Forging a New Housing Policy: Opportunity in the Wake of Crisis

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Published under the auspices of The National Center for Suburban Studies® at Hofstra University

National Center for Suburban Studies® at
HOFSTRA UNIVERSITY.

ACKNOWLEDGEMENTS & DEDICATION

This anthology is based, in part, on the essays presented at a conference of the same name at Hofstra University in November 2008. We thank all of those who supported the conference, especially Lawrence Levy and Ina Katz at the National Center for Suburban Studies at Hofstra University, and Athelene Collins and Natalie Datlof of the Hofstra University Cultural Center. We gratefully acknowledge the support of the Rauch and IIE/Ford Foundations. Finally, we thank the conference participants and anthology contributors for their insights and commitment to the project.

This anthology is dedicated to those who have lost their homes, who strive to maintain shelter for themselves and their families, who search for affordable housing, and to those who wage the struggle for more equitable and democratic forms of housing.

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Introduction

As this collection goes to press, an atmosphere of frustration pervades American politics. The United States languishes in the longest recession since World War II. Economists are divided between those who predict another long "jobless recovery" and those who haunt the cable news networks with warnings of a "double dip recession." Falling tax revenues and tax expenditure limitations have strangled state and local budgets.

When the United States faced economic crisis seventy-five years ago, public protest spurred on the development of robust and broad-ranging New Deal initiatives. But today the federal government seems unable to find coherent policies—particularly in the fields of jobs and healthcare—that are sizable enough to work or exciting enough to create the grassroots support necessary to overcome the naysayers.

The effects of these failures are clear enough: conservative victories at the state and national levels, the rise of the populist-right Tea Party movement, and widespread liberal disillusionment with a president whose only consistent policy seems to be one of retreat. Few politicians have attempted to mobilize their constituencies around the problems that lie at the core of the present crisis, even though the effects of the housing crisis cut across the working and middle class. All of these developments suggest that the possibilities for innovative federal housing policy, supported by the grassroots, have been severely circumscribed.

Housing efforts at the federal level have been almost exclusively oriented toward reviving the housing "market." The ideological blinders that preclude a vision beyond market relations restrict policy debates to questions such as "which market actors need to be bailed out?", "how much should the government regulate the financial sectors?" and "what are the best ways to stimulate demand?" Short-run efforts to prevent foreclosures and to keep people in their homes have been anemic, at best. And now, the latest manifestation of the crisis—widespread sloppiness and malfeasance on the part of lenders in the handling of mortgage-related paperwork and records—has stalled foreclosure processes across the nation. Rather than welcoming the prospects of relief for millions of unemployed and underemployed homeowners who may be able to remain in or reclaim their homes, market apologists are now fretting that the real estate market's recent signs of recovery will be reversed. It is a strange moment, indeed, to include the word "opportunity" in the title of a policy report.

Yet we believe that housing represents a viable and largely unexplored arena for bold action. As the papers in this report suggest, a careful look reveals that market relations and the behavior of market actors themselves are at the core of the crisis. The private housing market commodifies basic human needs and motivates market transactions with the promise of profit and wealth. These market relations unavoidably contribute to the economic and social conditions we now face. Once that fact is recognized, it is possible to explore new avenues for non-market policies that can lead us out of the present crisis and, quite possibly, avoid new ones in the future. The opportunities for intervention are plentiful. Many of them would take local and state initiatives that have already been developed by the public and nonprofit sectors and bring them to the national scale.

The housing crisis is certainly not over. In the first quarter of 2010, 14% of 1-to-4-unit residential properties were either delinquent or in foreclosure.[1] Tenants in foreclosed properties have gained some protection in certain states and localities, but largely remain subject to eviction on little notice if their landlord fails to notify them of foreclosure proceedings. Those who have managed to hold onto their property now collectively own less than 40% of their homes' values[2]—having suffered losses equivalent to $7 trillion in equity. Individually, nearly one in four homeowners with a mortgage now owes more than their homes are worth.[3]

	2005	2009
Owners' equity, (trillions of US$)	$13.2	$ 6.2
Owners' home values (trillions of US$)	$22.1	$16.6
Equity as a percentage of home value	59.9%	37.6%

Federal actions to address the housing crisis have been timid and halting. (Some state and local courts and governments have arguably been more innovative, and are discussed in this report.) Nevertheless, over $100 billion has now been committed, in some form, to help homeowners and communities affected by the financial crisis, most notably:

- *The Help for Homeowners program:* Hampered by partisan debate in Congress and (at best) executive-branch indifference, the program quickly became a dead letter and rescued few homeowners in the first year of its existence.
- *The homebuyers' tax credit:* Passed with the eager support of the real estate industry, the credit largely represented a windfall for less-distressed taxpayers. Studies showed that the vast majority of these homeowners would have made their purchases anyway. By August 2009, the government had already paid $10 billion in foregone revenue; three months later, the credit was extended through April, 2010.[4]
- *Making Home Affordable:* Amid over $2 trillion of commitments to back the financial sector, lawmakers eventually funded $75 billion to support delinquent homeowners. Through the end of 2009, the Making Home Affordable program worked with banks and borrowers to permanently modify the mortgages of a mere 67,000 homeowners nationwide. By July 2010, about 422,000 troubled mortgages were considered to have been permanently modified, a far cry from the 3 million targeted by the Administration for protection from foreclosure. In addition, most of the modifications have been relatively minor, and may not protect homeowners for the long run.[5]
- *Neighborhood Stabilization Program:* Sensing (correctly, in this case) that the most effective responses had been those mounted by state- and local-level nonprofits, Congress also allocated $5.8 billion for two waves of neighborhood stabilization funding, allowing communities to purchase and rehabilitate foreclosed housing.

Many economists shake their heads at even these limited measures, arguing that they will prolong the crisis. They point out that loose monetary policy promoted the rapid inflation of asset values, creating a new round of "irrational exuberance" in the 2000s. In this light, the present crash in property values is a painful but necessary readjustment, and foreclosures are hard lessons that must be learned to avert future moral hazards. Allowing bankruptcy judges to devalue mortgages through a "cram-down" process would produce exactly the types of moral hazards that worry some economists. On the other hand, the most recent program launched by the Obama Administration, the Home Affordable Foreclosure Alternatives Program, attempts to "fix" the market by encouraging both lenders and borrowers to devalue their assets through the short sale process.

If such policies help establish a new market equilibrium in the coming years, they do little to ameliorate the effects of the crisis upon communities in general and communities of color in particular. By now, it is well-known that foreclosed properties do not end at the lot line, but have effects on their surroundings, whether quantified in crime rates or reported in changing perceptions of neighborhood quality. Press reports have provided stark visual documentation of fire-gutted houses and overgrown lawns, even in areas once thought to be middle-class or affluent. These effects became most dramatic in certain metropolitan regions (e.g., Las Vegas, Tampa, Phoenix, Detroit), but few cities were untouched by the crisis, and a broad group of homeowners lost their equity.

For urban and suburban Black and Latino communities, this damage may be particularly difficult to repair. Here, the subprime boom(s) and eventual bust represented deliberate, protracted, and largely successful attempts to strip equity away from homeowners. This was a perverse change of fortune: for decades, the same communities had been starved for credit by institutional racism in the public and private sectors. The inaccessibility of homeownership compelled many to remain renters and pay rents to the landlords who, as a class, monopolized urban property.[6] Housing activists fought against landlords and for credit access, a struggle that culminated in the passage of the Community Reinvestment Act (CRA) in 1977, and continued with calls for CRA enforcement through the 1990s. It was not long after CRA-regulated banks finally began to provide capital that an explosion of subprime lending—most of it originated through non-CRA-regulated mortgage brokers and companies—began to pump high-interest credit into these communities. A ever-more-complex group of actors—mortgage companies, servicers, commercial banks, GSEs, and investors—now extracted wealth from communities of color. As subprime lenders emerged as the slumlords of the 21st century, longtime housing activists grew alarmed. "Communities began to wonder," writes Kathe Newman, "whether they had gained access to capital, or capital had gained access to them."[7] Once the subprime bubble burst, those communities lost most of the wealth that they had accumulated. Although the ultimate effects of the crisis on wealth have not yet been measured, the demonstrably disproportionate number of subprime loans made in communities of color suggest that the crisis will wedge open a racial wealth gap that had only begun to close, and very slowly, in recent decades.[8] Policies that try to "fix" the market will not mend these neighborhoods, where damaged credit ratings will prevent former owners from purchasing property at fire-sale prices.

Nor will new regulations necessarily prevent future crises. Undoubtedly, recent judicial and legislative action has the potential to protect some homebuyers from the most predatory lending practices, partly by empowering state regulators. The Supreme Court's June 2009 decision in *Cuomo v. Clearing Housing Association* was critical in this regard, as it provided a legal basis for states to regulate the lending practices of national banks. Financial reform now under consideration in the Senate would set limits on pre-emption policies that recently allowed federal regulators to override stronger state laws. But the effectiveness of these reforms will largely hinge on strong legislative, executive, and grassroots support for fair-lending legislation at the state level. Similarly, financial regulation will likely create a new federal-level Consumer Financial Protection Agency (CFPA), but it is unlikely that the agency will be independent if it is housed within the Federal Reserve, which does not boast consumer protection as its forte.

A more fundamental limitation of even the best of these policies, however, is that they fail to resolve the contradictions at the heart of the housing market. As a nation, we aspire to create stable communities of households that enjoy some measure of housing security. But in a country where consumers can only rent or buy housing in the for-profit market, profit margins and speculative manias will continue to determine housing access and security. This creates a perpetual instability that did not begin in 2005, and will not end in 2011. The subprime bust exacerbated the permanent housing crisis and magnified its absurdity: here, tracts of vacant, commodious housing; and there, thousands of displaced, sometimes homeless families who had to start from scratch. But displacement and extreme housing burdens are endemic to the United States housing market, as are massive windfalls and losses that most homeowners can neither control nor predict. Eventually, the spike of foreclosures will recede, but the crisis will continue.

There are viable solutions. In late 2008, Hofstra's National Center for Suburban Studies and Department of Sociology welcomed researchers and activists to a one-day symposium entitled "Forging a New Housing Policy: Opportunity in the Wake of Crisis." Largely based upon the day's presentations, the essays collected here offer insights on both the roots of the subprime boom and the present opportunities for transforming housing in the United States.

The first section considers the causes of the subprime explosion, situating the phenomenon within the broader political economy of the U.S. housing market. By now it is clear that the rise of subprime lending was not merely the aggregated actions of predatory lenders and unwise borrowers; instead, shifts in the institutional and housing market began to favor high-risk lending practices. The growing complexity of derivatives based upon securitized mortgages and the identification of neighborhoods of color as "growth areas"—the final frontiers for finance capital—were two of the proximate driving factors in the development of the boom. But as Michael Stone and Peter Marcuse point out we can, and must, trace the origins of the crisis back further.

The second and third sections include analyses of various aspects of the crisis as it unfolded, proposals for remedying the effects of the crisis, and for rebuilding the U.S. housing sector. In the short run, homeowners and renters still require additional protections against the immediate threat of displacement. Elena Vesselinov and Andrew Beveridge point to the disparate neighborhood-level impacts of the housing crisis along racial/ethnic and class lines. They highlight how the combination of a history of racial segregation and predatory lending practices have resulted in a devastating concentration of foreclosure rates in majority-minority neighborhoods.

In the past two years, service providers and advocacy groups, encountering the effects of foreclosure on the ground, have pressed local, state, and federal government to pass protections. State and local government response has varied; as Todd Swanstrom and his co-authors show, where grassroots housing movements, public leadership, and favorable institutional frameworks have prevailed, homeowners have generally enjoyed a fair measure of protection from foreclosure. Jeff Crump underlines the role of grassroots social movements in assuring passage of favorable legislation at the state level. For renters, the federal government has provided some relief. Josiah Madar and Allegra Glashausser update the research conducted at the Furman Center for Real Estate and Urban Policy, which first shone a spotlight on the plight of renters, and describe the current status of renters under the legislation. Last July, the federal government passed the Protecting Tenants at Foreclosure Act, safeguarding tenants from post-foreclosure eviction without notice. The "self-executing" legislation, however, makes no provision for federal enforcement—relying on tenants' (and tenants organizations') understanding of their rights—and expires in 2012.

Protecting tenants and homeowners is a crucial first step in rebuilding a housing sector that will enhance community stability and economic security. Organizing efforts that unite foreclosed homeowners and tenants, as Steve Meacham describes here, lay a groundwork for collective control of housing. Such control will also take place, in part, through regulation of the financial sector, as suggested by James Mumm and Elvin Wyly, and will entail better information about and accountability for lending practices (beyond mere regulation of predatory lending). Organizing and regulation, together with leadership from the grassroots and from policymakers, will create the conditions under which housing for social needs can flourish. Models for such an approach already exist in shared equity arrangements such as limited- and no-equity cooperatives, resident-owned communities, and community land trusts. Anthony Flint explains how community land trusts operate, and Brenda Torpy describes the work of one of the largest land trusts operating in the United States today.

Despite recent reports that the foreclosure crisis may be easing, housing advocates are still scrambling to save the homes of renters and homeowners. But just as real estate and banking interest cast eyes across a devastated landscape and see opportunity for profit, so must housing advocates plot the routes from crisis to shared equity and housing security. This will require leadership and innovation from government and the nonprofit sector. And it will ultimately require the grassroots support of communities and residents who have suffered through the worst of the ongoing housing crisis, who have lost much of their wealth, and who seek new ways of owning housing and controlling their futures.

NOTES

1. Mortgage Bankers Association press release, 19 May 2010, available at http://www.mbaa.org/NewsandMedia/PressCenter/72906.htm.
2. The figure had remained above 58% for sixty years, from the time that the Federal Reserve started collecting data in 1945 until 2005. See Tables B. 100 in the Federal Reserve's *Flows of Funds Accounts of the United States*, available at http://www.federalreserve.gov/releases/z1/Current/data.htm. For *mortgaged* properties, the equity percentage was closer to 30% (American CoreLogic Media Alert, 23 Feb 2010).
3. American CoreLogic Media Alert, 23 Feb 2010, available at http://www.loanperformance.com/infocenter/library/Q4_2009_Negative_Equity_Final.pdf.
4. Government Accountability Office. *First-Time Homebuyer Tax Credit: Taxpayers' Use of the Credit and Implementation and Compliance Challenges*, 22 Oct 2009, available at http://www.gao.gov/new.items/d10166t.pdf; also see Jackie Calmes, "Congress Poised to Keep Homebuyers' Tax Credit," *New York Times*, 3 Nov 2009.
5. David Streitfeld. "U.S. Mortgage Relief Effort Is Falling Short of Its Goal," *New York Times*, 21 August 2010.
6. Elvin Wyly, Markus Moos, Daniel Hammel, and Emanuel Kabahizi. "Cartographies of Race and Class: Mapping the Class-Monopoly Rents of American Subprime Mortgage Capital," *International Journal of Urban and Regional Research*, 33(2): 332-54.
7. Kathe Newman. "Post-Industrial Widgets: Capital Flows and the Production of the Urban," *International Journal of Urban and Regional Research*, 33(2): 314-31.
8. United for a Fair Economy. *Foreclosed: State of the Dream*, 2008.

Part I: The Foundations of a Housing Crisis: How Did We Get Here?

HOUSING AND THE FINANCIAL CRISIS: WHAT HAPPENED, WHAT TO DO ABOUT IT[1] —*Michael Stone*

INTRODUCTION

Subprime lending is but the last card in the housing finance house of cards. It is a house that was built over many decades. To those who say that no one could have predicted its collapse, I say "NONSENSE!" Not only was its collapse predictable, it was predicted over 30 years ago, when the house had far fewer cards, viz. (Stone, 1975):

> Meanwhile the inability of working-class families to keep up existing mortgage payments has increased mortgage defaults and foreclosures on both owner-occupied housing and apartment buildings… Unable to deal with the causes of mortgage defaults and foreclosure, which lie within the institutions of capitalism, the options available will only compound the problem in the long run. The proposals all basically involve reductions in current housing costs by increasing debt… Adding more claims to future income in these ways only adds to the increasing vulnerability of the entire financial system as well as the mortgage system in particular…

Since that time, I have chronicled the growing house of cards and its increasing instability (Stone, 1978; 1980a; 1980b; 1983, 1986; 1993; 2006), albeit with no impact on the course of events.

What has taken place was not only predictable, it is a consequence of the very structure of the housing system and the financial system. Resolving the problems and preventing similar occurrences in the future will require fundamental changes to those systems. This paper will examine each of the pieces in a schematic way. For greater detail on the construction of the house of cards the reader is directed to the above cited sources (especially Stone, 1993, Part II, and Stone, 2006a). For greater detail on the types of structural changes needed, see Stone, 1993, Part III.

THE HOUSE OF CARDS

Just as there are 4 suits in a deck of playing cards (clubs, spades, hearts and diamonds), so there are four suits out of which the housing finance house of cards is built:

1. Wide and widening income inequality
2. Treating housing as a speculative commodity at all levels
3. Overdependence on debt and the private capital markets to finance housing
4. Public policies that exacerbate the instability of the other three types of cards

Wide and widening income inequality: consequences for housing

(For basic facts and analysis income inequality see Tilly, 2006)

The first consequence of growing inequality has been reduced affordability and rising house prices (linked to the next suit of cards, the speculative housing market). On the one hand, this makes it harder for most people to afford housing. On the other hand, those at the top with more and more income have been driving up home prices, through gentrification, McMansions, and tear downs. The rich also have had lots more money looking for profit, including investments in apartment buildings and condos, adding to price increases in multi-family buildings.

The second consequence has been that households are less able to save (linked to the third suit of cards, the debt system). This, in turn, has had two major results. Most households have had reduced capacity to make substantial down payments, and hence there has been a push for lower down payments, i.e., higher loan-to-value ratios in the mortgage market, with associated increases in risk. Furthermore, because middle-income households have not had money to put into savings (thrift) institutions, which traditionally were the self-sustaining source of most residential lending, housing finance has had to become more dependent on the capital markets.

The third major consequence of widening income inequality for housing is that enormously increased incomes at the top have sought high profits in the capital markets (also linked to the third suit of cards, the debt system), which fueled the bubble of mortgage-backed securities.

The speculative housing market

Everyone believes that they are entitled to make a killing in residential real estate, up and down the food chain—not just distant investors, intermediate mortgage packagers, and nearby speculators and mortgage brokers—but far too many homebuyers and homeowners.

This attitude has been coupled with the idealization and over-promotion of speculative homeownership, based on the following myths (for critical examination of these myths, see, e.g.: Kemeny, 1981; Heskin, 1983; Edel, Sclar and Luria, 1984; and Stone, 1993, pp. 18-22):

- that you are always better off economically as a homeowner than a renter because you no longer have a landlord who can raise the rent;
- that homeownership is a sound and effective way to build assets/accumulate wealth;
- that property values always go up, at least as long as you can keep undesirable activities and undesirable people out of your neighborhood; and
- that homeowners are full citizens ("real Americans"), but renters are not.

The mythology of homeownership has, in turn, been facilitated and lubricated by the most dangerous and addictive hallucinogenic drug ever created: **The illusion of ownership through the reality of DEBT…**

Overdependence on debt and the private capital markets to finance housing

Because housing is costly to produce and most producers are relatively small businesses, housing development is very dependent on borrowed money. More significantly, though, because housing is both a commodity and long-lasting, the transfer of houses is financed almost entirely by borrowed money, with the property as collateral. Furthermore, because housing is a speculative commodity, it is the prime source of collateral for borrowing even without transfer, i.e., refinancing and home equity borrowing.

Taking these three elements together, no sector of the economy has been as dependent on debt as housing. Over the entire period since World War II, housing-related debt has been the fastest-growing component of the entire financial system; it has grown much faster than the overall economy and hence faster than the ability to repay it (Stone, 1993, Table 5.1, p. 128).

Combined with ever-widening income inequality, and the more active and aggressive promotion of mortgage homeownership since the 1990s, this dependency has been turned into addiction, creating debt junkies at all levels of the system, and pushers emerging at all levels because of enormous and growing opportunities for profit:

- Ever higher incomes at the top led to the creation and expansion of hedge funds and structured investment vehicles, both inside and outside of banks and brokerages, to attract and soak up this money.
- To maximize profits on these pools of funds, Wall Street decided to expand the volume of mortgage-backed securities (MBSs) and create layers and layers of derivatives of these.
- In order to expand the volume of MBSs, in turn, it was necessary to promote a vast increase in mortgage lending; since homeownership rates were declining overall and were especially low for households of color, there was both motive and opportunity for a whole new wave of overpromotion of homeownership to underrepresented populations, along with rising refinancing, home equity borrowing, and the purchase of second and third homes and investment properties.

- This process created almost limitless profit opportunities, but also piled risks ever higher, as each and every level—not just homebuyers—became leveraged to the hilt, borrowing far beyond any realistic potential of repayment (a classic pyramid scheme, discussed more fully later).

Public policies

The instability in these first three suits of cards was in turn stimulated and exacerbated by public policies:

Monetary policy. Loose money/low interest rates by Greenspan's Fed encouraged borrowing and speculation, and leveraging of little capital with lots of debt to invest in high-risk/high-return real estate and capital market vehicles.

Tax policy. The flattening of the progressive income tax and tax cuts since 1986 contributed to widened income inequality, and provided more money at the top of the income distribution for speculation in housing and financial markets.

> The flattening of the progressive income tax and tax cuts since 1986 contributed to widened income inequality, and…speculation in housing and financial markets.

As significant, the regressive homeowner deductions for mortgage interest and property taxes, along with the elimination of any taxes on capital gains from the sale of owner occupied housing, have created perverse incentives to borrow and speculate in housing. The tax benefits are only available to homeowners, and specifically those homeowners who benefit from itemizing, i.e., whose deductions exceed the standard deduction. The benefits rise with tax bracket, house value, mortgage amount, and interest rate. Over half the benefits flow to the top 10% of the income distribution. Even conservative economists recognize that they distort the housing market (Glaeser and Shapiro, 2003; Carasso, Steuerle, and Bell, 2005).

Privatization of the public institutions of housing finance (cf. Stone, 1993, Part II, and Stone, 2006a). The 1960s saw the end of the post-war prosperity, increased competition for credit, rising interest rates, and disintermediation from savings institutions. The late 1960s and 1970s witnessed expansion and privatization of secondary markets. In 1968, the privatization of Fannie Mae began and Ginnie Mae was created; in 1970, Freddie Mac was created. Fannie and Freddie are (were) both quasi-public government-sponsored enterprises (GSEs), with implicit government guarantees of their paper, and profit-motivated institutions with private shareholders. Ginnie Mae, by contrast, is very different: a government agency that issues MBS, with explicit government backing, against FHA/VA mortgages. GSEs package mortgages into pools, and issue securities sold into capital markets backed by pools; initially, these were plain vanilla pass-through securities bought mostly by institutional investors like pension funds, insurance companies and commercial banks.

Deregulation and lax regulation of private financial institutions activities (cf. Stone, 2006a). From the late 1970s into the 1980s, there was extensive deregulation of the financial system, and there has been another wave since the 1990s. Over the past decade, there has also been lax enforcement of the regulations that remain.

Implications for Households

Trends pointed to problems even before the recent subprime surge. First, there was a steady trend toward bigger, more costly houses. Second, homeownership peaked in 1980 and then declined until 1994. Then, in 1995, homeownership started to increase, particularly among lower income households, especially households of color. This was the result of various factors, including the Community Reinvestment Act (CRA), the easing of usury limits on interest rates resulting in more subprime lending, and the Clinton administration's homeownership push. Rising household debt burdens and mortgage stress were already apparent by early 2000s, even prior to the new growth of homeownership (Stone, 2006a).

By the middle of the 2000s, five vulnerabilities became apparent at the base of the housing system:

- ***The spread of high-risk nontraditional loans***—not just subprimes, but Alt-A, "ninja" (no interest, no job or assets), interest only, negative amortization, 100%+ loan-to-value, and adjustable rate loans;
- ***Rising housing costs,*** due not only to mortgage resets, but also the cashing-out of equity, including

the refinancing of original primes into subprimes (add to these rising property taxes, heating costs);

- ***Declining incomes,*** as many people were on the margin of being able to afford their housing (and other) debts, even with multiple jobs and incomes (and faced the risk of default in the event of a layoff, personal or family illness, divorce, new child, etc.);
- ***Declining property values,*** as fewer and fewer buyers were able to sustain ever higher prices, meaning that eventually and inevitably prices would turn down; and
- ***High leverage,*** as many had no equity cushion (and any decline in prices would mean negative equity, making default more likely).

Implications and Consequences for the Financial System *(see Stone, 2006a)*

The S&L crisis of the late 1980s was followed by a deep recession, declining house values, high foreclosures, and a slow recovery. The market rebounded from the mid-1990s to the mid-2000s, but rising prices and homeownership rates were built on increasing inequality and debt.

This period also saw the full fruition of mortgage-backed securities (MBSs). Housing finance became fully integrated into global capital markets. MBSs were sliced and diced into collateralized mortgage obligations (CMOs) and collateralized debt obligations (CDOs), which had originated by Freddie Mac in 1984 and became profitable for both Freddie and Fannie. This became standard practice, as private pooling and securitizing by Wall Street sliced and diced securities against pools of plain vanilla MBSs, and created new derivatives of these securities (see Stone, 2006a, for fuller discussion).

But the mid-1990s already gave a hint of the problems with securitization and derivatives—computer models were inadequate, and did not account for refinancing—so in the mid-1990s there was an MBS crisis, with chaos in MBS markets (Stone, 2006a).

Non-prime lending (subprime, Alt-A, etc.) had long existed, but there had been no secondary market because such loans did not meet Fannie and Freddie standards. So there were limited originations of such loans until the early 2000s, when Wall Street, looking for highly profitable outlets for pools of cash, started to buy and securitize non-prime mortgages. This led to a stampede into high-profit non-prime MBSs and derivatives, with profits multiplied by fees and by high leveraging fostered by low interest, expansive monetary policies. These investments provided huge profits on upside, huge risks on downside.

Instability in Fannie and Freddie was already apparent by the early 2000s (Stone, 2006a). Nonetheless, with the loss of their market share to Wall Street, Fannie and Freddie lowered their standards to compete in the non-prime secondary market and keep share prices up and stockholders happy, with heavy lobbying to prevent regulation.

Culmination and Collapse

Together these factors were a perfect storm that blew apart the house of cards. The vulnerabilities at the base resulted in surging defaults and foreclosures, and not just on subprime loans. While the foreclosure rate is of course much higher on subprime loans, most loans are not subprime and, indeed, about half of foreclosures have been on prime loans.

As has been well documented in the media and some deeper analyses (see, e.g., Morris, 2008), the collapse has spread up through the financial system to create the worst financial crisis since the Great Depression, in which housing finance was also deeply implicated (see Stone, 1993, Part II).

HOW TO BUILD A SOLID HOUSE

The ideas presented here are a program adapted in part from the long-term program described in Stone 2003 (Part III), with some new elements. The focus is on dealing with the first three suits of cards—income inequality, ownership, and financing—through fundamentally different kinds of government intervention and action.

1. Income Inequality

I propose creation of a Refundable Housing Affordability Tax Credit (HATC). This would be a demand-side government program, patterned somewhat after EITC, administered through the IRS, but unlike EITC the credit would not be lost if there were job loss. And it would reach higher up the income ladder. Such a program would be tenure neutral, progressive, and an entitlement with no waiting lists and no means testing.

How would the government pay for it? By converting the current high-income housing subsidy program—homeowner tax deductions (upwards of $120 billion a year)—and the current low-income subsidy programs—Section 8, etc. (about $30 billion a year)—into a single program of about $150 billion a year. Not only would such a program be budget neutral, costing no more than current housing subsidies cost the Treasury, but it would be fundamentally redistributive and eliminate one of the most perverse incentives to housing speculation.

2. Ownership

I propose that homeownership be transformed from a *de facto* junk bond back into a savings account. Instead of offering the promise of windfall profits but the risk of losing everything, we should provide protection on the downside with modest return on the upside.

In the short term, this would mean dealing with foreclosures by offering at-risk homeowners the opportunity for low-cost refinancing with resale restrictions for non-speculative ownership; this offers downside protections with upside limits on gain. For housing that has already gone into foreclosure, there should be opportunities for individual and collective purchase for non-speculative ownership (see Stone, 2006b, for explanation of various models of non-speculative ownership).

As a longer-term strategy, I offer the Mutual Housing Association alternative to homeownership for secure tenure and wealth accumulation (NRC, 1985; Stone, 2006b, pp. 248-249): resident-savers in debt-free housing (Stone, 1993, pp. 193-198). In comparison with conventional and shared equity homeownership, this model offers:

- Control of space and inheritability, comparable to conventional models of homeownership;
- Superior affordability and security of tenure (no mortgage payments, no foreclosure risk);
- Comparable wealth accumulation, with less vulnerability and volatility and more liquidity.

3. Financing

I propose, as part of financial reform, that there be a tax on all capital market financial transactions, and that a large share of the revenues be put into the National Housing Trust Fund for capital grant financing (Stone, 1993, Chapter 8) of social housing (Stone, 2006b). Capital grants would greatly increase the amount of debt-free social housing, through new construction and acquisition. This would be a supply-side government housing finance program to complement the demand-side Housing Affordability Tax Credit.

This program would be capitalized through a wealth tax of about a tenth to a quarter of a percent on all capital market financial transactions, which would generate well over $100 billion per year. Paid into the National Housing Trust Fund, this could finance about 1 million debt-free social housing units per year.

I proposed such a tax for a National Housing Trust Fund in the early 1990s (Stone, 1993, pp. 266-268). Dean Baker (2000, 2008) has proposed a similar speculation tax on financial transactions, which he estimated could have raised over $120 billion a year as of 2000. In his presidential election campaign, Ralph Nader (2008) proposed a 0.1% tax on derivative transactions, the volume of which he estimated (without documentation) at $500 trillion in 2008, which would have meant revenues of $500 billion.

I also propose a series of structural reforms to the existing housing finance system:

- Prohibit high-risk loans and restore plain vanilla mortgage loans: fixed-rate, fully-amortized, level-payment, non-recourse loans requiring non-negligible down payments (along with mortgage insurance and default insurance);
- Restore and strengthen local, mutually-owned and public lenders: credit unions, mutual savings banks, depositor-owned s&ls, community loan funds and public lenders (HFAs);
- Promote the Ginnie Mae model for mortgage securitization: now that Freddie and Fannie are fully in the public domain, they should remain there (without shareholders, without highly paid executives, without high-priced lobbyists), and return to issuing government-backed, plain vanilla pass-through mortgage-backed securities on the plain vanilla mortgages; such securities would be prohibited from being sliced and diced and pyramided with derivatives; this would provide liquidity and access to the

capital markets for responsible lending without the greed, speculation and risk that brought the system down;

- Strongly regulate financial markets, with transparency and accountability, including prohibition on pyramiding of securities, and including explicit criminal as well as civil liability for violations.

CONCLUSION

The house of cards cannot be put back together with bubble gum. It won't work: gum isn't strong enough to hold it up and keep it from collapsing again.

Instead, we can build and must build a solid house with different architects, different building materials, and different building contractors.

NOTES

1. An earlier version of this essay appeared in the journal *Human Geography*, Issue 2, Number 1.

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THE THREE PILLARS OF THE MORTGAGE FORECLOSURE CRISIS: ANALYSIS AND REMEDIES[1] —*Peter Marcuse*

This paper deals with the subprime mortgage crisis in the United States, as part of a more generalized housing crisis (itself part of the broad economic crisis). By exposing the roots of the subprime mortgage crisis, it is thus possible to offer proposals for addressing and politicizing it, in the context of what further might be done to redirect housing policy in the United States.

The subprime mortgage problem is part of a crisis that has been part of the U.S. housing landscape for a long time. It was officially recognized at least as far back as the Housing Act of 1937, whose objective was to provide "adequate housing within their means for all Americans." That promise was never fulfilled, and the history of U.S. housing policy is replete with one effort after another to solve the problem while preserving the dominance of the private housing market.[2] There is an obvious injustice in the results of such a system. The foreclosure of homes marketed to families of limited income is only the most current manifestation of that ongoing crisis.

The subprime mortgage crisis is not a result of the simple greed or stupidity of key actors. It is not because the underlying system for the provision of housing is not working. The crisis occurs precisely because the system is working. The prevailing system and the consequent subprime mortgage crisis, rests on three pillars:

A. The reliance on the private profit-oriented market for the provision of the overwhelming bulk of all housing; and thus the commodification of almost all housing;

B. The subordination of governmental involvement to the private sector and a severely restricted role of government in both providing housing and regulating its private provision;

C. The myth of speculative homeownership, which is the ideological correlate of the first two pillars.

They are each discussed in detail below.

THE FIRST PILLAR: THE PRIVATE PROFIT-ORIENTED MARKET

The reasons for the dominance of the private for-profit sector in the housing industry are, on the one hand, the economic and political power of that sector at all levels of society to impose a single model of housing provision; and on the other, the propagated dominance of the private ownership form as the ideal for housing tenure.

Underlying the argument here is the understanding that the housing crisis—of which the subprime mortgage crisis is a part—is an inherent consequence of an economic system, broadly called capitalist, in which housing and land are produced, sold, and managed for private profit, grounded in an economic system whose motor is the drive for increasing profit. The private housing market system itself produces these crises in housing, not because it is failing, but because it is working. However, its operation brings basic contradictory tendencies to the fore. On the one hand, profit is maximized when the product is sold at the highest prices that can be squeezed from the market. Housing is thus only provided to those who can pay enough for it to make a profit for its supplier. On the other hand, the purchasing power of the working majority in the United States cannot keep up. Today, there is not a single city in the country in which a full-time worker earning the minimum wage can afford even a one-bedroom apartment, a situation in which African-Americans, Hispanics, immigrants, and women suffer in grossly disproportionate numbers. Therefore, unsavory and risky credit and lending practices are used in an attempt to close the gap between housing prices and what people can actually afford. When it then turns out that the buyers cannot repay the loans, as was predictable, and foreclosure results, it appears as a credit crisis, rather than the housing crisis it really is.

The first pillar of the crisis is thus the very nature of housing development in America: trusting the private for-profit sector to meet housing needs. By definition then, it also relies on the second pillar, the restricted role of government.

THE SECOND PILLAR: THE RESTRICTED ROLE OF GOVERNMENT

The public sector in the United States has consistently filled in only where the private for-profit sector is not functioning well. Its scope has tended to be limited during liberal times and severely cut back during conservative periods. During both, its role has been limited to tweaking the supply and demand aspects of the market. In this regard, it is worth noting that the housing components of the Roosevelt administration's New Deal programs were largely promoted as "job creation" efforts. Moreover, assurances were given to the private sector that New Deal housing initiatives would not be so far-reaching as to threaten the private for-profit model. As a result, housing policies since that time have tended to favor programs that aid middle-income households over lower-income ones and private ownership and management over public.

Government action is welcomed by the private housing industry to the extent that it facilitates the construction, marketing, sale, and management of housing for profit, as by the provision of infrastructure, layout of streets, judicial enforcement of contracts, provision of police and fire services, technical research and setting of common standards, etc. But as to the public provision of housing, government is required to be penurious to the point of starvation in the resources it provides to meet the true need for housing, one of life's necessities. The history of attempts to change the system by governmental action is rife with the lesson that piecemeal reforms can ameliorate, but don't solve, the problem. Grassroots groups, alarmed by one phase of the crisis or another, have pushed for reform. With only one significant exception—public housing[3]—and even that one to a limited degree, every public program to enlarge the supply of affordable housing has relied on bribing the private housing industry to make its product more affordable. Those programs have systematically been underfunded, have never been made a matter of entitlement, and have always been conspicuously inefficient in terms of the amount of subsidy siphoned off by those involved in producing housing[4]. The result has been a for-profit mode of housing production and recycling that does not meet housing needs throughout the economic spectrum (first pillar of the crisis). This mode of provision is tied to a subordinate public sector which restricts the role of government to tweaking market relations and thus precludes it from meeting the true human need for housing (second pillar). That failure requires the addition of a third, ideological, pillar: a belief in the necessity of private homeownership.

The idea that only through private speculative ownership can security be attained… ignores the fact that conventional homeownership does not necessarily provide that security[.]

THE THIRD PILLAR: THE MYTH OF SPECULATIVE HOMEOWNERSHIP

All efforts to address the housing crisis have also been colored by the officially promulgated fantasy of homeownership as The American Dream.[5] It is a powerful ideology that relies on a myth and a confusion. The myth is that homeownership is necessarily linked to the possibility of making a speculative profit on a rise in its price. This leads to the misplaced equation between ownership of the single-family house on its own lot—a design concept that would puzzle the majority of the people living in cities in the industrialized world—with long-term household financial security. More broadly, the confusion is linked to a misunderstanding of the possible range of tenure forms. The idea that only through private speculative ownership can security of tenure be attained—security being identified with freedom from a landlord's right to evict—ignores the fact that the right to evict can be limited in a whole variety of ways, and ignores the fact that conventional homeownership does not necessarily provide that security, as millions of households are finding out today. These are ideological problems. Most buyers accepting this ideology are unaware that there are other forms of tenure that can provide equal rights of occupancy, because ownership is in fact a complex bundle of rights[6], among which security of occupancy may or may not be provided, and to which the possibility of speculative profit or lose need not necessarily be linked.

Thus, dealing with the current crisis in housing, resting as it does on its three pillars, requires a profound reorientation of housing and credit policies. At minimum, an effective approach would have to include three basic components: movement away from speculative, private, and for-profit provision and maintenance of housing stock; by necessity, a greater role for government and the nonprofit sector not just in regulating monitoring the private sector, but in the actual construction and management of housing; and an ideological shift toward a view of housing as a human right and away from the belief that housing can only exist as a commodity to be bought and sold for profit. Responses to the crisis should provide for alternate forms of homeownership other than the speculative form. They might include conversion of private homeownership into various forms of cooperative and social housing, systemwide rent controls, confiscatory speculative profits taxes, and direct public housing provision and ownership. It would build on those proposals already advanced by many housing advocates, who have dealt with the spatial aspect of the crisis, and who would see the importance of neighborhood and community-building potentials in any serious proposal. Within the range of the realistic, what proposals at the federal, state, and local levels then might have a significant impact on the current crisis?[7]

1. A nationwide moratorium on evictions.
2. General financial support and enabling legislation as needed for the formation and operation of land trusts, coops, condominium associations, mutual housing association—provided that the following conditions are met:
    a. no profit on sale or from rental,
    b. a right to pass on to family when occupant vacates, but otherwise a collective selection of successor occupant with guidelines for continuing availability for those in need.
3. Government purchase of foreclosed property or property at risk of foreclosure for transfer to non-profit ownership or public housing, with provision for continued occupancy by the previous owner.
4. Establishment of municipal land trusts, with general operating administrative expenses covered by local government, to take the initiative in implementing the above programs.
5. Provision of guaranteed continuing subsidies to all those paying more than 25% of their incomes for housing, with immediate priority to those in #2.
6. Full funding for existing public housing maintenance and modernization and for new construction.
7. A vast expansion of the Neighborhood Stabilization Program of the 2008 Housing and Economic Recovery Act, with its flexible grants to states and local governments; with provisions to encourage experimentation with alternate tenure and management forms combining public and private nonprofit arrangements.
8. Legislation against warehousing of residential units, modeled after but stronger than New York City Council legislation (instigated by Picture the Homeless) that would provide for requisitioning of empty units for the homeless.
9. A right of purchase for present residents of housing built with now-expiring subsidies in federal and state programs, at a price permitting a limited return on equity to commercial owners, and a continuing subsidy as needed after purchase.
10. Support for the National Housing Trust Fund, with earmarked source of funds to subsidize affordable housing construction, emphasizing low-income housing.
11. Stronger rent regulation where it exists, and new regulations where it doesn't.
12. Anti-gentrification legislation designed to preserve what affordable housing there is.
13. Some combination of anti-speculation taxes (taxes with high rates on profits made after property is held for one year or less, reducing slowly over x years), flip taxes, and windfall profits taxes, with proceeds earmarked for housing purposes. State action on this objective will be key.
14. Increased regulation of mortgage-backed securities. This demand, however, runs the danger of reducing the amount of capital available for housing. To the extent that the governmental funds for most of the above proposals are not made available and private capital is needed, alternate means of providing for

the use of savings for housing development need to be developed. Re-establishing the role of Savings and Loan Associations might be one such approach, in effect limiting banks to make residential loans and using individual savings deposits for the purpose. Expanding the role of GNMA, the Government National Mortgage Association, already directly a government agency within HUD, unlike FNMA, might be another.

15. Establishment of participatory and democratic bodies to manage all Stimulus funds. Planning for the treatment of properties in or threatened with foreclosure should be in local hands, subject to federal guidelines. Where local bodies exist, e.g., Community Boards in New York City, those bodies should be given primary authority and responsibility for the implementation of federal policy, and the discretion to tailor such policies to local circumstances and desires, democratically developed.

NOTES

1. An earlier version of this contribution was published in *Community and City*, 8:3, 351-357, 2009.
2. See "The Permanent Housing Crisis: The Failures of Conservatism and the Limitations of Liberalism" with W. Dennis Keating. In: *A Right to Housing Foundation for a New Social Agenda*, edited by Rachel G. Bratt, Michael E. Stone and Chester Hartman. Philadelphia: Temple University Press, 2006, which traces the successive governmental actions dealing with "the housing crisis," including the suppressed alternatives that were not put on the policy table.
3. See Marcuse, Peter. 1995. "Interpreting 'Public Housing' History." *Journal of Architectural and Planning Research*. Vol. 12, No. 3, Autumn, pp. 240-258. which recounts the limits placed on that program by the forces of real estate industry and the conservative ideological commitment to the private market.
4. The largest current program, the low income housing tax credit, is notoriously inefficient, as even the most mainstream of housing analysts concede.
5. The approach has a long history, going back to the days of Jefferson and Hamilton, Herbert Hoover's commission on homeownership, FDR's moratorium on evictions and adoption of Federal mortgage insurance, the Section 235 program, Clinton's National Homeownership strategy, etc.
6. For a detailed discussion of ownership as a bundle of rights, see Marcuse, Peter. 1972. "The Legal Attributes of Homeownership." Washington, DC, The Urban Institute, April 13, Working Paper #20911. A discussion of some alternate forms of tenure may be found in Marcuse, Peter. 1996. "Privatization and its Discontents: Property Rights in Land and Housing in Eastern Europe." in Andrusz, Gregory, Michael Harloe and Ivan Szelenyi, eds. *Cities After Socialism: Urban and Regional Change and Conflict in Post-Socialist Societies*. London: Blackwell, pp. 119-191.
7. The following was developed with Amanda Huron as input into a platform development process of the Right to the City Alliance in New York City.

Part II: The Impact of the Housing Crisis: Fertile Ground for Innovation

WWGCD? Fair Lending and Community Reinvestment after the Crisis: What Would Gale Cincotta Do?

—James Mumm and Elvin Wyly[1]

In the early 1970s, Gale Cincotta led National People's Action and a growing coalition of people and organizations who persuaded a reform-minded U.S. Senator to finally address the serious national problems of racially discriminatory mortgage lending and urban disinvestment. For decades, banks and savings institutions had unfairly denied credit to many creditworthy and low-income borrowers and viable urban neighborhoods. The results of Gale's organizing and advocacy are familiar today. The Home Mortgage Disclosure Act (HMDA) of 1975 provides essential, annual public information on certain aspects of the supply of mortgage credit by banks, savings and loans, and many other kinds of mortgage lenders. The Community Reinvestment Act (CRA) of 1977 specifies that institutions that seek the money of savings depositors who live in a particular community have an affirmative obligation to serve the borrowing needs of creditworthy people in that community. CRA and HMDA have been amended several times since their passage in the 1970s, but they were weakened considerably by the dramatic restructuring of housing finance that created the risky "subprime" revolution and triggered the worst global financial crisis since the Great Depression. Gale Cincotta died of cancer in August 2001, at a time when urban America was beginning to see the devastating consequences of the first wave of high-risk and predatory subprime lending. As we now know, subprime and predatory abuses got much, much worse from 2001 until the market collapse of 2007–2008.

A generation ago, when people challenged the injustice of banks and savings institutions who denied credit to millions of qualified minority applicants and long-established, stable urban neighborhoods, Gale mobilized the crowds with rallying cries such as, "We've met the enemy, and it isn't us!," "We want it. They've got it. Let's go get it!", and finally, on her deathbed, "Get the crooks!" These words should ring in our ears today, after trillions of dollars have been given to "stabilize" the financial system by bailing out the institutions who wrecked so many lives and communities. Meanwhile, proposals that would not cost a penny of public funds, like allowing bankruptcy judges to modify the terms of first-lien predatory mortgages, are repeatedly killed in Congress because they are supposedly too expensive or too burdensome for the industry.

Gale and her army of grassroots community leaders and organizers were not motivated to develop and pass HMDA and CRA because they were policy wonks infatuated with the finer details of banking and finance. They mobilized because they believed that stable, mixed-income, multi-racial communities were not just a dream, but a real possibility in the real world. Indeed, most of these organizers *knew* that such communities were possible, because they lived in these kinds of neighborhoods at a time when financial institutions, enabled by government policy, were doing things that undermined community stability and multi-racial cooperation. Animating this vision was Gale's deep and abiding conviction that the relationships built in community help us to become fully human. These relationships matter. They're worth the effort to preserve, protect, and defend. To do something that destroys a neighborhood, and the relationships that sustain, nurture, and center people's lives, is wrong. To do so for the sake of greed or racism is a sin of the highest order.

IN THE AFTERMATH OF THE PANIC OF 2007–2008, WHAT WOULD GALE CINCOTTA DO?

Much has changed in the world of housing finance since the 1970s. Then, urban America faced discrimination by racial and geographic exclusion. Banks and savings institutions dominated the market, and they carefully rationed credit —often using business practices that (by design or unintentionally) avoided even the most highly qualified racial and ethnic minority individuals and minority urban neighborhoods. Prior to HMDA, it was easy for lenders to dismiss allegations of discrimination, without having to supply any information on their lending practices. CRA was passed specifically to deal with the problem of extractive disinvestment: many banks happily solicited the money of savings depositors from minority and low-income people in central-city and minority neighborhoods, but focused their lending almost exclusively in upper-income, white communities in the rapidly-expanding suburbs. With the subprime revolution, however, a new breed of lenders—and some traditional banks who saw the profit opportunities—found new ways to profit by specializing in a new array of high-cost, high-risk credit products made possible by deregulation and the growth of new Wall Street funding sources. The result is a more complex landscape of reverse redlining in which discrimination takes place through racial and geographic segmentation—targeting minority neighborhoods for risky, exploitative credit.

This new era has not completely erased the old inequalities of exclusion. Some have argued that anybody could get credit at the height of the subprime boom, but in 2006 (the year of the weakest underwriting limits), lenders denied more than 4.65 million people who requested loans; non-Hispanic African Americans were 1.94 times more likely than non-Hispanic whites to be rejected (FFIEC, 2007). Among people who received loans, the credit was much more likely to be subprime for African American, Latina/Latino, and Native American borrowers, and for applicants in low-income and minority communities. These disparities cannot be fully explained by income and other factors, and they highlight enormous variations in opportunity and exploitation across hundreds of cities and suburbs, big and small, all across America (see maps in following two pages). While borrower income and other factors explain most (but not all) of the unequal burden of subprime lending for large suburban Black middle-class communities outside Washington, DC and Atlanta, and for the vibrant Latino metropolis of Miami, the same cannot be said for many other places. There are scores of large cities, heavily-populated suburbs, and small-town counties where African Americans are more than four times more likely than otherwise similar Whites to wind up with a subprime loan (Figure 1). These loans were also much more likely to be made by mortgage companies and subsidiaries that do not take deposits, and are thus not subject to CRA and other regulations (Immergluck, 2009). The comparative, "yes/no" simplicity of credit rationing that necessitated CRA in the 1970s has been replaced by a much more competitive and "innovative" environment, in which brokers, originators, and Wall Street financial services firms found ways to profit—for a while, at least—from risky transactions that were destined to harm millions of individual homeowners, investors, and communities now left with entire streets and blocks of foreclosures and abandoned properties. CRA and HMDA need to be revised and expanded, and strengthened in light of what we now know about the contemporary dynamics of mortgage market competition and innovation.

If Gale Cincotta were with us today, we think she might agree with three simple suggestions to restore and revive the legacy she worked so hard to achieve in the 1970s. First, ordinary people should have access to at least a little bit of the same kinds of information that powerful companies now use to target consumers and communities. Second, the original intention of CRA—to promote prudent, fair, responsible, and sustainable investment in people and communities—can and should be restored with a new set of reasonable, easily-understood regulations. Third, when there is persuasive evidence of discrimination by exclusion or segmentation, disagreements between federal and state laws and regulations should be resolved in ways that maximize the chances for a fair hearing for people and communities who have historically—and who still today—face marginalization from American economic and political opportunities.

FIGURE 1
MAP

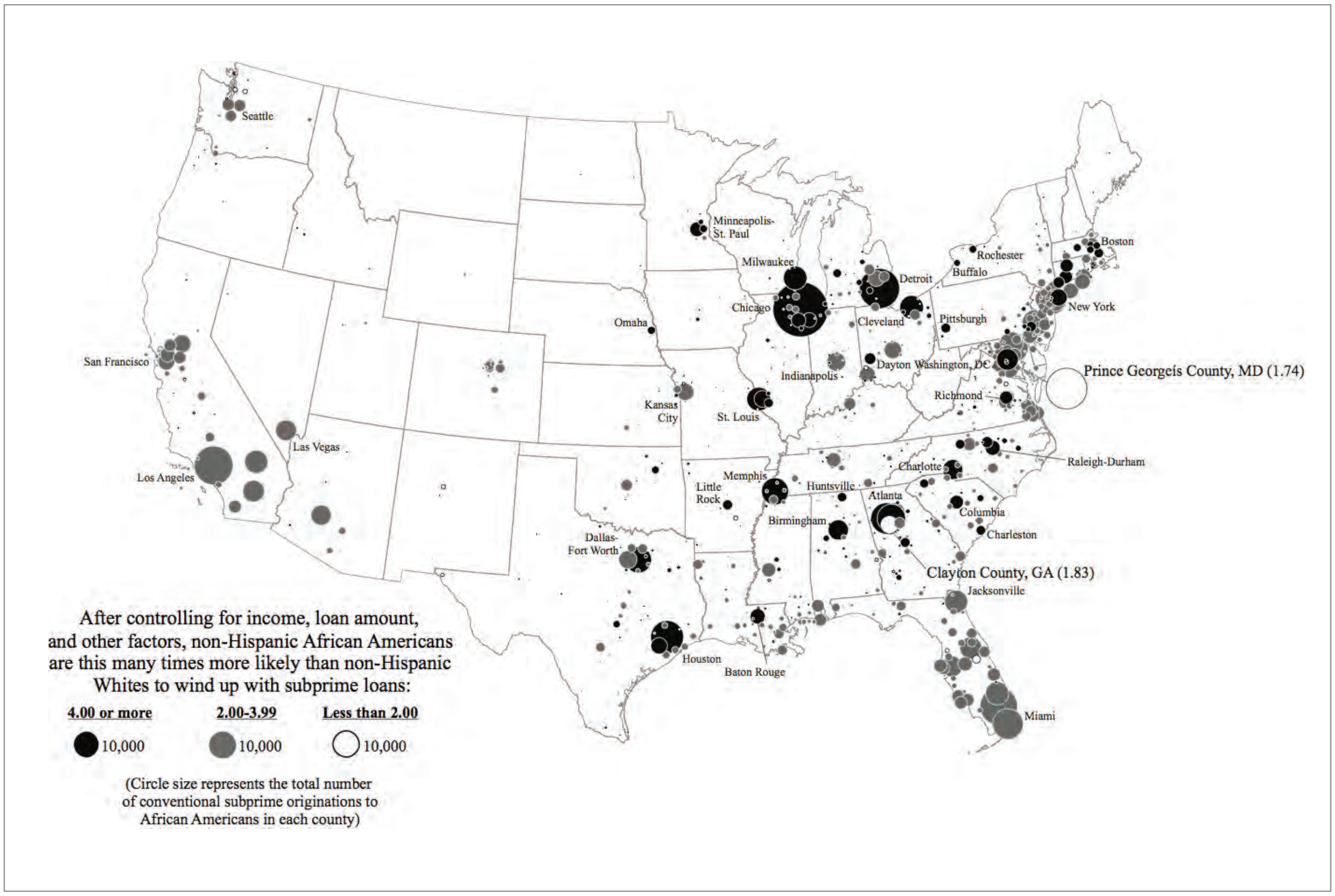
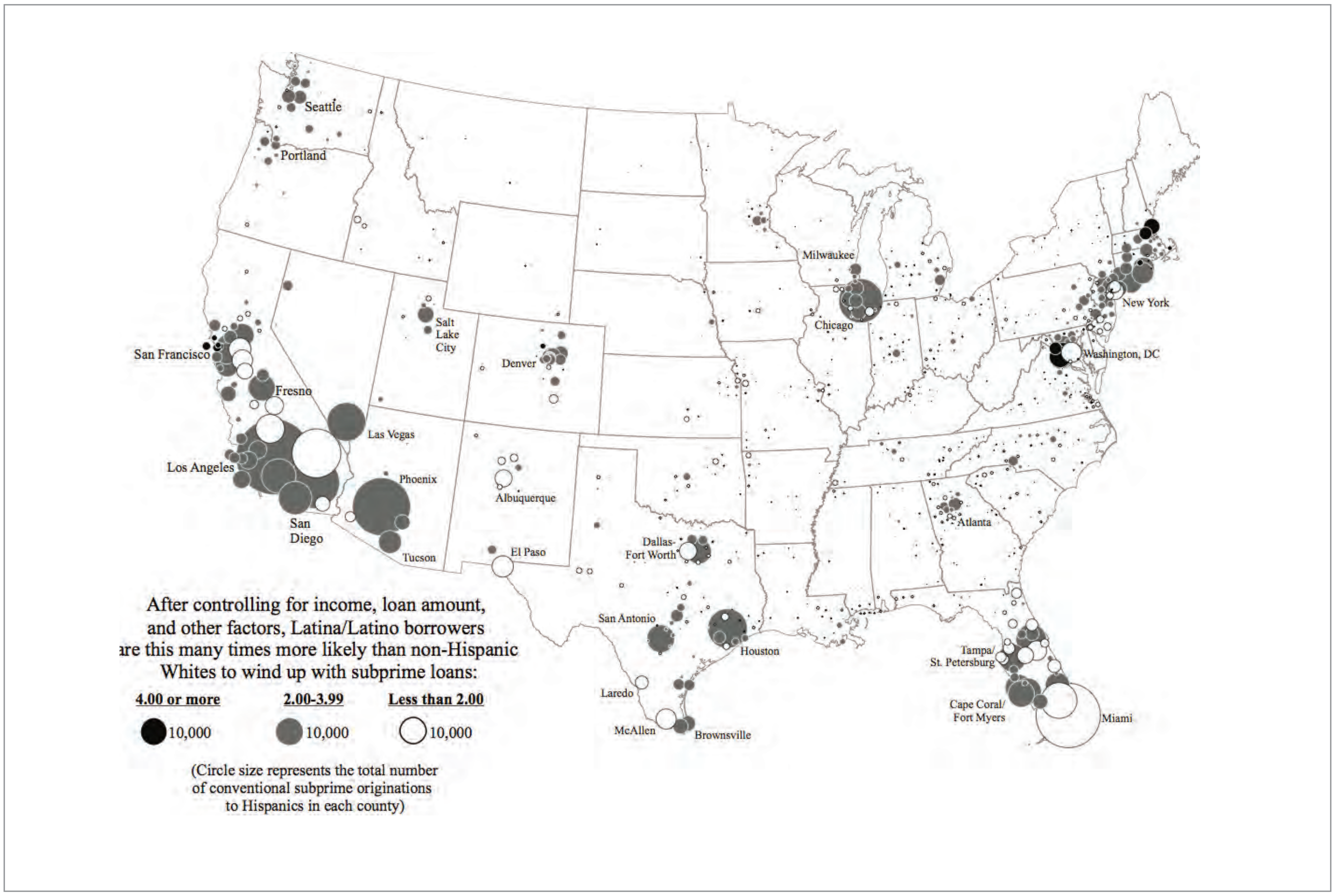

Seattle
Minneapolis-St. Paul
Milwaukee
Detroit
Rochester
Buffalo
Boston
New York
Chicago
Cleveland
Pittsburgh
Omaha
San Francisco
Dayton
Washington, DC
Indianapolis
Prince Georgeís County, MD (1.74)
Richmond
Kansas City
St. Louis
Las Vegas
Los Angeles
Raleigh-Durham
Charlotte
Memphis
Huntsville
Little Rock
Atlanta
Columbia
Birmingham
Charleston
Dallas-Fort Worth
Clayton County, GA (1.83)
Jacksonville
Houston
Baton Rouge
Miami
After controlling for income, loan amount, and other factors, non-Hispanic African Americans are this many times more likely than non-Hispanic Whites to wind up with subprime loans:
4.00 or more
2.00-3.99
Less than 2.00
10,000
10,000
10,000
(Circle size represents the total number of conventional subprime originations to African Americans in each county)

FIGURE 2
MAP


Seattle
Portland
San Francisco
Fresno
Salt Lake City
Denver
Las Vegas
Los Angeles
Phoenix
San Diego
Tucson
Albuquerque
El Paso
Milwaukee
Chicago
New York
Washington, DC
Atlanta
Dallas-Fort Worth
San Antonio
Houston
Laredo
McAllen
Brownsville
Tampa/ St. Petersburg
Cape Coral/ Fort Myers
Miami
After controlling for income, loan amount, and other factors, Latina/Latino borrowers are this many times more likely than non-Hispanic Whites to wind up with subprime loans:
4.00 or more
2.00-3.99
Less than 2.00
10,000
10,000
10,000
(Circle size represents the total number of conventional subprime originations to Hispanics in each county)

1. DATA TO THE PEOPLE! GIVE THE PEOPLE THE INFORMATION THEY CREATE.

The cliché is that information is power. It's profit, too. The subprime revolution was driven in part by technological and institutional changes that made it easier and quicker for companies and entrepreneurs—brokers, lenders, appraisers, Realtors, investment banks, credit reporting and credit ratings agencies—to get more and more detailed information about the behaviors, preferences, and circumstances of individual consumers and potential borrowers. During the boom, many influential experts (including Alan Greenspan) thought this new information was accurate and reliable, and explained how lenders were able to profitably serve riskier market segments. Now, of course, experts question the accuracy of the information that drove the market, and challenge the assumptions of the default models and financial mechanisms used to measure, price, and manage various kinds of risks. Overlooked in this debate is a simple paradox: all of the information that private companies buy and sell when they identify potential customers, design marketing campaigns, evaluate credit history, or monitor loan repayment and prepayment—all of this information is created primarily by the actions of individual consumers. People, going about their daily lives in a society that requires money at every turn, are also required to provide all kinds of personal information to participate in economic life. All Americans who work, borrow, and spend help to build—a little bit every day and every month—the enormous credit reporting and marketing databases that industry lobbyists all praised as the technological foundation of the American Dream during the many years of the housing and credit boom.

But we have very few rights to what we helped to create. In fact, thanks to intellectual property law, trademark protections, and the like, we only have the right to see a few tiny slivers of this huge infrastructure.

For home lending purposes, HMDA is one of the small windows on the market that allows all of us to see a little bit of what's going on. We need to expand HMDA immediately to capture the contemporary dynamics of home lending and consumer finance. Coverage should be expanded to include all financial transactions backed by mortgages—specifically, any financial transaction that is backed by the legal sanctions of bankruptcy, foreclosure, or contract law—including, but not limited to, home equity lines of credit, reverse mortgages, and land-installment contracts. The exemptions for small operators who make only a few mortgage loans should be eliminated: many shady operators deftly exploit such disclosure thresholds to stay under the regulatory and legal radar. HMDA should also require the self-reporting of the age of applicants (and, where applicable, co-applicants). It is now widely recognized that racial/ethnic inequalities interact with gender and age to create markets exploited mercilessly by predators: there are several documented cases of lenders or brokers specifically targeting elderly African American widows living in older homes with accumulated home equity for abusive equity-stripping refinance or renovation loans (Ferguson and King, 2006; Loonin and Renuart, 2006; Mayer, 2000).

HMDA should also be revised to require the disclosure of precisely those pieces of information that industry lobbyists always cite when they claim that HMDA-based studies cannot prove discrimination. If there is no systematic discrimination, lenders will be exonerated if we include borrower profile information such as applicant credit scores,[2] household debt, and household debt to income ratios, as well as loan characteristics such as down payment information, LTV, contract interest rate, initial interest rate, broker and lender fees, fixed- or adjustable-rate status, amortization period, prepayment penalties, balloon payments, and perhaps some of the new kinds of sophisticated innovations the industry will develop in the future. Because the industry "innovates" faster than HMDA regulations are updated, there should be a mandatory review of HMDA requirements every five years where communities and regulators have the opportunity to suggest changes to HMDA. Most of these existing data fields are already collected and reported—to powerful and highly profitable private companies—so it will be quite easy to add the same information to HMDA.

Finally, HMDA should be updated to add a single, crucial piece of new information. Each year, the company responsible for servicing any loan originated and reported in HMDA should report any changes in the status of the loan during the previous calendar year—whether the loan stayed current, slipped into delinquency, default, or foreclosure, or was repaid/prepaid (in which case, obviously, the reporting requirement ends). Information about any servicing interventions would also be reported here, including information about loan workouts (location of loans, forms of modifications, resulting household debt, loan to value, and income of the borrower). Under current regulations, HMDA submissions already include a unique numerical identifier for each HMDA loan application record (LAR), so this new requirement would simply require any institution selling a loan into the secondary market to provide the LAR identifier to the servicer. The servicer would then submit simple annual disclosures to the interagency group that now collects HMDA data—the Federal Financial Institutions Examination Council (FFIEC)—and the performance data would be added to the LAR records publicly disclosed on the FFIEC website. The current structure of bank regulatory fees can be slightly revised to provide a small funding stream to cover the small expenses incurred by servicers for reporting this information; this new funding will reduce the perverse incentives motivating loan servicers, who make nearly all of their profits from service charges and late fees (and who therefore benefit when a payment is mysteriously "lost" for a few days) (see Eggert, 2004, and for a discussion of servicers' current reluctance to do loan modifications, see Goodman, 2009).[3]

As with the loan terms, this information is already collected, bought, and sold by private companies. It's just that you and I can't get access to this information right now, unless we have a lot of money and we are willing to sign a restrictive contract that prohibits us from using the data to inform public discussion and democratic decision-making. If you want to know how many of the loans made by one of the notorious lenders who dominated the headlines in 2007 and 2008 ended in foreclosure in your neighborhood, you can't get this information. You can't even get this information if you go to your local county courthouse and spend months poring over detailed mortgage and foreclosure records. You won't be able to get the right kinds of information, thanks in part to creative legal and corporate maneuvers devised by the industry during the boom—like "Mortgage Electronic Registration Systems, Inc.," an industry consortium that served as an information-laundering scheme and now claims the right to foreclose on behalf of banks that issued mortgage notes (McIntyre, 2009). The information is out there, and powerful companies are now profiting from it. We have a right to this information (Newman, 2009). It is a compelling public interest. It serves an important public purpose. It belongs in the public domain. Our actions helped to create the information. It's ours. Let's go get it.

2. FAIR ACCESS TO FAIR CREDIT! REASONABLE REVISIONS TO CRA WILL ENSURE FAIR AND SUSTAINABLE COMMUNITY REINVESTMENT.

At the heart of CRA was the recognition that some economic agents—especially old-school executives and loan officers at tradition-bound savings and loans who specialized in serving upper-income, non-Hispanic Whites in America's suburbs—were extracting capital from communities that would remain viable and healthy if only their creditworthy borrowers could get loans for which they were qualified. Redlining and discrimination fueled a cycle of disinvestment and decline that exacerbated terrible costs for individuals, cities, and (through premature asset depreciation and the increased burdens on place-based social programs) the national economy (Bradford, 1979). CRA instituted ratings systems, by which examiners analyzed deposit and lending patterns to evaluate how institutions were serving the credit needs of communities where they chose to do business. These ratings systems have been revised several times since 1977, and they need to change now to reflect the growth of non-bank lenders and the supply-side nature of high-risk lending.

> Redlining and discrimination fueled a cycle of disinvestment and decline that exacerbated terrible costs for individuals, cities, and... the national economy.

First, CRA should be expanded to all entities that report under the revised requirements of HMDA. If the trillions of dollars of devastation in this crisis have taught us anything, it is that the individual decisions by brokers, borrowers, and lenders negotiating financing on particular houses on local streets and avenues in unique neighborhoods across America can add up to something really big—for communities, state budgets, federal bailouts, individual 401(k) and mutual fund investors, and Treasury Department officials who find themselves in tense discussions with Chinese central bankers worried about the value of dollar-denominated Treasury bills. This is community reinvestment today, as delivered by the innovations of deregulated American financial services. There is no reason that CRA should be restricted to the deposit-taking institutions that have been losing market share, for many years, to the more lightly-regulated mortgage companies and subsidiaries who engaged in the most risky subprime practices. It is time to include bank holding companies, lenders and the affiliates and subsidiaries of all lenders in an expanded CRA assessment area that covers where all loans are being made, held as investments or serviced.

Gale and NPA's original vision for CRA, written on a cocktail napkin at a late night staff meeting, was for communities to share with regulators the right and responsibility to hold lenders accountable. Today, the CRA grading system is broken, with the banks that led the charge into subprime mortgages and securitizations receiving "Outstanding" ratings. Just like grade inflation at the Ivy League schools that many bank executives attended, regulators have been far too generous in handing out A's to bankers who have not performed well at all. Deregulation and industry restructuring in the 1990s further eviscerated the ability of communities to hold lenders accountable in the CRA examination process.

The CRA examination process must force banks to end, once and for all, the practices of race-based denial and race-based loan pricing—whether these practices come from deliberate intent or disparate impacts that cannot be justified on the basis of prudent, sustainable business necessity. The *quality* of credit to communities should be a prime consideration in the lending and investment tests. There should be real consequences for poor performance, including among subsidiaries and affiliates. Failing institutions should be required to implement reinvestment improvement plans. For those institutions with high or geographically concentrated foreclosures, there should be mandatory foreclosure prevention and neighborhood revitalization efforts.

We've seen what happens when implementation is left up to regulators who are played off one another in a process of "regulatory arbitrage"—where financial institutions get to choose their regulator, and thus shop around for the easiest rules. The quality of regulators' enforcement ebbs and flows with the tides of political will, as filtered through an electoral process saturated by money. We need to re-open the process, to involve the community in ways intended by the original discussions of CRA in the 1970s. If we hold financial institutions accountable, with public hearings on CRA exams and appeal hearings for grades that local communities regard as unwarranted, we will improve the equity of housing finance even while providing an early-warning system for unsustainable lending practices of the sort that created the current catastrophe.

Second, the bankruptcy code should be immediately revised to permit bankruptcy judges to modify the terms of all mortgage loans for consumers entering the bankruptcy process. The lending record of the institution originating the loan should be made available to, and specified as a factor to be considered in the evaluation of assets and liabilities by bankruptcy judges. This provision was removed from the Helping Families Save Their Homes Act of 2009 after the banking and financial services industry pumped $42 million into lobbying in just the first quarter of 2009, with a substantial portion flowing directly to both Democratic and Republican Senators who voted down the amendment. The measure was expected to prevent 1.69 million foreclosures and save Americans $300 billion in home equity.

Third, CRA should be amended to provide for substantial—but not unlimited—assignee liability. Trusts, Special Purpose Vehicles, Structured Investment Vehicles, and all the other new kinds of institutions created by Wall Street over the past twenty years, were all created in large part to minimize corporate tax and legal liabilities. Structured finance breaks the chain of legal liability, and makes it difficult or impossible for aggrieved borrowers to seek justice for deceptive, abusive, and illegal acts committed in the original loan transaction when the loan is sold and assigned to trusts and other entities in the secondary market. Institutions investing in mortgage-backed securities had little incentive to ensure that the loans collateralizing their investments were not the fruit of systematic deception, fraud, abuse, or exploitation. For many years, advocates and organizers fought for assignee liability at the state level, to allow victimized borrowers some recourse against Wall Street institutional investors. These efforts were stymied by the ratings agencies, who threatened to refuse to rate *any* non-prime securities originated in a state that passed such legislation, even narrowly-targeted rules that would impose very limited legal liability for the most dangerous kinds of practices. Right now, in the wake of the massive losses on securities pools blessed with top marks by the ratings agencies, their threats no longer carry the same powerful threat in the marketplace. There is compelling evidence that assignee liability can be designed in ways that do not create excessive litigation uncertainty, and that improve the discipline and efficiency of securities and investor markets (Engel and McCoy, 2007).

Fourth, CRA ratings tests should be replaced by a series of standard, probability-based inferential statistical models—of the kinds currently (if sporadically) used by federal bank examiners—to measure and monitor disparities that threaten the public interest of equitable and sustainable community reinvestment. Some of these models should follow current practices by testing for racial disparities in lenders' prime denial and subprime segmentation of individual applicants on the basis of protected classes defined under fair housing and fair lending laws. Other models should test for systematic racial-geographic disparities—to monitor the pervasive targeting of subprime credit to African American and Latina/Latino neighborhoods that cannot be fully justified by the creditworthiness of applicants in these communities. And some of these models should test for systematic problems in long-term loan performance—measured by the new HMDA disclosures—that cannot be adequately explained in terms of borrowers' qualifications. All of these models should be adjusted for contextual differences across metropolitan areas, in order to compare lenders to their local peers.[4] Results of periodic evaluations will be used to identify areas where further investigation is warranted. Cases meriting further investigation would be referred to the Department of Justice, the new Consumer Financial Protection Agency recently proposed by the Obama Administration, and State Attorneys General. The results of all evaluations should be made public.

This proposal raises some issues that are simultaneously technical and legal. First, multivariate inferential statistical methods cannot be used when the number of observations becomes very small. Thus, as under current law in employment and other domains, other kinds of evidence become more important when investing small institutions. But for all but the very smallest lenders, the enhanced HMDA and revised CRA rules will deter systematic disparities and thus restore beneficial, pro-market incentives. Lenders will be encouraged to make better loans to all creditworthy borrowers. Some lenders will do this by making efforts to increase prime lending to qualified racial and ethnic minorities, women, and other protected classes. Other lenders committed to specializing in the subprime market might choose to seek market opportunities across all racial/ethnic groups to avoid civil rights violations.

Other incentives, meanwhile, should promote sustainable credit and homeownership among all groups and individuals. We propose the creation of a direct tax credit tied to loan performance. This incentive is motivated by the same principles embodied in the Earned Income Tax Credit (EITC) that enjoys rare bipartisan support for its encouragement of work. Similarly, benefits under a performance-based tax credit would encourage lenders to work carefully and prudently. Originators would receive a partial tax credit for each year of good loan performance on particular kinds of mortgages. This practice mirrors the current use of funds from the Treasury and from the Troubled Asset Relief Program (TARP) to pay servicers to modify the terms of mortgages for borrowers in distress; the funding formula provides for bonuses paid out for each year the restructured loan remains current.

Loans to first-time homebuyers would be an obvious candidate for performance-based tax credits, but credit on good terms for refinance and home improvement that perform well should also merit some tax benefits. These tax benefits will not prohibit lenders from taking risks and making subprime loans that wind up performing poorly due to regional economic shocks and other factors. But the tax preference will gradually strengthen the incentives for lenders to find the genuine, legitimate, and sustainable credit needs that are out there, amongst the millions of hardworking Americans who do honor their financial obligations when they are treated fairly and honestly. Indeed, such a tax credit might restore practices that prevailed in some parts of the subprime market during its first boom, in the 1990s: back then, some subprime lenders withheld a sizable portion of the yield-spread premium (the bonus paid to brokers who found customers willing to pay higher interest rates) for several months until a loan performed well on repayment (Immergluck, 2009, p. 103). Additionally, the creation of performance-based tax credits will reduce the incentives for small operators to create and disband tiny lenders as a way of exploiting short-term profits while avoiding regulation and legal liability: it will become more profitable to stay in business *to do good lending*. That's what Gale taught us that community reinvestment is all about.[5]

3. THE STATE OF PLAY MUST BE FAIR! RE-NEGOTIATING FEDERALISM FOR PEOPLE, NOT PROFITS.

Our third simple proposal involves a new and long overdue clarification of the relations between the states and the federal government on consumer protection for mortgages and other financial services. In a wide-ranging history of the subprime market, two prominent experts began part of their analysis with two lines that almost seem like unintentional, deadpan humor: “Many factors have contributed to the growth of subprime lending. Most fundamentally, it became legal” (Chomsisengphet and Pennington-Cross, 2006, p. 38). But this is no laughing matter. The single most important factor in how and why these new practices became legal involved Washington’s assault on the consumer protection laws of the states that had been in place for many years (Mansfield, 2000; McCoy and Engel, 2008).

For twenty-five years, legislators and executive-branch officials in Washington have acted in ways that create a partial, selective, and ultimately dangerous form of federalism. When it came to the rights of mortgage lenders, Washington pre-empted state laws in the interests of fostering an integrated national capital market. When it came to social welfare expenditures required to deal with the rising economic inequalities in an era of global competition, many federal policymakers pushed more responsibilities onto the states, with predictable and costly race-to-the-bottom consequences in the attempt to attract jobs and taxable investments. But when the states tried to respond to the rising wave of predatory lending abuses, all states’ rights rhetoric was tossed aside in favor of pre-emption to protect financial services firms. National banks, and eventually their operating subsidiaries, were allowed to shop amongst different regulators for the most de-regulatory policies, and were allowed to “export” the rules of the most de-regulatory state they could find to apply to loans made anywhere in the nation.

For twenty-five years, legislators and executive-branch officials in Washington have acted in ways that create a partial, selective, and ultimately dangerous form of federalism.

First, we propose an end to federal pre-emption of consumer protection laws on all mortgage lending activity. While some of these changes can be accomplished through executive rulemaking, others will require legislation; Congress will need to take explicit action to eliminate the doctrine of regulatory exportation, for instance. The financial terms of all mortgages should be governed—weakly or strongly, as decided by elected legislators—by the state where the collateral home is located. This location is where the quality-of-life benefits accrue to owner-occupiers, and where the risks of foreclosure are located for both borrowers and state and local governments.

Second, we propose a buyout and reorganization of the American credit surveillance system. As we noted earlier, every time activists and researchers try to obtain better information to document the market failures that led to the current crisis, conservatives and industry lobbyists cite closely-guarded, detailed proprietary data to dismiss any concerns about discrimination or inequality. Then industry advocates attack any proposal to have government agencies gather the same kind of information as a threat to consumers’ personal privacy. The only way out of this Kafka-esque situation is for Congress to clarify the balance between individual privacy and the compelling public interests of accurate and timely information to facilitate efficient credit markets. If the industry is correct in its claims that proprietary data explain all market outcomes, then this information is indisputably a compelling public interest. Moreover, the dramatic failures of the ratings agencies in the subprime crisis demonstrate the limits of the competitive corporate model—particularly when so many other government policies have built a market for the agencies: many pension funds, local governments, and other institutions are legally prohibited from investing money in instruments that do not earn a specified grade from one of the “Nationally Registered Statistical Ratings Organizations” (NRSROs). Now, after billions of dollars of debt blessed as triple-A by the ratings agencies went into free-fall and led to dozens of lawsuits by investors, Standard & Poor’s has retained the celebrated First Amendment attorney Floyd Abrams to defend its ratings on free-speech grounds, as equivalent to things like newspaper editorials (Segal, 2009). Fine. Let the ratings agencies write editorials if they want to. But then we must eliminate their built-in, government-granted monopoly, which was codified by rules issued by the Securities and Exchange Commission in 1975. Free speech isn't free if it's bought on commission. If bond ratings are essential for the objective, transparent assessment of company performance, and if the credit bureaus are crucial to allow lenders to evaluate the honor and integrity of potential borrowers, then these entities are serving fundamentally *public* purposes. All of these companies should be bought out and reorganized as national public utilities. The federal government has established scores of mixed, public-private organizations like this over the last thirty years. Some work better than others, but all of them reflect an understanding that private market competition and profit must be balanced with the public interest in democratic accountability and shared governance.[6]

When the global financial crisis threatened to take entire economies over the cliff in the last months of 2008, several prominent experts suggested that the entire banking sector should be reorganized as a public utility. This was an excellent idea, but it was quickly pushed aside as too expensive and thus politically impossible. By comparison, it would be a bargain to reorganize the dominant ratings agencies and credit bureaus. Current market capitalization suggests a buyout price of less than $30 billion—about 5% of the authorization under TARP, and about one-sixth of the funds used so far to bail out a single company, the American International Group.[7]

Third, we propose a simple yet powerful reporting change that will enhance the efficiency and effectiveness of current state-federal collaboration. For years, unscrupulous actors sought to stay below the radar screen by organizing themselves to evade regulation or legal scrutiny. One aspect of this problem is addressed by Title V of the Housing and Economic Recovery Act of 2008, also known as the Secure and Fair Enforcement (S.A.F.E.) Mortgage Licensing Act, which establishes a nationwide Mortgage Licensing System and Registry for all mortgage originators (Public Law 110-289, 2008). To facilitate criminal background checks and keep track of enforcement, S.A.F.E. assigns "a unique identifier" to each originator. Our proposal is simple: link this identifier, with appropriate personal privacy protections, to the originator codes in HMDA. This improved public information will enhance transparency and efficient market accountability.

Fourth, Congress should pass necessary legislation to clarify that states have the sovereign right to enforce their own fair housing and antidiscrimination statutes against any offender—even nationally chartered banks. The existing framework of the Fair Housing Act and other civil rights statutes already provides for coordinated and complementary state and federal enforcement powers. But for the national banks and subsidiaries that have enjoyed dramatic deregulation over the past twenty years—a thorough evisceration of state powers—Congress needs to clarify what federalism means. On the one hand, the Supreme Court's decision in *Watters v. Wachovia* (2007) allowed nationally chartered banks to ignore even minimal state supervision of their operating subsidiaries. On the other hand, in *Cuomo v. Clearing House Association* (2009), the Court rebuffed a trade group that argued against a state attorney general's demand for information from several national banks, and that claimed that a state did not have the authority to enforce its own antidiscrimination laws when it came to nationally chartered banks. *Cuomo* is only a partial resolution, however: the Court upheld a prohibition on a state attorney general's use of executive law enforcement subpoenas, but not judicial enforcement actions. Given how legally technical and complex things have become, it is time for Congress to clear up the confusion and to answer a simple question: when the federal government fails to deal with the criminality of predatory lending, what can states do?

AT A CROSSROADS, AGAIN

A decade ago, the economist Lawrence Lindsey (2000) wrote an essay describing "community development at a crossroads," and drew a sharp contrast between immature, irresponsible protestors, versus mature "professionals" who talked respectfully to political elites and business leaders. Lindsey's condescending tone and his advice for protesters to "grow up" infuriated many in the community reinvestment movement. The two paths he portrayed as separate—"noisy protest and quiet accomplishment"—have in fact always been essential and inseparable. For many years, many community reinvestment professionals have worked in offices and boardrooms, negotiating with bankers and public officials or doing the painstaking research to analyze the new breed of dangerous predators that most economists and legislators were ignoring (Lee, 2003; Squires, 2003). But these "quiet accomplishments" would have been impossible without the professionalism of protesters who come out on the streets when their voices, presence, and bodies are necessary to make the case for social justice. Creative, insistent, nonviolent direct action built the entire infrastructure of fair lending that—for many years—successfully encouraged fair, responsible, community reinvestment. Congress did not enact laws solely on the basis of polite negotiations or incontrovertible "proof" of problems that could not even be seen before the data were disclosed under HMDA. Laws changed because there was evidence of a problem, some advocates persevered in polite negotiations, *and others—many others—marched and protested to demand the right to public information and public accountability.*

Today, after millions of foreclosures, trillions of dollars of losses and bailouts, community reinvestment is once again at a crossroads, at the junction of the rough road to fair lending and the high-speed toll highway of risky, deregulated global capital flows. If anyone needs to grow up, it's the arrogant geniuses in Washington and on Wall Street who spent years reassuring us that unregulated markets would always solve every problem, and that government is always the problem (unless it serves the needs of powerful, well-connected companies). There are bad regulations, and there are good regulations, and both can be found in private companies and private markets as well as democratically-elected systems of government. Anti-government ideologues hate state regulations and powers when it comes to the rights of investors and corporations. But somehow they never object to many thousands of very powerful government interventions that are now taking place every day when the local sheriff's deputies arrive to evict distressed families from foreclosed homes, so often as the result of predatory loans made by large and powerful institutions connected to the lucrative circuits of capital and power flowing through Wall Street and Washington, DC. With millions of families living in fear of foreclosure and eviction, now is the time for lots of quiet accomplishment *and* noisy protest. We have met the enemy, and it isn't us! We want it. They've got it. Let's go get it! Get the crooks!

CODA

A preliminary version of this essay was presented at a conference at Hofstra University in November 2008, a few days after the Presidential election. The subsequent two years have been turbulent indeed. Barack Obama inherited an economy wracked by a stock market that had collapsed by some 40% over a period of seven months, and global economic output was contracting for the first time since the Second World War. At a White House meeting of a baker's dozen of CEOs leading the nation's largest financial institutions, Obama gently reminded the plutocracy of the risks of populist rage over billionaires' bailouts and bonuses: "My administration is the only thing between you and the pitchforks." (quoted in Johnson and Kwak, 2010, p. 3). Yet Obama chose a remarkably conservative path, installing an economic team that was not without its Wall Street acolytes. Even so, the new administration's efforts amidst the chaos of the evolving crisis provided an overdue correction from the long national nightmare of the Bush administration, with its peculiar blend of market fundamentalism and administrative incompetence. Obama's team moved quickly to shore up the financial system and stabilize Chrysler and General Motors, and then turned to the task of reining in the worst abuses of the banking industry and helping struggling homeowners. Unfortunately, even the most cautious, limited housing rescue plans unleashed an epochal, nationwide backlash of ideology, money, and hate. A month before Obama had warned the bankers about the pitchforks, CNBC correspondent Rick Santelli attacked Obama's mortgage rescue plan in a loud tirade broadcast live from the trading floor of the Chicago Board of Trade: "The government is promoting bad behavior," he began, "...do we really want to subsidize the losers' mortgages...?" Santelli turned from the camera and waved across the vast meadow of trading terminals staffed by scores of testosterone-pumped derivatives jockeys. "...this is America." He yelled out at the traders, "How many of you people wanna pay for your neighbor's mortgage, that has an extra bathroom and can't pay their bills? Raise their hands!" The traders booed. "President Obama, are you listening?" Santelli yelled into the camera. A few minutes later he called for a "Chicago Tea Party. All you capitalists who want to show up on Lake Michigan, I'm going to start organizing."

Santelli's rant provided a simple, powerful icon that helped to focus a grassroots conservative and libertarian rebellion that was beginning to sweep across America. At the same time, the Supreme Court's Citizens United decision in January 2009 struck down campaign finance restrictions on corporate spending in elections—opening the floodgates of right-wing cash that would help to organize and focus the bizarre mixture of ignorant anxiety and market-tested lies about "death panels" during the healthcare debates of the summer. Conservatives moved quickly to invest whatever it took to take down the Democrats. In November 2010, Democrats suffered the worst electoral whiplash in sixty years.

The real story of populist anger in America had nothing to do with pitchforks or tea bags. After crashing the economy, the American Bankers Association made a monumental strategic mistake in scheduling its October 2009 annual conference in Chicago, still home to Gale's enduring National People's Action. With a total of 7,000 people attending three days of actions and protests inside and outside the ABA Conference, and in the lobbies of Goldman Sachs and Wells Fargo, a new populist movement was born. This Showdown in Chicago was followed by the Showdown on Wall Street with over 10,000 people in April 2010 and then 3,500 people shut down the epicenter of bank lobbying in Washington, DC at the Showdown on K Street in May 2010. At this event, NPA affiliate Alliance to Develop Power brought more than 100 people to sit in at newly minted Senator Scott Brown's office, forcing a meeting several weeks later where they secured the final 60th vote for financial reform legislation.

With Brown's vote coming amidst an ongoing economic crisis and toxic climate in Congress, a compromise financial reform bill finally passed the House and Senate, and survived the reconciliation process. Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act into law on July 21, 2010 (see Public Law 111-203, 2010). The compromises required to achieve the legislation were not pretty, and there is widespread concern about the viability of provisions designed to prevent another Wall Street catastrophe. Yet the legislation delivered significant, long-awaited progress on consumer protection and mortgage disclosure. Dodd-Frank creates a new Consumer Financial Protection Bureau, with at least some autonomy from the Federal Reserve. Dodd-Frank also updates and refines HMDA in many of the ways we hoped, responding to more than a decade of calls from innumerable activists, attorneys, and researchers. With assistance and language from NPA Board Member Calvin Bradford, Section 1094 requires HMDA reporters to collect and disclose information on total points and fees, a revised rate-spread measure, prepayment penalty terms, teaser rates, negative amortization, term to maturity, property value, retail/broker origination channel, and borrower age. The legislation also mandates the collection of borrower credit scores, in a form yet to be determined, and mandates the regulatory consideration of several optional data elements: property parcel information, originator identification number pursuant to the S.A.F.E. Act, and a universal loan identification number. Another section of the law mandates the creation of a census-tract level Default and Foreclosure Database.

Gale's inspiration remains as important as ever. Dodd-Frank was signed into law not long after National People's Action held their third meeting with Fed Chairman Ben Bernanke and secured the cooperation of the Fed, FDIC, and OCC to begin a long-overdue process to review and revise Regulation C to update the implementation of HMDA (see Federal Reserve Board, 2010) as well as the CRA. The Fed's action, along with the creation of the new Consumer Financial Protection Bureau, creates a long transition period with considerable ambiguity during the hand-off. Analysts and activists have to watch carefully, considering the tradeoffs between prompt action by a Fed notoriously vulnerable to regulatory capture, and delayed action by a more pro-consumer Bureau that is still under construction. Gale would have been at the showdowns between Wall Street and neighborhood people, leading us in the march to get passage of a good law in 2009 and 2010. Now she would be cheering us on as we worked both behind the scenes to keep a close eye on the regulatory details of implementation and on the front lawns of bank CEOs to hold them accountable for their continuing role in foreclosing on millions of families. We still need as much quiet accomplishment and noisy protest as possible, as we work together to build a more inclusive, equitable financial system. We want it. They've got it. Let's go get it!

NOTES

1. Thanks to Kathe Newman for valuable comments on an earlier draft, and to Christopher Niedt and Marc Silver for organizing the conference at which these ideas were discussed.
2. Proposals to include applicant credit records have been controversial for many years. Among many other issues, two stand out. First, the information raises significant privacy concerns, in light of the way that HMDA records can be (partially and inconsistently) matched with other public-records data released at the local level. This is an important issue. But the privacy concerns of HMDA are nothing compared to the highly personal information already held by private data vendors. Adding new information to HMDA will have little effect on marketers and other industry actors who already have access to highly detailed industry datasets—but it will help communities by giving them access to precisely that information that is used by industry advocates to dismiss concerns about discrimination or predatory exploitation. Second, proposals to add credit scores risk granting a competitive advantage to the company whose proprietary formula is chosen for the reporting requirement. Robert Avery, at the Board of Governors of the Federal Reserve, has suggested that this issue can be resolved by translating each of the credit scores used in the industry to a simple, 0-to-100 score reported for each applicant.
3. Regulations implementing the Equal Credit Opportunity Act (ECOA), the Fair Credit Reporting Act (FCRA) and perhaps other statutes may require strengthening to bar loan servicers from acting on any decisions enabled by their ability to link borrower repayment history with the unique HMDA LAR codes—and thus the self-reported race, ethnicity, and gender available in HMDA. This possible disclosure could only occur for lenders who hold loans in portfolio, however: since the unique LAR codes are now held confidential by the FFIEC, the only entity able to match repayment history with the unique code (and thus the borrower's self-reported race, ethnicity, and gender) is the entity who submits the original LAR and who retains the servicing rights. Data linkage issues like this do raise important questions of privacy. But it is important to remember that many private databases already include highly detailed personal information—including Social Security Numbers and other detailed data—that lenders and marketers routinely use to infer consumers' race, ethnicity, and other social characteristics.
4. In other words, the results of these inferential models should be normalized by population characteristics by metropolitan area: the racial coefficients of a denial or segmentation model for loan markets in Los Angeles, Detroit, Miami, and the metros of Puerto Rico, for instance, will differ substantially from those in metro areas across Utah, West Virginia, or Kentucky—even among lenders who are engaged in fair, legitimate, and sustainable market activity.
5. One possible problem with this proposal is that it could encourage loan servicers to be more aggressive with borrowers in distress, as a way of claiming credits and keeping payments current even in cases of genuine hardship. This problem can be minimized, however, by giving bankruptcy judges more power to modify mortgages, and by giving the Obama Administration's proposed Consumer Financial Protection Agency jurisdiction over loan servicers.
6. Reorganizing the credit bureaus as public utilities need not mean a full public disclosure of all of the detailed personal dossiers held by the credit bureaus. There are many ways to release public information in ways that do not violate confidentiality, as demonstrated by the hundreds of data products created and publicly distributed by the Bureau of the Census. For years, the Government Sponsored Enterprises (GSEs) have disclosed detailed mortgage loan-level information in separate public-use tabulations to provide important details while ensuring individual anonymity.
7. This figure is based on the current, approximate market capitalizations of Moody's ($6.1 billion), the McGraw-Hill Companies (of which Standard & Poor's is a subsidiary) ($9.3), Fimalac, S.A. (of which the Fitch Group is a division) ($1.1), Equifax ($3.3), Experian PLC ($7.4), and Fair, Isaac Corp ($0.75). Market capitalization figures are not available for TransUnion, which is a privately-held corporation.

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Regional Resilience in the Face of Foreclosures: The Role of Federal and State Policies

—Todd Swanstrom, Karen Chapple and Dan Immergluck

> Forward-looking cities shouldn't be succeeding despite Washington; they should be succeeding with a hand from Washington. We want to hear directly from them, and we want to hear directly from all of you, on fresh ideas and successful solutions that you've devised, and then figure out what the federal government should do or shouldn't do to help reinvent cities and metropolitan areas for the 21st century. (Remarks by President Barack Obama, Urban and Metropolitan Policy Roundtable, July 13, 2009: http://www.whitehouse.gov/the_press_office/Remarks-by-the-President-at-Urban-and-Metropolitan-Roundtable/)

The quote from President Obama suggests that the new administration will be looking for ways to support innovative policies at the local level—not devising one-size-fits-all federal policies. The foreclosure issue provides a good laboratory for testing how federal (and state) policies can support innovative local responses. At the beginning of the foreclosure crisis, federal foreclosure policies to aid local responses were largely absent. Many local actors devised innovative responses on their own. In this chapter, we draw from a study of foreclosure responses in six metropolitan areas to examine how vertical relations in the federal system (federal-state-local) can support horizontal collaborations in metropolitan areas among the public, private, and nonprofit sectors to prevent foreclosures and minimize their negative spillovers.[1]

THE CONCEPTS OF RESILIENCE AND OPPORTUNITY SPACE

Our research was guided by the concept of resilience. Resilience is the ability of a system (region, government, nonprofit, company, or individual) to bounce back from an external stressor, or challenge, and recover healthy functioning. The concept of resilience has been developed in many fields, including engineering, psychology, and ecology. The engineering concept of resilience is the ability of a system to return to equilibrium after a disturbance—for example, when a thermostat returns a room to 70 degrees after a cold wave. We draw mostly from the ecological concept of resilience, which is based on the idea of multiple equilibriums. In the face of a stress or challenge, a system can change its structure and function, creating a new system. In the face of the foreclosure challenge, for example, resilient regions do not just return to the *status quo ante* but reinvent themselves with new relationships that are more likely to support healthy functioning housing markets.

We use the concept of resilience to focus our case studies on the processes by which regions adapt to the foreclosure challenge, identifying some of the barriers and supports of resilient processes. We find evidence of resilience in the ability of metropolitan areas and the organizations within them to respond to a challenge by:

1) redeploying assets or expanding organizational repertoires;

2) collaborating within and across public, private, and nonprofit sectors;

3) mobilizing or capturing resources from external sources.

Resilience is an inherently normative concept. It is always a question of resilience toward what or for whom? Subprime lenders, for example, were quite resilient in inventing new mortgage products to take advantage of vulnerable homeowners. Here, the type of resilience we focus on is action aimed at maintaining stable neighborhoods with a balance of supply and demand and minimal involuntary displacement.

Resilience encourages researchers to think of regions as composed of complex interlinked processes with powerful feedback effects that must be fully understood for effective policy interventions. Following the logic of ecological theory, resilience cannot be simply engineered into a region by linear, top down interventions based on simple cause and effect. We think of regions as complex systems involving interactions among public, private, and nonprofit actors. The difference between ecological resilience and regional resilience is that regions are not natural; they are man-made. A forest cannot change the laws of nature, but a region can lobby state and federal governments to change the laws that govern regional housing markets. The powerful impact of state and federal laws on metropolitan resilience is a major theme of our research.

We also draw upon the concept of "opportunity space," defined as the economic, legal, and institutional conditions that expand or constrict the opportunities for local actors to be resilient. For example, foreclosure prevention is difficult in hot market metropolitan areas where many homeowners find themselves "under water," i.e., with negative equity in their homes. Preventing a foreclosure in such cases is more difficult than in weak market areas where housing prices have not fallen as much and relatively modest expenditures by rescue funds can bring people current on their payments. On the other hand, minimizing the negative spillovers of foreclosures is more difficult in weak market metro areas where foreclosed homes are more likely to be vacant and abandoned, blighting the neighborhood. Although the basic market conditions are difficult to change, collaboration among housing nonprofits, governments, and private lenders shapes the opportunity space and can be influenced by leaders and state and local policies.

FORECLOSURE PREVENTION: OVERCOMING PRIVATE SECTOR RIGIDITY

The idea that localities can "prevent" foreclosures is something of a misnomer because local actors largely lack the legal power to address the major cause of many foreclosures—predatory lending practices. When local governments did try to regulate predatory lending, they were preempted by state laws—and when states tried to regulate predatory lending they were often preempted by federal regulators (Immergluck, 2004). Here we address foreclosure prevention in a narrower sense—the ability of local actors to prevent foreclosures *after* a borrower is in default on a mortgage, usually through counseling and loan modification.

> Federal funding has been essential…but the supply of counselors is clearly inadequate in a nation where over 300,000 homeowners face foreclosure each month.

Given the many negative externalities of foreclosures on neighboring property owners, municipalities, schools, etc., prevention makes sense from a public policy point of view. Foreclosure prevention also makes sense for lenders. Estimates vary widely but all of them conclude that the cost to the holder of the mortgage of going through with a foreclosure is significant. Many studies estimate the cost at about $50,000 per foreclosure, or 30–60% of the outstanding balance (Mortgage Bankers Association, 2008). Given the fact that preventing a foreclosure is often, if not always, a winner for public and private balance sheets, why is more not being done in the way of prevention?

The main effort to prevent foreclosures is being conducted by HUD-certified counselors who are paid per case by the federally funded National Foreclosure Mitigation Counseling (NFMC) Program. To date, since the program was enacted in December 2007, the federal government has appropriated $410 million for this program. According to a recent report to Congress by NeighborWorks America, the implementing agent, as of March 31, 2009, the program had counseled 373,169 homeowners nationwide (NeighborWorks America, 2009). A recent evaluation of the FNMC program by the Urban Institute was generally favorable, reporting that 9% of clients had successfully completed loan modifications and 76% of clients who had received counseling had not entered foreclosure as of February 2009.

The federal funding has been essential for jumpstarting local counseling efforts, but the supply of counselors is clearly inadequate in a nation where over 300,000 homeowners face foreclosure *each month*. Our research shows that local support for foreclosure prevention varies significantly. We found that local resources committed to foreclosure prevention were significantly greater in Cleveland, Chicago, and the Inland Empire of California, than in St. Louis, Atlanta, or the Bay Area. This suggests that we cannot rely on local political processes or charity to fund a crucial service like foreclosure prevention. Federal and state funding is essential.

Aside from lack of adequate funding, lack of time is a major obstacle to foreclosure prevention. Foreclosure processes are regulated by state law. They are either judicial, that is, regulated by public courts, or non-judicial, regulated by the conditions in the mortgage contract, with the addition of required public notices. States with non-judicial foreclosure laws have foreclosure processes as short as 33 days (from first legal notice to sheriff's sale), thus restricting the time that households and foreclosure counselors have to prevent foreclosure by raising funds or modifying the mortgage (Cutts & Merrill, 2008). Short foreclosure processes restrict the opportunity space for foreclosure prevention and state laws to lengthen the process would improve local resilience.[2]

According to our research, however, the most significant barrier to foreclosure prevention is rigid policies by loan servicers. The private sector prides itself on being resilient and flexible. However, in the case of mortgages that have been pooled, chopped up into a confusing array of investment vehicles, and controlled by loan servicers subject to public servicing agreements (PSAs), the private sector is the epitome of rigidity, not resilience. In our research we heard many stories of mortgage counselors who could not get servicers on the phone and when they did they often got the runaround.

However, local action can alter this outcome. For instance, in Cleveland a grassroots group, Empowering & Strengthening Ohio's People (ESOP) mounted an advocacy campaign that included throwing 2½-inch plastic sharks on the lawns of executive officers of the lenders in order to pressure them to sign a memorandum committing to systematic loan modifications. By the fall of 2008, ESOP had twelve signed agreements covering about 20 lenders and servicers, counting subsidiaries. According to a Cleveland State University evaluation, ESOP, which runs one of the local counseling agencies, had a loan workout rate of 76.5% compared to 18% for the other agencies (Weinstein, Hexter & Schnoke, 2008).

The Obama Administration's $75 billion Making Home Affordable program provides incentives to servicers to modify loans and helps borrowers by reducing monthly payments to 31% of gross income. As of May 2009, 14 mortgage servicers, representing 75% of the market, had signed up for the program (Bernard, 2009). However, the mortgage servicers, buried in a "paper avalanche," still have limited capacity to produce loan modifications (Goodman, 2009).[3] An important component of the Administration's plan to motivate servicers was legislation that would have enabled bankruptcy judges to include mortgages in bankruptcy proceedings, thus reducing what lenders would be paid. This legislation was easily defeated in Congress with little lobbying by the Obama Administration. Clearly, the carrots of the Making Home Affordable program would work better in conjunction with the sticks of the so-called "cram down" legislation. Moreover, many households facing foreclosure do not even know about the federal program, so the cooperation of local housing nonprofits and counseling agencies will be essential to enable them to work to capacity.

NEIGHBORHOOD STABILIZATION: UNEVEN CAPACITY ACROSS AND WITHIN METROPOLITAN AREAS

What can local actors do to stabilize neighborhoods *after* foreclosures? In contrast to foreclosure prevention, neighborhood recovery is generally easier in strong market regions than in weak market regions. In traditionally strong market regions, market demand is more likely to soak up foreclosed properties, though lender-owned properties (REOs) can accumulate in hot market areas with high foreclosure rates (Immergluck, 2009). In weak markets, foreclosed homes are more likely to lie vacant and abandoned, spreading blight to neighboring properties.

Weak markets also exist *within* metro areas. For example, both the Cleveland and St. Louis metropolitan areas are characterized by strong demand for housing on the urban fringe linked to weak demand in the urban core, which leads to large numbers of vacant and abandoned units. Both Cleveland and St. Louis rank in the top ten metropolitan areas by the ratio of building permits for new units of housing relative to growth of new households (Bier & Post, 2006: 185). As new housing construction is built (mostly on the suburban fringe) and exceeds the growth of new households within the region, housing abandonment in the urban core areas is inevitable, making neighborhood recovery after foreclosures more challenging. Also, exurban areas with long commute times may find it more difficult to absorb foreclosed properties in the housing market (Immergluck, 2009).

Effective neighborhood stabilization requires adequate resources, careful targeting strategies, and collaboration across governments, as well as across functions and sectors. One of the findings of our study is that suburban areas are often ill-prepared to stabilize neighborhoods in the face of foreclosures. Housing nonprofits have been the "first responders" to the wave of foreclosure. But maps of housing nonprofits show that housing nonprofits are concentrated in central cities; many suburban areas have no housing nonprofits at all (Swanstrom, Chapple & Immergluck, 2009: 11-12, 26, and 40-41). Second, we found that governments that are CDBG-entitlement cities were much better prepared to devise plans for neighborhood stabilization. The many suburban governments that fall below the 50,000 population threshold for entitlement status often have no housing planners on staff. How metropolitan areas respond to these two capacity issues is crucial for neighborhood stabilization.

The contrast between neighborhood recovery efforts in two hot market California metro areas, San Bernardino-Riverside (Inland Empire) and the East Bay of the San Francisco Bay Area, illustrates the problem of uneven capacity. Given the high price of housing in hot market metro areas such as the East Bay, neighborhood recovery is more expensive and it threatens to push out low and moderate income residents. With the exception of a couple of small efforts by ACORN to start community land trusts, the East Bay has been slow to act and most of the interventions have been local and not regional. The mature multi-family rental housing industry is not equipped to conduct acquisition and rehabilitation of scattered-site suburban properties, and with the crisis concentrated in outer areas, the region's central cities, San Francisco and San Jose, have not exerted their usual policy leadership.

By contrast, the Riverside-San Bernardino region, the "Inland Empire," has developed an impressive regional collaboration, called the Red Team, to stabilize neighborhoods. The Red Team was formed by Riverside Mayor Ron Loveridge and County Supervisor Tavaglione in conjunction with the Inland Empire Economic Partnership. Apart from the Riverside governments, the most active members of the Team are the building industry, the real estate trade association, Bank of America, a local credit union, a few of the cities near Riverside, and the Western Riverside Council of Governments. Whatever ultimately materializes from the effort, the Team's collaboration has already pushed local government to be more proactive. For instance, locals have already organized an acquisition/rehab program under the auspices of the National Community Stabilization Trust, the effort led by Enterprise, the Housing Partnership Network, LISC, NeighborWorks, and the National Urban League.

How can federal and state policies address the problem of uneven capacity for neighborhood stabilization? Neighborhood stabilization capacity has two dimensions. The first kind refers to implementation capacity, the ability of local governments to purchase properties, rehab them, and get them back on the market quickly. HUD regulations, such as the requirement that properties purchased at a 5 to 15% discount can impede local implementation and need to be streamlined. Many NSP recipients find that private buyers, sometimes out-of-town speculators, buy up the most attractive properties, leaving them with the more difficult properties. HUD has allocated $50 million for capacity-building and the National Community Stabilization Trust is working to speed up purchases of foreclosed properties.

The second kind of capacity issue is more difficult to address. This might be called longer-term strategic or collaborative capacity. The limited funds available under NSP will be ineffective if they are spread around—the so-called peanut butter approach. In weak market cities, fixing up and marketing a few homes in one neighborhood may only lead to abandonment of homes in another neighborhood. Instead, funds need to be targeted to "transitional" neighborhoods which were previously stable but could tip over into decline from foreclosures. Targeted investments in these neighborhoods could stabilize them (Mallach, 2008, The Reinvestment Fund, 2008). Targeting can be very difficult in areas with ward-based politics or fragmented suburban jurisdictions. Also, the public sector needs to collaborate with community-based organizations that possess the fine-grained local knowledge of housing markets that is essential for successful neighborhood recovery. Finally, stable neighborhoods need more than good housing; they need jobs, good schools, low crime, parks, and transportation. Effective neighborhood recovery needs to coordinate across these functions.

The second round of the Neighborhood Stabilization Program (NSP2) is a competitive grant, and criteria were included to encourage regional collaboration. However, more could be done to encourage strategic targeting and collaboration across sectors and functions (policy silos). HUD could lift up best practices and partner high-capacity regions with low-capacity regions to facilitate learning. One of the dangers of competitive grants that reward collaboration is that by rewarding the high-capacity regions they can end up increasing the gap between high- and low-capacity regions.

CONCLUSION

Metropolitan resilience to foreclosures benefits from local relations of trust and collaboration across public, private, and nonprofit actors that are supported by strong federal, state, and private sector policies. Local actors cannot adequately address the crisis on their own. The right kinds of policies by higher level actors can support metropolitan resilience; the wrong kinds of policies can undermine it. Local actors not only lack the resources—the hardest hit areas often have the fewest resources—but they often also lack the ability to collaborate across metropolitan areas and coordinate across sectors and policy functions. Federal and state policies should reward areas that have strong strategic and collaborative capacities while simultaneously building up low-capacity areas.

At the same time, policy makers need to recognize that centralized policies will be ineffective without strong local actors to organize and target the interventions. Local housing counselors often need to work face-to-face with homeowners to keep them in their homes. Local nonprofits understand local housing markets and how to build on local assets to stabilize neighborhoods. The foreclosure crisis presents an opportunity to shift housing policy from a bricks-and-mortar approach to a more comprehensive place-based strategy to build stable neighborhoods of choice where families can both be linked to opportunity and find quiet repose from the fast pace of urban life.

NOTES

1. The research this article is based on was funded by the MacArthur Foundation's Building Resilient Regions (BRR) project. To access the full report go to: http://brr.berkeley.edu/ and click on Resources/Working Papers. It is important to note two limitations of our research. Our study focused on the processes of collaboration within metropolitan areas, or what we call "resilience." We did not evaluate whether these responses successfully prevented foreclosures or minimized negative spillovers. Also, we studied only the resilience of places, not the resilience of households. More research on household recovery is needed.
2. Foreclosure processes that are too long can also be problematic. Long drawn-out foreclosure processes discourage families from seeking loan reinstatements, because they have an incentive to stay in the home rent-free during the long legal process. Cutts and Merrill (2008) argue that there is a "sweet spot" in the length of the foreclosure process around the state average of 120 days.
3. The program is less likely to work in places like California and Florida where many borrowers find themselves "under water"—owing more on their loan than their house is worth. The Administration has a program to help them, Hope for Homeowners, which will give borrowers a sustainable FHA loan if the mortgage investors are willing to take a write-down on their investment. This program has suffered from significant design flaws, some of which are being addressed.

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Addressing the Housing Crisis in Minnesota: State Legislative Responses

—Jeff Crump

TO BEGIN: STRANGE TALES FROM THE FRONT LINES OF THE FORECLOSURE CRISIS

In an incident that reads like an article from the satirical newspaper *The Onion*, Ted Poetsch of Minneapolis, Minnesota was imprisoned in his family home when he was boarded inside his house by city contractors (Shiffer, 2009). According to news reports, Minneapolis city officials had ordered his eviction because, "The city determined that the house was potentially unsafe and that Poetsch was essentially a squatter in the only home he had ever known" (Shiffer, 2009, A8).

Mr. Poetsch's twisted and strange housing story begins in 1945, when his parents purchased a home located in North Minneapolis. In 1990, Mr. Poetsch inherited the house, free and clear, when his mother died. Later, he took out a new subprime mortgage to pay for home repairs and to eliminate his credit card debt. He soon fell behind on his payments and in 2006, he received a notice of default from his lender.

After receiving his default notice, Mr. Poetsch was contacted by a foreclosure "rescue" firm, United Home Solutions. United came up with a scheme whereby Mr. Poetsch signed his home over to them and agreed to pay rent for one year. United also promised that at the end of this period he could obtain a loan and repurchase his home. Although United Home Solutions allege that Poetsch was irresponsible with his money, Poetsch claims he was bamboozled into losing his home to the firm. Meanwhile, because the mortgage went unpaid, Fannie Mae filed a foreclosure action on the house. The foreclosure did not move forward however, because Fannie Mae, concerned by the forced displacement of thousands of its borrowers, enacted a temporary foreclosure moratorium.

Strangely enough, despite the Fannie Mae moratorium, Minneapolis city officials decided that the home was *potentially* unsafe and moved to evict Poetsch. As JoAnn Velde, deputy director of city housing inspections was quoted as saying, "We've got occupants living in a building where nobody's responsible for the maintenance, which is potentially unsafe" (Shiffer, 2009, A8). Therefore, the city filed an eviction notice and then boarded up the building—with Poetsch inside.

Poetsch did manage to escape—his attorney came and removed the boards from the doors of the house. Later, when he returned to get the rest of his belongings, Mr. Poetsch found that his DVDs and television set had been stolen from the boarded house. In the end, he lost his home and his belongings, the city gained another abandoned house (which was soon vandalized) and Fannie Mae owned a house it did not want.

Poetsch's story is only one of the many strange and complex foreclosure narratives that can be found in the news media. As thousands of borrowers struggle to pay poorly underwritten mortgages, millions are losing their family homes, some falling into foreclosure scams, while others gain some hope (illusory in many cases) through federal foreclosure plans and lender moratoria. City and other public officials struggle to address a myriad of foreclosure-related problems and are forced into a reactive mode of crisis management.

BRINGING IT ALL BACK HOME: THE FORECLOSURE CRISIS IN MINNESOTA

In 2008, there were a total of 26,265 foreclosure sales in the state of Minnesota. This was an increase of 29% over the 2007 figure of 20,404 (HousingLink, 2009). The Twin Cities Metro accounted for 66% of the 2008 foreclosure sales and even though foreclosures are spreading to suburban locations, the minority neighborhoods of the core cities of Minneapolis and St. Paul are bearing the brunt of the foreclosure crisis.

The spatially concentrated impacts reflect the geography of subprime lending in the Twin Cities (Crump, 2007). Research findings from a study of the racial dimensions of subprime lending indicate that African American borrowers, irrespective of income and neighborhood characteristics, were approximately four times more likely to receive a subprime loan than were whites. In addition, Hispanics were twice as likely to obtain a subprime loan as whites (Crump, 2007).

With respect to the linkages between subprime lending and foreclosure, the chain of causality is a fairly well established one: as subprime lenders target minority borrowers, the spatial distribution of subprime loans is concentrated in minority neighborhoods. Because subprime loans have a greater likelihood of default and subsequent foreclosure, minority neighborhoods bear the brunt of problems associated with foreclosure.

ADDRESSING THE HOUSING CRISIS: STATE LEGISLATIVE EFFORTS

The housing crisis was a disaster foretold. As early as 2005 (Crump, 2005), research findings indicated that subprime lending was driving a foreclosure boom in predominantly African American North Minneapolis. State Representative Jim Davnie (DFL) of Minneapolis was one of the early advocates of regulating the subprime market, and attempted to pass legislation banning some of the most egregious aspects of those loans. These early efforts at regulation met with stiff opposition, as the advocates for subprime lending claimed that high-cost loans were providing unprecedented homeownership opportunities for minority citizens. Prominent defenders of the subprime mortgage market included officials of the Federal Reserve Bank of Minneapolis, who argued against regulation on numerous occasions.

> ...the Minnesota Anti-Predatory legislation also provides some much-needed regulation on the activities of mortgage brokers and other actors within the lending industry.

At the state level, legislative efforts began by addressing the abuses of subprime lending in Minnesota. During the 2007 Legislative Session, two bills limiting predatory lending were passed. The Minnesota Anti-Predatory Act of 2007 outlaws many of the most abusive types of subprime loans. First, the law requires that lenders verify the income of the borrower and ensure that the applicant is able to repay the loan, curbing “no-document” loans that became common during the 2000s. Second, the law addresses the abuses caused by repeated refinancing of mortgages, a practice that increases profits but otherwise provides little or no benefit to the borrower. Thus, loan “churning” is banned unless there is a “reasonable and tangible benefit” to the borrower. Also prohibited are negatively amortized mortgage products; under these terms, borrowers make payments, but their loan balance continues to increase, leaving them in very precarious situations. The 2007 law also outlaws prepayment penalties which make it difficult, if not impossible to obtain refinancing.

Besides addressing these loan characteristics, the Minnesota Anti-Predatory legislation also provides some much-needed regulation on the activities of mortgage brokers and other actors within the lending industry. With respect to mortgage brokers, the law establishes a duty of agency and prohibits mortgage brokers from engaging in lending activities that cause a net harm to the borrower. For example, brokers are forbidden to sell subprime loans to borrowers who qualify for less expensive prime loans. Furthermore, mortgage fraud is clearly defined and fraudulent lending activities such as making false or misleading statements are banned. These elements make it easier (and more likely) for prosecutors to press charges in instances of mortgage fraud.

Nearly two years after its implementation, the Minnesota Anti-Predatory Lending Act is widely considered to be a model law, and a recently introduced federal anti-predatory lending bill is based on it (*New York Times*, 2009A). In particular, the more stringent requirements placed on mortgage brokers have caused many to give up their licenses and the number of active mortgage brokers has dropped from over 4,000 in 2007 to 1,319 at present (Buchta, 2008). As the crash in the housing market did not begin in Minnesota until the fourth quarter of 2007, most observers attribute these declines to the new law rather than a change in housing market conditions.

As the foreclosure crisis gathered steam throughout 2007, several issues—including the need for improved foreclosure data and the impact of investor-related foreclosures on tenants—provided the impetus for legislative remedies. In fall of 2007, five bipartisan working groups were convened by State Legislator Joe Mullery (DFL-Minneapolis) to address the foreclosure crisis. Significant legislative proposals came out of the foreclosure data committee (which I chaired), the renter working group, and the remedies working group. Subsequently, in the 2008 Minnesota State Legislative Session, eleven bills dealing with some aspect of the foreclosure crisis were passed and signed into law.

The Foreclosure Data Group (FDG) addressed the need for more complete and accessible foreclosure data. The discussions among the members of the bipartisan FDG are emblematic of debates about the foreclosure crisis in general. Some participants argued that although foreclosure data is public information, making it more accessible would only facilitate the predatory actions of real estate "vultures." In addition, the specter of government invasion of privacy was raised. Finally, those opposed to altering foreclosure law with respect to data collection and dissemination claimed that the current foreclosure crisis would not last very long, and that it would be a waste of taxpayers' money to collect any additional data.

On the other side of the debate were those advocates who argued for the collection of detailed mortgage information on every mortgage originated in Minnesota. Such a data system would be cross-referenced to foreclosures, thereby facilitating the analysis of the causes of foreclosure. The strongest and most convincing argument was that better data was needed to promote foreclosure prevention efforts. In the end, the committee members agreed to recommend that additional data elements be included on foreclosure documents, largely to facilitate prevention efforts.

Passed in 2008, the Foreclosure Data Practices Act adds important locational data such as the address and some sorely-needed information regarding the originator and loan servicer to each of the publicly recorded foreclosure documents. In a bid to modernize the land records system and foreclosure data in particular, the legislation also established a working group charged with developing and planning a statewide electronic foreclosure data system.

Facilitating foreclosure prevention was also the goal of a related bill that now requires lenders to notify borrowers in default of the availability of foreclosure counseling. In addition, a *preforeclosure notification requirement* now mandates that lenders provide default notices directly to approved mortgage foreclosure prevention agencies. This requirement facilitates the efforts of foreclosure prevention counselors to contact borrowers before an actual foreclosure is filed.

It is important to remember, however, that the effectiveness of foreclosure counseling hinges upon the willingness of lenders to renegotiate loan terms or to provide payment plans that provide the homeowner with a reasonable ability to repay the loan. At present, the record of the lending industry is not good and it remains to be seen if voluntary efforts will be enough to address the foreclosure crisis (California Reinvestment Coalition, 2008; *New York Times*, 2009B).

Especially wrenching are the difficulties faced by tenants when their landlord goes into foreclosure. There are numerous instances in which tenants were evicted even though they had faithfully paid their rent. Several important bills addressing foreclosure and rental properties were also passed in the 2008 session. Most noteworthy are new requirements to notify current and prospective tenants of landlord foreclosure, facilitating the ability of tenants to pay utility bills and another bill that provides for the mandatory expungement of foreclosure-related evictions from the tenant's rental record in cases of landlord foreclosure.

The most important (and controversial) bill to pass in the 2008 Legislative Session was intended to provide a temporary foreclosure moratorium for borrowers with subprime loans. Titled the Minnesota Subprime Borrower Relief Act of 2008, the bill mandated that borrowers work with a mortgage foreclosure counselor and the lender to bring their loan current and keep making payments on the loan in return for a one-year deferment of foreclosure. The bill's proponents argued that approximately 15,000 subprime borrowers would be eligible to participate in the program (Cox, 2008).

The Minnesota Subprime Borrower Relief Act was approved by the Minnesota legislature, but vetoed by Governor Tim Pawlenty. Pawlenty's reasoning closely followed the arguments voiced by the lending industry that such a law would raise lending costs to consumers and restrict the flow of mortgage capital into Minnesota (Merrick, 2008).

In response, proponents of the bill argued that it would help to slow foreclosures in Minnesota and thereby reduce the distressing decline in home values. They also noted that the mortgages covered by the bill had been outlawed by the Minnesota Anti-Predatory Lending Act and therefore were no longer available within the state. As the author of the bill, Professor Prentiss Cox stated, "This notion that lenders will refuse to make financially sensible mortgage loans […] based on Minnesota helping subprime borrowers now can accurately be described as a threat of class warfare. It may make good, if divisive politics—inciting fear in the affluent against homeowners in need…but it doesn't make sense from a market perspective" (*Minnesota Monitor*, 2008).

In the 2009 State Legislative Session, three major pieces of legislation were considered. Minnesota's foreclosure law was amended to allow borrowers to petition for a postponement of a foreclosure sale and gain time to negotiate with their lender. The provisions were passed by the Legislature and signed by the Governor and it has the potential to help many borrowers (Steve Brandt, 2009). Prior to the new law, borrowers in foreclosure generally had six months prior to the Sheriff's sale to bring their loan up to date, effectively "reinstating" the loan and halting the foreclosure process. If the borrower was unable to bring the loan current (reinstatement), the property would be sold at the Sheriff's sale. Subsequent to the sale, there would be a six-month redemption period. During the redemption period, if the borrower were able to pay off the balance of their mortgage, the property would be "redeemed" and the foreclosure proceedings halted. However, redemptions are increasingly rare, because most borrowers are unable to find new financing.

The Postponement law allows a borrower to delay the Sheriff's sale for five months, effectively extending the reinstatement period. Advocates hope that the additional time will facilitate negotiations between borrowers and lenders which will lead to loan modifications that will bring the loan current and save the borrower from foreclosure.

Another bill that was passed by the Legislature but was vetoed by Governor Pawlenty came from the Minnesota Attorney General, Lori Swanson. The Homestead Mediation Lender Act, based on the farmer-bank mediation system used to address widespread farm seizures in the 1980s, would have provided mediation between borrowers and lenders in the interest of arriving at a sustainable debt burden that would keep borrowers in their homes. Under the provisions of the mediation bill, borrowers would be notified of the availability of foreclosure prevention counseling, and of the opportunity for mediation. If foreclosure prevention counselors were unable to reach agreement on loan modifications that would resolve the mortgage default, the mortgage debt would be reviewed in mediation. Mediators would be approved by the Minnesota Attorney General's office. During mediation, the foreclosure process would have halted.

Though the Mediation bill had considerable support, Governor Pawlenty vetoed it. In his veto message, he objected to the designation of the Attorney General as program administrator, opposed a $125.00 fee assessed on foreclosures to pay for the process, argued that mediation sessions should be available electronically, and claimed that using mediators to decide if mediation was appropriate was "nonsensical" (Pawlenty, 2009).

In the 2009 Legislative Session, another attempt was made to enact a foreclosure moratorium. The proposed Foreclosure Moratorium bill declared that foreclosures constituted a public emergency. As stated in the bill, "The legislature declares that a public economic emergency exists in the state due to the increase in foreclosure rates. The legislature declares that these conditions have created a housing emergency that justifies creating a moratorium on mortgage foreclosures" (Karen Clark, 2009, 3). Unfortunately, this bill did not even make it out of committee.

DISCUSSION: THE HOUSING CRISIS AND LEGISLATIVE REMEDIES IN MINNESOTA

This essay has documented the numerous bills (proposed, passed and vetoed) that have attempted to address various aspects of the housing crisis in Minnesota. The first bill, the Minnesota Anti-Predatory Lending Act of 2007, has had a relatively limited initial impact on lending practices because under the Bush Administration, the Office of the Comptroller of the Currency (OCC), claimed that state laws cannot be used to regulate federally-chartered banks ("preemption"). However, on June 29, 2009, the Supreme Court of the United States ruled in the *Cuomo vs. Clearing House Association and the Office of the Comptroller of the Currency (OCC)*, that states can impose their own consumer protection laws.

Now that the Supreme Court has opened the door to state regulations, there is currently a bill before the U.S. Congress that will specifically allow states to regulate federally-chartered banking institutions. If this were to become law, all lenders in the state of Minnesota will have to conform to the strict Minnesota Anti-Predatory Lending law. Furthermore, it is noteworthy that the Minnesota Anti-Predatory Lending law is serving as a model for federal proposals to regulate the activities of lenders. The influence of this state statute could extend well beyond the borders of Minnesota.

Another significant legislative accomplishment was the provision of "early warning" data on mortgage defaults that is now being provided to foreclosure counseling agencies. According to the Minnesota Home Ownership Center, 56 percent of the borrowers they worked with were able to stave off foreclosure (Gugin, 2009).

It is unfortunate that the foreclosure moratorium and mediation bills were vetoed. These efforts would have assisted large numbers of borrowers and reduced the number of foreclosures that are leading to widespread declines in home values throughout the state. As a recent article reporting on legislative efforts states, "A wave of foreclosures may sweep thousands of Minnesotans from their homes in coming months, but the state's Legislature won't be throwing them any life preservers" (Sundquist, 2009, 1).

Although Minnesota's legislative efforts to regulate lending and to address some of the most serious consequences of the foreclosure crisis are laudatory, the foreclosure catastrophe can only be effectively addressed with the resources of the federal government. Two actions spring to mind here. First, Congress must pass a stringent anti-predatory lending law that applies to *all institutions* providing home mortgages. The mortgage industry, which is seemingly without morals, ethics or remorse, must be regulated to protect consumers, neighborhoods and cities from the predatory and irresponsible lending practices that are the root cause of the foreclosure disaster. Second, U.S. bankruptcy law should be changed to allow judges to write down the principal amount of mortgages. The failure of the Obama Administration to support the so-called "cramdown" provision provides ample evidence of the political power of the banking industry. Without the ability to reduce principal, ever-increasing numbers of borrowers will fall into foreclosure. Mass foreclosure and abandonment throughout U.S. cities is a fact. Unless the disaster of foreclosure is somehow stopped, the future of the U.S. city is dystopian indeed.

The failure of the Obama Administration to support the so-called "cramdown" provision provides ample evidence of the political power of the banking industry.

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The Evolving Crisis in Context: Recent Developments for Tenants in the Foreclosure Crisis

—Josiah Madar and Allegra Glashausser

> "People all over this country who rented, who didn't make an imprudent decision to buy a house, found themselves being evicted because somebody didn't pay the mortgage."[1]
> —Congressman Barney Frank during Congressional debates on the Emergency Economic Stability Act, September 29, 2008

As Congressman Frank's comment demonstrates, the plight of renters in the foreclosure crisis had finally entered the consciousness of national policymakers by the fall of 2008. Unfortunately, renters have more often than not been omitted from the narratives offered to describe the ongoing crisis, particularly in its early months in 2007 and 2008. These narratives instead focus on homeowners and banks (as victims or reckless speculators) and the neighborhoods where foreclosures were concentrated. In fact, despite the lack of attention they have received, many thousands of rent-paying tenants have also been affected by the foreclosure crisis.[2] Many of these renters, tenants in houses and buildings that entered foreclosure, have been forced to move from their homes, often with very little notice, and suffered the direct and indirect costs associated with displacement. And as Congressman Frank points out, as mere bystanders to the unsustainable mortgages and declining property values that drove the foreclosure crisis, tenants as a group are innocent victims by almost any definition. Fortunately, tenants have received specific protections from mortgage giants Fannie Mae and Freddie Mac as well as new rights under new federal laws. But while these new protections and rights should help, tenants still face significant uncertainty as the foreclosure crisis continues to unfold and outreach and communication of these rights will be essential.

OVERVIEW OF ISSUES FACING TENANTS IN FORECLOSED BUILDINGS

Tenants in properties that enter foreclosure have faced a variety of issues resulting from the legal position of their tenancy, the uncertainty of their situation and their landlord's financial distress. Both landlord–tenant law and foreclosure law are historically domains of the states and not the federal government. In most jurisdictions, the traditional rule is that completion of the foreclosure process extinguishes all "junior" liens on, or interests in, the property.[3] Generally, a residential tenant's lease will be among these junior liens or interests. As a result, when a new party (often the foreclosing lender) takes ownership of a residential property through a foreclosure auction, the last step of the foreclosure process in most jurisdictions, the new owner traditionally has had the right to terminate the lease and evict the tenants, regardless of the remaining term of the lease.

Tenants in properties with four or fewer units have faced a particularly high rate of being evicted as a result of foreclosure because of the practices of mortgage servicers and investors. Banks and investors generally consider these smaller properties to be more marketable to prospective buyers if they are vacant, because they can more easily be renovated or used as the buyer's personal residence. In contrast, tenants of larger buildings are less vulnerable to foreclosure-related eviction, because of the expense of prosecuting so many evictions simultaneously and the lost revenue that would result from emptying the building.

Even before the recent legislative and policy changes described later in this article, there were a number of important exceptions to the general vulnerability of tenancies in foreclosed buildings. Tenants in project-based Section 8 apartments or using a Section 8 voucher generally cannot be evicted solely as the result of a foreclosure of their building.[4] Renters in New Jersey, New Hampshire, and Washington, DC are sheltered from eviction by broad "just" or "good" cause laws, which allow eviction only in statutorily defined situations, which do not include foreclosure.[5] Similar municipal laws protect tenants from foreclosure-related evictions in certain cities.[6] In New York City, tenants in rent regulated apartments (which generally do not include units in the City's many 2–4 family properties) are protected by broad "just" or "good" cause laws.

For all tenants unprotected by "just" or "good" cause laws and other exceptions to the general vulnerability of leases to foreclosure, notice regulations have helped mitigate the effects of the foreclosure crisis. Although notice does nothing to prevent eventual eviction, it has provided tenants with valuable time to learn about their rights, find and save for new apartments, and prepare to move. These laws vary by state; some states require notice of foreclosure proceedings to tenants while others do not. And until recently, notice to vacate after foreclosure is complete ranged from as little as three days in Ohio to 120 days in Illinois.[7]

Legal eviction, however, is only one of the threats tenants face when their building enters foreclosure, so notice and anti-eviction laws are far from iron-clad protection. A landlord who is unable to keep up her mortgage payments is often unable or unwilling to spend money on necessary maintenance or even on vital utilities. In such cases, it may be a lack of habitability that forces a tenant to leave, despite her continued right to remain while the foreclosure process continues. In December 2008, city officials in Oakland, California declared that utility shut-offs were a "significant threat to public health and safety," triggering a state law that effectively put in place a temporary utility shut-off moratorium.[8] In New York City, the high-profile financial distress and foreclosure of multiple large rental complexes, including some that have suffered significant physical decline, has drawn attention to this risk to tenants.[9]

Tenants may also face uncertainty and confusion if they receive notice about the foreclosure. While some state statutes now mandate a clear notice to tenants explaining their rights, tenants often do not understand the implications of a foreclosure action. They may not know, for example, that they are still obligated to pay their rent to the landlord up until they are notified that the property has been transferred to a new owner or their lease is terminated. Even if a tenant has a legal right to stay in a rental unit following a completed foreclosure, he or she may be intimidated by threats of eviction and inaccurate claims by realtors or unscrupulous new owners that receiving "cash for keys" to move out quickly is the best they can hope for. In December 2008, illegal eviction complaints in New Jersey, for example, prompted a press release warning of real estate agents intentionally misleading tenants in foreclosed buildings about eviction and landlords locking tenants out.[10]

Finally, the foreclosure crisis has created new opportunities for fraud perpetrated against tenants. Unscrupulous owners may lease homes that are already in foreclosure to unsuspecting tenants and then disappear with the security deposit or other prepaid rental payments.[11] Other victims sign leases and pay rent and a security deposit to people who fraudulently misrepresent themselves as the owner of a vacant home that instead belongs to someone else.[12] This crime has been made much easier by the explosion of vacant homes that has resulted from the foreclosure crisis.

THE SCALE OF THE PROBLEM

If the plight of renters in the foreclosure crisis was overlooked for too long, it is not because it was experienced by few or confined to only a handful of cities. Survey data collected by the Mortgage Bankers Association indicated that at least 18% of all mortgages entering foreclosure in the third quarter of 2007 were on properties that were not owner-occupied.[13] The vast majority of these were, presumably, rental properties, many of which contained more than one unit. In 2008, the National Low Income Housing Coalition (NLIHC) reviewed several other studies and regional estimates and concluded that about 20% of all foreclosure filings nationally were on rental properties and that rental households made up about 40% of all affected families.[14] In California, Tenants United, a tenant's rights group, estimated that one third of all units that were in foreclosure in 2008 were rental units.[15] Studies looking at foreclosure and building type data in Minneapolis, Cleveland, and Chicago, among other cities, demonstrate that in urban areas in particular, foreclosure touches many rental units.[16] In New York City, the country's largest rental market, NYU's Furman Center for Real Estate and Urban Policy used foreclosure filing data and building type to estimate the number of rental households affected by foreclosure over the course of the foreclosure crisis.[17] As shown in Table 1, the Furman Center found that a majority of foreclosure filings in New York City were on multi-unit buildings and more than 25,000 rental units were in buildings that entered foreclosure in 2009 alone.

TABLE 1: FORECLOSURE FILINGS AND RENTAL UNITS IN NEW YORK CITY

	2007	2008	2009
Percentage of all foreclosure filings that were on multi-unit buildings	58%	58%	56%
Estimate percentage of affected units that were rentals	50%	51%	54%
Estimated number of affected rental units	14,643	15,523	25,027

Source: Furman Center for Real Estate and Urban Policy

Data availability limits our ability to quantify exactly how foreclosure is affecting these many renter households. Most of the existing research looks at residential foreclosure filings and either owner occupancy or building type to estimate the number of affected rental households. However, foreclosure filings are only the first step in the foreclosure process and are often resolved without displacement of the property's occupants (homeowner or renter) or any noticeable disruption to a tenancy. Estimates based on foreclosure filings, then, provide the upper bounds of the number of affected renter households.

A smaller body of research has focused on the last stages of the foreclosure process—the foreclosure auction—to produce more conservative estimates of the impacts of foreclosure on rental households. To provide a lower bounds estimate of the number of renters affected by foreclosure in New York City, the Furman Center counted the number of rental units in properties that completed the foreclosure process and were transferred at a foreclosure auction, either to a foreclosing lender or to a third-party buyer. The number of such units grew from fewer than 1,000 in 2007 to more than 1,500 in 2008, but even then it was much smaller than the number of rental units in properties that began the foreclosure process that year. A NLIHC study of foreclosures in Connecticut, Massachusetts, New Hampshire, and Rhode Island revealed that of the 15,000 properties that were either scheduled for a foreclosure auction or were acquired by a foreclosing lender ("REO" properties) in 2007 and the first quarter of 2008, 32% were multi-unit buildings.[18] The study estimated that these buildings contained 23,000 units, about 45% of which were rentals. It is important to note that these lower bounds estimates undercount the number of renter households harmed by foreclosure. As described earlier, well before a property finishes the foreclosure process, tenants can be subject to reduced maintenance and utility shutoffs, confusion over the proper party to whom rent should be sent and insecurity about the future of their tenancy.

FEDERAL ACTION AND GSE POLICY CHANGES

Landlord-tenant relationships and the foreclosure process are by and large governed by state law. However, the depth of the broader financial crisis and its impact on homeowners and tenants alike have prompted federal legislation and policy changes by the two large "government-sponsored enterprises" (Fannie Mae and Freddie Mac). The first federal response to the crisis that benefited tenants was the Emergency Economic Stability Act (more commonly referred to as EESA or the "Bailout Bill"), enacted in October 2008. EESA, the product of intense debate about the best response to the growing global economic crisis, authorized the Secretary of the Treasury to spend up to $700 billion to purchase troubled assets from financial institutions.[19] This was the basis for what came to be known as the Troubled Asset Relief Program (TARP). EESA also included short provisions promoting foreclosure mitigation, homeowner assistance and tenant protections in connection with the mortgages that the federal government would come to own (directly or indirectly through mortgage-backed securities) as a result of the program.[20] Perhaps most importantly, the provisions ensured that federal ownership of mortgage assets would not preempt any state or local tenant protections for the occupants of the properties at the bottom of those mortgage assets.

Policy changes by Fannie Mae and Freddie Mac (which had entered federal conservatorship in September 2008) marked another step in the evolution of national tenant protections. Both entities take ownership of defaulting mortgages in pools whose securities they insure, so they are effectively the foreclosing lender for thousands of homes every month. Prompted in part by pressure from legal services groups and litigation, Fannie Mae began its National Real Estate Owned (REO) Rental Policy in January 2009. The policy permits renters in houses that Fannie Mae acquires through foreclosure to remain under a month-to-month lease instead of facing eviction.[21] In March 2009, Freddie Mac launched a similar program, the REO Rental Initiative, though it applies both to tenants and defaulting homeowners and requires occupants to prove their ability to pay rent.[22] Under both programs, tenants are also offered financial assistance to move out of the property as an alternative to staying on as tenants. Both programs came on the heels of broader eviction moratoria that the companies had announced in late 2008, but the programs remain in place even after the moratoria expired in early 2009. Though significant, neither program provides help to tenants in the many homes with subprime mortgages that were neither held nor guaranteed by the companies.

In February 2009, the enactment of the American Recovery and Reinvestment Act (ARRA or more commonly known as the "Stimulus Bill") provided some tenants with further protection. Under ARRA and a previous act (the Housing and Economic Recovery Act), congress dedicated almost $6 billion to the Neighborhood Stabilization Program. Under this program, HUD has allocated money to local governments and nonprofit agencies for, among other things, the purchase and rehabilitation of foreclosed houses. ARRA mandates that purchasers of foreclosed properties using Neighborhood Stabilization Program money provide existing tenants 90 days' notice before eviction or, if there is an existing lease, honor its remaining term.[23] Although this provision was likely to affect only a small portion of the many renters facing foreclosure-related displacement, it signaled the federal government's determination not to aggravate the problem through its own neighborhood development programs.

Finally, in May 2009, the President signed into law the Protecting Tenants at Foreclosure Act (PTAF), the most comprehensive federal measure to date addressing the plight of renters in the current crisis. PTAF, part of a broader foreclosure prevention and mitigation bill, effectively extends ARRA-like protections to renters in *any* residential property that goes into foreclosure after May 20, 2009. Specifically, the Act requires those who acquire properties out of foreclosure to provide at least 90 days' notice before evicting any tenant (provided the tenant continues to pay rent) or, if longer, honor the remaining term of a tenant's existing, bona fide lease. If a purchaser of a foreclosed property intends to occupy it as her primary residence, an existing lease can be terminated, but the tenant must still be provided 90 days' notice before he or she is required to leave the property. The Act does not undercut any existing state-level protections or provisions governing federal housing subsidies that may be stronger, but provides a minimum level of protection throughout the country. The provisions of PTAF, which are an extraordinary federal foray into to the traditional domain of state and local law, expire on December 31, 2012.

Unfortunately, protecting a tenant's legal right to stay in his or her home addresses only one of the risks tenants face when their landlord is in foreclosure.

But while the federal government has shown its willingness to increase the rights of tenants in properties that face foreclosure, it has conspicuously omitted many rental units from its efforts to prevent foreclosures. The Making Home Affordable program (MHA), the Obama administration's marquee foreclosure prevention effort, only allows owner-occupants to refinance or modify their mortgages to avoid foreclosure.[24] Thus, while the goal of the restriction is to avoid aiding a specific class of "undeserving" homeowners (property investors), it also has the effect of excluding many tenants from the stability that foreclosure avoidance would offer. The administration did, however, promise $1.5 billion in assistance to renters as part of its roll-out of MHA.[25]

CONCLUSION

In October 2008, in one of the more dramatic responses to the foreclosure crisis by local government, Sheriff Thomas Dart of Chicago unilaterally decided to halt evictions because he felt justice was not served by forcing rent-paying tenants out of their homes.[26] At that stage of the foreclosure crisis, tenants were still largely vulnerable to foreclosure in jurisdictions without "just" or "good" cause protections. Since the fall of 2008, however, federal legislation addressing the broader financial and foreclosure crises has tracked the growing awareness of national legislators of the risks facing renters. PTAF in particular, with its significant protections and broad national coverage was a major milestone.

Unfortunately, protecting a tenant's legal right to stay in his or her home addresses only one of the risks tenants face when their landlord is in foreclosure. Ensuring that vital utilities are paid for and provided and that basic maintenance is performed continues to be a serious challenge when so many landlords are in financial distress. Furthermore, because of the complexity of landlord-tenant and foreclosure laws, many tenants are likely still confused about what their rights are and could benefit from continued outreach. Accordingly, despite the awareness of the issues exhibited by national policymakers in the past two years, local public officials and advocates still have a crucial role in protecting renters from a foreclosure crisis that was not of their making.

NOTES

1. 110 Cong. Rec. H 10,393 (2008).
2. For a fuller discussion on renters in foreclosure see Vicki Been & Allegra Glashausser, *Tenants: Innocent Victims of the Nation's Foreclosure Crisis*, 2 Alb. Gov't L. Rev. 1, 1 (2009).
3. Because of the variation in state real estate law and landlord tenant law, this generalization comes with many caveats and exceptions. For more information about individual states, see *Without Just Cause: A Review of the (Lack of) Rights of Tenants in Foreclosure*, Report (NLCHP & NLIHC), Feb. 25, 2009.
4. Section 8 tenants are protected by 42 U.S.C.S. § 1437 (d)(1)(5); NYCRR § 2524. For more information, see *Preserving Section 8 Tenancies After Foreclosure* for an outline of the legal issues Section 8 tenants may face after foreclosure. Esme Caramello, Clinical Instructor, Harvard Law School, Presentation before Shriver Center National Center on Poverty Law (Oct. 2, 2008) (presentation available at http://www.povertylaw.org//poverty-law-library/research-guides/foreclosure-webinar/caramello.pdf).
5. D.C. Code 42-3505.01 (1985); N.J. Stat. 2A: 18-61.1; N.H. Title LV, Ch 540-2. The N.H. law is more restricted than the others because it does not apply to single-family homes acquired through foreclosure or rental units in an owner-occupied building with four units or fewer. N.H. Ch 540: 1-(a) (I).
6. *See, e.g.,* Seattle Municipal Code § 22.206.160 (C); Chicago Residential Landlord Tenant Ordinance § 5-12-130; Berkeley Rent Stabilization and Eviction for Good Cause Ordinance Sec. 13.76.130; Rent Stabilization Ordinance of L.A. § 151.09 (1979).
7. Ohio Rev. Code Ann. § 1923.04 (requiring notice be provided to tenants that they have three days to vacate the property before an eviction action is commenced); Ill. Comp. Stat. 5/15-1701 (h)(4) (2007).
8. *E.g.,* Press Release, City of Oakland Office of the City Attorney, City of Oakland Declares Utility Shut-Offs in Foreclosed Buildings to be a Significant Threat to Public Health and Safety (Dec. 22, 2008). (http://www.oaklandcityattorney.org); Lynda Carson, *Oakland declares 120-day delay in utility shut-offs, S.F. Bay View,* Dec. 24, 2008, www.sfbayview.com.
9. Manny Fernandez and Jennifer 8. Lee, *Struggling Landlords Leaving Repairs Undone, NY Times*, Jul. 14, 2009. www.nytimes.com.
10. Press Release, Dep't of the Public Advocate. Tenants in Foreclosed Properties Have Rights—Cannot be Evicted Due to Foreclosure Under NJ Law (Dec. 23, 2008), available at www.state.nj.us/publicadvocate/news.
11. *See, e.g.,* Hillary Copsey & Nadia Vanderhoof, *Foreclosures Have Rental Fraud Cases on the Rise in Florida, TCPALM* (Palm City), Apr. 26, 2008, http://www.tcpalm.com/news (reporting on a victim of renter fraud, and quoting local officials on a recent spike in rental fraud cases).
12. *See, e.g.,* Press Release, South Carolina Dep't of Consumer Affairs, Residential Rental Scam: Combining Fraud with Risk of Identity Theft (Aug. 6, 2008), available at http://www.scconsumer.gov (warning issued after reports of rental fraud in neighboring states); Commercial Crimes Bureau, Victim's Guide to Real Estate Fraud, L.A. County Sheriff's Dep't, available at http://www.lasd.org/sites; Brent Whiting, *Family Stung By Rental Fraud, Ariz. Republic,* Aug. 5, 2008, www.azcenral.com.
13. Brinkman, Jay, "An Examination of Mortgage Foreclosures, Modifications, Repayment Plans and Other Loss Mitigation Activities in the Third Quarter of 2007." 2008. Available at: http://www.mbaa.org/files/News/InternalResource/59454_LoanModificationsSurvey.pdf.
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15. Tenants Together, "Hidden Impact: California Renters in the Foreclosure Crisis," 2009, available at: http://www.tenantstogether.org/downloads/ForeclosureReport.pdf.
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17. Data provided by the Furman Center for Real Estate and Urban Policy on March 24, 2010. For methodology and analysis of 2007 data, see Press Release, Furman Center for Real Estate and Urban Policy, New Analysis of NYC Foreclosure Data Reveals 15,000 Renter Households Living in Buildings that Entered Foreclosure in 2007 (Apr. 14, 2008), available at http://furmancenter.org/files/pr/Furman_Release_Renters_in_Foreclosure_4_14_2008.pdf.
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19. 12 U.S.C. § 5201.
20. 12 U.S.C. § § 5219, 5220.
21. Press Release, Fannie Mae, Fannie Mae Announces National REO Rental Policy (January 13, 2009), available at www.fanniemae.com/newsreleases/2009/4581.jhtml.
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Avenue to Wealth or Road to Financial Ruin? Homeownership and the Racial Distribution of Mortgage Foreclosures

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I. INTRODUCTION

The current economic crisis has affected people and neighborhoods across America. Beyond the expected effects of any economic crisis—rising unemployment, increased debt, and difficulty paying bills—present-day challenges have struck in the heart of what has long been a central credo of well-being in America: owning a home. The U.S. government has encouraged and sponsored homeownership since the establishment of the Federal Housing Administration in 1934, and many scholars consider homeownership to be the main avenue to wealth accumulation for the majority of families (Oliver and Shapiro, 1995). It seems, however, that the widespread foreclosure crisis has transformed homeownership from a successful financial strategy into a serious liability. There is no doubt that the foreclosure crisis is widespread, but has it affected all neighborhoods to the same extent?

In this study we address the above question and report analysis more specifically about: (1) Which neighborhoods in several metropolitan areas across the United States are affected the most by the current foreclosure crisis? (2) What are the socio-economic characteristics of these neighborhoods? The unique dataset we use has geographically referenced information for each individual foreclosure, which we have aggregated to census tract level. We further focus on the distinctions between the most and the least affected neighborhoods based on rate of foreclosure, house values, income, education and race/ethnicity.

The paper is divided into the following sections: the next section focuses on prior research related to established residential patterns, for they are important in understanding the possible effects of foreclosures for the future stability of the affected neighborhoods. We specifically focus on the patterns brought about by continuous residential racial and economic segregation and the process of predatory lending, established well before the most recent proliferation of subprime mortgage instruments. Section three briefly discusses the data and methodology applied in our analysis, and sections four and five describe the results. The study contributes to the long line of research on residential patterns, housing segregation and discrimination, and predatory lending; as well as emerging research related to the current economic crisis.

II. PRIOR RESEARCH

From the recent evidence related to the foreclosure crisis, it appears that the most affected neighborhoods are those with minority populations, which include Blacks, Latinos and immigrant minorities. Therefore, it is likely that any effects of foreclosures upon neighborhoods are conditioned by the racial/ethnic and socio-economic composition of the neighborhood. Thus, the questions about how the foreclosure crisis is affecting neighborhoods can only be addressed based on knowledge of already existing racial/ethnic and socio-economic residential patterns. These patterns have been thoroughly studied in the urban scholarly literature. Here we consider two related aspects: residential segregation and predatory lending.

Residential Segregation

The persistent level of Black-white residential segregation has been given a central place in the scholarly literature. The explanations for such trends focus on consistent housing discrimination on the part of the white majority and an array of federal government policies (Galster, 1988; Massey and Denton, 1993; Oliver and Shapiro, 1995). Black-white segregation in the metropolitan U.S. has been continuously high (Massey and Denton, 1989). Massey and Denton (1989, 1993) argue that, overall, Blacks are much more segregated from whites than Latinos, and other research also shows that Blacks and Latinos are more segregated from whites than Asians (Spatial Structures for Social Sciences, 2001).

Studies of recent trends in racial residential segregation illustrate that Black-white segregation has declined at the national level between 1980 and 2000. Still, it remains the highest among minorities in 2000 (national weighted average of 65%, which means that across all major metropolitan areas in the United States, 65% of whites need to be reassigned to different neighborhoods in order to achieve integration), while, at the same time, in metropolitan areas, Latino-white and Asian-white segregation has slightly increased to 52 and 42%, respectively (Logan, Stults and Farley, 2004).

Between 1970 and 1980 and again in the 1990s, Latino-white segregation was much lower than the level of Black segregation, but it has substantially increased in many urban areas where the population of Latino immigrants has been growing (Massey and Denton, 1987; Logan, Alba, and Leung, 1996). Therefore, while Latinos continue to migrate to the U.S. and often select areas where there is a pre-existing large Latino population, they face greater residential segregation in these areas.

Latino and Black residents also faced increasingly acute economic segregation in the 1980s (Massey and Eggers, 1993; Abramson, Tobin and VanderGoot, 1995; Jargowsky, 1996). Although the levels of economic segregation (regardless of the measure used) for whites, Blacks and Latinos are generally much lower compared to levels of racial residential segregation, they have increased for all groups between 1970–1990 (Jargowsky, 1996:990). Examining the intersection of race and class, Fischer (2003) finds that poor Blacks continue to be segregated from others at higher levels than the overall level of segregation.

As a result of this continuous tradition of segregation, particularly of Blacks and Latinos, we can expect that foreclosures indeed affect such neighborhoods disproportionately. There is already some evidence that levels of segregation, and the racial/ethnic neighborhood composition play a central role in the foreclosure crisis as shown in the study by Been, Ellen, and Madar (2009). Across metropolitan areas in the United States, the authors find that both Black and Latino borrowers are more likely to receive high-cost home purchase and refinance loans in metropolitan areas where their racial group is more segregated.

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Predatory Lending

One of the well-documented trends in housing discrimination is predatory lending. According to the federal banking agencies, a subprime loan is one made to a borrower with a weak credit history or repayment capacity. Predatory lending is then defined as a subset of subprime lending, and includes at least one of the following three practices: making unaffordable loans based on the assets of the borrower rather than on the borrower's ability to repay; inducing a borrower to refinance a loan repeatedly in order to charge high points and fees each time the loan is refinanced; or engaging in fraud or deception to conceal the true nature of the loan obligation from an unsuspecting or unsophisticated borrower (Marcisco, 2002).

Many studies show that predatory lending has systematically accompanied the housing market experience of Blacks and Latinos well before the current crisis (Massey, 2005; Williams, Nesiba and McConnel, 2005; Bowdler, 2005; Apgar and Calder, 2005; Squires and Kubrin, 2006, among others). Among the more recent studies, Apgar and Calder (2005) show that borrower's race and their neighborhood's racial composition are significantly linked to their access to prime loans. The authors argue that, in 2001, prime conventional lenders accounted for nearly three quarters of all home purchase lending to whites, but less than 50% for Latinos and less than 40% for Blacks. The racial gap in prime lending persists even after controlling for borrower income. addition, Apgar and Calder found a gap between the shares of prime loans made in neighborhoods of different racial and ethnic composition independent of the race of the borrower. According to the authors, prime lending accounts for 70% of all home purchase lending but only 57% of home purchase lending in lower-income census tracts. For lower-income census tracts in which Blacks account for over 50% of total households, the prime share for Black borrowers falls to 28%.

Analyzing the link between foreclosures and neighborhoods in the state of Massachusetts, Gerardi and Willen (2009) advance two main findings relevant to our study. First, the subprime mortgage boom led to both more purchases and more ownership terminations by minority buyers and second, subprime borrowers were more likely both to default and to sell.

Therefore, based on the legacy of residential segregation and predatory lending, we can expect that the neighborhoods with higher proportions of Black and Latino residents will be disproportionately more affected than majority native white neighborhoods. We suggest that at least two mechanisms explain an observed association between neighborhood race and ethnicity and foreclosure rates. First, because of the history of housing discrimination, minorities and immigrants represented a large fraction of the non-homeowning population, and were thus more likely to be targeted during the subprime boom. Second, because many of these families had little experience with ownership and because residential segregation results in uneven information across neighborhoods about lending and ownership, it is likely that many of these buyers did not have access to information about the quality of the loans they were receiving. We emphasize that these mechanisms highlight neighborhood-level processes that make some groups more vulnerable to subprime lending and subsequently to foreclosure.

III. DATA AND METHODS

Quantitative data used in the analyses were obtained from RealtyTrac foreclosure databases, the 2000 U.S. Census, and the 2008 American Community Survey. Proprietary data on foreclosures was obtained from RealtyTrac for the period May 2008 through April 2009, and each foreclosure was geocoded and assigned to a specific Census tract. The availability of these data makes this study both unique and very timely. Data from Census 2000 was used to obtain neighborhood characteristics. Neighborhood and community characteristics were updated to 2008 using the American Community Survey and an estimating process developed by Beveridge.[1]

Variables. The variable used in calculating the foreclosure rate is based on the information of real estate agencies and banks taking possession of the home, which property is called Real Estate Owned or REO. We decided to use this variable for two reasons: (1) The foreclosure process is quite complicated and diverse across counties and states; however, there is one universal feature among the procedures and it is when a property is taken over by a bank or a real estate agency; (2) REO properties are considered as the final stage in the foreclosure process and therefore it is also a clear indicator that a foreclosure has indeed taken place. Many times a property can go through some initial default stages but not end up being foreclosed upon. Therefore, we have selected this final stage in the process so that we have a consistent foreclosure rate for the entire country. In calculating the foreclosure rate we first aggregate the individual foreclosures to census tracts, and then estimate the rate as a percentage of the owned housing units in the tract.

Among the rest of the variables used in the analysis, population density, year built and rent are derived from Census 2000 public data files. The rest of the variables are based on the estimated data. The selection of metropolitan areas is based on prior research establishing California, Arizona, Nevada and Florida as four states with the highest overall rates of foreclosure. We have selected the largest metropolitan areas in each state and compare them with the other largest metropolises, which are not as affected by this crisis, New York and Chicago.

Method. At this stage of our analyses, we have focused on establishing some similar and dissimilar patterns in the distribution of foreclosures across neighborhoods in each of the seven metropolitan regions. We study the variation of the foreclosure distribution within each urban region and measure it by comparing the socio-economic patterns for the first and fifth quintiles. Secondly, we select two urban regions, Chicago and Phoenix, and study the spatial patterns in the distribution of foreclosures by neighborhoods. We conduct spatial analysis using Local Indicators of Spatial Autocorrelation or LISA (Anselin, 1988) and test for global and local spatial autocorrelation, identifying statistically significant spatial clusters.[2]

IV. FINDINGS

The foreclosure crisis is widespread but it affects some neighborhoods more than others. Table 1 on following pages: 42–43 shows the distinctions between the first and fifth quintiles of the foreclosure rate distribution in seven metropolitan areas. The variation in the distribution of foreclosures is quite significant within each metropolitan area yet a clear trend can be found: on average, there is an overrepresentation of minorities in the neighborhoods with the highest concentration of foreclosures. Furthermore, this trend seems to be independent of whether or not the metropolitan area exhibits a higher or lower foreclosure rate. For example, Chicago has a low overall foreclosure rate, 2.5%. Las Vegas, on the other hand, has one of the highest rates among urban areas, 17.5%. Nevertheless, Blacks are significantly overrepresented in the census tracts with the highest concentration of foreclosures in Chicago and Latinos are overrepresented in the top foreclosure tracts in Las Vegas.

Table 1. Socio-Economic Characteristics by the First and the Fifth Quintiles of the Foreclosure Rate Distribution.

Characteristics	METROPOLITAN AREAS											
	Chicago			Las Vegas			Los Angeles			Miami		
	All Tracts N=2053	Top 20 N=379	Bottom 20 N=539	All Tracts N=343	Top 20 N=68	Bottom 20 N=76	All Tracts N=2626	Top 20 N=511	Bottom 20 N=591	All Tracts N=918	Top 20 N=176	Bottom 20 N=218
Percent REO	2.5	9.3	0.2	17.5	64.2	2.2	3.9	11.9	0.4	2.6	8.0	0.3
Percent Owners	63.5	41.0	69.2	60.3	54.3	62.2	53.0	37.3	62.8	67.4	50.8	77.4
Percent Foreign Born	16.3	9.0	13.6	21.5	24.1	16.7	33.6	42.3	25.2	33.5	35.0	21.1
Population Density	5,778	12,134	4,654	5,401	4,226	3,881	9,097	15,206	6,252	6,043	7,945	3,610
Median Year Built	1946	1944	1960	1987	1990	1987	1962	1961	1962	1970	1973	1959
Median House Value ($$)	254,160	178,108	323,464	258,122	241,942	281,390	527,864	412,992	651,784	279,210	222,199	353,898
Median Rent ($$)	898	765	926	1,081	991	1,147	1,206	982	1,422	1,117	983	1,227
Median Income ($$)	58,888	31,417	75,916	57,800	54,492	58,706	62,969	40,786	87,787	53,896	40,756	66,171
Income (Percent)	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Less than $25,000	23.6	43.0	16.7	17.6	19.7	19.3	21.2	32.5	13.9	24.8	32.7	19.1
$25,000–$49,999	22.1	25.4	17.4	25.6	26.6	23.0	22.3	27.6	15.3	24.8	27.0	21.7
$50,000–$74,999	17.9	14.9	16.7	21.9	22.1	19.6	17.6	16.9	15.1	17.7	16.4	16.9
$75,000–$99,999	12.7	8.0	13.6	14.0	13.4	13.0	12.1	9.6	12.6	11.4	9.7	12.1
$100,000–$124,999	8.1	3.8	10.0	8.2	7.7	8.5	8.6	5.2	11.2	7.3	5.4	8.6
$125,000 and above	15.7	5.3	24.5	12.6	10.3	15.4	18.1	8.1	31.8	14.0	8.6	21.0
Education (Percent)	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Less than High School	17.7	29.1	9.8	17.6	20.0	14.5	24.6	42.7	9.5	17.9	24.1	10.7
High School Diploma	26.3	31.8	20.3	30.9	32.3	30.3	21.6	23.4	16.3	28.0	30.8	24.8
Some College	25.3	26.7	22.9	30.8	30.2	31.1	25.4	20.0	25.9	25.4	23.5	27.1
College Graduate	18.5	8.0	26.1	13.6	12.4	14.7	18.7	10.0	28.3	18.4	14.2	23.3
Professional Degree	11.8	4.4	19.5	6.8	5.1	8.2	9.8	4.0	18.8	10.4	7.2	14.4
Racial Composition	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Percent White	49.4	6.5	72.0	53.8	46.0	65.9	34.3	13.6	57.4	43.3	26.8	70.1
Percent Black	25.2	75.1	9.0	8.6	12.2	5.7	6.9	11.3	2.9	19.7	36.6	8.6
Percent Latino	19.4	17.0	10.8	27.3	31.3	19.2	42.9	64.9	17.8	34.0	33.2	18.4
Percent Asian	4.7	1.2	6.5	6.6	6.8	5.9	13.3	8.2	18.2	1.9	2.0	1.8
Percent Other	1.2	0.3	1.7	3.7	3.8	3.7	2.6	2.0	3.7	1.0	1.4	1.0

Table 1. (continued)

Characteristics	METROPOLITAN AREAS								
	New York			Orlando			Phoenix		
	All Tracts N=4486	Top 20 N=456	Bottom 20 N=664	All Tracts N=329	Top 20 N=66	Bottom 20 N=69	All Tracts N=693	Top 20 N=136	Bottom 20 N=152
Percent REO	0.7	6.1	0.0	2.7	9.6	0.3	6.9	22.7	0.9
Percent Owners	53.5	36.1	52.6	66.1	50.9	75.9	67.5	59.8	75.5
Percent Foreign Born	28.3	31.8	27.8	15.3	19.3	10.9	17.3	29.0	10.7
Population Density	14,326	21,525	17,235	2,697	2,636	2,635	4,470	5,661	3,214
Median Year Built	1927	1947	1908	1979	1981	1976	1972	1976	942
Median House Value ($$)	434,792	330,545	470,648	220,669	194,001	268,567	229,555	181,921	268,985
Median Rent ($$)	1,129	946	1,153	1,010	976	1,085	964	831	1,035
Median Income ($$)	65,919	41,687	69,521	53,621	45,912	65,948	56,936	44,086	66,960
Income (Percent)	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Less than $25,000	21.2	33.4	20.5	21.2	25.1	16.1	20.3	28.1	16.4
$25,000–$49,999	20.1	25.1	18.7	27.0	31.1	22.0	25.4	30.1	21.3
$50,000–$74,999	16.5	17.2	15.7	20.1	18.7	19.8	19.5	18.2	18.4
$75,000–$99,999	12.4	10.1	12.0	12.0	9.9	14.0	13.2	11.4	13.8
$100,000–$124,999	9.2	6.1	9.0	7.5	6.3	9.8	8.3	5.6	9.7
$125,000 and above	20.1	8.3	22.3	12.2	9.1	18.5	13.2	7.0	19.0
Education (Percent)	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Less than High School	17.3	29.0	15.9	13.8	17.5	7.8	17.8	34.0	8.9
High School Diploma	28.1	34.4	25.4	28.9	30.2	23.8	25.1	28.6	21.8
Some College	21.1	21.3	20.1	29.2	28.3	28.8	30.5	24.7	30.3
College Graduate	19.3	10.3	21.2	19.0	16.7	25.6	16.9	8.6	22.6
Professional Degree	13.1	4.9	15.5	9.1	7.4	14.0	9.3	4.2	14.5
Racial Composition	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Percent White	48.6	11.1	54.7	58.1	43.4	74.6	59.4	32.1	73.5
Percent Black	18.9	48.7	13.0	16.1	25.9	7.6	4.0	6.2	2.7
Percent Latino	21.0	33.5	19.3	20.2	24.2	13.2	30.6	57.4	15.5
Percent Asian	9.1	4.6	10.4	3.3	3.4	2.9	2.6	1.6	3.1
Percent Other	2.4	2.2	2.6	2.4	3.1	1.8	3.4	2.6	5.1

Which specific minority group is overrepresented depends on the history of racial composition in the given area. In metropolitan regions, like Chicago, which have has a long history of racial residential segregation between whites and Blacks and where about a quarter of the overall population is Black, it can be expected that the most disadvantaged group is African Americans. In places like Las Vegas, Los Angeles, and Phoenix, Latinos constitute the largest minority population and have been excluded from majority-white neighborhoods. Therefore, it is reasonable to expect that they are among the largest groups in disadvantaged neighborhoods (with high foreclosure rates). In Miami, again given its history of immigration and residential racial divisions, both Latino and Black residents are overrepresented in the tracts affected by the highest foreclosure rate.[3]

Given the history of residential segregation, the neighborhood concentration of minorities is traditionally accompanied by socio-economic disadvantages, such as lower income and education, particularly compared to mostly white neighborhoods. Similar trends are recorded in Table 1. On average, foreclosures have affected neighborhoods with much lower house values, lower rents, lower median income and lower education, compared both to the overall estimates for the metropolitan area and to the estimates for neighborhoods with fewer foreclosures. For example, the median house value in the top 20% of the foreclosure rate distribution by census tract in Chicago is significantly lower ($178,108) than the median value across all census tracts ($254,160) and it is almost half of the median value for the bottom 20% ($323,464).

While the same patterns are repeated for income and education across all seven metropolitan areas, it is important to point out that the comparison here is not between the top and the bottom 20% of the income distribution. That is, we are not studying the long-existing distinctions between rich and poor, or between the most affluent and the poorest neighborhoods. The neighborhoods most affected by the foreclosure crisis are not among the most destabilized and destitute of places. On the contrary, these neighborhoods have respectable median incomes, ranging from $31,417 in Chicago to $54,492 in Las Vegas. By all sociological standards, these incomes constitute anywhere from lower middle-class to solid middle-class income neighborhoods. The neighborhoods also comprise a sizeable proportion of homeowners, ranging from 36% in New York to almost 60% in Phoenix. Such levels of homeownership are usually associated with stable neighborhoods, at least until they were targeted by brokers and financial institutions selling subprime mortgages.

Therefore, it is important to realize the sad irony here: because homeownership was considered as one of the ways in which to increase the stability in a neighborhood, bringing the lower middle class into the realm of homeownership was supposed to produce more prosperous neighborhoods. Unfortunately, by relaxing the standards of giving out mortgages and various other loans, the effect is quite the opposite: instead of being a benefit, homeownership has become one of the most serious liabilities for both residents and neighborhoods.

What further complicates the story is the fact that the spread of foreclosures has a spatial component: neighborhoods with higher foreclosure rates tend to be spatially closer to each other or produce statistically significant spatial clusters. The sociological implication of this finding is that the foreclosure crisis does not affect isolated neighborhoods; it affects clusters of neighborhoods. The social significance of this finding is that instead of having to address the problems of a few neighborhoods, larger areas are affected; thus multiplying the disadvantages. Tables 2 and 3 on the following two pages show the overall socio-economic distinctions between foreclosure spatial clusters and affluent spatial clusters (based on median house values) in Chicago and Phoenix. These distinctions are even more striking compared to Table 1. In Chicago, the median house value across the foreclosure clusters is $185,411 and in the affluent clusters it is $485,000; the median income in the foreclosure clusters is $23,600, whereas in the affluent clusters it is *four* times higher, $96,122. In Chicago, we also find an almost complete racial mirror image between the foreclosure clusters and the affluent clusters: while Blacks constitute 92% of the population in foreclosure clusters, the whites constitute 76% of the population in the affluent clusters.

Table 2. Socio-Economic Characteristics by Spatial Clusters.

Characteristics	METROPOLITAN AREAS					
	Chicago			Phoenix		
	Census Tracts N=2053	REO Clusters N=123	Affluent Clusters N=2053	Census Tracts N=693	REO Clusters N=43	Affluent Clusters N=58
Percent REO	2.5	16.2	0.5	6.91	19.7	2.1
Percent Owners	63.5	30.0	66.4	67.5	65.7	82.3
Percent Foreign Born	16.3	2.9	14.5	17.3	25.5	10.0
Population Density	5,778	14,560	13,843	4,204	3,670	2,131
Median Year Built	1946	1931	1955	1971	1978	1952
Median House Value ($$)	254,160	185,411	485,001	229,555	179,429	461,393
Median Rent ($$)	898	771	1,186	963	859	1,244
Median Income ($$)	58,888	23,603	96,122	56,935	45,213	93,735
Income (Percent)	100.0	100.0	100.0	100.0	100.0	100.0
Less than $25,000	23.6	52.3	13.0	20.3	27.4	8.6
$25,000–$49,999	22.1	24.0	14.8	25.4	29.3	13.7
$50,000–$74,999	17.9	11.3	14.6	19.5	19.3	16.3
$75,000–$99,999	12.7	5.4	12.2	13.2	12.2	14.7
$100,000–$124,999	8.1	2.7	10.2	8.3	6.0	11.6
$125,000 and above	15.7	4.3	35.9	13.2	6.9	33.6
Education (Percent)	100.0	100.0	100.0	100.0	100.0	100.0
Less than High School	17.7	30.9	7.2	17.8	33.6	3.6
High School Diploma	26.3	32.9	12.0	25.1	29.5	14.3
Some College	25.3	24.8	17.7	30.5	26.0	27.8
College Graduate	18.5	6.7	35.8	16.9	7.2	32.1
Professional Degree	11.8	4.1	27.9	9.3	3.9	20.4
Racial Composition	100.0	100.0	100.0	100.0	100.0	100.0
Percent White	49.4	2.0	76.1	59.4	30.1	85.4
Percent Black	25.2	91.8	4.9	4.0	8.4	1.8
Percent Latino	19.4	4.6	12.3	30.6	58.7	7.9
Percent Asian	4.7	1.3	6.0	2.6	1.4	3.2
Percent Other	1.2	0.3	0.7	3.4	1.4	1.8

Table 3. Socio-Economic Characteristics by City/Suburb.

Characteristics	METROPOLITAN AREAS											
	Chicago						Phoenix					
	City			Suburb			City			Suburb		
	All Tracts N=865	REO N=743	No REO N=122	All Tracts N=1188	REO N=1150	No REO N=38	All Tracts N=406	REO N=403	No REO N=3	All Tracts N=287	REO N=274	No REO N=13
Percent REO	4.2	4.8	0.0	1.3	1.3	0.0	7.6	7.7	0.0	5.9	6.2	0.0
Percent Owners	46.4	47.4	40.3	75.8	76.0	71.5	63.5	63.8	28.3	73.1	73.6	63.1
Percent Foreign Born	17.3	17.6	15.3	15.6	15.7	11.2	21.0	21.1	15.0	11.9	11.8	15.0
Population Density	17,502	17,913	14,996	4,156	4,189	3,146	5,447	5,485	356	3,088	3,139	2,000
Median Year Built	1923	1945	1791	1964	1966	1912	1977	1977	1968	1964	1985	1525
Median House Value ($$)	261,350	255,537	296,747	248,925	247,133	303,158	223,871	224,884	87,698	237,597	244,193	98,582
Median Rent ($$)	808	819	743	965	967	909	920	922	673	1,026	1,047	586
Median Income ($$)	44,771	43,624	51,756	69,168	68,758	81,564	53,663	53,757	41,020	61,565	62,789	35,761
Income (Percent)	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Less than $25,000	32.7	33.3	28.6	16.9	16.9	17.5	22.4	22.3	28.6	17.3	17.0	22.6
$25,000–$49,999	23.3	24.3	17.1	21.3	21.3	20.1	27.1	27.1	31.7	23.1	23.3	17.9
$50,000–$74,999	16.6	16.8	15.0	18.8	18.9	16.7	18.8	18.8	20.1	20.4	20.7	15.7
$75,000–$99,999	9.9	10.0	9.4	14.7	14.7	14.1	12.2	12.2	11.7	14.6	14.8	9.1
$100,000–$124,999	5.8	5.7	6.3	9.8	9.8	8.5	7.3	7.4	3.8	9.6	9.8	5.5
$125,000 and above	11.1	10.1	17.5	18.8	18.7	23.3	12.3	12.4	4.7	14.6	14.9	6.8
Education (Percent)	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Less than High School	23.9	25.0	17.4	13.2	13.3	11.8	21.3	21.3	17.0	12.9	12.9	14.0
High School Diploma	25.1	26.6	16.2	27.2	27.3	26.1	25.2	25.2	23.9	24.9	24.8	27.2
Some College	22.3	23.4	15.7	27.5	27.6	26.2	28.4	28.3	32.4	33.5	34.1	20.7
College Graduate	16.5	15.3	24.1	19.9	19.8	20.8	16.3	16.3	18.0	17.8	18.2	9.2
Professional Degree	11.1	9.8	19.1	12.3	12.2	16.0	8.8	8.8	8.4	10.0	10.2	6.0
Racial Composition	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Percent White	29.1	26.6	43.9	64.3	63.9	74.6	54.4	54.5	44.3	66.5	67.7	41.8
Percent Black	41.1	43.5	26.5	13.7	13.8	8.6	4.4	4.4	3.9	3.3	3.4	2.2
Percent Latino	24.0	25.3	15.9	16.1	16.3	11.1	35.9	35.9	42.8	23.0	22.9	25.0
Percent Asian	4.5	3.9	8.5	4.8	4.8	5.0	2.2	2.2	2.1	3.2	3.2	3.2
Percent Other	1.3	0.7	5.1	1.1	1.1	0.6	3.1	3.0	7.0	3.9	2.8	27.8

Similar are the distinctions in Phoenix, where Latinos are the majority population in the foreclosure clusters (almost 60%) and the whites are the overwhelming majority of the affluent clusters, 85%. The disparity is again exacerbated by the residential spatial patterns, associated with each type of cluster, that correspond to the history of racial inequality. In both cities, the foreclosure and affluent spatial clusters are in different sections of the metropolitan area. The foreclosure clusters in Chicago are in the South Side, notable for its concentration of African Americans. In Phoenix, the Latino immigration of the last several decades certainly contributes to differential racial/ethnic residential patterns in the city. Yet, the median income across foreclosure clusters in Phoenix is $45,213, which is almost twice as high as the median income across foreclosure clusters in Chicago, $23,603. This finding is all the more remarkable given that the median house value of foreclosure clusters in the two cities are comparable ($185,411 in Chicago and $179,429 in Phoenix). Therefore, there are distinctions between the neighborhoods with the highest concentration of foreclosures depending on the larger metropolitan area and its history of racial residential patterns.

Another trend is that the foreclosures have affected both cities and suburban areas. In Chicago, 86% of central city tracts have been affected by foreclosures and 97% of the suburban tracts have been affected. In Phoenix, almost all neighborhoods in the entire metropolitan area have been affected, albeit to a different degree. It seems that the distinctions between the affected and unaffected neighborhoods within cities and within suburbs are not as significant as in the previous two tables (and in Phoenix, the distinctions are not particularly meaningful). Thus, it seems that the foreclosure process may have further eroded what already seems like porous differentiation between central cities and suburban areas.

The foreclosure process may have further eroded what already seems like porous differentiation between central cities and suburban areas.

V. CONCLUSION

In this study we address two research questions: (1) Which neighborhoods are most affected by the current foreclosure crisis? (2) What are the socio-economic characteristics of these neighborhoods? Based on a unique geographically-referenced dataset for several metropolitan areas in the United States, we find that there are significant socio-economic distinctions between neighborhoods with the highest and lowest concentration of foreclosures. We find evidence that the foreclosure crisis, while widespread, has affected communities differentially: homeowners living in minority neighborhoods, particularly with concentrations of African Americans and Latinos, have been most adversely affected by the crisis. Contrary to that, homeowners in whiter and more affluent communities seem not to have suffered as much. Moreover, the housing crisis has affected many middle-class neighborhoods, which means that we will most likely witness the transformation of such communities into disadvantaged places. Thus, we can conclude that homeownership has not been a winning strategy for all neighborhoods, including middle-class communities.

A second important conclusion is that the foreclosure crisis is bringing more segmentation to the already fragmented urban metropolis. While in the era of globalization, the avenues of information and communications are merging, the avenues for financial stability continue to diverge. The clustering effects related to the diffusion of foreclosures in Chicago and Phoenix suggests that both old and new larger disadvantaged communities should be brought to the fore of urban policy making. Finding statistically significant spatial clusters, based on foreclosure distributions, means that the crisis has affected not isolated neighborhoods but larger urban areas. Many of these areas are the ones, as in Chicago, where the federal government, local governments, and residents placed their hopes and contributed their investments to create stable and prosperous neighborhoods. Such hopes and investments seem to have been shattered together with the housing prices.

It is not so difficult now to analyze the reasons for the September 2008 crash; what is more difficult to do is to suggest the best ways in which the worst effects of the crisis for families and neighborhoods can be remedied. Therefore, the consequences of widespread foreclosures should be further analyzed so that a similar devastating impact upon America's communities can be avoided in the future.

NOTES

1. Here we use Census tract data with change at the PUMA level between 2000 and 2006 allocated to each tract. In this way, the social characteristics of those areas which experienced very rapid growth will be included. For more information about the calculation of the estimates, contact Andrew A. Beveridge.
2. For further methodological description, see Baller, R., *et al.* (2000).
3. It is safe to expect that we will find recent Latino immigrants among the most disadvantaged, rather then Cubans from the "Golden Wave."

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Part III: Out of the Crisis: The Search for Policy Alternatives

Two Strategies to Confront the Crisis: Value Capture in Inclusionary Zoning and Converting Foreclosed Properties to Community Land Trusts

—Anthony Flint

Taking my turn at addressing the current housing crisis, there is only one thing of which I am fairly certain: I would be, in these perilous times, the only contributor to invoke the name of Henry George.

George, the 19th century political economist and author of *Progress and Poverty* ([1879] 1912), believed that land should be common property, subject to a single tax, and that all that man created on land could be owned and the source of prosperity. His proposal that land value was increased by government action is an important underpinning in the two specific initiatives that have great relevance in the current: *value recapture in inclusionary housing,* and *community land trusts.*

In the "silver buckshot" approach to policy challenges, a diversity of strategies is embraced. The interventions in affordable housing have included: location-efficient mortgages; workforce housing; zoning reform to increase supply and diversity including multi-family and rental housing; lifting prohibitions on mixed-use, density, and accessory dwelling units such as carriage houses, in-law apartments, and granny flats.

Inclusionary zoning, or the broader term inclusionary housing, has been particularly successful in establishing a basic foundation of affordability in new development. Inclusionary housing is based on the idea that a certain percentage, typically between 10 and 20%, of new residential development should be reserved to be accessible by those earning 80% of area median income. This "set-aside" can be provided on-site, off-site, or funded all or in part through a trust fund into which the developer makes contributions.

In many cases, when municipalities have passed inclusionary housing ordinances, the development community has insisted on provisions for so-called density bonuses—the capacity to increase density in a given project, in return for setting aside a percentage of affordable homes. Yet two scholars who have done research for the Lincoln Institute of Land Policy, Nico Calavita, a city planning professor at San Diego State University, and Alan Mallach, nonresident senior fellow at the Metropolitan Policy Program at The Brookings Institution, have been concerned with a kind of opposite incentive—namely, that when there is a zoning change that facilitates development, local government may seize the opportunity to compel builders to include more affordable housing.

Calavita and Mallach have tracked social housing in the United Kingdom and public housing elsewhere in Europe, where recently there has been a shift towards inclusionary housing strategies. These European reforms presume that there is a fundamental basis for the public obligations of the development community to absorb the cost of providing affordable housing, either in initial land transactions or in subsequent profit margins.

"It is widely argued that increases in land values do not generally result from the owner's unaided efforts, but rather from public investments and government decisions, and are therefore in whole or part 'unearned,'" Calavita and Mallach wrote in the January 2009 issue of *Land Lines.* "This argument is accepted in many European countries, leading to the adoption of regulations that attempt to recapture or eliminate what are considered to be windfall profits associated with land development. Our research, supported by the Lincoln Institute, has found that in many countries, inclusionary housing is viewed explicitly as a mechanism to recapture unearned increments in land value" (Cavalita and Mallach, 2009).

In the U.S., perceptions of a "right to develop" establish a different set of expectations. But this is changing, as hard-pressed local governments seek to capture the value of zoning changes that open up land to residential development. The pioneers include Washington State, which, in 2006, enacted HB 2984, which authorizes inclusionary housing anytime there is an upzoning; and New Jersey, which requires that in cases where zoning is changed from non-residential to residential, any development within two years must include a set-aside for low- and moderate-income families.

In a two-tiered approach, communities could impose modest inclusionary requirements within an existing zoning framework, incorporating incentives such as density bonuses. But when there are significant zoning changes of either specific parcels or larger areas, local governments could impose inclusionary requirements that could be substantially higher than the 10 to 20% standard for set-asides, justified by the principle of land value recapture.

Inclusionary zoning works when there is growth in residential real estate, and clearly today there is a pause. But developers, and especially urban infill developers, will continue to acquire land and will be laying the groundwork for future zoning changes. The time may be right to consider a land value capture element in inclusionary zoning as another way of changing the nature of the transaction and the very basis of land values and housing.

Mallach and Cavalita have more fully detailed the international experience in inclusionary housing—as a means of using the planning system to create affordable housing and foster social inclusion by capturing resources created through the marketplace—in Inclusionary Housing in International Perspective Affordable Housing, Social Inclusion, and Land Value Recapture (Lincoln Institute, 2010, http://www.lincolninst.edu/pubs/1791_Inclusionary-Housing-in-International-Perspective). They examine programs, regulations, and laws that require or provide incentives to private developers to incorporate affordable housing, whether on-site, off-site, or by contributing to a fund, in-depth in seven countries (United States, Canada, England, Ireland, France, Spain, and Italy) and report on experiences in others, including South Africa, Australia, New Zealand, Malaysia, Israel, India, and Colombia.

* * *

There is today a similar moment of opportunity to build on the success of another affordable housing strategy, the community land trust (CLT). CLTs are typically run by a nonprofit entity, such as a community development corporation. Often working in partnership with municipalities, these entities will purchase or acquire land for housing, and through such methods as establishing a 99-year ground lease, effectively take the land out of the equation that determines the price of the housing. Buyers purchase the homes only, and do not pay for the land they sit on. There are limits on resale profits, so if there is a government investment, it is sustained as permanently affordable housing, rather than disappearing after the initial purchase.

The roots of the Community Land Trust model in the U.S. can be traced to several thinkers, including Henry George, Ebenezer Howard, Arthur Morgan, and Ralph Borsodi, and social movements in the U.S. and abroad, such as the land- and village-gift movement associated with India's freedom against colonial rule. The first CLT in the United States, New Communities Inc., was established in 1968 in rural Georgia. While there were about two dozen in the 1980s, growth accelerated in the 1990s and subsequently. According to a recent Lincoln Institute survey, most are concentrated in the Northeast (37%) and the West (29%), with the remainder in the Midwest (19%) and the South (15%). The study identified 120 CLTs providing at total of 6,500 homes, primarily detached, single-family new construction in urban areas. Most CLTs consist of fewer than 100 homes. Last summer, the Lincoln Institute published a Policy Focus Report, *The City-CLT Partnership* (Davis and Jacobus, 2008) which identified several cases in which affordable, green, transit-accessible homes have been made available through the community land trust model. It is estimated that there are at least 200 CLTs all around the country today, from Irvine, California, to Chicago and Austin, Texas, and 20 different communities in Florida.

The housing bubble, credit crunch and rampant foreclosures have all brought new relevance to the community land trust model. The number of foreclosures in the U.S. was estimated at 3 million in 2008, representing nearly 2% of all American homes. President Obama recently proposed a sweeping housing aid program that included significant measures to stave off further foreclosures. The Housing and Economic Recovery Act (HERA) provides funding for such re-purchases: "The Secretary shall, by rule or order, ensure, to the maximum extent practicable and for the longest feasible term, that the sale, rental or redevelopment of abandoned and foreclosed-upon homes and residential properties under this section remain affordable to individuals or families." (The Housing and Economic Recovery Act of 2008, section 2301 (f)3B.)

Meanwhile, cities across the country are trying the best they can to shift vacated properties before they have a negative impact on entire neighborhoods—in many cases buying up the properties themselves, typically to sell to another viable developer. Boston, Minneapolis, San Diego, and several other cities are buying foreclosed properties to refurbish and resell them to developers and homeowners, hoping to thwart further decline in urban neighborhoods. In contrast, an alternative strategy has been emerging in the quest for neighborhood stabilization: turning foreclosed properties into CLTs. The pioneers in turning foreclosed properties into CLTs include advocates and leaders in Massachusetts, Colorado, and Minnesota. About 200 practitioners of community land trusts gathered in December 2008 at the National CLT Network annual conference in Boston, co-sponsored by the Lincoln Institute, to focus on best practices and acquisition strategies. The idea has gained some traction, though "everybody's a little skittish right now," said John Barros, head of the Dudley Street Neighborhood Initiative, which includes a major community land trust of more than 400 homes in the Roxbury section of Boston. A webinar on neighborhood stabilization and community land trusts is at the NCB Capital Impact website, http://www.ncbcapitalimpact.org/.

CLTs are nothing if not stable—they cut across the peaks and valleys of boom-and-bust housing cycles. Homeowners have control, predictability in mortgage costs, inheritability, and wealth creation. CLTs and buyers form a partnership. "The land trust is there to back up the homeowner in financial trouble," says Barros. "We work with the lenders, who have agreed to give us rights that almost always let us work something out."

National survey results show that only a fraction of homes on community land trust land have gone into foreclosure. There were only two in 2007. In dozens of cases, the community land trust has intervened to head off default.

While there are necessarily many approaches to re-engineering our way out of the current housing crisis amid an historic economic downturn, it is a worthwhile exercise to consider the policies that have brought about a kind of slow-and-steady stability over the years—and to build on them. Inclusionary housing can be expanded by embracing the principle of land value recapture, and community land trusts offer a valuable alternative to dealing with a rash of foreclosures in neighborhoods across the country. These are two important ways to take advantage of this moment and ensure more affordability in the types of communities that we know we need to flourish as more sustainable human settlement in the years to come.

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Organizing Against the Economic Crisis by Creating a Bank Tenant Association

—Steven Meacham

Before Jean Bertrand Aristide became president of Haiti in 1991, he was a radical priest organizing in the slums. The oligarchy challenged him by asking if he believed in the class struggle. He responded essentially that the question was not relevant. Just like the earth goes around the sun, the class struggle continues regardless of whether he believes in it. The only relevant question is, he said, "Which side are you on?"

Boston experienced more than 1,200 foreclosures last year. That is about 2,400 households, or 4–5,000 people, faced with forcible eviction from their homes after foreclosure. Such a number of people losing their homes would elicit international sympathy if caused by a natural disaster. This disaster, however, is human-made and should elicit our outrage.

The richest and most powerful institutions in the country used their control of the market to try to get even richer at the expense of the majority. They did not just offer millions of individual bad loans, especially directed at communities of color. They created a speculative real estate bubble. Dean Baker of the Center for Economic Policy and Research has noted that real estate values historically tracked incomes until about 10 years ago. The financial institutions fueled a bubble upon which their profits depended. This forced people to pay inflated prices, by definition too high for their real income.

For us to point out the profound inequalities of class, race and gender that characterize this crisis, for us to refer to it as "an attack," is simply to state the obvious. The question, as Aristide might suggest, is how do we respond?

THE CRISIS AND THE POLITICAL MOMENT

The financial/economic crisis, along with the last election, is arguably a "political moment." Political moments are times of potential conflict and change, for good or bad. They are times when large structures of power are revealed to have obvious contradictions, when the common sense of one era doesn't seem to make sense anymore. Most important, they are times when localized resistance is helping reveal those contradictions and change what is common sense.

One arena for this political moment to play out is post-foreclosure eviction defense. While most discussion nationally has focused on the need for "workout counseling" and loan modification before foreclosure, eviction defense *after* foreclosure has proven to be a more effective arena, both for individual cases and systemic change.

Working with Legal Services folks, City Life organized the Bank Tenant Association (BTA) in the summer of 2007 to (organize)[fight] against foreclosure evictions. Since then, we have stopped 95% of the evictions that have come to us. We are working with hundreds of households. Large move-out settlements have been won. Banks have backed down and accepted rent.

> Eviction defense after foreclosure has proven to be a more effective arena, both for individual cases and systemic change.

In increasing numbers of cases, banks are even selling properties to occupants at the real appraised value, perhaps half the old loan value. This "cram-down" of principal is almost unachievable by normal loan modification efforts. It has been made possible by a committed and growing movement of bank tenants, willing to engage in dramatic protests, including civil disobedience, alongside more standard legal defense.

THE BANK TENANT ASSOCIATION

City Life has used the method of post-foreclosure eviction defense to gain leverage for negotiations with the banks. This wins results for individual households and defends working-class communities. Key to doing that is the Bank Tenant Association.

The BTA is composed of occupants of foreclosed buildings, both former owners and tenants. We stress that, after foreclosure, everyone is a *tenant* of the bank. It also includes some people not yet foreclosed who feel that foreclosure is imminent. While we do not discourage anyone from trying to avoid foreclosure, we emphasize that foreclosure is not the end of the struggle, but rather the beginning of phase two.

One of the problems of current workout counseling is that foreclosure is seen as complete failure. This puts ordinary people at a decided disadvantage. In any negotiations, the side that cannot walk away is probably going to lose. Therefore, we encourage owners to lose their fear of foreclosure. We encourage tenants to understand that they have the power to stay in their homes.

What are the key features of the Bank Tenant Association that would allow it to be replicated in another city?

MASS CANVASSING

There are various ways to identify buildings in foreclosure. It's crucial to reach those buildings just before foreclosure takes place, before the banks can send representatives to intimidate occupants into moving. In Boston, we focus on the list of buildings scheduled for a foreclosure auction, the final step where the bank typically takes control of the building.

Canvassing is labor intensive. Where do the troops come from? In Boston, there are several sources for the 100+ volunteers that have been involved in monthly canvassing:

- Law students in the larger circle of legal services centers.
- Other students, through student groups, looking for a way to be involved.
- Religious institutions wanting to contribute to solving the crisis. The Jewish social service group the Kavod House, has canvassed monthly with City Life for over a year and a half.
- Radical activists, including those from other movements, who want to link to the housing crisis. Such activists, acting as City Life volunteers, have anchored canvassing in two of Boston's neighborhoods.
- Bank tenants themselves.

The canvassing is very effective. People in foreclosed buildings are generally very motivated listeners. Canvassers go door-to-door knowing that the information they bring is literally the difference between eviction and staying in their homes.

Volunteers are easy to recruit. The effectiveness, dramatic, and public nature of the struggle causes many to seek us out.

REGULAR MASS MEETINGS

The Boston BTA meets every week. Regular attendance is now around 60–70. Each meeting has a variety of goals:

- Explanation of eviction rights. You don't have to move just because the bank says so.
- Developing solidarity, ending the isolation of individual foreclosure and eviction cases. This involves a lot of sharing through "testimony," panel discussions, etc.
- Building unity between former owners and tenants. Former owners have been some of the most aggressive and determined leaders against the banks as tenants after foreclosure.
- Political education/discussion about the nature of the crisis. Don't let them individualize the struggle and blame the victim.
- Planning for protests and public actions, summing up those actions.
- Recruiting volunteers.

Each meeting presents the strategy of The Shield and The Sword. The Shield is legal defense. We are not depending on legal defense to win outright, just to hold the bank off while The Sword takes effect. The Sword is public pressure and protest.

Weekly meetings take place at City Life that are translated into Spanish. At the same time, East Boston volunteers organize meetings every 2–4 weeks primarily in Spanish in that neighborhood.

ENGAGING TENANTS

The foreclosure crisis is thought of as a problem for homeowners. But 60% of the households evicted after foreclosure in Boston (47% statewide) are tenants. Some of these folks are tenants of owners facing foreclosure in the same building. Since tenants have relatively more rights in eviction defense than former owners, engaging the participation of tenants can really help the owners win. This is important in building unity.

Many tenants are living in absentee-owned buildings facing foreclosure, usually 2–3 family buildings or condos. This is the result of a host of investment schemes gone awry, including condo conversion scams. For example, many buildings were converted to condos and sold to straw owners, but none of the owners ever move in and the rent is not nearly enough to cover the mortgage. None of the tenants in such buildings will ever be assisted by the method of pre-foreclosure work-out counseling. Such condos or absentee owned buildings probably should be foreclosed, but the occupants, the tenants, should be protected and supported in gaining control of the building.

INTAKE AND ORIENTATION

Canvassers emphasize getting names and numbers of folks living in foreclosed buildings. All contacts coming from the canvass receive calls that orient people to our strategy and invite them to the next meeting. Canvassing is our main source of new folks, but people also find us in other ways (referrals, community meetings, press reports, etc.).

CASE MANAGEMENT—EVICTION PROCESS AND THE "PUBLIC LETTER"

When starting at BTA, there is sometimes space for following each case in a detailed way, but our experience is that this soon becomes impossible. City Life Vida Urbana (CLVU) is tracking 350 cases at any moment. We are thus forced to handle legal education through our mass meetings and peer counseling rather than primarily through individual counseling by staff. City Life organizers very consciously avoid a "client" relationship with members of the BTA. We want to foster a "helping each other" attitude, not dependence on case workers.

Each foreclosure eviction case has two tracks to follow. One is the "shield" aspect of the eviction process: cash for keys, notices to quit, summons to court, answers, discoveries, etc. Sometimes this is taken over by a legal services attorney who officially represents bank tenants. On the other hand, we are able to counsel people to successfully represent themselves in various stages of the eviction process.

The second track is the sword aspect. We have started to encourage each building occupant to write a "public letter." These are moral statements sent to the bank explaining what people want. The arguments made are not legal but ethical and moral. These letters are "cc'd" to many local political leaders and get initial publicity for each case. These letters put mortgage companies on notice that they face serious resistance. They also help residents stay involved in their own "case."

To stay in touch with the vast and growing base of bank tenants, volunteers call every single household every week to remind them of meetings and offer them a chance to update CLVU staff about their situation.

EVICTION BLOCKADES

When people who are regular members of the BTA run out of legal options, we consider an eviction blockade. In Massachusetts, a constable must give 48 hours' notice before a truck eviction. In that time, we organize a protest in front of the building at the moment of eviction. Some are willing to resist arrest and chain themselves to the doorway.

We called blockades 14 times in 2008. The banks backed down 11 times. These protests are very emotional, garner lots of media attention, and give huge visibility to the bank tenant movement. In recent months they have exposed graphically the contradiction between banks getting huge bailout money and their utter disregard for residents of foreclosed buildings.

We can't block every bank eviction. We do blockades only where we are making a demand that the occupant can follow through on—pay rent to the bank or buy back the building at appraised value. Either of these outcomes forces the bank to take the hit and admit the loss. Both put focus on the central issue of the foreclosure crisis—the creation of the housing bubble and who should pay the bill when it bursts.

In one blockade, we were defending an elderly brother and sister, both legally blind. They had been scammed into a bad loan by their niece, who walked away with the money. Their family offered to buy the building back from Deutsche Bank at the real value (about half the loan value), but the bank initially insisted on eviction. The eviction blockades in front of their house did not make the Deutsche Bank look very good. The blockades were successful and these folks are now near to buying their home back.

For many in the BTA, the blockades and civil disobedience connect emotionally with the civil rights movement. We show clips from “Eyes on the Prize” to encourage discussion about this connection. Some have referred to our blockades as “getting across the Pettus Bridge” (reference to Selma, Alabama).

OFFENSIVE PROTESTS AND CAMPAIGNS

The blockades are technically defensive but help expand the movement rapidly. We also have campaigns that target the offices of major banks. In our case, we have targeted Deutsche Bank and Bank of America. Deutsche Bank was our original target, since it was the largest forecloser and evicter in the state in 2007. Deutsche insisted that, as “trustee” for investors, they bore no responsibility; their servicers were responsible. Even though the servicers have Deutsche power of attorney, Deutsche insisted they had no influence over them. Through protests in 2007, we got Deutsche to issue a letter to their servicing companies urging them to consider choices other than mass eviction after foreclosure. When this letter had no effect on the servicers, we organized a protest of over 100 people at the Deutsche Bank PGA golf tournament near Boston in August 2008.

Interestingly, the Bank of America campaign emerged from an “unsuccessful” blockade on September 5. That eviction and the arrests sparked a mass movement, still ongoing, to demand that B of A stop evictions after foreclosure and accept the rent. An example was a 2009 Valentine’s Day protest, done jointly with Rising Tide, an environmental group. While protesters were outside, many entered to close their accounts, “breaking up” with the B of A on Valentine’s Day. A coalition of groups picketed Bank of America outlets every Thursday through March and April. Unions have joined with community groups for protests in June and July, linking foreclosure demands to Bank of America’s role in organzing opposition to the Employee Free Choice Act. More protests will follow until B of A agrees to do what Fannie Mae and Freddie Mac did—stop post foreclosure evictions.

Both the blockades and the bank office protests are organized out of the weekly BTA meetings.

COALITION WORK AND LEGISLATION

CLVU links its direct action and organizing to several broad coalitions. Our legislative initiatives go through those coalitions. The most important one is the demand for “just cause eviction.” Simply put, the banks should have a reason to evict after foreclosure.

Currently, the banks foreclose and become the landlord. Occupants, now tenants of the bank, offer to pay rent to the bank. The bank refuses the rent and thus evicts “no-fault.” Just cause eviction requires that the bank have reason other than the simple fact of foreclosure.

Such legislation would dramatically change the negotiations with the foreclosing banks. They would be much more likely to sell at real value or do meaningful loan modifications before foreclosure.

The legislation would be very effective and would cost the public nothing. Nevertheless, it wasn’t even an option a year ago. Bank opposition was too strong. This legislation was reintroduced in 2009 with support from a majority of legislators and the Governor. A well-attended hearing in May added impetus. We are now seeking committee action to report the bills out for a vote.

The BTA model of organization raises issues that are at the center of the political debate around housing and financial capitalism.

RADICAL ANALYSIS AND NARRATIVE

The BTA model of organizing raises issues that are at the center of the political debate around housing and financial capitalism. A popular, radical perspective on these issues is an enormous asset in doing this direct action organizing.

The following are some principles we emphasize in our training sessions:

- The financial institutions created the crisis. They should pay for it. This means that foreclosing banks should (1) rewrite loans to appraised, real value at fixed rates, (2) accept rent from occupants, and/or (3) resell foreclosed buildings to occupants or non-profits at the real value. This can solve the crisis without waiting for government bailouts.

- We want the government to act, to provide money for nonprofit purchase of foreclosed property, and to produce new regulations, but we have a strategy that allows us to win even if the government does not act.
- The financial crisis is one of speculation, and the tendency of speculation to take over is directly linked to the growing gap between the rich and everyone else. That gap not only impoverishes us, it creates investors with no productive outlet—hence speculation as the outlet.
- We have the right to defend our homes and our communities, regardless of what the court says is the legal status of our claim to our homes.
- The communities and people hurt by this crisis are disproportionately people of color. Recognizing this publicly helps organize a resistance that benefits everyone.
- When we emphasize the sword and the shield, the understanding is that we are going into a battle. We have to prepare accordingly.

The tendency of capitalism to create growing inequality, followed by speculative bubbles, helps us put forward a narrative quite different from the dominant one. Predatory loans are not just individual mortgages, like ARMs. There was rather a predatory lending environment, characterized especially by deliberately inflated real estate values diverging from real income. People did not "buy more house than they could afford." People simply purchased whatever housing was available at inflated prices.

BTA meetings create time to discuss these issues. In the summer of 2008, we sponsored a Summer Institute, part of the Radical Organizing Conference series, that presented workshops on many different political issues, alongside skill-building workshops. This activity links the housing crisis and the organizing against it to a host of other issues—wages, trade, healthcare, etc. That creates broader support for our organizing and trains new leaders.

City Life Bank Tenant Organizing was featured on *Bill Moyers Journal* on PBS on May 1, 2009. The 20-minute segment was introduced by Moyers by contrasting City Life's street protests and direct pressure with Sen. Durbin's (D-Ill) comment that the banks own the Senate. The *Moyers* clip produced a flood of calls to City Life, most of them seeking a similar organizing approach in their city.

Returning to the initial point of this article, the housing bubble, subsequent collapse and wave of foreclosures/evictions represent an attack by the banks on the livelihoods of millions of people. Every such attack produces resistance. We are gratified at City Life that so many people have responded enthusiastically to the opportunity for resistance offered by the Bank Tenant organizing model. Finding ways to enter profound national debates by organizing on your street is the essence of "Thinking globally, Acting locally."

The Community Land Trust Solution: The Case of the Champlain Housing Trust

—Brenda Torpy

I have long said that Americans are in the thrall of two great socio-economic myths: One, that we have the greatest healthcare in the world, and two, that we could all get rich in real estate. We could safely say today that both have been roundly debunked, but it is the nature of myths that they are deeply rooted in our aspirations about ourselves so we do cling to them.

As a day-to-day practitioner and one most motivated by models of affordable housing that give security, equity and political power to people who can't afford conventional homeownership I really appreciate the opportunity to address the important questions posed by the current housing crisis.

My remarks are based on my experience in the field. Even though I work in a small corner of Vermont, many of our housing needs can only be met by major corrections in national policy and regulation and with the significant financial investment that can only be generated by the federal government.

Vermont has the second highest housing-wage gap in the country and the highest rate of childhood homelessness in New England. Our fastest growing jobs are in retail and the service sectors. Two workers earning minimum wage cannot afford the rent on a two-bedroom apartment, and two-thirds of our citizens cannot afford to purchase the average-priced home. Our housing crisis did not start with the mortgage meltdown. In fact, subprime lending is not rampant in our state. Our foreclosure rate has happily been among the lowest nationally, but it is growing fast as a result of the economic crisis that has followed. Housing affordability has been and continues to be the issue. As land and construction prices doubled in Vermont over the last decade, each and every federal source that we used to access to bridge the gap was eliminated or drastically reduced.

This latest financial crisis just underlines the reality that our boom-and-bust real estate market cycle never benefits low-income people. In boom times, our residents could not afford decent and safe rentals in good neighborhoods, let alone make the jump to homeownership. And as we saw in Vermont in the real estate crash of the early nineties, it was in lower-income neighborhoods that landlords and speculators walked away from their properties, resulting in abandonment, disinvestment, and displacement of renters—even those who had been paying their rents—as properties were foreclosed. This scenario is being played out now around the country. Many homeowners who are current on their mortgages find themselves underwater (owing more on their mortgages than their homes are worth). This is frequently the result of neighborhood decline associated with numerous defaults in the surrounding community and the attendant spread of physical and social blight. This time I hope that we will not let this moment—this completely predictable and avoidable disaster—go by without securing from it a fair and equitable national housing policy.

Homeownership alone did not create the middle class. As an asset that kept up with inflation and provided security to people of otherwise modest income, homeownership probably exceeded all expectations in post-WWII America. For our parents' generation, homeownership did provide a nest egg, but so did access to higher education, secure employment with reliable benefits such as healthcare and pensions, along with social programs that have since been eliminated or drastically cut. By the 1980's, homeownership had become one of the last lifelines into middle class. Interest rates were in double digits and significant down-payments were required. Nonetheless, homeownership still held out the hope of ultimate financial security. It is no wonder then that as mortgages became more accessible, people took huge risks to get as much house as they could. Home equity became the only hedge against illness, bouts of unemployment, and the only hope for big outlays like college education. Home equity became an ATM, not a nest egg, and seemingly unlimited credit of all kinds was all that replaced a real social safety net of public assistance and programs to help people through hard times.

Unfortunately, Vermont's challenges in housing since the 1980s are all too common across the nation. On the other hand, our experiments and innovations are also transferable. We sponsored a community land trust (CLT) in Burlington in order to protect the vulnerable from gentrification, to improve our old substandard housing stock for the poor people who were already the fabric of the neighborhood, and to create secure alternatives to the all-or-nothing market (and government-supported) alternatives of renting or owning.

What started out as a network of nonprofit organizations working together to implement the city's vision throughout the greater Burlington region merged into one community land trust called the Champlain Housing Trust (CHT) in 2006. Through the CHT (and its antecedents), the city of Burlington has implemented a policy of actively taking real estate out of the private market to create a varied stock of permanently affordable homes. Not only did we invest in secure alternatives between market rental and ownership, but an alternative to purely public or privately-owned real estate by working through nonprofits that were and are engines of civic engagement that run the gamut from groups with self-perpetuating institutional leadership to resident led and membership groups like the Trust and a mutual housing association of co-ops. This network collectively organized people around the principles of housing equity and security and has been embraced by our wider community in a way that government agencies never were or ever would be. CHT raises money locally for operations and have nearly $2 million in our endowment. CHT has over 3,600 members, most of whom are residents. Each year 300–500 take part in advocacy, membership building and organizational activities and partner with other organizations, such as Vermont's Affordable Housing Coalition and Vermont Tenants Inc., to secure funding or legislative gains. This broad coalition has been critical in preserving state programs and policies that favor permanently affordable housing through 6 years of a Republican Governor bent on destroying them.

CHT homeowners earn equity but…their homes remain affordable to lower-income buyers at resale with no additional government subsidy.

Presently, 25% of the city's rental stock is price restricted by income. The sky has not fallen on this little "socialist republic" of Burlington. Our downtown is thriving, our real estate is still among the most valuable in the state, and businesses and developers have not fled to the hills. Many of the homeowners in our shared-appreciation model of homeownership have moved up through these affordable rental and co-operative homes. Further, as our evaluation of the shared-appreciation homeownership program in 2003 showed, and a recent update will support, the majority of our homeowners who move out of CHT homes become homeowners in the private market. Without the stepping stones created and preserved by our active and activist organizations and supportive government, these people would never make it. Those first steps of stability and security are as important as the idealized "American Dream" of homeownership to helping people out of poverty and into the middle class. These are the opportunities that have been neglected and that need to be instituted as part of a comprehensive national housing policy.

CHT homeowners earn equity but, through the stewardship of CHT, their homes remain affordable to lower-income buyers at resale with no additional government subsidy. In fact because we recycle the initial subsidy for future buyers, the value of the public's investment has actually increased with the value of the real estate. An updated evaluation of the program, which has served 630 families in 450 homes over 25 years, was published in the spring of 2009. The results underscore the value of the community land trust approach to housing security from both the public's and the beneficiaries' perspectives. Investments in permanently affordable housing reduce public costs over time through preservation but also through the ability of nonprofits to extend ownership, power and control to generations of residents, regardless of income, who have a stake in maintaining the asset.

Northgate Apartments also offers a clear illustration of the value of resident empowerment and permanent affordability. It is a 336-unit subsidized rental complex in Burlington that was nearly converted to market rate condos in 1989, but was saved by tenant activism matched by community support and local government. It cost a publicly created entity $12 million to purchase it in 1990 from the developers who had built it for $3 million in 1970, and another $9 million to repair it because they had let it deteriorate into slum conditions even as they benefited from preferential HUD financing. Today it is a beautiful mixed-income community serving low- and very-low-income people with half of the apartments subsidized by Section 8 and all apartments rent controlled. It is owned and governed by the nonprofit Northgate Residents Ownership Corporation—NROC. The size of many Vermont villages, Northgate is operated like a zero-equity co-op—and it operates spectacularly by all measures: high occupancy, strong financials, terrific curb appeal backed by excellent management and maintenance, healthy reserves, and on-target capital plan implementation. When the 1990 subsidies expired last year, this group led this latest buyout, with community support again, and it only cost $500,000 to extend the affordability. It would cost over $35 million to purchase the complex in the current market, and over $75 million to build the 336 apartments today.

So my main policy recommendation is that we rebuild the first rungs of the ladder of housing tenure, from entry level basic shelter—rooms, transitional housing options, deeply subsidized rentals, zero- and limited-equity co-ops, to shared-equity homeownership—through an invigorated local nonprofit sector that we can rely on to preserve public investment, nurture civic engagement among the direct beneficiaries as well as among members of the wider community.

This is what our nation's cities, towns, and villages need. We have been losing rental housing stock for 30 years and production has not kept pace. More critically, we have lost public housing, rental subsidies, and rent-subsidized developments through cuts and conversions to market. This requires straight-out public investment. There is no way around it. Not only is such housing a critical part of a community's social fabric and physical infrastructure, but it will contribute to our much-needed economic stimulus, not only by creating jobs up front for construction and rehab, but by providing a safety net for our poorest citizens and struggling working class.

Our Homeownership Centers in Northern Vermont work with up to 500 customers a year who seek to establish the financial basis for home purchase. Contrary to the propaganda that blames the mortgage crisis on its victims, low-income people are not buying boats and toys with their credit cards, and a only a small minority are speculating. We see our customers' credit reports and we know their situations and their goals. What we see are a lot of hospital bills, car purchases and repairs, back-to-school purchases, school loans. We hear their hopes and dreams for a better life for their children and for the safety and security of having a place to call home. It is not surprising in this context that many who had no assistance or financial advice to the contrary crossed their fingers and accepted any amount of risk to make the leap into homeownership.

I liken this not to people gambling but to the risks taken by migrants from the world's poorest countries who make the journey to the rich ones like ours—risking their very lives in the hope of achieving a better life and opportunity for their children. It is aspiration. Aspiration is at the root of the American promise, and that aspiration needs to be met with more than we have offered as a society for too many years. Ideally our citizens would have safe and reliable ways to save for health, education, and retirement with appropriate matching incentives from government, without reliance on credit or a gamble on the value of something as essential to their basic health and security as a home.

Fortunately, during the long devolution of the federal government away from affordable housing, many effective new models like those I've described from Vermont have sprung up and been shared among nonprofit and local government sectors. There are now 230 Community Land Trusts around the country and many state, county, and municipal jurisdictions that have applied durable resale controls to homes for sale that are publicly subsidized, and also extend the affordability restrictions on federally assisted rental developments. We do not have to reinvent the wheel or search for new answers as we move towards a more just and equitable national housing policy. We just need to invest in an invigorated social housing sector and capitalize it to provide an accessible and affordable housing tenure ladder that will provide both opportunity and security to our lower-income citizens as part of a wider restoration of social and economic fairness and equity.

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