the requirements of Paragraph 2(f). Cornerstone and the Assistant

¹ In addition, no Applicant shall be eligible for payment of an Award from the Compensation Fund if such Applicant has previously received compensation from Cornerstone in response to any claim of discrimination and has executed a release in exchange for such compensation.

Secretary, or his or her designee, shall have thirty (30) days in which to review the Claims that the Administrator tentatively approved and provide to the Administrator any written objections to the Administrator's tentative approval of a Claim. If either Cornerstone or the Assistant Secretary, or his or her designee, disputes, in writing, the Administrator's tentative approval of a Claim, the Administrator shall, within ten (10) days provide any other factual information to Cornerstone and the Assistant Secretary that the Administrator believes should be considered by the parties.

- (j) Cornerstone and the Assistant Secretary, or his or her designee, will work cooperatively in an effort to resolve any disputed claims based on the information provided by the Administrator and any other available information. In the event that the parties are unable to reach agreement as to whether a claim(s) should be approved, each side may present relevant information to the Administrator and the Administrator will make the final determination. For all Claims that are not disputed by either party, the Administrator shall mail each Applicant a copy of the notice contained in Appendix B of this Agreement within ten (10) days of the expiration of the time for dispute, with a copy of each notice to Cornerstone and the Assistant Secretary, or his or her designee. If the Administrator receives any notice returned with a forwarding address, it shall promptly re-send the notice to the forwarding address.

- (k) Within seventy-five (75) days of mailing the notices of approved Claims, the Administrator shall make a payment from the Fund of \$7,500.00 to each Claimant whose Claim was approved and who timely returned a signed Release. If the number of Applicants eligible for payment from the Fund exceeds one hundred, each Applicant shall receive a pro rata share of the Fund. For example, if 105 Applicants are eligible for payment, each Applicant shall receive \$7,142.85. In the event that disputed claims might impact the amount of money to be received by the undisputed Claimants, no payments will be made until final resolution of the disputed claims. The Administrator shall provide Cornerstone and the Assistant Secretary, or his or her designee, a full accounting, including copies of all Releases received, Awards sent, and letters to which no response was received or that were returned as undeliverable.

- (l) Within seventy-five (75) days of mailing the notices contained in Appendix B of the Agreement, the Administrator shall return to Cornerstone any remaining undistributed portion of the Fund, including interest accrued in the Fund.

G. TRAINING

Cornerstone shall provide at least one training session to all employees with significant involvement in residential lending to ensure that their activities are conducted in a nondiscriminatory manner. This training shall encompass their fair lending obligations under the Act, and the provisions of this Agreement. The parties have agreed to an organization that will conduct the training. In addition, within sixty (60) days of the entry of this Agreement, Cornerstone shall provide to all such employees an explanation and copies of the applicable provisions of this Agreement, and allow an opportunity for such employees to have any questions concerning the Agreement answered.

H. POLICIES UPDATED

Cornerstone has adopted, with the Department's approval, a clear company policy addressing the availability of all home loan products regardless of an Applicant's status as pregnant or an Applicant taking pregnancy or maternity leave. Cornerstone's policy was adopted company-wide on May 31, 2011 and written copies have been provided to loan officers, underwriters and decision makers.

I. EVALUATING AND MONITORING COMPLIANCE

1. For the duration of this Agreement, Cornerstone shall retain all records relating to its obligations hereunder. The Department shall have the right to review and copy such records upon request.
2. On the one year anniversary of this Agreement, Cornerstone shall make a report to the Department on its progress in fulfilling the goals of this Agreement. The report shall provide a complete account of Cornerstone's actions to comply with each requirement of this Agreement during the previous year, an objective assessment of the extent to which each quantifiable obligation was met, an explanation of why any particular component

fell short of meeting its goal for that year, and any recommendations for additional actions to achieve the goals of this Agreement.

J. ADMINISTRATION

1. The requirements of this Agreement shall be in effect for one (1) year, unless an extension is necessary to complete the actions mandated by the Agreement.
2. Any time limits for performance fixed by this Agreement may be extended by mutual written agreement of Cornerstone and the Assistant Secretary, or his or her designee.
3. Cornerstone's compliance with the terms of this Agreement shall fully and finally resolve all claims of the Department relating to Cornerstone's alleged violation of the Act by means of discriminating against persons on the basis of their pregnancy or maternity leave status, including all claims for equitable relief and monetary damages and penalties. Each party to this Agreement shall bear its own costs and attorney's fees associated with this matter.
4. The Department shall retain jurisdiction of this matter for the duration of this Agreement to enforce the terms of the Agreement.

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WHEREFORE, the parties hereto have duly executed this Agreement:

Assistant Secretary for Fair Housing and
Equal Opportunity

5-31-11
Date

By: John Trusina

Cornerstone Mortgage Company, d/b/a Cornerstone
Home Lending and Cornerstone Home Lending,
Inc.

5/29/11
Date

By: Julia A. Belong