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A STRUCTURAL RACISM LENS ON SUBPRIME FORECLOSURES AND VACANT PROPERTIES

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Rick Cohen

Introduction

As seen by critics, structural racism is fundamentally word games, semantics; substitute “low-income” for “race” and there is no difference in the analysis or policy recommendations. As seen by ideological supporters who actually don’t grasp the meaning of the word “structural,” the lens is turned to questions of “racist attitudes” rather than persistent disparate outcomes.

The recent exchanges in the pages of the *Chronicle of Philanthropy* concerning a conservative theorist’s odd critique of structural racism ended up with the example of the subprime lending crisis as the example debated. A response to the *Chronicle*’s conservative columnist cited the subprime mortgage foreclosure issue as one that exemplified outcomes that could be defined as evidence of structural racism.¹ The columnist countered that the subprime issue and the suggested policy responses were racially neutral, not induced by racial animus, and equally likely to have been generated from an analysis of the subprime crisis through a low-income rather than structural racism lens.²

The persistent, disparate racial impacts of the subprime lending crisis actually offer an unfortunately excellent example of how structural racism operates. Contrary to the perspectives of those who focus on searching for discriminatory intent as the sine qua non, in some cases the subprime process draws on policies that were justified over the years as advancing the interests of racial and ethnic minorities in the housing market. Subprime lending was touted as making homeownership available to African-Americans and Latinos who had been denied home mortgages due to the pernicious policy of bank (and insurance) redlining. Financing obtainable using limited documentation was meant to vault families into homeownership from which they would have been excluded had they encountered conventional mortgage underwriting standards. The home equity loans that homeowners sought through subprime lenders ostensibly gave older homeowners access to cash they could use for needed expenditures without, in theory, risking the security of their homes. Even subtracting from the analysis the concept of “predatory” lending, the results of the subprime lending crisis still end up with persistently disparate racial and ethnic outcomes that may not be effectively solved by default policy responses.

The subprime crisis carries the seeds of structural racism not from discriminatory intent, but from ostensibly racially benign or supposedly ameliorative policies and programs. This is a difficult message for the nation to hear. The pushback has been strong. For example, the financial sector has fed the press numerous stories of working class African-American and Latino home purchasers who purchased much too expensive “McMansions” by misrepresenting their incomes and assets.

¹ “Foundations and 'Structural Racism': Take Another Look,” *The Chronicle of Philanthropy* (May 29, 2008).

² “Philanthropy and Racism,” *The Chronicle of Philanthropy* (June 12, 2008).

A less obvious pushback is the feeling that among some observers, the problem of subprime foreclosures is not an inner-city phenomenon, but a suburban ring issue; families obtaining financing for home purchases in the suburbs and discovering that the costs of their mortgages exploded faster than the sizes of their take-home pay. While there is some truth to a phenomenon of suburban subprime foreclosures, involving financing often provided by developers and their affiliated mortgage brokers to fast-track suburban tract sales,³ frequently that suburban subprime dynamic also contains its own structural racism component.

In the rapidly gentrifying, increasingly white Washington D.C., the subprime foreclosure phenomenon is being seen in suburban jurisdictions that are majority-minority (such as Prince Georges County, Maryland) or in suburban pockets where minority population growth has been concentrated over the past few years (Latino and Asian pockets in Fairfax and Prince William counties in Virginia and Montgomery County, Maryland).⁴ The burgeoning numbers of subprime foreclosures in suburban Cuyahoga County are actually in the inner-ring suburbs that abut Cleveland, in largely low-income minority neighborhoods.⁵

Nonetheless, the mechanisms of denial stymie action at the local, state, and national levels, or shape actions in a way that may perpetuate rather than remedy the underlying conditions that have nurtured the disparate racial impacts of the subprime foreclosure problem. This brief analysis suggests some fruitful areas for understanding the concrete manifestations of the disparate racial and ethnic impacts of the subprime crisis.

Aggregation Conditions

The subprime mortgage crisis did not sneak up on this nation and take it by surprise. The problem was festering in a financial system that was predicated on each player in the system—lenders, brokers, servicers—taking whatever they could get through fees and profits and passing along the problem to someone else, with a “not my responsibility” attitude. Even now, with the subprime wave crashing through inner-city (and suburban) communities, solutions are hard to come by. The players who created this crisis are barely budging from hard-line positions against making changes unless incentivized through federal government tax credits⁶ or federal bailouts such as the much ballyhooed Bear Stearns bailout or the government’s approval of the Bank of America acquisition of Countrywide.

Communities with burgeoning vacancies discover lenders and servicers freer with lip service than action in restructuring mortgages or donating properties for rehabilitation and restoration. While some nonprofit organizations with credibility such as Neighborhood Reinvestment

³ The Brookings Institution’s Christopher B. Leinberger highlights “starter home” tracts such as the 132-unit Windy Ridge development outside of Charlotte, North Carolina, with 81 foreclosures, in “The Next Slum?,” *The Atlantic* (March 2008).

⁴ Prince Georges has the highest rate of foreclosures of any county in Maryland and Prince William County had the most foreclosure filings in the metro Washington area in early 2008, cf. Jonathan Mummolo and Bill Brubaker, “As Foreclosed Homes Empty, Crime Arrives,” *Washington Post* (April 27, 2008).

⁵ Erik Eckholm, “Foreclosures Force Suburbs to Fight Blight,” *New York Times* (March 23, 2007).

⁶ A bipartisan legislative package in Congress in early 2008 included \$6 billion in tax credits (actually an extension of the carryback allowance period from two to four years, so that builders who had profitable years and paid taxes in 2004 could apply those profits to 2009 and 2010, essentially a tax refund for taxes already paid) for the construction industry, cf. Cynthia Tucker, “Our Opinions: Subprime senators: Senate shoots down most ideas that would aid homeowners rather than builders and bankers,” *Atlanta Journal Constitution* (April 7, 2008); on Capitol Hill, the tax credit for home builders was seen as a legislative attempt to purchase the cooperation of the home builder lobby.

(NeighborWorks) and the Housing Preservation Fund participated in President Bush's Hope Now coalition of lenders and servicers promising to help homeowners at risk, the program was designed in a way to assist a relatively small slice of homeowners,⁷ and the actual assistance has been flimsy and inconsequential in most cases.

Legislation is making halting progress through Congress to deal with the problem of actual foreclosures and subsequent vacant and abandoned properties, with financing structured in ways that make it difficult to imagine how deals will actually work. Little or nothing is being done to correct the more fundamental problems of how the nation's financial institutions and their fundamental lending and down payment policies combined to create this problem in the first place, and solutions being crafted for the nation's two largest GSEs may actually perpetuate some problems while giving Fannie and Freddie latitudes to buy more expensive mortgages for luxury homes as the payoff for purportedly helping out in the subprime crisis.

Overall, the subprime mortgage foreclosure crisis has generated numerous analytical reports of high quality. But the sense is one of analysis by paralysis. Notwithstanding an abundance of excellent statistical data and interpretative analysis, effective remedial action has been hard to find. The noteworthy efforts of community-based nonprofits such as the East Side Organizing Project in Cleveland, the Community Development Law Center in Indianapolis, and others stand out against a backdrop of how little is actually occurring to counter the negative effects of the subprime crisis, much less attack the underlying structural elements that gave rise to the subprime mortgage crisis in the first place.

With over 2 million homeowners likely to lose their homes by the end of 2009 due to "exploding" adjustable rate mortgages, perhaps a similar number at risk between 2009 and 2010 due to another form of subprimes, "Alt-A" mortgages, some 500,000 vacant, foreclosed properties dotting inner-city neighborhoods by the end of this year, the massive scale of the subprime crisis makes the prospects for organizing and action hard to conceive. Dwarfing the scale and cost of the Savings and Loan crisis of the 1980s, the subprime crisis will need a federal commitment in the billions to slow down a train wreck for America's moderate and lower income homeowners.

But, given the complexity and multiple moving parts of the subprime crisis, it is possible to disaggregate the problem through a lens of the disparate impacts of the crisis on racial and ethnic minorities in a way that should enable advocates to conceptualize interventions and actions specific to populations and geographies particularly hard hit by the crisis—and not likely to be

⁷ Despite the promises of President Bush and Treasury Secretary Paulson, the Hope Now coalition has been unable to provide assistance to most homeowners who have called the Hope Now hotline. Although the original notion was that lenders and servicers would restructure mortgages for the narrow slice of homeowners who qualified for Hope Now assistance, in nearly all cases, the most that was done for homeowners was to restructure their mortgage payment schedules, not reducing principal or interest levels. Cf. Lynnley Browning, "Distressed Owners Are Frustrated by Aid Group," *New York Times* (April 2, 2008). None of this should have been surprising; the Hope Now coalition of lenders and servicers emerged from the Financial Services Roundtable, a lender/servicer trade association, and the executive director of Hope Now is a former subprime mortgage lender. Supposedly, only about 4 percent of callers ever even get to speak to a Hope Now counselor. The Center for Responsible Lending's analysis of the Hope Now plan suggests that even if the participating lenders were to live up to their rhetoric, due to the plan's provisions regarding who qualifies for help, only 3 percent of subprime loan recipients are likely to receive assistance in the form of restructured loans, cf. *Voluntary Loan Modifications Fall Far Short: Foreclosure Crisis Will Continue Unabated Without Court-Supervised Modifications* (January 30, 2008).

well served by the generic solutions emerging at the moment from municipal, state, and federal policy makers.

Disparate Impacts

Several organizations have generated statistics on the broadly disparate impact of the subprime mortgage foreclosure crisis on racial and ethnic populations. Like the underlying problems of bank and insurance redlining and the subsequent revelations about predatory lending, the subprime problem has had significantly disproportionate impacts on African-Americans and Latinos.

According to the findings in *Foreclosed: State of the Dream 2008*, released by United for a Fair Economy, people of color are more than three times as likely as whites to have subprime mortgages, and high-cost loans account for 55 percent of loans to African-Americans but only 17 percent of loans to whites.⁸ Like many other sources, the UFE study notes that the subprime crisis has already chipped away at minority homeownership rates. Minority homeownership was responsible for the bulk of the increase in homeownership rates in the past decade, but much of that has already been lost due to foreclosures.

The UFE report confirms the findings of the Center for Responsible Lending, which concluded that African-American borrowers were substantially more likely than similarly-situated white borrowers to receive higher rate subprime loans with onerous prepayment penalties.⁹ The nonprofit researchers' analyses are supported by federal government data: an underreported HUD study noted that "even when controlling for differentials in available household, loan, and property characteristics, blacks and Hispanics (particularly non-white Hispanics) have significantly higher interest rates than comparable white households. For African-Americans, this differential is 21 to 42 basis points, while for non-white Hispanics, the range is 13 to 15 basis points."¹⁰ While the HUD authors take pains to suggest that this outcome is unrelated to discriminatory policies, the disparate outcomes are clear.

The racially disparate nature of the subprime dynamic has actually been known for some time, but not particularly publicized until the spike in delinquencies and foreclosures in 2006 and 2007. For example, Consumers Union examined cities in Texas in 2002, and reached a clear statistically justified conclusion: "...race matters. The race/ethnicity of borrowers is a powerful factor in the penetration of subprime lending in Texas communities. Our study shows that subprime loans are concentrated in geographical areas with a higher concentration of minority residents. Even after accounting for other factors, the likelihood of getting a subprime loan increases for minority borrowers, especially Black borrowers. Among higher income borrowers, the distinction between subprime lending to Whites and subprime lending to minorities is stark."¹¹

⁸United for a Fair Economy, *Foreclosed: State of the Dream*
http://www.faireconomy.org/files/StateOfDream_01_16_08_Web.pdf

⁹ Center for Responsible Lending, *Unfair Lending: The Effect of Race and Ethnicity on the Price of Subprime Mortgages* at
<http://www.responsiblelending.org/issues/mortgage/research/page.jsp?itemID=29371010>

¹⁰ Boehm et. al., *Mortgage Pricing Differentials Across Hispanic, Black, and White Households: Evidence from the American Housing Survey* at
http://www.huduser.org/publications/homeown/hisp_homeown5.html

¹¹ Minority Subprime Borrowers (Consumers Union, October 2002); an earlier study of Texas cities by Calvin Bradford for the Center for Community Change (*Risk or Race? Racial Disparities and the Subprime Refinance Market*) generated much higher racial impactation numbers than the Consumers Union study of

Sometimes aggregate statistics hide the human dimensions of the problem, but the mainstream press has covered this problem, noting the implications of the subprime mortgage crisis undermining and reversing asset wealth gains and neighborhood stabilization accomplishments in minority communities.

Citing Federal Reserve statistics that “About 46% of Hispanics and 55% of blacks who took out purchase mortgages in 2005 got higher-cost loans, compared with about 17% of whites and Asians,” *USA Today* reported on African-American and Latino homeowners with exploding first and second mortgage ARMs, facing foreclosures because they had not understood—and had not had appropriate information and counseling about—the risks and costs of adjustable rate mortgages or had had to seek unconventional financing because of their lack of sufficient documentation.¹² The *USA Today* article started with Chicago for good reason: in a study of 2005 mortgage lending by seven lenders (including Countrywide and Washington Mutual) in New York City, Los Angeles, Boston, Chicago, Charlotte, and Rochester, Chicago topped the list with the highest disparity between African-Americans and whites receiving high cost home loans (and Boston showed the highest disparity between Latinos and whites).¹³

Local studies across the nation demonstrate that in inner-city neighborhoods, the subprime foreclosure crisis is being felt most significantly in minority neighborhoods by people-of-color homeowners. In New York City, the majority of loans in minority neighborhoods such as Bushwick and East New York were subprime.¹⁴ In Atlanta, the Pittsburg and Sylvan Hills neighborhoods are the epicenters of the subprime crisis. It is important to remember that this problem is not simply a phenomenon of large cities, but small cities have been ravaged, particularly small cities with significant if not majority populations of people of color: Natchez, Mississippi, Lawrence, Massachusetts, El Paso and McAllen, Texas, and many others.

What is striking about many of the cities where subprime problems are concentrated, the resources deployed to address these problems are in short supply. At the municipal level, places such as Newark, Indianapolis, and Atlanta face municipal budgets many millions in the hole, leading authorities to plunder federal programs such as CDBG and HOME to pay surreptitiously or not for general expenditures, and taxpayers to launch, as in Indianapolis, real estate tax revolts that exacerbate the revenue problems. In smaller communities, the size of the subsidy program is too small to make a dent on acquiring and rehabilitating foreclosed properties, and unlike these larger cities, the small and mid-sized communities lack the presence of large foundations such as the John D. and Catherine T. MacArthur Foundation (in Chicago), the Kresge Foundation (Detroit), the Lilly Endowment (Indianapolis), and others that might put some philanthropic dollars toward building capacity for tackling this problem.

Vacant Foreclosed Properties

In some cities, it didn't take the subprime mortgage crisis to undo two decades of community development work in two years of foreclosures. Certainly, in areas such as the East Side

the same geography, but Bradford's analysis excluded FHA and VA loans from the base against which subprime loans were calculated.

¹² Sue Kirchoff and Judy Keen, “Minorities Hit Hard by Rising Costs of Subprime Loans,” in *USA Today* (April 25, 2007).

¹³ Celeste Busk, “Minorities Getting Lion's Share of Subprime Loans,” *Chicago Sun-Times* (March 16, 2007).

¹⁴ Ford Fessenden, “Subprime Mortgages Concentrated in City's Minority Neighborhoods,” *New York Times* (October 15, 2007).

neighborhood in St. Paul, the reversal is stunning, with vacant property rates now as high as they were when community development organizations were motivated to take on the abandonment issue in the 1980s and before.

But in many cities, the subprime mortgage foreclosure problem constitutes simply one more layer of vacant properties on top of a rash of vacancies that already existed. For example, in Indianapolis, community organizers note that the impact of the subprime mortgage foreclosure process was difficult to discern because of the wave of vacancies that already existed. The same certainly holds true for cities such as Detroit and Buffalo, among others. Detroit may be the consistent leader in the nation for subprime foreclosures, but it occurs against a backdrop of thirty years of decreasing housing demand.

Nationally, housing vacancies have been increasing steadily since the 1990s, with a significant increase between 2000 and 2004—largely before the spike in subprime mortgage foreclosures. For some communities such as Phoenix and Las Vegas, local authorities anticipate that future job growth will result in purchasers and renters absorbing housing that has become vacant due to subprime foreclosures. But, as “weak market” housing expert Alan Mallach noted in Congressional testimony recently, “Officials cannot make that assumption in Dayton, Flint or Buffalo. Properties there will have to be held longer, maintained longer, and ultimately either demolished or rehabilitated before they can be put back to productive use.”¹⁵

Due to weak markets, in many instances the vacant units are simply sitting unused and unmarketed, a problem only exacerbated by the subprime crisis. For example, a 2003 survey of vacant units in Marion County (Indianapolis), Indiana, resulted in a count of 7,900 vacant properties containing 9,000 vacant units. Of these vacant properties, 21 percent were vacant and boarded and another 57 percent vacant without either boarding up or evidence of being on the market, only 22 percent vacant and for sale.¹⁶ The City of Buffalo, as of 2008, had 20,000 vacant residential properties, a dynamic which local organizers note was only exacerbated by, hardly caused by the subprime crisis.¹⁷ A recent report on burgeoning vacancies in Buffalo, noting an increase of 2,300 vacant and undeliverable addresses reported by the U.S. Postal Service (a great indicator of true vacancies and abandonment) between the fall of 2006 and the fall of 2007, does not even mention subprime foreclosures as a significant contributing factor.¹⁸

In largely minority communities, immigrant communities, and declining manufacturing economies, the subprime mortgage foreclosure crisis is deepening a housing market abyss that primarily impacts lower income families. Despite the fact that families cannot obtain affordable rental housing or access financing for purchasing new homes (due to tightening credit markets), the policy response is going to be, by virtue of weak housing market demand, demolitions rather than acquisition, rehab, and redevelopment of vacant properties. For these communities, the subprime crisis is the culmination of a perfect storm—concentrated poverty plus long term job losses topped by the exploding ARMs of subprime loans.

¹⁵ Testimony Of Alan Mallach, FAICP To The Domestic Policy Subcommittee Of The House Oversight And Government Reform Committee, May 21, 2008.

¹⁶ City of Indianapolis, Vacant Housing Initiative: Report Prepared for the Abandoned House Work Group Meeting December 2nd, 2003.

¹⁷ News release from Congressman Brian Higgins (May 8, 2008), “Hails Passage of Legislation Echoing Provisions Called for In Higgins Legislation.”

¹⁸ Michael Clarke and Anthony Armstrong, *Vacancy and Abandonment in Buffalo, NY* (Local Initiatives Support Corporation).

Immigrants

The subprime mortgage foreclosure crisis has had devastating effects on immigrant populations. In Newark's North Ward and Ironbound neighborhoods, for example, immigrant groups were targeted by mortgage brokers peddling high cost mortgages to families that could have qualified for conventional financing. Lawrence, Massachusetts, is majority Latino and the virtual epicenter of the subprime foreclosure crisis in that state, though Framingham, Waltham, Boston, and other cities are well represented by immigrant purchasers. Nonetheless, the largest majority-Latino city in Massachusetts evidences stunning foreclosure statistics: Lawrence is first in the state in the number of projected foreclosures per 1,000 residential properties at 40.18; by this ratio, Boston's foreclosure rate doesn't even make the state's top 20 cities. Lawrence was long known as the state's "arson capital," but through the beneficial impacts of immigration, developed a thriving housing market in the 1990s. The disproportionate impact of subprime mortgages on Latinos will take its toll on entire communities, like Lawrence, in addition to displacing individual homeowners.

To convince families to take on financing clearly to their detriment, frequently the lenders recruited mortgage brokers from immigrant groups to sell to their own. For example, the Washington Post reported on numerous cases in the Virginia suburbs where many Afghan immigrants have moved, noting cases of Afghan brokers persuading Afghan purchasers to take the subprime deals. The Spanish-language press in New York City has reported on cases of subprime mortgages where homebuyers were lured with the promise of minimal documentation to qualify. In Massachusetts, struggling Brazilians, who account for three out of every ten homes sold to immigrants in that state, appear to have been sold subprime deals by brokers who themselves were immigrants.

No surprise, but particularly victimized have been undocumented immigrants, who were pitched "NINJA" loans ("no income, no jobs, or assets"), but the subprime crisis swept up documented as well as undocumented homebuyers. An underlying problem is that less than half of immigrants use formal banking institutions for their regular financial services, thus making them easy prey for purveyors of exotic, high cost mortgage products. The payday lenders, pawn shops, and rent-to-own stores that specialize in immigrant neighborhoods do not help customers build credit histories and generally escape the oversight and regulation of consumer regulatory entities or, as weak as the protection might be, the Community Reinvestment Act scrutiny by the Comptroller of the Currency or state banking departments of conventional bank lenders.

As a rapidly growing component of the U.S. population, Latinos have been significant users of subprime mortgages in all of their forms: ARMs, Option ARMs, Alt-A mortgages, and more. Nationally, in the early 1990s, one-fifth of home purchase mortgages for Latino purchasers were subprime compared to one-tenth for non-Latino whites, and in some metropolitan areas such as Hartford, Connecticut and San Antonio, Texas, the proportion of subprime loans for Latino buyers reached 30 percent or more, though current data suggest that about half of Hispanic homeowners have subprime loans. Some conventional lenders such as Bank of America and Citibank that made efforts to reach undocumented immigrants with loans and banking service have had their confidence rewarded as ITIN mortgages (for applicants with "individual taxpayer identification numbers") has shown infinitesimal delinquency and foreclosure rates, but unlike the subprime shark brokers, banks offering ITIN mortgages ask for substantial income and credit evidence to ascertain that borrowers will be able to keep up with mortgage payments.

Rental

Coverage of the subprime mortgage foreclosure crisis leads to a narrative that involves homeownership. The public is not aware that a significant number of delinquent and foreclosed properties are not single-family properties, but two-family or three-family residential properties, or more. In some instances, these properties include an owner-occupant in one of the units, but frequently they were purchased and owned by investors who lost their properties in foreclosures. Several commentators describe renters as the collateral victims of the subprime mortgage foreclosure crisis.

In Newark and other communities in Essex County, New Jersey, the vacant foreclosed properties that could not be resold at foreclosure auctions include many vinyl-clad so-called “Bayonne boxes,” built by speculators and now virtually unmarketable. The Boston Redevelopment Authority has acquired a set of foreclosed properties in the Hendry Street area of Dorchester Bay, all of them traditional “triple-deckers,” with at least two of the units having been rentals before the subprime foreclosure.

Perhaps one in five subprime-foreclosed units is renter-occupied.¹⁹ Anecdotal and statistical evidence from around the nation suggests higher levels of renters affected by subprime foreclosures: In some zip codes in Kansas City, Missouri, half of owners facing foreclosures do not live in those properties, or at least are registered at other addresses;²⁰ in Hennepin County (Minneapolis), Minnesota, where the bulk of the state’s subprime foreclosures are concentrated, a significant number are renter-occupied with tenants scrambling to find advice on their rights.²¹

For as lousy as the system is toward homeowners with tanking mortgages, for renters, the situation is pure laissez faire economics:

- Typically, when a foreclosure is started, tenants are not notified. They may not even be aware of a foreclosure in process until well after the process is underway. When an owner walks from a property prior to foreclosure or sometimes even after the foreclosure has proceeded, tenants find themselves occupying properties with no one responsible for maintenance, utilities, and upkeep. Community organizations in Newark, for example, reported instances of tenants coming to City Hall asking for instructions on how to pay water and sewerage bills in the absence of departed property owners.
- When a property goes into foreclosure, the tenant effectively has no rights and can be evicted virtually on the spot. In most cities, tenants have few protections in small 2- and 3-unit buildings anyhow, but with foreclosures, they are simply put out into the street with little or no notice. In theory, nothing prevents a bank or a new owner acquiring a property at a foreclosure auction from simply evicting the tenants, except in very limited circumstances.²²

¹⁹ The Joint Center for Housing Studies counts one-in-five foreclosure actions in 2007 involving 1- to 4-unit rental properties with non-resident owners (*America’s Rental Housing—The Key to a Balanced National Policy* (Joint Center for Housing Studies, 2008)), but that misses the renters in 2-, 3-, and 4-unit properties with one unit owner-occupied. The tenant vulnerability to the subprime foreclosure crisis may be seriously understated.

²⁰ Paul Wenske, “Renters Caught in Subprime Mortgage Crunch,” *Kansas City Star* (May 26, 2008)

²¹ Steve Brandt and Warren Wolfe, “Wave of foreclosures hits renters,” *Star Tribune* (October 29, 2007)

²² Tenants with Section 8 vouchers get some additional protection due to the federal laws that might permit their leases to survive a foreclosure, and in some states and the District of Columbia, the courts are

- A tenant's lease affords the renting family little or no protection. The bank or servicer that acquires the property in a foreclosure proceeding is not obligated to honor the landlord's lease with the tenant. Perhaps a tenant might be able to initiate legal action against the now-departed landlord for damages of some sort, but that usually doesn't mean that they have any ability to retain their positions as occupants of the foreclosed property.

Amazingly, due to the geometrically increasing rental housing costs in many markets, many moderate income renters took to subprime-financed homeownership as a cheaper alternative, only to lose their properties to exploding ARMs and other exotic financing products. Add to those displaced families the evicted tenant occupants of foreclosed properties, the result is further pressure on already overheated rental markets. In the terms of investors, the "fundamentals of the rental market" will improve, that is, with higher rent levels and lower rental vacancies, due to the pressure of families displaced due to subprime foreclosures,²³ with rental markets tightening further in already high cost areas such as New York City, Seattle, and San Francisco.²⁴

The reality is that for much of the short term response to the subprime crisis, the solution is to take foreclosed properties and make them available as scattered-site rental units or lease-purchase (rent-to-own) properties. But because of a consistent bias against renters as less committed to their neighborhoods than homeowners, most city governments are militantly against adding to the rental inventory,²⁵ much less subsidizing rental units with public funds such as HOME or Community Development Block Grant funds that would trigger affordability restrictions.

It would be a serious error to ignore the racial and ethnic dimension of this problem. As the Joint Center's latest studies show, racial/ethnic minorities account for nearly half of all renters, with Latinos accounting for nearly half of the increase in rental numbers (while the number of white renters dropped) between 1995 and 2005. Immigrant households were 1/6 of all renter households, and 80 percent of all immigrant families were renters.²⁶

It isn't news that the gap between families qualified for rental subsidies and the number of available Section 8 vouchers and other affordability mechanisms is huge and widening. In combination with ever-decreasing public housing inventories, perhaps one-fourth of eligible households are able to obtain rental subsidies. While much of the public attention focuses on the homeownership dimension of the subprime foreclosure problem, the structural dimension of a large class of unprotected renters who simply lose their units in the process, without a scintilla of legal protection, much less resources offered in emerging federal legislation, suggests a policy issue that merits significant attention.

This situation is exacerbated by the scattered-site nature of the subprime foreclosed properties: the acquisition and rehabilitation of these properties, even if used for short-term lease-purchase developments, adds to the management costs of the nonprofit or for-profit owners. Most won't

beginning in some instances, particularly where there are rent-control ordinances, as meriting some protections.

²³ "US rental market gains seen after subprime debacle," *Reuters* (May 29, 2008)

²⁴ Matt Woolsey, "Market looks good for landlords: More Americans are renting as foreclosures and risky lending roil the housing market," *Forbes.com* (2008)

²⁵ The City of Cleveland appears to be a noteworthy exception, working with Neighborhood Progress, Inc. and the Cleveland Housing Network to acquire foreclosed properties for lease-purchase rehab and management, a specialty of the Network and suitable to Cleveland's weak homeownership market.

²⁶ *America's Rental Housing—The Key to a Balanced National Policy* (Joint Center for Housing Studies, 2008)

touch scattered-site rental or lease-purchase projects (other than the occasional scattered-site specialist such as the Cleveland Housing Network, and even CHN has had to get help with its scattered-site tax credit projects). The result is a housing stock and market that requires, at least temporarily, a rental solution, but a system of incentives for developers that militates against rental. The losers are lower-income minority householders who could qualify for rentals or lease-purchase units were there the political will and the public subsidy.

Older Homeowners

In the public's view, the subprime crisis is a home purchase crisis, families having purchased homes with mortgages that they couldn't afford and should have known better (the blame-the-victim perspective that banks are using to defend their actions and that opponents of federal programs are citing in their opposition to "bail-outs") or that they failed to understand and in many cases may not have been able to understand the exploding and ultimately punitive terms of their mortgages. But a significant number of victims of the subprime crisis are losing homes that were not purchased in the past few years, but homes they have lived in much longer.

A sizable portion of the subprime victims have been families who refinanced their existing mortgages in order to realize some of the built-up equity as cash. These "home equity" loans attracted subprime lenders to stabilizing or stable inner-city neighborhoods where longer term, often older homeowners might be attracted to the prospect of being able to tap the built-up equity in their homes for home improvements or consumer expenditures. For moderate income families, these "cash-out" loans offered quick access to cash that the homeowners might not have ever been able to tap in theory. A HUD study of subprime loans from ten years ago revealed that half of subprime loans in African-American neighborhoods compared to less than one-tenth in white neighborhoods were refinance loans. Other studies comparing neighborhoods by race and income in various cities revealed that these refinance loans were disproportionately marketed to African-American neighborhoods,²⁷ including starkly disparate statistics from Boston that for 2003, over 25 percent of refinance loans provided to African-American borrowers, 19 percent to Hispanic borrowers, and only 5.6 percent to white borrowers were subprime loans.²⁸

As of 2004, the share of subprime loans that were refinance loans varied from over 10 percent in the Pacific states region to more than one-fourth in the Southwest, and the MSAs with typically high rates of subprime refinance loans were in North and South Carolina, Georgia, Alabama, and Mississippi in the Southeast, and Louisiana, Arkansas, Texas, and New Mexico in the Southwest.²⁹ According to the Center for Responsible Lending, a majority of subprime loans do not go for home purchases, only one-fourth to first time homebuyers.³⁰ The effect has been to take stable neighborhoods in places like Detroit and undermine them by aiming at older homeowners, frequently householders in their 50s and 60s. Unlike potentially more

²⁷ Cf. Dennis E. Gale, *Subprime And Predatory Mortgage Refinancing: Information Technology, Credit Scoring And Vulnerable Borrowers* (Institute of Business and Economic Research, Fisher Center for Real Estate and Urban Economics, May 2001) for a review of the HUD study and others documenting the subprime refinance trends prior to 2000.

²⁸ Jim Campen, *Borrowing Trouble: Subprime Lending in Greater Boston 2000-2003* (January 2005), Table 2; Campen's 2008 study, *Changing Patterns: Mortgage Lending to Traditionally Underserved Borrowers & Neighborhoods in Boston, Greater Boston and Massachusetts*, 2006 (February 2008) demonstrates that this pattern of racially disparate refinance lending continues.

²⁹ Allan Fishbein and Patrick Woodall, *Subprime Cities: Patterns of Geographic Disparity in Subprime Lending* (Consumer Federation of America, 2005)

³⁰ *Subprime Lending is A Net Drain on Homeownership* (Center for Responsible Lending, CRL Issue Paper No. 14, March 27, 2007)

geographically mobile younger homeowners, these home equity victims confront a disruptive uprooting against which they have little or no recourse.

The resulting problem is one that disproportionately affects older homeowners in inner-city neighborhoods and undermines the progress of communities that had made significant strides toward stable housing market dynamics. “Equity rich” but cash poor older homeowners have been attractive targets for subprime lenders and brokers. But it isn’t simply a matter of refinancing. Older homeowners typically hold subprime mortgages: in 2001, more than half of the mortgages of homeowners 45 and older were subprime compared to 12 percent for homeowners 35 or less.³¹ Is this a problem clearly related to disparate racial outcomes? Subsequent studies from the AARP reached that conclusion: “Older borrowers who were widowed, female, black, and less educated held a significantly greater percentage of subprime loans than older borrowers who were married, male, non-black, and more educated.”³²

Subsidies

From the very beginning of considerations of the response to bringing foreclosed properties back into productive use, the resource picture has been focused on federal subsidies such as additions to the Community Development Block Grant and reprogramming of various tax credit programs such as the New Markets Tax Credit and the Low Income Housing Credit.

In Columbus, Ohio, an affiliate of Enterprise Community Partners (formerly the Enterprise Foundation) is acquiring and rehabilitating foreclosed properties financed by a mix of public subsidies including NMTC plus a combination of local subsidies; in suburban Newark, New Jersey, an aggressive and creative nonprofit called HANDS is attempting a bulk acquisition of some 40 properties from one major subprime lender; and in the Twin Cities area, the Greater Minneapolis Metropolitan Housing Corporation is drawing on a privately capitalized fund to acquire, rehab, and resell foreclosed properties. Much of what is contemplated is predicated on private financing, including program-related investments and other kinds of social investments from philanthropic grant makers.

But on the ground, local governments are looking toward solutions that do not trigger the use of CDBG or HOME subsidies for a very obvious reason: these subsidies come with mandatory affordability and resale restrictions, meaning that the re-occupants of these formerly restored units might be lower income. Even more frightening to some local officials is that the properties might be converted to rental or some form of social ownership such as community land trusts, limited equity cooperatives, or other forms of shared equity ownership.

The opportunity, if it can be called such, of the collapse of the financial markets’ predatory approach to affordable homeownership, is that for communities with huge swaths of foreclosed properties, conversion to shared equity approaches might now be feasible. A spokesperson for the NeighborWorks “Multi-Family Initiative” suggested that the foreclosure crisis might be spark for local governments and the nonprofit sector to take up the challenge of the Ford Foundation’s

³¹ Neal Walters and Sharon Hermanson, *Subprime Mortgage Lending and Older Borrowers* (AARP, March 2001)

³² Neal Walters and Sharon Hermanson, *Older Subprime Refinance Mortgage Borrowers* (AARP, July 2002)

George McCarthy to make 10 to 25 percent of the housing of major cities permanently affordable.³³

Despite lip service, there is often little in various plans that would mandate long term affordability as an element of the solution to this crisis. Anecdotal reports from activists in Indianapolis and Richmond, for example, suggest that local authorities are generally resistant to any solutions other than restriction-free homeownership. Few of the actual proposals for a response to the challenge of 500,000 vacant, foreclosed properties by the end of 2008 actually broach the concept of long term affordability. Generally, affordability is dictated by the market; since the housing markets in some of these cities are weak, the subsequent sales of reclaimed subprime-foreclosed properties will be affordable simply because market conditions don't support higher sales prices. Influential organizations such as the free-market oriented Initiative for a Competitive Inner City (ICIC) have issued policy proposals that omit long term affordability controls and alternatives to fee-simple homeownership.³⁴

The reality is that unless the federal government intervenes to mandate that lenders and servicers turn over properties to localities and nonprofits, the total development costs for foreclosed properties will result in units outside of the affordability range of moderate and even many middle-income purchasers. Certainly, in expensive markets such as Los Angeles and Boston, many properties that reach foreclosure auctions still end up selling at huge costs. But even in less robust sectors of these markets and in weaker markets, the combination of acquisition, rehab, holding, and disposition costs add up to total development costs that need subsidies if they are going to be marketed for moderate and lower income households.

For example, if a nonprofit were to want to do a "bulk acquisition" of the 46 REO properties owned by Countrywide in Indianapolis, Indiana, at the moment Countrywide is marketing the properties for an acquisition price of \$3,168,590, or \$68,882 per property.³⁵ This is in Indianapolis, where the market tanked before the subprime foreclosure crisis, yet Countrywide persists in asking for substantial pre-rehab acquisition prices (with the comic turn of ending each asking price with \$900, like gasoline prices that always end in 99 cents). Perhaps Countrywide might be willing to offer a discount to a nonprofit with the economic wherewithal to make a bid for the properties, but Countrywide's REO units are scattered throughout the City, so managing and securing the scattered site properties present additional costs to the acquiring entity. While some properties might be in reasonably good physical condition, it is a rule of thumb that upon foreclosure, properties are subject to vandalism (disappearing copper pipes, etc.), suggesting that more than mod rehabs are in order. And with slow markets and tight mortgage financing, the time that a nonprofit would have to hold and manage the properties before ultimate disposition is potentially long. As a rule of thumb, assuming that the lenders and servicers continue to show little or no willingness to budge on prices except under political duress, the TDC on subprime foreclosed properties will be two to three times the listed acquisition prices—and to make those affordable, even in weak markets, it will take deep subsidies.

A significant contrast is the proposal from ECP and the Center for American Progress calling for the creation of the "Great American Dream Neighborhood Stabilization" Fund (GARDNS),

³³ Don Akchin, "Shared-Equity Ownership: Has Its Time Come?," *NeighborWorks Bright Ideas* (Fall 2007), p. 21.

³⁴ *Foreclosures and the Inner City: The Current Mortgage Crisis and Its Inner City Implications* (Initiative for a Competitive Inner City, 2008).

³⁵ Calculations based on the advertised asking price, which Countrywide describes as "bargains," of Countrywide's REO listings, for Indianapolis at http://www.countrywide.com/purchase/f_reo.asp.

which explicitly builds in deed restrictions and “soft seconds” to maintain the affordability of reclaimed units for a period of time, or suggests that redeveloped housing go into community land trusts (where affordability is guaranteed by deed riders with covenants on the land).³⁶ But government openness to social responses to the subprime foreclosure problem is scattered at best, notwithstanding lip service to the contrary. The result is that people in the housing market who could be helped by the restoration of foreclosed properties through shared equity mechanisms will largely lose out due to ideological barriers from private lenders and government officials.

Structural Solutions

It is striking that the battles over how to restructure and save homeowners in their homes, requiring lenders and servicers to restructure the terms of their loans (sacrificing loan principal and shaving interest rates), will be fought out in Congress and the bankruptcy courts, eventually being solved too late for the millions of homeowners currently at risk due to exploding ARMs and other current forms of subprime loans (the success of HOPE NOW and other counseling will be minimal until the lenders and servicers are compelled to accept changes in loan terms, not simply modifications in payment schedules). The beneficiaries will be the homeowners at risk in the next phase of subprime foreclosures, the Alt-A loans, which will begin coming due in large numbers in 2009 and 2010. Oddly enough, the Alt-A borrowers tend to be higher income and less minority than families holding 2-28 or 3-27 ARMs. In essence, the public’s halting response to the subprime crisis of today, with a significant minority component, will benefit the next wave of subprime borrowers, with a smaller racial and ethnic minority profile.

Partly, the structural racism response to the subprime solution is to push for faster and more aggressive responses due to the clearly disparate racial impacts and outcomes of delinquencies and foreclosures, undoing decades of slow but discernable progress in improving housing and neighborhood conditions for African-American and Latino families. But what is needed is not simply speed, but solutions that get at the racial underpinnings of aspects of the problem, including potentially these:

- Social housing solutions: Some of the prospective responses to the problem require thinking differently about ownership. Fee simple homeownership for lower-income households that lack the resource wherewithal to withstand the financial shocks of job losses and other factors, simply means that these homeowners lose everything. Social housing solutions—limited equity cooperatives, community land trusts, etc.—controlled by community-based organizations have to be considered unless our society is basically satisfied with a constant churning of minority families and neighborhoods as the miner’s canary of the nation’s economic problems.
- Community-based organizations: The hidden story of the subprime crisis is that for the most part, community-based nonprofits have not been at fault. In fact, the housing developed and financed by community development corporations, community land trusts, and others, have shown minimal evidence of subprime problems.³⁷ Unlike fee-driven builders and brokers, community development corporations, for all of their financial limitations, basically put home

³⁶ David Abramowitz, *Addressing Foreclosures: A Great American Dream Neighborhood Stabilization Plan* (Center for American Progress, January 31, 2008), p. 10.

³⁷ Rick Cohen, “How Foundations Can Heal the Housing Crisis”, the *Chronicle of Philanthropy* (June 12, 2008); Rick Cohen, “Nonprofits Stand Out in Subprime Crisis”, in the *Philanthropy Journal* (April 21, 2008); Rick Cohen, “Nonprofits and the Subprime Meltdown”, in the *Nonprofit Quarterly (Cohen Report)* (April 15, 2008); Rick Cohen, “Foreclosed, but not Forewarned: Subprime Mess Will Put Pressure on Charities”, in the *NonProfit Times* (February 1, 2008)

purchasers into conventional loans, supplemented by pre- and post-purchase counseling. The results are obvious and suggest future policy directions.

- **Community banking:** Unless there is some new study about to be released suggesting contrary information, the nation's minority-owned African-American and Latino banks have been solid performers on home mortgage and home equity loans, in contrast to the heinous performance of lenders such as Countrywide, Washington Mutual, Deutschebank, etc. For both minority-owned banks and community development financial institutions (CDFIs), there are roles to be played in crafting community-level responses.
- **Federal subsidies through municipalities:** An odd dynamic in the debates on Capitol Hill has been a presumption that providing money to municipal governments will end up with waste and inefficiency compared to funneling federal resources through state governments. The supposed rationality of state allocations, given that most state legislatures are dominated by suburban and sometimes rural jurisdictions, seems to perpetuate the notion that localities with minority populations governed by African-American and Latino mayors and city councils cannot govern themselves and craft locally specific solutions.
- **Social investment:** National legislation to respond to the prospect of 500,000 vacant REO properties anticipates a mix of grants and loans, the lending frequently of a relatively short term nature. Given market conditions and total development costs, responding to the glut of vacant, foreclosed properties in American cities requires financing not predicated on a lot of lending. Given acquisition, holding, and rehab costs, the projects cannot sustain much lending, not to mention short-term lending. This is an opportunity for major, tax endowed institutions (for example, foundations sitting on well above a half-trillion dollars in assets) to make equity investments in local funds, controlled by local entities, to acquire and rehab foreclosed properties.
- **Minority homeownership:** Beyond social housing solutions, the nation must eschew responses that simply turn prospective minority homeowners into a future class of victims in the next, unimaginable but assured wave of structural racism in the housing market. Already, proposals are emerging that seem to replicate the problems of the current subprime crisis, albeit under different terminology, all but guaranteeing a future reprise of this dynamic. Responding to the specific challenges of increasing minority homeownership is called for.
- **Speculation:** It is difficult to believe, but federal legislation moving through Congress will reward with tax incentives, speculators and "house-flippers" who specialize in acquiring and quickly remarketing foreclosed properties. As a response to the subprime problem, Congress is supporting, reviving, and undergirding the worst of speculators (in some cities, marketing themselves with flyers saying "we buy ugly houses"), whose actions may, for legislators' purposes, result in the temporary reuse of foreclosed properties, but overall serve to further undermine neighborhood community development. As banks and servicers bring foreclosed properties to auction, these speculators always end up first in line to pick up properties before community-based nonprofits can even get there, stripping the properties of whatever they can, and then flipping the properties before walking. Targeting these speculators whose targets are generally minority neighborhoods is worth considering.
- **Municipal tools:** As anyone dealing with the foreclosed property problem at the local level can attest to, acquiring subprime foreclosed properties is nightmarish. There are multiple lenders, servicers, and investors, all saying that the decision-making responsibility lies with someone else, almost none willing to budget on prices. On any block, the number of foreclosures is matched by a multiplicity of lenders and servicers. In the absence or perhaps even with federal action, localities should be able to use their powers of eminent domain and redevelopment to acquire foreclosed properties in particularly hard-hit minority neighborhoods, compensating lenders and servicers not for the mortgage price, but for the actual (often nonexistent) market value. In this way, municipalities and their nonprofit

partners could then gain control of blocs of properties with the potential of taking decisive actions to return properties to productive uses.

- Litigation: The disparate racial outcomes of the subprime crisis ought to be a reason for localities and nonprofits to consider litigation against lenders and servicers. Municipalities such as Cleveland and Baltimore have litigated against the subprime lenders, and the press has suggested that these suits have not achieved anything positive. That is entirely wrong. In Cleveland, the lenders are coming to the table to negotiate bulk dispositions with community organizations and the city government, in part because of the effect of the litigation. The litigation brought the lenders to the table for negotiations. Because of the demonstrable disparate racial outcomes of the subprime crisis, litigation strategies could result in community-specific progress with certain lenders and servicers.

This is a very brief recounting of only some of the disparate racial outcomes of the subprime crisis and some potential solutions that could be considered that build on a structural racism analysis. To remove the racial and ethnic dimension of the subprime crisis and imagine that this is simply a housing markets problem, looking for a housing finance correction or solution, is to miss the potential power of a structural racism approach.

