

As HUD Chief, Cuomo Earns a Mixed Score

By [DAVID M. HALBFINGER](#) and [MICHAEL POWELL](#), New York Times, August 23, 2010

As [Andrew M. Cuomo](#) campaigns for governor, he points to his leadership of the [Department of Housing and Urban Development](#) during the Clinton administration as proof he possesses the ability and vision needed to lead New York out of its fiscal and political swamps.

Mr. Cuomo was housing secretary at a critical moment for the nation, just as its subprime mortgage fever was beginning to spike. It was during his tenure that the banking industry began to embrace predatory loans, and these creations led to a housing bubble that badly damaged America's banks and nearly toppled its financial system.

An examination of Mr. Cuomo's tenure atop the agency shows he was quick to warn about Wall Street's dangerous hunger for predatory subprime loans — generally more expensive mortgages sold to people with poor credit. He counseled caution when many influential players, including the Federal Reserve and Congress, resisted any suggestion that they slow the country's stampede to home ownership.

He also called attention to a pernicious mortgage-broker incentive payment that drove up interest rates for borrowers — secretly, in many cases — and that helped put many home buyers into loans they later found they could not afford.

And, in an effort to reverse decades of discrimination against blacks and Latinos, Mr. Cuomo pushed the government-sponsored banks, [Fannie Mae](#) and [Freddie Mac](#), to buy more home loans taken out by poor and working-class borrowers.

But when presented with chances to throttle back on the exploding subprime market, guard against predatory lending and reel in mortgage brokers and lenders, Mr. Cuomo several times faltered and backed down, interviews and records show.

He did not heed local officials and others who wanted him to make Fannie and Freddie publicly report details about the loans they bought.

And he chose not to impose penalties and other deterrents to ensure that the giant public banks did not promote dangerous lending.

He also reversed himself, under heavy lobbying pressure from mortgage brokers and bankers, on the arcane but costly mortgage-broker payments known as yield spread premiums. These were lucrative bounties that banks paid to brokers who found new clients; the unwitting borrowers paid higher-than-market interest rates as a result.

Yield spread premiums fueled the subprime frenzy, according to official post-mortems on the crisis.

Nearly every political leader whose hands touched the fiscal and housing crises has had decisions scrutinized, actions questioned. Already, Mr. Cuomo has heard such rumblings from supporters of his likely Republican opponent, [Rick A. Lazio](#), a former congressman.

Mr. Cuomo, whose tenure at HUD ended in early 2001, refused repeated requests to talk about his experience running the nation's housing agency and how he wrestled with such policy questions. He gave no reason for his reticence. Instead, his staff issued a statement, and his former chief of staff at HUD, Howard B. Glaser, took the role of surrogate for the candidate.

Mr. Glaser, now a consultant to the mortgage industry, produced an inch-thick binder that sang Mr. Cuomo's praises, attacked criticisms and deflected blame. Its title: "The Myth of Andrew Cuomo and the Subprime Crisis."

Some people, particularly from the ideological right, argue that Mr. Cuomo's decisions helped set in motion the nation's economic decline. Such claims seem likely to grow louder as Congress takes up the question of the future of Fannie Mae and Freddie Mac.

"Raising the affordable housing low- and moderate-income goal to 50 percent was the key initial step in setting Fannie and Freddie on a path to insolvency," said Peter J. Wallison, a conservative scholar who sits on the Congressionally appointed [Financial Crisis Inquiry Commission](#), which was created in 2009.

That argument, the record suggests, seems overdrawn. The record shows that the mortgages bought by Fannie and Freddie during Mr. Cuomo's tenure had low default rates. More broadly, if Mr. Cuomo was less prescient and gutsy than he now claims, no one seriously argues he deserves some outsize share of the blame for the subsequent collapse.

Far more powerful actors, including the finance industry, its various regulators, two presidents and Congress, helped create the environment and wrote the policies that caused it.

To a certain degree, the clock ran out on Mr. Cuomo's reform ambitions; within months, [George W. Bush](#) was president and Mr. Cuomo was looking for work. And the worst lapses at HUD and at Fannie Mae, most experts and regulators now agree, came years after Mr. Cuomo departed, as Bush appointees set even higher and more perilous goals for personal home ownership.

So the scorecard for Mr. Cuomo appears mixed. Had he acted tougher, and perhaps risked more, he might well have forestalled or limited some of the worst abuses. It could be argued, though, that doing so would have required of him a degree of foresight lacking in nearly every national leader of that time.

"If they had put something in with a lot of teeth, it would've changed the world," said Dwight Jaffee, a [University of California, Berkeley](#), economist who reported on the role of Fannie and Freddie to the Financial Crisis Inquiry Commission. "But no one in 2000 that I know of was thinking about that being necessary."

Leaning Into a Fight

As the head of a department under near constant attack — at his confirmation hearing, a Republican senator spoke of wanting to wipe HUD off the map — Mr. Cuomo severely cut its budget and reshaped its structure. He also won the removal of several of HUD's most important departments, although not the entire agency, as he had said, from an official federal list of most-troubled government agencies. A practiced political player, he changed public housing and homeless policy, rewarded innovation and increased the number of housing vouchers for the poor.

“Extinction was right there on the table,” said the current housing secretary, [Shaun Donovan](#), who had been a deputy assistant secretary under Mr. Cuomo. “It’s pretty clear Cuomo helped save the agency.”

Mr. Cuomo's style, always, was to lean into a fight. And when he was appointed secretary in 1997, he saw an easy victory. He planned to tackle one of the mortgage brokerage industry's most abusive practices: the yield spread premium, by which banks paid lucrative bounties to mortgage brokers who found new clients.

“Too often consumers think the brokers are working for them,” Mr. Cuomo warned. “In reality, they are working against them.”

By the time the mortgage crisis exploded, nearly 9 out of 10 brokered subprime mortgages were saddled with these premiums, costing Americans untold hundreds of millions of dollars.

But when Mr. Cuomo's moment of decision came in March 1999, he proved less than bold. Those who had identified the premiums as a true menace wanted him to declare them illegal, and thus end them. Mr. Cuomo, though, ultimately ruled that the practice was “not per se illegal.” Those four words shocked advocates and undercut dozens of lawsuits intended to end the practice and to protect home buyers.

Under his policy, Mr. Cuomo also did not require mortgage brokers to disclose such payments to their customers.

The brokers were delighted. But others still harbor anger at Mr. Cuomo. David Donaldson, an Alabama lawyer who filed a high-profile case against the mortgage premiums, recently offered one word when asked his opinion of the former HUD secretary: “Gutless.”

Mr. Donaldson said that at the time he thought he had found a sympathetic ear in Gail Laster, the HUD general counsel. She supported the idea of declaring the premiums illegal, he said.

“But she could only go so far, and I could only attribute that to one person, because there was only one person above her,” Mr. Donaldson said.

Mr. Glaser disputed that version of events. He said Ms. Laster “flatly told Cuomo that HUD had no legal authority to ban Y.S.P.'s.”

Ms. Laster now works as a lawyer for the House Financial Services Committee. She declined requests for a substantive interview.

Was she aware, Ms. Laster was asked by telephone, that Mr. Glaser had placed the onus on her?

“That’s what they do now, isn’t it?” Ms. Laster said before hanging up.

Mr. Cuomo’s 1999 policy statement held that yield spread premiums could be legal if mortgage brokers were paid a reasonable exchange for goods or services. The policy, Mr. Donaldson said, eliminated the ability of plaintiffs to bring class-action suits, a tactic he regarded as the most effective way of challenging the premiums.

“If you’ve got to look at every loan and see if it’s reasonable, you can’t have a class action,” he said.

If Mr. Cuomo’s decision disappointed them, it did not shock lawyers and others involved in fighting the practice. Mortgage brokers had a powerful lobby, with members in every Congressional district. Many legislators in Congress would fight Mr. Cuomo if he moved on the brokers.

“We’re setting these rules in a context of litigation, with Congress standing ready to make changes if it didn’t like what we did,” said Mr. Donovan, the current housing secretary.

Mr. Donaldson and other lawyers eventually hit upon a strategy to press lawsuits even after Mr. Cuomo’s policy statement; in 2001, HUD, under the Bush administration, slammed the door shut on those challenges as well.

Howell E. Jackson, a [Harvard](#) law professor who argued for the abolition of yield spread premiums, said a ban would have hit the industry hard, and Mr. Cuomo apparently decided against picking that fight.

“In retrospect, HUD was mistaken,” he said. The premiums “really fueled mortgage brokers, and consumers could never understand it. And it really fueled the boom.”

For some advocates for borrowers, the concept was all too simple. “It’s a kickback, and Cuomo did nothing to prevent that,” said Bruce Marks, chief executive of the Neighborhood Assistance Corporation of America. “That one thing would’ve had a huge impact on preventing the subprime crisis that we are in now.”

Congress finally outlawed yield spread premiums in July. The financial reform legislation forbids mortgage originators to charge fees linked to anything other than the principal amount of a loan.

Taking On Fannie Mae

Homeownership had jumped during the Clinton administration, to 65.4 percent in 1997, when Mr. Cuomo took charge, from 63.7 percent in 1993. The ambitious new HUD secretary wanted to keep the number rising.

But Mr. Cuomo quickly learned the HUD secretary was not the most powerful housing player in Washington. If he wanted to push homeownership, particularly for low- and middle-income Americans, he had to tackle Fannie Mae, with its considerable political muscle.

He decided to set the affordable housing goals high, at a fat, round 50 percent of the companies' business volume. His tactics were not terribly subtle. The agency commissioned and trumpeted a report showing that Fannie's new automated-underwriting system disproportionately screened out minority borrowers. This infuriated Fannie Mae's chairman, [Franklin Raines](#), who is black.

When Fannie Mae resisted HUD's demand that it produce millions of loan records, Mr. Cuomo's agency sent a referral letter to the Justice Department, accusing Fannie's vice chairwoman, Jamie S. Gorelick, of having violated the False Claims Act. Ms. Gorelick, a former deputy attorney general, was said to have been enraged. The Justice Department did not pursue the matter. She declined to comment for this article.

But the government banks were on board. More loans would be made. And the evidence shows that Mr. Cuomo's higher goals did not force Fannie and Freddie to make riskier mortgages. In his report to the Financial Crisis Inquiry Commission, Professor Jaffee, the Berkeley economist, showed that default rates for mortgages bought by Fannie and Freddie from 2000 to 2003, under Mr. Cuomo's goals, were low and declined as the foreclosure crisis grew.

After 2004, by contrast, when the Bush administration announced an even steeper increase in the housing goals, Fannie and Freddie began buying large quantities of poor-quality loans, and the default rates shot higher and higher.

"Look at the timing," said Mr. Donovan, the current HUD secretary. "Fannie and Freddie didn't start buying these truly bad loans for years until after Andrew left."

Faulted on Safeguards

Where Mr. Cuomo can be faulted, according to some analyses, is that while in office he did not put in place the kinds of requirements and safeguards that might have prevented what would become Fannie and Freddie's mad push into ever riskier loans, or that could have at least limited their impact.

After all, by 1999, when Mr. Cuomo signaled his intention to raise the goals, both Fannie and Freddie had made their subprime ambitions well known, introducing no-down-payment products, openly talking of capturing half the market and alarming some top aides to Mr. Cuomo.

Indeed, some critics say that Fannie and Freddie appeared to use Mr. Cuomo's well-intentioned goals as political cover for getting into the lucrative subprime market.

"I believe it was simple avarice," Professor Jaffee said of Fannie and Freddie's true ambitions. "We can buy these mortgages, make lots of money, and we'll be rich, and if it works out badly the government can take us over."

Some consumer groups pleaded with Mr. Cuomo to prohibit Fannie and Freddie from buying predatory loans altogether, or at least to impose penalties. And they urged him to require a public accounting of Fannie and Freddie's loans, to see if they were including abusive mortgages in claiming credit toward achieving the goals. In effect, the public could have examined the loans the banks were making and sounded the alarm.

"I could tell you, loan by loan, what [Bank of America](#) was generating in a neighborhood," said Dan Immergluck, a professor of housing policy at [Georgia Tech](#). "I could not get that for" Fannie and Freddie.

Speaking of Fannie Mae and Freddie Mac, called government-sponsored enterprises, he said: "I wanted the public to know what kind of loans the GSEs were buying and investing in. And we didn't want the subprime stuff to count toward the housing goals. I think the general conclusion is that it did."

But Mr. Cuomo refused to install the measures, and in the end, HUD and Mr. Cuomo sided with Fannie and Freddie, arguing in October 2000 that demands for more transparency would impose "an undue additional burden."

Asked why HUD had not required more detailed data reporting, Mr. Glaser said, "It was too big a piece to chew off in this rule."

Professor Immergluck offered a simpler explanation: "They just didn't want to do it."

In fairness to Mr. Cuomo, even consumer advocates who wanted him to build transparency and stronger safeguards into the housing goals say it would have been unrealistic to have expected much more from him.

"It would've taken a person of tremendous courage and political juice to be able to effect more protection," said Margot Saunders, a lawyer for the National Consumer Law Center. "He could've done more, but not a whole lot more."

Mr. Cuomo did speak out more loudly and presciently on the question of predatory lending by private mortgage companies. He held hearings across the country, and warned — a bit ahead of his time — of the danger in Wall Street's growing investment in the subprime market.

In June 2000, HUD and the [Treasury](#) issued a report on predatory lending. It recommended bolstering disclosure requirements, enhancing consumer protections against high-interest loans and curtailing prepayment penalties.

It was a fairly powerful report. But it required Congressional and Federal Reserve action, and when Vice President [Al Gore](#) lost the 2000 election to Mr. Bush, Mr. Cuomo was out of a job.

“He wrote what I think is the definitive report on solutions,” said Judith Kennedy, president of the National Association of Affordable Housing Lenders. “Whereupon they lost the administration.”