An Urban Slice of Apple Pie

Rethinking homeownership in US cities

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> "For *some* families *some* houses represent wise buys, but a culture and real estate industry that give blanket endorsement to ownership fail to indicate *which* families and *which* houses."
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> John P. Dean, Homeownership: Is It Sound—1945[1]

The romantic notion of homeownership is deeply rooted in the American psyche. Homeownership as the "American Dream" borders on cliché. We proclaim that June is "National Home Ownership Month."[2] However, it is worth asking whether this aspiration to own a home can or should be spatially differentiated. Beginning with the first HOLC maps that infamously redlined inner city neighborhoods, the push toward homeownership favored suburban locations. As GIs returned from World War II, suburban Levittown type developments beckoned with the promise of a safe and tranquil escape from the tensions of the city. Homeownership rates in the suburbs typically far outstripped homeownership rates in the major cities of the United States.[3] Other government policies built upon this suburban favoritism leaving city dwellers to wonder if they were, in fact, permitted to share in the same dream.

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[1] Cited in Lawrence Vale, The Ideological Origins of Affordable Home Ownership, in Rhoe and Watson, Chasing the American Dream, Cornell University Press, 2007 p. 37.

[2] A. MECHELE DICKERSON, The Myth Of Home Ownership And Why Home Ownership Is Not Always A Good Thing, 84 Indiana Law Journal 189, 190 (2009).

[3] In 1950, the city owner occupied percentage was 50% and the suburban owner occupied percentage was 56%. By 1960, the city owner occupied percentage was 47% and the suburban owner occupied was 67%. Census Data 1950 and 1960.

Urban economists, sociologists and policy makers, however, extolled the both the individual benefits of homeownership (wealth creation, forced savings) and the positive externalities (stability, crime reduction, etc.) and pushed for an increase in homeownership rates in urban neighborhoods. Citing the long history of racial discrimination in mortgage lending advocates of homeownership pushed for regulation barring this type of discrimination and advocating opening the mortgage markets to previously underserved populations. In the most recent past CRA and policy changes at Fannie and Freddie had the explicit goal of increasing homeownership in historically underserved city neighborhoods.

City homeownership did have a substantial increase in the 2000 census–when the rate of urban homeownership hit 53.4%. However, the soft underbelly of this increase was the creeping reliance on subprime loans to finance this ownership. Even before the current crisis there was a heavier use of non-prime loans in minority and inner city neighborhoods. The advent of the subprime ARM may have contributed to a noted increase in urban homeownership. However, as that bubble began to burst so not only did the dreams of the individual homeowners evaporate into foreclosure. Also the visions of city leaders built upon the same dreams morphed into fiscal nightmares.

That leaves us with the salient question: does (or should) the distinctly suburban mindset of homeownership have a place in urban policy? The fact that many households hold their wealth through homeownership does not mean that this should be true of all.[4] To answer that question we must first historically contextualize patterns of urban housing tenure and contrast it to the growing push to suburban homeownership. Next step will entail discussing the recent federal policy initiatives directed specifically at *urban* homeownership and their effect on housing tenure. The recent boom and bust of

[4] See, MELISSA JACOBY, Home Ownership Risk Beyond A Subprime Crisis: The Role Of Delinquency Management, 76 Fordham Law Review 2261, 2278 (2008). But see, J. PETER BYRNE, MICHAEL DIAMOND, Affordable Housing, Land Tenure, And Urban Policy: The Matrix Revealed, 34 Fordham Urban Law Journal 527, 544 (2007) (advocating for homeownership for low income families)

the residential housing market had grave implications for urban communities due in large part to the intersection of racial concentration in residential living patterns coupled with extraordinary penetration of subprime mortgages into the minority housing markets. The foreclosure crisis occupies a central focal point of this discussion. The conclusion forces a rethinking of urban housing policy to incorporate not just the goal of individual homeownership but also the stability and economic well being of the city's neighborhoods including those who are not able to join the ranks of homeowner.

I Historical Notions of Urban Homeownership

From its agrarian roots the United States has shifted into a nation that is increasingly urbanized. In the 1920 census the population split between rural and urban resident was almost even.[5] It began to widen The gap began to widen as early as the 1930s, where the rural population dropped from 48.8% to 43.9% and the urban population increased from 51.2% to 56.1%. The difference became even more pronounced in the 1950's with 36% of the population living in rural areas and 64% in urban areas.[6]

Mass urbanization began with a shift from an agriculturally focused nation to a more industrially driven nation.[7] As workers streamed into the city they swelled the unsanitary and unsafe tenement houses and rental apartments.[8] Teeming masses in squalid living conditions stands in stark contrast to the traditional Jeffersonian ideal of private landownership that has permeated American culture since the inception of the country. [9] The seeds of tension of urban living and homeownership are thus sown.

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[5] 51% of the total population was urban and 49% was rural. 1920 Census data.
[6] United States Census data 1930 and 1950.
[7] Get Cite.
[8] Charles C. Bohl, Affordable Housing Design for Place Making and Community Building, in Rhoe and Watson, Chasing the American Dream, Cornell University Press, 2007 p. 114.
[9] See, Georgette C. Poindexter, Collective Individualism: Deconstructing the Legal City, 145 U. Penn. L.Rev. 607, 625. See also, J. PETER BYRNE, MICHAEL DIAMOND, *Affordable Housing, Land Tenure, And Urban Policy: The Matrix Revealed*, 34 Fordham Urban Law Journal 527, 542 (2007). It is interesting to note that this Jeffersonian ideal tied civic participation to land ownership. Tenants were not permitted to vote in federal elections until 1860. See, William M. Rohe and Leslie S. Stewart, Homeownership and Neighborhood Stability, Housing Policy Debate Vol. 7 Iss. 1 Fannie Mae Foundation 1996, p. 37

In point of fact, however, the idealized notion of homeownership was not prevalent in urban centers of the United States for the first several centuries. [10] The idea of owning a single family home took a foothold during the 1920s and urban homeowner rose during the 1920s. Homeownership rates jumped from 45.6% in 1920 to 47.8% in 1930.[11] Even then it was far from a foregone conclusion that a family (even one of financial means) would choose to buy a home rather than rent.[12] However, the bottom of the housing market fell out almost completely during the Great Depression and ownership rates dipped once more.[13] In an attempt to shore up the failing real estate industry, the federal government intervened into the private mortgage market with the creation of the FHA (discussed in more detail, infra). Interestingly the market drop cut across economic status. Homeownership rates after the Depression were not markedly different across class lines. In 1940 the homeownership rates for skilled and unskilled manual workers was not far below that for professionals (slightly less than 44%).[14] Prior to World War II it was common for people (especially those in the working class) to buy their first home in their forties when the eldest children had entered the work force and could contribute to the family income. [15]

[10] In fact homeownership rates dropped from 1890-1920. Rhoe and Watson, Chasing the American Dream, Cornell University Press, 2007 p. 9. See, also, Ira Rheingold, Michael Fitzpatrick, and Al Holfeld, Jr. From Redlining to Reverse Redlining: A History of Obstacles for Minority Homeownership in America Clearinghouse Review| January – February 2001 at 642. See,

[11] William M. Rohe and Harry L. Watson, Chasing the American Dream (2004), 16.

[12] Margaret Garb, City of American dreams: a history of home ownership and housing reform in Chicago 1871-1919, University of Chicago Press (2005) at 119-120 (discussing ambivalence of upper middle class families in Chicago in choosing to rent or to buy a home).

[13] Ira Rheingold, Michael Fitzpatrick, and Al Holfeld, Jr. From Redlining to Reverse Redlining: A History of Obstacles for Minority Homeownership in America Clearinghouse Review| January – February 2001 at 642.

[14] Harris R. (2003). The Suburban Worker in the History of Labor. *International Labor and Working Class History*, *64*, 8-24. Rhoe and Watson, Chasing the American Dream, Cornell University Press, 2007 p. 9. Richard Harris, Working-Class Home Ownership in the American Metropolis, J. of Urban History, Vol. 17 No. 1, November 1990 at 50.

[15] Richard Harris, Working-Class Home Ownership in the American Metropolis, J. of Urban History, Vol. 17 No. 1, November 1990 at 49.

After World War II, homeownership rates sky rocketed in the suburbs often at the expense of the city. At the beginning of the 20th century, most Americans did not own their own homes.[16] By 1960, about 56% of Americans owned their own homes.[17] But this growth was uneven. In 1960, 47% of city units were owner occupied whereas 67% of suburban units were owner occupied.[18] The suburbs became cheap and easy. First of all, land was cheaper away from the city core which made homeownership available.[19] Furthermore, the federal income tax code included deductibility of mortgage interest and real estate taxes, made owning this suburban bungalow even cheaper.[20]Federal highway dollars built concrete connectors from bedroom to office that facilitated commuting from the suburbs.[21] Federal mortgage guarantees through the FHA enticed buyers to the suburbs. The GI Bill (along with VA insured mortgages) opened up capital to returning soldiers who found they could afford a single family detached house in the suburbs.

The propaganda extolling the virtues of homeownership dates back to Herbert Hoover's "Own-Your-Own-Home" campaign when he was Secretary of Commerce under Harding and Coolidge.[22] However, in post War America the push toward homeownership was embraced with new fervor. Whether economic (promoting self sufficiency and wealth building), psychological (promoting positive well being)

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[16] Get Cite.

[17] United States Census data 1960.

[18] United States Census data 1960.

[19] Richard Harris, Working-Class Home Ownership in the American Metropolis, J. of Urban History, Vol. 17 No. 1, November 1990 46-69 at 59.

[20] [**cite to tax code]** See also, J. PETER BYRNE, MICHAEL DIAMOND, *Affordable Housing, Land Tenure, And Urban Policy: The Matrix Revealed*, 34 Fordham Urban Law Journal 527, 542 (2007)

[21] See, Georgette C. Poindexter, Towards a Legal Framework for Regional Redistribution of Poverty Related Expenses, 47 Wash.U. J. Urban Contemporary Law 3,8 (1995). See also, J. PETER BYRNE, MICHAEL DIAMOND, *Affordable Housing, Land Tenure, And Urban Policy: The Matrix Revealed*, 34 Fordham Urban Law Journal 527, 564(2007); WILLIAM A. FISCHEL, *An Economic History of Zoning and a Cure for its Exclusionary Effects*, 41 Urban Studies 317, 327(2004).

[22] Lawrence Vale, The Ideological Origins of Affordable Home Ownership,in Rhoe and Watson, Chasing the American Dream, Cornell University Press, 2007 p. 19. As an ironic aside when Hoover was President during the Great Depression encampments of homeless Americans were dubbed "Hoovervilles".

or social (promoting stable neighborhoods and communities)[23] almost no one dared to question the seemingly foregone conclusion that all Americans should strive to own their own home.[24] This thread of tying homeownership to "the American Way" continues strong through today.[25]

Two separate but powerful changes drastically bent the curve in homeownership growth: the FHA and zoning. In an effort to jump start the moribund construction industry the FHA was created to insure home mortgages.[26] This alone has no urban/suburban dichotomy. Where the division arises lies in the geographically proscribed limits in which these mortgages can secure a home loan. The invidious HOLC maps that literally redlined massive swaths of urban neighborhoods (thus preventing lending on houses in these neighborhoods) serve as the subject of countless books, articles and scholarly treatises.[27] The story is well told but it bears a distinct reference here because this was a crucial step in creating a schism in the rates of homeownership between the city and the suburbs. Requirements for minimum lot sizes and setbacks plus a preference for new construction all combined to push homeowners to the suburbs.[28] The crowning fact that the maps were explicitly race based left its legacy on countless city neighborhoods where access to capital was nigh impossible.

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[23] MELISSA JACOBY, *Home Ownership Risk Beyond A Subprime Crisis: The Role Of Delinquency Management*, 76 Fordham Law Review 2261, 2262 (2008).

[24] Notable critics at the time were Carol Aronovici ("complaining that renters were not given a proper place on the roster of solid citizenry" and John P. Dean. In fact the Atlantic Month chastised another periodical criticism of homeownership stating " criticism of homeownership is almost as reprehensible as an attack upon the Deity or a denial of the sincerity of mother's love." Lawrence Vale, The Ideological Origins of Affordable Home Ownership,in Rhoe and Watson, Chasing the American Dream, Cornell University Press, 2007 p. 37

[25] In August 1986 Newsweek magazine announced that "Homeownership has finally joined motherhood and apple pie on the list of unassailable American Institutions". August 25, 1986 p. 19 [get more examples] The same extollations of homeownership can also be heard in Canada where scholars have noted that, "Americans have commonly referred to home ownership as the "American dream," but it can with equal justice be described as the dream of Canadians." See, RICHARD HARRIS, *More American Than The United States*, 26 Journal Of Urban History 456, 462 (2000). Contrast this with Switzerland, which has the lowest homeownership rate in Europe (30%) and the only developed nation to tax imputed rent. See, WILLIAM A. FISCHEL, *An Economic History of Zoning and a Cure for its Exclusionary Effects*, 41 Urban Studies 317, 334 (2004).

[26] See, Ira Rheingold, Michael Fitzpatrick, and Al Holfeld, Jr. From Redlining to Reverse Redlining: A History of Obstacles for Minority Homeownership in America Clearinghouse Review| January – February 2001 at 644.

[27] Most notably, Kenneth T. Jackson, Crabgrass Frontier: The Suburbanization of the United States (1985)

[28] See, Charles L. Nier, III, Perpetuation Of Segregation: Toward A New Historical And Legal Interpretation Of Redlining Under The Fair Housing Act, 32 J. Marshall L. Rev. 617, 625 (1999)

Furthermore, changes in local government law that affirmed the constitutionality of zoning catapulted the single family house into exalted status. The primacy of single family dwellings had its roots in previous land use law initiatives-- most notably the publication of A Model Tenement House Law in New York in 1910.[29] This legislation categorized dwellings into three classes (single family, two family and multiple family) with the goal of eventually eliminating multiple family dwellings altogether.[30] In 1926 the United States Supreme Court upheld a zoning law whereby the municipality could restrict a landowner from using the property except in accordance the zoning code. For the "health safety and welfare "of the populace it is permissible to segregate land uses.[31] Among the reasons stated by the Court to justify the separation was that the proximity of "tenements" to single-family homes ruined the latter.[32]

If one imagines a zoning code as a triangle with most intensive land uses on the bottom, the single family home designation rests as the pinnacle. In development a property can be "up-zoned" meaning that, in most instances, it can legally be used for less intensive uses than what the code allows (e.g. you can build a single house in an area zoned for multi-family). However, it cannot be "down zoned" (you cannot build a multi-family structure in an area zone for single houses) without a variance which will be based on a showing of hardship and/or necessity. As one commentator has noted there is no theoretical reason that other land uses should be regarded as less important—but they are.[33] Zoning a piece of land as single family endows it with the value that all surrounding land will be used comparably preserving the economic value of the land and incentivizing consumption. This works well for

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[29] Lawrence Veiller A Model Tnenment House Law, Russell Sage Foundation (1910, 1920)

[30] Lawrence Vale, The Ideological Origins of Affordable Home Ownership,in Rhoe and Watson, Chasing the American Dream, Cornell University Press, 2007 p. 18.

[31] Village of Euclid v. Ambler Realty Co. 272 US 365 (1926)

[32] Village of Euclid v. Ambler Realty Co. 272 US 365 (1926). See, Tim Iglesias, Our Pluralist Housing Ethics And The Struggle For Affordability, 42 Wake Forest L. Rev. 511, 576 (2007)

[33] WILLIAM A. FISCHEL, *An Economic History of Zoning and a Cure for its Exclusionary Effects*, 41 Urban Studies 317, 327(2004).

undeveloped land in the suburbs. However, in urban centers already built up with attached housing and mixed uses the endowment value is unattainable.

A by-product of these policies and laws was the increasing economic and racial stratification in metropolitan areas. The suburbs grew more white and more wealthy. The central core grew more minority and poor. Historically the gap between black white homeownership was narrowing before 1940.[34] However, as an increasing number of blacks left the rural South (and homes they owned) for the urban north, the gap widened because homeownership rates for residents of central cities remained low.[35] There is no dispute that although racial segregation might have predated federal housing and transportation initiatives, these programs reinforced mobility barriers that kept minorities out of the suburbs and put homeownership beyond their grasp.[36]

Civil unrest left many of America's cities bursting into rioting flames in the late 1960s. One response of the federal government was an attempt to create housing and homeownership opportunities for low income families. Title VIII of the Fair Civil Rights Act of 1968[37] (also known as the Fair Housing Act) sought to eliminate housing discrimination and level the playing field across racial lines in access to housing. It had two major goals: expand minority housing opportunities and foster residential

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[34] See George S. Masnick, Home Ownership Trends and Racial Inequality in the United States in the 20th Century, Joint Center for Housing Studies Harvard University, W01-4, February 2001, 9.

[35] See, William J. Collins and Robert A. Margo, Race and Home Ownership: A Century-Long View, Explorations in Economic History 38,89 (2001)

[36] The racial impact of federal programs is so well accepted as to constituted a stylized fact, see, e.g. Kenneth Jackson, Crabgrass Frontier: The Suburbanization of the United States (1985) at 362; William J. Collins and Robert A. Margo, Race and Home Ownership: A Century-Long View, Explorations in Economic History 38,84-85 (2001); Charles L. Nier, III, Perpetuation Of Segregation: Toward A New Historical And Legal Interpretation Of Redlining Under The Fair Housing Act, 32 J. Marshall L. Rev. 617, 618 (1999); J. PETER BYRNE, MICHAEL DIAMOND, *Affordable Housing, Land Tenure, And Urban Policy: The Matrix Revealed*, 34 Fordham Urban Law Journal 527, 564(2007); JOHN A. POWELL, *Reflections On The Past, Looking To The Future: The Fair Housing Act At 40* 41 Indiana Law Review 605, 612 (2008); Ira Rheingold, Michael Fitzpatrick and Al Holfeld, Jr. From Redlining to Reverse Redlining: A History of Obstacles for Minority Homeownership in America, Clearinghouse Review, January – February 2001 p. 644-645.

[37] 42U.S.C.A. §§ 3601-3631

integration.[38] It's centerpiece program, Section 235, however, rests in the history books as a failure. Middle income white families used the program to purchase new suburban housing while black families were forced into over-priced old inner city homes of questionable structural integrity.[39] Notwithstanding the failure of the Section 235, program there were indeed gains made in homeowner rates among people of color. In 1950 the non-white homeownership rate was 34.9**%**, by 1960 it had grown to 38.2**%** and by 2000 almost half (46.6%) of non-whites owned their homes.[40] These statistics should have be analyzed as compared to white ownership rates of 57%, 64.4% and73% during the same period.[41]

In the wake of the Fair Housing Acts several government programs shifted away from homeownership in the central city and towards affordability in the rental market. Notably the Voucher Program under Section 8 introduced tenant portability to low income rental housing subsidies. The Low Income Housing Tax Credit, begun in 1987, incentivizes developers to build low income housing by subsidizing the cost of capital. Urban homeowners, though, no longer occupied center state in the policy arena.

II. More recent government policies affecting urban homeownership

Despite the turn towards rental housing, seeds of homeowner policy remained. Recognizing the disparity between suburban and urban homeownership rates (and acknowledging that federal policies had a large hand in creating these disparities) the federal government did embark on several programs aimed at increasing urban home homeownership—specifically ownership among the low-moderate

[38] Charles L. Nier, III, Perpetuation Of Segregation: Toward A New Historical And Legal Interpretation Of Redlining Under The Fair Housing Act, 32 J. Marshall L. Rev. 617, (1999)

[39] For an in-depth analysis see, Kevin Fox Gotham, Separate and Unequal: the Housing Act of 1968 and the Section 235 Program, 15 Sociological Forum 13 (2000); see also, Ira Rheingold, Michael Fitzpatrick and Al Holfeld, Jr. From Redlining to Reverse Redlining: A History of Obstacles for Minority Homeownership in America, Clearinghouse Review, January – February 2001 p. 645.

[40] United States Census Data, 1950, 1960, 2000.

[41] See George S. Masnick, Home Ownership Trends and Racial Inequality in the United States in the 20th Century, Joint Center for Housing Studies Harvard University, W01-4, February 2001, 21 Table 1. See also, JOHN A. POWELL, *Reflections On The Past, Looking To The Future: The Fair Housing Act At 40,* 41 Indiana Law Review 605, 608 (2008) (reflecting on the positive gains of the Civil Rights movement in minority homeownership).

income (LMI) groups whose effect is still felt today.[42] These housing programs followed carried the same tune of previous federal policies emphasizing homeownership as a asset building, socially beneficial and economically positive goal (bordering on virtue).[43] Two recent programs in particular are generally acknowledged as the major policy initiatives pointed towards increasing urban homeownership the Community Reinvestment Act and changes at Fannie Mae and Freddie Mac.

Community Reinvestment Act

The Community Reinvestment Act (CRA) was enacted by Congress in 1977 in an attempt to increase access to credit to lower- and moderate-income borrowers, who were limited by policies, such as redlining, which systematically excluded certain neighborhoods (based on, among other indicia, racial composition) from access to mortgage capital[44]. It emerged during a time when bank competition was legally limited and lenders had little incentive to develop business in low income neighborhoods.[45] This underinvestment in certain communities was held out as the cause of blight.[46] The premise underlying the passage of the CRA was that because banks receive certain benefits, such as low interest rates, federal charters, and federal deposits from the government, banks should reinvest money back into lower income communities, especially communities where they operate.[47] The mission of the CRA is "intended to encourage depository institutions to help meet the credit needs of the communities in

[42] Since previous federal policies had either the explicit or implicit goal of moving the white middle class to the suburbs the literature and policy analysis of urban homeowners is inextricably intertwined with both class (lower income) and race (minority). To tease out the differences here is does not serve the underlying goal of this research as the effect of difference would be minimal.
[43] See, J. PETER BYRNE, MICHAEL DIAMOND, *Affordable Housing, Land Tenure, And Urban Policy: The Matrix Revealed*, 34 Fordham Urban Law Journal 527, 543 (2007).
[44] Charles L. Nier, III, Perpetuation Of Segregation: Toward A New Historical And Legal Interpretation Of Redlining Under The Fair Housing Act, 32 J. Marshall L. Rev. 617, 633 (1999); Ira Rheingold, Michael Fitzpatrick, and Al Holfeld, Jr. From Redlining to Reverse Redlining: A History of Obstacles for Minority Homeownership in America Clearinghouse Review| January – February 2001 at 648. See also, Ben S. Bernanke, "The Community Reinvestment Act: Its Evolution and New Challenges," Board of Governors of the Federal Reserve System, http://www.federalreserve.gov/newsevents/speech/ Bernanke20070330a.htm.
[45] Howard Husock , Housing Goals We Can't Afford, Op-Ed, New York Times, 11 December 2008
[46] KATHLEEN C. ENGEL PATRICIA A. MCCOY, *The CRA Implications Of Predatory Lending*, 29 Fordham Urban Law Journal 1571, 1571(2002).
[47] Raymond H. Brescia, "Part of the Disease or Part of the Cure: The Financial Crisis and the Community Reinvestment Act," *South Carolina Law Review*, Spring 2009, 631.

which they operate, including low- and moderate-income neighborhoods, consistent with safe and sound banking operations."[48]

The CRA does not force banks to loan money to lower- and moderate-income communities or set specific quotas for lending as Congress did not want to dictate an individual bank's lending practices.[49] Instead, banks are periodically evaluated for their record in meeting the credit needs of the communities in which they operate through an examination by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency (OCC), or the Office of Thrift Supervision (OTS)[50]. The governmental institutions that oversee banks give them one of four ratings – outstanding, satisfactory, needs to improve, or substantial non-compliance.[51] In 1995 the Clinton Administration made lending in LMI neighborhoods a requisite for an "outstanding" rating. However, the fundamental issue that will play a key role in the financial crisis is that Banks were not judged on how their loans performed but rather on the volume of loans originated.[52]

Banks are expected to originate loans in areas where they take deposits. This is determined by where the bank has its main office, a branch, or deposit-taking ATMs.[53] Non-deposit mortgage lenders are not subject to the CRA, and commercial banks have the choice whether or not to count affiliates in their CRA examinations.[54] One of the reasons that there may be doubt about whether the CRA leads to more

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[48] Federal Financial Institutions Examination Council, "Community Reinvestment Act," http://www.ffiec.gov/CRA/history.htm.
[49] Raymond H. Brescia, "Part of the Disease or Part of the Cure: The Financial Crisis and the Community Reinvestment Act," *South Carolina Law Review*, Spring 2009, 631.
[50] Federal Financial Institutions Examination Council, "Community Reinvestment Act," http://www.ffiec.gov/CRA/history.htm.
[51] Federal Financial Institutions Examination Council, "Examinations Procedures-Overview," http://www.ffiec.gov/cra/exam_overview.htm.
[52] Howard Husock , Housing Goals We Can't Afford, Op-Ed, New York Times, 11 December 2008
[53] Raymond H. Brescia, "Part of the Disease or Part of the Cure: The Financial Crisis and the Community Reinvestment Act," *South Carolina Law Review*, Spring 2009, 633.
[54] Raymond H. Brescia, "Part of the Disease or Part of the Cure: The Financial Crisis and the Community Reinvestment Act," *South Carolina Law Review*, Spring 2009, 632.

mortgages for lower-moderate income (LMI) families in urban areas is that so few of the mortgages issued to these families have been originated by institutions covered by the CRA. In fact, only 6% of higher-priced mortgage loans in 2004-2005 were covered by the CRA.[55]

One concern with the CRA is that the statute is loosely written; accordingly, it is difficult for the regulatory agencies to interpret what constitutes compliance.[56] Another issue is that the courts cannot overrule legislative decisions related to the CRA.[57] Additionally, the CRA has rarely been enforced—less than .06% of bank applications from 1988 through May 2007 were denied for failing to meet CRA criteria.[58] In light of these deficiencies efforts were made during the 1990s to increase enforcement of CRA requirements.[59] However, these efforts were insufficient. Accordingly because of these and other issues, in 1995, U.S. President Bill Clinton pushed for changes in the CRA that made the criteria easier to understand, the forms easier for banks to file, and an increased focus was placed on the actual lending.[60]

The efficacy of CRA requirements is decidedly mixed when analyzing the goal of increased access mortgage financing for low and moderate income families. On the one hand, Ben Bernanke stated,

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[55] Raymond H. Brescia, "Part of the Disease or Part of the Cure: The Financial Crisis and the Community Reinvestment Act," *South Carolina Law Review*, Spring 2009, 644.
[56] Glenn B. Canner, Elizabeth Laderman, Andreas Lehnert, and Wayne Passmore, "Does the Community Reinvestment Act (CRA) Cause Banks to Provide a Subsidy to some Mortgage Borrowers?", *Board of Governors of the Federal Reserve Finance & Economics Discussion Series*, April 2002, 8.
[57] Raymond H. Brescia, "Part of the Disease or Part of the Cure: The Financial Crisis and the Community Reinvestment Act," *South Carolina Law Review*, Spring 2009, 654.
[58] Raymond H. Brescia, "Part of the Disease or Part of the Cure: The Financial Crisis and the Community Reinvestment Act," *South Carolina Law Review*, Spring 2009, 653.
[59] Ira Rheingold, Michael Fitzpatrick, and Al Holfeld, Jr. From Redlining to Reverse Redlining: A History of Obstacles for Minority Homeownership in America Clearinghouse Review| January – February 2001 at 649. Along with the increased enforcement there were also several new initiatives to promote LMI homeownership most notably Homeownership and Opportunity for People Everywhere (HOPE). Rheingold, et al. at 649
[60] Liz Laderman, "Has the CRA Increased Lending for Low-Income Home Purchases?," *Federal Reserve Bank of San Francisco*, June 2004, http://www.frbsf.org/publications/economics/letter/2004/ el2004-16.html#subhead2. The Clinton Administration also initiated a National Home Ownerhip Strategy focusing on increasing access to credit. See, Ira Rheingold, Michael Fitzpatrick, and Al Holfeld, Jr. From Redlining to Reverse Redlining: A History of Obstacles for Minority Homeownership in America Clearinghouse Review| January – February 2001 at 649.

"Research on the CRA has tended to find positive net effects, but the results are not uniform."[61] Literature reviews along with studies based on CRA discussion groups have also found similar findings.[62] Moreover, there are several studies whose findings imply no effect of the CRA on lending to LMI communities. Berry and Lee found no CRA effect on lending when comparing "matched pairs" of houses where one is just above the CRA threshold and one is just below.[63] Gunther found that, between 1993 and 1997, CRA-covered lenders increased their mortgage originations to non-LMI borrowers more than to LMI borrowers while non-CRA-covered lenders exhibited the opposite results.[64] Bernanke also states, "some critical studies have argued that the CRA has been ineffective in addressing discrimination and market failures and that its social costs outweigh its benefits."[65]

Few studies on the CRA were available before 1993 because there was limited publicly available information on independent mortgage companies before this point.[66] In fact, one reason stated for the increases in lending under the CRA was the release of public CRA data in 1990, which increased the pressure on banks to lend to lower- and moderate-income borrowers because of resulting increases in potential negative publicity and the strengthening of community organizations' push for increased

[61] Ben S. Bernanke, "The Community Reinvestment Act: Its Evolution and New Challenges," Board of Governors of the Federal Reserve System, http://www.federalreserve.gov/newsevents/speech/ Bernanke20070330a.htm.

[62] Eric S. Belsky, Matthew Lambert, and Alexander von Hoffman, "Insights into the Practice of Community Reinvestment Act Lending: A Synthesis of CRA Discussion Groups," *Harvard University Joint Center for Housing Studies*, August 2000, 4. Raymond H. Brescia, "Part of the Disease or Part of the Cure: The Financial Crisis and the Community Reinvestment Act," *South Carolina Law Review*, Spring 2009, 638.

[63] Neil Bhutta, "Giving Credit where Credit is Due? The Community Reinvestment Act and Mortgage Lending in Lower-Income Neighborhoods," *Board of Governors of the Federal Reserve Finance & Economics Discussion Series*, 2008, 5. Citing following study: Christopher R. Berry and Sarah L. Lee, "The Community Reinvestment Act: A Regression Discontinuity Analysis," *Harris School Working Paper Series07.04*, 2007.

[64] Liz Laderman, "Has the CRA Increased Lending for Low-Income Home Purchases?," *Federal Reserve Bank of San Francisco*, June 2004, http://www.frbsf.org/publications/economics/letter/2004/ el2004-16.html#subhead2. Citing Jeffery Gunther, "Should CRA Stand for 'Community Redundancy Act,'" *Regulation* 23 (3), 56-60.

[65] Ben S. Bernanke, "The Community Reinvestment Act: Its Evolution and New Challenges," Board of Governors of the Federal Reserve System, http://www.federalreserve.gov/newsevents/speech/ Bernanke20070330a.htm. Citing, Michael Barr, Banking the Poor, 21 Yale J. on Reg. 121 (2004) and Keith Hylton, Development Lending and the Community Reinvestment Act, Law and Economics Working Paper Series 06-07 Boston Univ. Law School (2006).

[66] Liz Laderman, "Has the CRA Increased Lending for Low-Income Home Purchases?," Federal Reserve Bank of San Francisco, June 2004, http://www.frbsf.org/publications/economics/letter/2004/ el2004-16.html#subhead2.

lending.[67] CRA discussion-based groups reveal that regulatory factors leading to increased CRA lending included the Board of Governors of the Federal Reserve's 1989 denial of a merger request by Continental Illinois National Bank and Trust Company of Chicago "on the ground that the bank had not met its obligations under the CRA," increased Congressional pressure to enforce the CRA in the early 1990s, and the changes to the CRA instituted under President Clinton in 1995.[68]

More recent studies do find a significant effect of the CRA on LMI mortgage lending.[69] Along with this finding, researchers found that lenders subject to the CRA originate a higher portion of loans to LMI borrowers and neighborhoods where there is active community organization focused on promoting the expansion of credit than in areas lacking community involvement.[70] This could explain some increases in LMI lending as CRA agreements increased significantly after President Clinton's reform from $150 billion in 1995 to $397 billion in 1997.[71] Also, researchers found that CRA lenders make a higher portion of loans in metropolitan statistical areas (MSAs) where a higher percentage of the areas within the MSA

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67 Eric S. Belsky, Matthew Lambert, and Alexander von Hoffman, "Insights into the Practice of Community Reinvestment Act Lending: A Synthesis of CRA Discussion Groups," Harvard University Joint Center for Housing Studies, August 2000, 10.

68 Eric S. Belsky, Matthew Lambert, and Alexander von Hoffman, "Insights into the Practice of Community Reinvestment Act Lending: A Synthesis of CRA Discussion Groups," Harvard University Joint Center for Housing Studies, August 2000, 11, 13, 14. The CRA regulations adopted in 1995 established for large institutions a three-pronged test based on performance in the areas of lending, investments, and services. While the regulations placed the greatest emphasis on lending, they encouraged innovative approaches to addressing community development credit needs. Several provisions were included to reduce compliance costs, among them a new rule that allowed small banks to meet their requirements by means of a streamlined examination focused on lending activities. See, Ben S. Bernanke, "The Community Reinvestment Act: Its Evolution and New Challenges," Board of Governors of the Federal Reserve System, http://www.federalreserve.gov/newsevents/speech/Bernanke20070330a.htm. See also, press release by Clinton Administration: http://clinton6.nara.gov/1993/12/1993-12-08-briefing-by-bentsen-and-rubin.text.html

69 Eric S. Belsky, Michael Schill, and Anthony Yezer, "The Effect of the Community Reinvestment Act on Bank and Thrift Home Purchase Mortgage Lending," *Harvard University Joint Center for Housing Studies*, August 2001, 1; Stuart A. Gabriel and Stuart S. Rosenthal, "Government-Sponsored Enterprises, the Community Reinvestment Act, and Home Ownership in Targeted Underserved Neighborhoods," in *Housing Markets and the Economy: Risk, Regulation, and Policy*, ed. Edward L. Glaeser and John M. Quigley, 210 (Connecticut: Lincoln Institute of Land Policy, 2009). Citing following study: Raphael Bostick and Breck L. Robinson, "Do CRA Agreements Increase Lending?," *Real Estate Economics* 31 (1), 23-51.

70 Eric S. Belsky, Michael Schill, and Anthony Yezer, "The Effect of the Community Reinvestment Act on Bank and Thrift Home Purchase Mortgage Lending," *Harvard University Joint Center for Housing Studies*, August 2001, 1.

71 "Banks Pledge More Loans in Minority Communities," *The Wall Street Journal*, 3/20/1998.

are CRA assessment areas.[72] Ellen Seidman, director of the federal Office of Thrift Supervision, said in a speech before the Greenlining Institute in 2001, "Our record home ownership rate [increasing from 64.2% in 1994 to 68% in 2001], I'm convinced, would not have been reached without CRA and its close relative, the Fannie/Freddie requirements."[73]

A possible explanation of an increase in CRA activity include the emergence of larger, more experienced firms who were able to more efficiently handle CRA loans, and a booming economy that made the risk of lower- and moderate- income applicants appear lower to banks.[74] Another reason cited as leading to increased LMI mortgages were a wave of consolidation in the financial industry which increased banks' incentives to avoid potential merger application denials.[75] However, banks walked a fine line here when the loans provided to show compliance with CRA requirements could be viewed as predatory or abusive. An illustrative case is the Citigroup/EAB merger. Although the merger was approved the Fed stated that "[b]orrowers do not benefit from expanded access to credit if the credit involves abusive lending practices."[76]

[72] Eric S. Belsky, Michael Schill, and Anthony Yezer, "The Effect of the Community Reinvestment Act on Bank and Thrift Home Purchase Mortgage Lending," *Harvard University Joint Center for Housing Studies*, August 2001, 1.

[73] Edward Pinto, Acorn and the Housing Bubble, The Wall St. Journal, 13 November 2009 p. A23 (Mr. Pinto was the chief credit officer at Fannie Mae from 1987 to 1989)

[74] Eric S. Belsky, Matthew Lambert, and Alexander von Hoffman, "Insights into the Practice of Community Reinvestment Act Lending: A Synthesis of CRA Discussion Groups," *Harvard University Joint Center for Housing Studies*, August 2000, 14-16.

[75] It should be noted though that the CRA led to larger increases in LMI lending in areas with banks that were seeking to merge and in more competitive markets where positive publicity was granted additional importance. See, Eric S. Belsky, Matthew Lambert, and Alexander von Hoffman, "Insights into the Practice of Community Reinvestment Act Lending: A Synthesis of CRA Discussion Groups," *Harvard University Joint Center for Housing Studies*, August 2000, 12, 25.

[76] Citigroup Inc., New York, N.Y., 87 Fed. Res. Bull. 600 (Sept. 2001). **[check this cite]**

One concern with these studies that they do not address whether CRA mortgage originations crowd out mortgage originations from lenders not subject to the CRA.[77]The evidence is mixed on the "crowding out" argument. Although one could argue that CRA mortgage lending crowds out mortgage origination to LMI borrowers by firms that are not subject to the CRA, one researcher found no crowd-out effect in the data and instead finds a slight "crowd-in effect" in areas with previously low home sales rates.[78]

However, despite these findings, one continuing theme with the CRA is that an increasing portion of mortgage loans made to LMI borrowers are made by lenders not covered by the CRA and the interaction with the galloping growth of the subprime market. In fact as will be discussed, infra, the biggest market in these neighborhoods is subprime lending. Interestingly, most CRA banks are not subprime lenders. An overwhelming majority of subprime lenders are non-bank lenders or mortgage companies. [79] In fact, CRA does not typically scrutinize the subprime lending activities of non-bank finance companies and independent mortgage companies are exempt from CRA.[80] A review of the research has shown that the "explosion of new forms of lending, the growing importance of mortgage brokers and mortgage banking operations, and the expansion of secondary mortgage markets" have reduced the CRA's impact.[81] The New York Fed estimates the CRA effect to have decreased from 3.7% in 1993 to 1.6% in 2000.[82] This is not to say that CRA banks are free from subprime lending. Some estimate that 50% of the high risk loans

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[77] Eric S. Belsky, Michael Schill, and Anthony Yezer, "The Effect of the Community Reinvestment Act on Bank and Thrift Home Purchase Mortgage Lending," Harvard University Joint Center for Housing Studies, August 2001, 1.

[78] Neil Bhutta, "Giving Credit where Credit is Due? The Community Reinvestment Act and Mortgage Lending in Lower-Income Neighborhoods," Board of Governors of the Federal Reserve Finance & Economics Discussion Series, 2008, 22.

[79] Kathleen C. Engel Patricia A. McCoy, The CRA Implications Of Predatory Lending, 29 Fordham Urban Law Journal 1571, 1585 (2002).

[80] Kathleen C. Engel Patricia A. McCoy, The CRA Implications Of Predatory Lending, 29 Fordham Urban Law Journal 1571, 1588 (2002).

[81] "The 25th Anniversary of the Community Reinvestment Act: Access to Capital in an Evolving Financial Services System," *Harvard University Joint Center for Housing Studies*, March 2002, v.

[82] William Apgar and Mark Duda, "The Twenty-Fifth Anniversary of the Community Reinvestment Act: Past Accomplishments and Future Regulatory Challenges," *FRB New York Policy Review* (June), 177.

bought by Fannie and Freddie were CRA loans.[83] Furthermore, CRA fails to penalize lenders that engage in predatory lending (either directly or through subsidiaries). Some argue that CRA lenders that do engage in subprime or predatory lending are not meeting the needs of the community and should, at the very least, not get credit for these types of loans.[84] This landscape may shift further as some community groups are pressuring Congress to expand CRA to cover all mortgage lends, credit unions, insurance companies and other in the financial industry.[85]

It is difficult to arrive at any definitive conclusion regarding whether changes in government policy in CRA have led to increases in mortgage originations to urban LMI borrowers. However, the research does seem to point to the CRA having a slight positive effect on mortgage originations, though this effect has been confounded in the recent spate of lending by mortgagees not subject to CRA. Because the CRA only covers a small percentage of mortgages now originated to LMI borrowers, it would be interesting to see if the CRA would still have an effect if all mortgage originators were subject to the CRA. It would also be interesting to see if one could show whether President Clinton's changes in 1995 directly led to increased mortgage lending for LMI borrowers or whether increases are due to subprime lending which escapes the purview of the CRA. It is possible that larger metropolitan areas have received most of the benefits of the CRA for varied reasons that could include more regulatory oversight, more established community groups ready to protest transactions and push for CRA agreements, and / or increased value of goodwill in a competitive market. Although much of the data has been done on a national scale, more research needs to be done on the effects of the CRA within individual metropolitan areas.

Fannie Mae and Freddie Mac

[83] Edward Pinto, Acorn and the Housing Bubble, The Wall St. Journal, p. A23
[84] Kathleen C. Engel Patricia A. McCoy, The CRA Implications Of Predatory Lending, 29 Fordham Urban Law Journal 1571, 1585, 1592 (2002).
[85] Edward Pinto, Acorn and the Housing Bubble, The Wall St. Journal, 13 November 2009 p. A23

The housing government-sponsored entities (GSEs), Fannie Mae and Freddie Mac, were established by Congress to increase the flow of funds to mortgage borrowers.[86] Fannie Mae states that its mission is "to provide liquidity, stability and affordability to the U.S. housing and mortgage markets."[87] The mission of Freddie Mac (created to spur market competition with Fannie Mae) is analogous.[88] In 1992, the Federal Housing Enterprises Financial Safety and Soundness Act[89] (also known as the GSE Act) was signed, increasing the requirements of Fannie and Freddie's purchases of low-income mortgages and allowing the U.S. Department of Housing and Urban Development (HUD) to establish "affordable housing goals" for the GSEs.[90]

This set the stage for Fannie and Freddie acquiring more than $6 million of single family housing loans over the next 16 years.[91] Consistent with increases in goals for lower income housing, the GSEs, especially after the 1992 regulations, increased their purchase of LMI mortgages. From 1992-1995, Fannie Mae increased its share of lower income mortgages by 100% while Freddie Mac increased its share by 50%.[92] In a foreboding cloud, there is evidence to support the charge that Fannie and Freddie were buying risky loans in 1993 and routinely misrepresenting the loan quality as "prime" when in fact the loans were subprime (or Alt-A).[93]

86 **[get exact cite]**Dan L. Crippen, "CBO Testimony," 2001, http://www.cbo.gov/doc.cfm?index=2839&type=0.
87 "About Fannie Mae," *Fannie Mae*, http://www.fanniemae.com/about/index.html.
88 Get cite
89 Insert exact cite
90 Stuart A. Gabriel and Stuart S. Rosenthal, "Government-Sponsored Enterprises, the Community Reinvestment Act, and Home Ownership in Targeted Underserved Neighborhoods," in *Housing Markets and the Economy: Risk, Regulation, and Policy*, ed. Edward L. Glaeser and John M. Quigley, 207 (Connecticut: Lincoln Institute of Land Policy, 2009).
91 Edward Pinto, Acorn and the Housing Bubble, The Wall St. Journal, p. A23
92 Stuart A. Gabriel and Stuart S. Rosenthal, "Government-Sponsored Enterprises, the Community Reinvestment Act, and Home Ownership in Targeted Underserved Neighborhoods," in *Housing Markets and the Economy: Risk, Regulation, and Policy*, ed. Edward L. Glaeser and John M. Quigley, 211 (Connecticut: Lincoln Institute of Land Policy, 2009).
93 Peter J. Wallison, The Price for Fannie and Freddie Keeps Going Up, The Wall St. Journal, 30 December 2009, p. A17

In 1999, Fannie was pushed to start a pilot program to increase access to credit for lower- and moderate-income home buyers.[94] Fannie prided itself on a sophisticated computer program that would give credit comfort to accurately assessing credit risk. Armed with this technological capability Fannie announced in 2000 that it would buy $2 trillion loans from low income, minority and risky borrowers by 2010. This shift in GSE policy toward LMI loans was further encouraged under President George W. Bush. In 2002, the Bush administration challenged the GSEs to increase their minority commitment goals by more than $440 billion.[95] The administration also encouraged the financial sector to create innovative products to promote homeownership and supported efforts for a zero down payment FHA loan program.[96]

These increases in loan purchases do not necessarily translate into increases in home mortgages to LMIs. In a 2000 study Gabriel and Rosenthal ran a model that isolates the effects of the CRA and GSEs on LMI home ownership. Their model found “a small positive CRA effect” on local home ownership rates.[97] However, their model found “essentially no evidence” of an effect of GSEs’ home loan purchasing on home ownership in LMI communities.[98]

Other studies of loans during the late 1990s have also had difficulties finding evidence of GSEs’ effects on LMI home mortgage originations. In a study analyzing the mortgage markets in the largest 308 MSAs

[94] Steven A. Holmes, “Fannie Mae Eases Credit to Aid Mortgage Lending,” *New York* Times, 9/30/1999, http://www.nytimes.com/1999/09/30/business/fannie-mae-eases-credit-to-aid-mortgage-lending.html?pagewanted=1.

[95] “Bush Aims to Boost Minority Home Ownership,” *CNN*, http://archives.cnn.com/2002/ALLPOLITICS/06/17/bush.minority.homes/index.html.

[96] A MECHELE DICKERSON, *The Myth Of Home Ownership And Why Home Ownership Is Not Always A Good Thing*, 84 Indiana Law Journal 189, 193 (2009).

[97] 7. Stuart A. Gabriel and Stuart S. Rosenthal, “Government-Sponsored Enterprises, the Community Reinvestment Act, and Home Ownership in Targeted Underserved Neighborhoods,” in *Housing Markets and the Economy: Risk, Regulation, and Policy*, ed. Edward L. Glaeser and John M. Quigley, 205 (Connecticut: Lincoln Institute of Land Policy, 2009).

[98] 7. Stuart A. Gabriel and Stuart S. Rosenthal, “Government-Sponsored Enterprises, the Community Reinvestment Act, and Home Ownership in Targeted Underserved Neighborhoods,” in *Housing Markets and the Economy: Risk, Regulation, and Policy*, ed. Edward L. Glaeser and John M. Quigley, 205 (Connecticut: Lincoln Institute of Land Policy, 2009).

between 1995 and 1999, Ambrose and Thibodeau were only able to find that GSEs led to expansions in the credit market for LMI borrowers in 1998.[99] Another study by Bostic and Gabriel that specifically looked at housing outcomes in California finds "little efficacy of the GSE home loan purchase goals in elevating the homeownership and housing conditions of targeted and underserved neighborhoods."[100] A study that evaluated the effects of GSEs in Cleveland also found no evidence of their efficacy.[101]

However, this picture changed after 2004 when Fannie and Freddie (after a big push by neighborhood groups and HUD) added a great deal of flexibility to their underwriting guidelines and expanded the scope of loans eligible for securitization. Under the "American Dream Commitment" Fannie pledged to finance 6 million new homeowners—including 1.8 million new minority homeowners by 2014. To achieve that goal Fannie announced they would increase the average annual financing of minority first time home buyers by 93,000 households (more than double previous four year averages).[102] President Bush boosted the affordable housing goal from 50% to 56% and challenged Fannie and Freddie that they "must do more."[103] To directly speak to the dearth on lending to those on the bottom of the economic spectrum HUD imposed further requirements on Fannie and Freddie in 2005 that they 32% of loan portfolio must be to borrowers in central cities (or other underserved areas) and that 22% of the loans

[99] Brent W. Ambrose and Thomas G. Thibodeau, "Have the GSE Affordable Housing Goals Increased the Supply of Mortgage Credit?," *Regional Science and Urban Economics* 34 (2004), 271.
[100] Raphael W. Bostic and Stuart A. Gabriel, "Do the GSEs Matter to Low-income Housing Markets? An Assessment of the Effects of the GSE Loan Purchase goals on California Housing Outcomes," *Journal of Urban Economics* 59 (2006), 458.
[101] Xudong An and Raphael W. Bostic, "GSE Activity, FHA Feedback, and Implications for the Efficacy of the Affordable Housing Goals," Journal of Real Estate Finance and Economics, 36 (2), 225. Citing following study: L. Freeman and G. Galster, The Impact of Secondary Mortgage Market and GSE Purchases on Underserved Neighborhood Markets: A Cleveland Case Study (2004.).
[102] Demetrios Papademetriou and Brian Ray, From Homeland to a Home: Immigrants and Homeownership in Urban America, Fannie Mae Papers, (foreword by Robert J. Levin, Executive Vice President for Housing and Community Development) 2004
[103] Carol D. Leonnig, How HUD Mortgage Policy Fed The Crisis; Subprime Loans Labeled 'Affordable', The Washington Post, p. A1 10 June 2008; Likewise Capitol Hill (especially Democratic lawmakers) prompted Fannie to increase its lending to LMI borrowers. See. Charles Duhigg The Reckoning Pressured to Take More Risk, Fannie Reached Tipping Point, New York Times, October 5, 2008.

must be to very low income families or borrowers living in very low income neighborhoods.[104] By 2008, 47% of GSE's purchases of mortgages were LMI loans, compared to 45% in 2005.[105]

Alongside these changes, however, the seeds for disaster were sown. The disconnect between policy imperatives to increase home ownership and the economic reality of the borrowers in the pool exploded the subprime market. The first pull into the waters of less than prime lending occurred in 1995 HUD agreed to allow Fannie and Freddie to get affordable housing credit for buying subprime securities. The expansion in lending went hand in hand with the increase in exposure to risk. By 2004 Fannie and Freddie's purchases of subprime loans had risen tenfold.[106] Between 2005 and 2008 Fannie purchased or guaranteed more than $270 billion in risky loans—more than 3 times as all earlier years *combined*.[107] This increase in subprime loans was by design—not by happenstance. Internal Fannie documents from 2006 state the objective of increasing "our penetration into the subprime market."[108] Some former Fannie employees express regret in moving so deeply into the subprime market,[109] and ask whether by enticing borrowers into dangerous subprime loans Fannie was "setting them up for failure."[110] Others stand by the decision disputing allegations of abusive lending and sloppy underwriting by claiming that they could not have predicted that subprime lending would dominated the market so quickly.[111]

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[104] Howard Husock , Housing Goals We Can't Afford, Op-Ed, New York Times, 11 December 2008
[105] "Overview of the GSEs' Housing Goal Performance, 2000-2007." *U.S. Department of Housing and Urban Development*, 2009, 6.
[106] Carol D. Leonnig, How HUD Mortgage Policy Fed The Crisis; Subprime Loans Labeled 'Affordable', The Washington Post, p. A1 10 June 2008
[107] Charles Duhigg The Reckoning Pressured to Take More Risk, Fannie Reached Tipping Point, New York Times, October 5, 2008
[108] David S. Hilzenrath, Fannie's Perilous Pursuit of Subprime Loans; In an Attempt to Increase Its Business, Company Gave the Risks Short Shrift, Washington Post 19 August 2008, p. D1
[109] William C. Apgar Jr., who was an assistant HUD secretary under Clinton, said he regrets allowing the companies to count subprime securities as affordable. See, Carol D. Leonnig, How HUD Mortgage Policy Fed The Crisis; Subprime Loans Labeled 'Affordable', The Washington Post, p. A1 10 June 2008.
[110] Statement of Fannie Mae Executive Vice President Thomas A. Lund in spring 2005, see, David S. Hilzenrath, Fannie's Perilous Pursuit of Subprime Loans; In an Attempt to Increase Its Business, Company Gave the Risks Short Shrift, Washington Post 19 August 2008, p. D1
[111] HUD Spokesman Brian Sullivan. See Carol D. Leonnig, How HUD Mortgage Policy Fed The Crisis; Subprime Loans Labeled 'Affordable', The Washington Post, p. A1 10 June 2008

Fannie and Freddie lost their quasi independent status in 2008 when the federal government took over both agencies. Most studies on the GSEs are based on data before the 1999 relaxation of credit standards and the 2004 expansion in LMI lending goals. It may be worthwhile to recreate studies based on data after both of these events. One might doubt that the legacy of the softening of credit is increased homeownership. In fact recent data confirm that a significant proportion of the subprime loans were not used to push people from the rental market into homeownership. These loans were used by existing homeowners to re-finance their homes or as a home equity loan. Nationwide, between 1998 and 2006 only 1.4 million of 15.1 million subprime loans were made to first time homebuyers.[112] Furthermore, as to city homeowners, any gains that were achieved through this effort (and, perhaps even more troubling, the significant gains made before 2000) were washed away completely in a foreclosure tsunami, discussed infra.

III Subprime mortgage penetration in city homeownership

As alluded to infra, the mortgage loans made in many city neighborhoods escaped CRA compliance as they were not made by banks subject to CRA. Financial service firms and mortgage companies dominated the market.[113] When programs such as CRA were created it might have been inconceivable that these same neighborhoods could have, in fact, too much credit.[114] However, while facially serving the needs of the community with access to capital, this access came at the very high price of so called "subprime" lending. No discussion of city homeownership can be complete with integrating the effect of the penetration of subprime mortgages. Numerous studies have confirmed that for decades minority neighborhoods experienced a significant concentration of subprime loans.[115] In fact, the problem was

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[112] A MECHELE DICKERSON, *The Myth Of Home Ownership And Why Home Ownership Is Not Always A Good Thing*, 84 Indiana Law Journal 189, 209 (2009).
[113] Cite from supra
[114] Kathleen C. Engel Patricia A. McCoy, The CRA Implications Of Predatory Lending, 29 Fordham Urban Law Journal 1571, 1571 (2002).
[115] For a complete discussion see Calem, Gillen and Wachter p. 394

recognized by the US Dept. of Housing and Urban Development over 10 years ago. In 1998 they determined that subprime loans are over five times more likely in a Black neighborhood than in a White neighborhood.[116]

Of course, a borrower may be unable to obtain a loan on traditional terms (e.g. 30 year fixed market rate) due to many factors, not the least of which is creditworthiness of the borrower. One possible explanation for such concentration would point to the possibility of greater incidence of low credit scores within particular subpopulations. However, even taking into consideration the possibility that minority borrowers might have a lower average credit score still does not full account for the disproportionate percentage of subprime loans in minority neighborhoods. Studies have shown that even after taking into consideration the creditworthiness of the borrower the percent of minority homeowners in the neighborhood (in that particular study specifically African American neighborhoods) is positively correlated with the subprime share of loans.[117].

In another study different authors came to the same conclusion: racial disparities exist in whether a borrower obtains a subprime loan.[118] Their study led the researchers to conclude "Regardless of whether we call it efficient risk-based pricing or invitation to predatory abuse, subprime mortgage lending is tightly bound up with the enduring racial-geographic inequalities of American housing."[119] What differentiates the previous era of subprime lending from the present environment is not so much

[116] HUD documented that in 1998 subprime lending accounted for 51% of loans in Black neighborhoods and only 9% of loans in predominately White neighborhoods. Unequal Burden: Income & Racial Disparities in Subprime Lending in America, U.S. Department of Housing and Development.

[117] Paul S. Calem, Kevin Gillen and Susan Wachter, *The Neighborhood Distribution of Subprime Mortgage Lending*, 29 Jour. R. Estate Fin. & Econ. 4, 393, 401 (2004).

[118] Elvin K. Wyly, Markus Moos, Holly Foxcroft, and Emmanuel Kabahizi, *Subprime Mortgage Segmentation in the American Urban System*, Urban Studies Program and Department of Geography Univ. of British Columbia (2004).

[119] Elvin K. Wyly, Markus Moos, Holly Foxcroft, and Emmanuel Kabahizi, *Subprime Mortgage Segmentation in the American Urban System*, Urban Studies Program and Department of Geography Univ. of British Columbia (2004), 26.

the economic disparity in the loan terms but rather the higher incidence of foreclosure.[120] In other words, while past lending patterns may have resulted in minority homeowners paying higher costs for home financing, subprime loans of a more recent vintage have wreaked their havoc when homeowners have been unable to pay resulting in loss of the home by the borrower and loss to the neighborhood in a now abandoned home.

The effect of the recent meltdown in the subprime market was acutely felt in minority neighborhoods. In 2004, 2005 and 2006 (the height of the subprime lending era) white borrowers certainly participated fully in the market. They accounted for slightly more than half of the subprime loans originated 2004-2006.[121] However a clearer picture of the impact of subprime lending emerges when a different question is posed: what percentage of borrowers (according to racial demographics) were subprime borrowers?[122]

	2004	2005	2006
Black	31%	51%	53%
Hispanic	18%	38%	41%
White	8%	19%	22%

If we focus the analysis on *urban* homeownership the analysis becomes more stark. There is a far wider geographic dispersion of white borrowers across city, suburban even rural areas. In contrast Black and

[120] Kristopher Gerardi and Paul Willen, *Subprime Mortgages, Forclosures, and Urban Neighborhoods*, Vol. 9: Iss. 3 (Symposium)B.E. JOUR. OF ECONOMIC ANALYSIS & POLICY, Article 12, 20), available at http://www.bepress.com/bejeap/vol9/iss3/art12.

[121] Maurice Jourdain-Earl, *The Demographic Impact of the Subprime Mortgage Meltdown*, 13, from a presentation given at the Mortgage Bankers Association Compliance Conference, Sept. 2008, available at http:www.compliancetech.com.

[122] Maurice Jourdain-Earl, *The Demographic Impact of the Subprime Mortgage Meltdown*, Sept. 2008, http://www.compliancetech.com.

Hispanic borrowers concentrate in the urban core. [123] Racially segregated and concentrated living patterns exacerbate the effect of the subprime crisis in minority neighborhoods. There is a steady increase in the percentage of subprime loans as the neighborhood composition becomes more minority. Building on trends indentified in several studies from the early 1990s through 2004, minority neighbors experienced a strong geographic concentration of subprime mortgages.[124] In fact since several studies have shown that subprime mortgages are concentrated in locations with high proportions of black and Hispanic residents, even controlling for the income and credit scores of these neighborhoods.[125] In 2006 if a neighborhood was less than 10% minority, 22% of the residential loans were classified as subprime. By contrast if the neighborhood was 90-100% minority, 48% of borrowers were subprime borrowers.[126] The ironic twist to this scenario is that, according to some estimates, 30% of subprime borrowers could have qualified for safer, lower-cost prime loans but instead were steered to the subprime market.[127]

As an interesting exercise (made possible through the technology of Google maps) what would happen if we overlay an HOLC map with a map of subprime lending?

[insert maps—coming in separate file]

Whether the cause of lack of investment is denial (as in redlining) or exploding mortgages (subprime mortgages) the maps graphically display that the race based lending inspired by the HOLC lives today.

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[123] Get cite.

[124] Paul S. Calem, Kevin Gillen and Susan Wachter, *The Neighborhood Distribution of Subprime Mortgage Lending*, 29 Jour. R. Estate Fin. & Econ. 4, 393, 401 (2004).

[125] Chris Mayer and Karen Pence, *Subprime Mortgages: What, Where, and to Whom?*, Finance and Economics Discussion Series Divisions of Research & Statistics and Monetary Affairs, Fed. Reserve Board, 2008-29, 3,14 ("Even controlling for credit scores and other Zip code characteristics, race and ethnicity appear to be strongly and statistically significantly related to the proportion of subprime loans. ") As to earlier subprime lending (where the same pattern holds true) see also, Paul S. Calem, Kevin Gillen,Susan Wachter, *The Neighborhood Distribution of Subprime Mortgage Lending*, 29 Journal of Real Estate Finance and Economics 393, 401 (2004)

[126] Maurice Jourdain-Earl, *The Demographic Impact of the Subprime Mortgage Meltdown*, Sept. 2008, http://www.compliancetech.com.

[127] Carol D. Leonnig, How HUD Mortgage Policy Fed The Crisis; Subprime Loans Labeled 'Affordable', Washington Post, p. A1, 10 June 2008.

While it is true that subprime lending can help make homeownership a reality for many who would not otherwise qualify for mortgage financing, subprime lending can also lead to homeownership loss. Subprime generally borrowers exceed the 30% maximum federal housing affordability guidelines for housing costs. In 2007 subprime borrowers spent approximately 37% of their after tax income on mortgage payments insurance and property taxes.[128] Devoting such a large proportion of income to housing costs put borrowers (who are already stretching thin resources to achieve homeowner status) into a precarious financial position. The more recent wave of subprime lending contained an even bigger threat to borrower stability: the emergence of teaser rate adjustable mortgages. While the subprime loans of previous vintage may have carried high interest rates (and hence were subject to charges that they were predatory), subprime loans of more recent origination were designed to require the borrower to refinance within 12-24 months or be reset at a rate that, generally, outstripped the payment ability of the borrowers. Hence mortgage foreclosures spiked when the market softened and interest rates rose.

Losses to individual homeowners have been staggering. A paper by the Center for Responsible Lending noted a homeownership gain to 50,925 first-time African American homebuyers and 72,981 first time Hispanic homebuyers but projected a homeownership loss of 98,025 African Americans and 110,674 Latin Americans based on a total of 1,075,770 subprime loans issued to minorities in 2005.[129] According to a study of neighborhoods in Boston in 2007 almost half of the changes in ownership in Black owned housing were as a result of foreclosure.[130] Although there is debate as to whether subprime lending actually increased the absolute number of minority homeowners, the impact of foreclosure is beyond

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[128] A MECHELE DICKERSON, *The Myth Of Home Ownership And Why Home Ownership Is Not Always A Good Thing*, 84 Indiana Law Journal 189, 207(2009).

[129] Subprime Lending: A Net Drain on Homeownership, CRL Issue Paper No, 14, March 27, 2007, available at http://www.responsiblelending.org.

[130] Gerardi Will p. 18

debate. The loss of equity to subprime borrowers of color is estimated to be nearly a quarter of a trillion dollars.[131]

The effect on minority neighborhoods has been equally devastating. In Chicago, "neighborhoods where the population is more than 80 percent non-white account for 65 percent of all [foreclosure] cases, up from 61 percent in 1993." This trend is not unique to Illinois; it has appeared in many major metropolitan areas across the country.[132] One study in Cleveland and the surrounding Cuyahoga County found that census tracts with a high proportion of African American borrowers correlate to the highest incidence of foreclosure of subprime loans.[133] Similar tales can be told in cities such as Atlanta and Philadelphia.[134] Cities with large minority populations are likewise hit with the effects of high foreclosure rates experienced by minority communities. Losses to the cities affected include decreased tax bases, increased police and fire commitments and other social pathologies (including community displacement) that follow clusters of properties left vacant and neglected as a result of foreclosure.[135]

In response to the wave of foreclosures citizens and cities have brought suit against lenders.[136] The allegations go to the heart of the lending crisis. Individual homeowners have challenged subprime lenders alleging that they were "sold an exotic high cost adjustable rate mortgage (ARM) …without consideration of [their] ability to pay the loan's hidden maximum interest rate, which far exceeded the initial teaser rate and made the loan unaffordable," that lenders targeted "financially distressed

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131 John A. Powell, REFLECTIONS *On The Past, Looking To The Future: The Fair Housing Act At 40*, 41 Ind. L. Rev. 605, 624 (2008).

132 Vikas Bijaj and Ron Nixon, *For Minorities, Signs of Trouble in Foreclosures*, N.Y. Times, Feb. 22, 2006.

133 Coulton, Chan Schramm, Mikelbank, Pathways to Foreclosure Center on Urban Poverty and Community Development (June 2008) p. 14

134 Vikas Bijaj and Ron Nixon, *For Minorities, Signs of Trouble in Foreclosures*, N.Y. Times, Feb. 22, 2006

135 See, Richard E. Gottlieb, Andrew J. McGuinness, Subprime Lending As A Public Nuisance: Casting Blame Mortgage On Lenders And Wall Street For Inner City Blight, 62 Consumer Fin. L.Q. Rep. 4, 6 (2008) For a more in depth discussion of the subprime mortgage crisis in minority neighborhoods see, Georgette Chapman Phillips, Black Brown and Green: The Persistence of Race in Home Mortgage Lending, Princeton **[get full cite]**

136 State Attorney Generals have also filed suit against unscrupulous lenders. See, Justin Collins, Without Other Options: The Limited Effectiveness, Unique Availability, And Overall Impact Of State-Directed Lawsuits Against Predatory Lenders, 17 J.L. & Pol'y 231, 233 (2008)

consumers with the intent of artificially inflating their earnings and without regard to whether borrowers could repay the loans," and further that lenders "knowingly and affirmatively misrepresented the most important measurement of the affordability of a mortgage product: the total amount of each monthly installment on the loan relative to the borrowers existing debt to income ratio."[137] Another case charged that the borrowers were qualified for a loan with better terms but that the lender paid a mortgage broker to arrange a loan with less favorable term.[138] The individual lawsuits, even class action suits, have failed to gain traction in the judicial system as they have floundered on procedural grounds.[139]

Some cities have taken a pro-active stance. The cities of Baltimore and Cleveland have filed suit challenging lending practices of major banks in predominately minority neighborhoods. [140] They allege damages to the city stemming from vacancies, decreased property tax revenue and increased fire and police costs and public nuisance. Neither case has had its final disposition. However, the arguments raised by the cities of Baltimore and Cleveland against banks such as Wells Fargo and Deutsche Bank are interesting because the underlying premise is that lending was not an economic decision but rather a political/racial decision. As noted above several studies have shown that subprime mortgages are concentrated in locations with high proportions of black and Hispanic residents, even controlling for the income and credit scores of these neighborhoods. This lends considerable credibility to the position of the cities that lenders have, once more, engaged in discriminatory lending practices.

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[137] See Briggins v. Wells Fargo, --- F.R.D. ----, 1, 2009 WL 2246199(N.D.Cal. 2009).

[138] Weller v. Accredited Home Lenders, Inc. Not Reported in F.Supp.2d, 2009 WL 928522 (D.Minn.,2009)

[139] For example, the Briggins complaint suffered from a lack of specificity and plaintiffs survived a motion to dismiss by the granting of leave to amend complaint. The Plaintiffs in the Weller complaint likewise were granted leave to refile their complaint with more information and specificity.

[140] City of Cleveland v. Deutsche Bank Trust Company, 571 F.Supp.2d 807 (N.D. Ohio 2008); Mayor and City Council of Baltimore v. Wells Fargo Bank, N.A.--- F.Supp.2d ----, 2010 WL 46401 (D.Md.,2010). Also the city of Philadelphia took an interesting (though likely illegal) approach: the sheriff of Philadelphia refused to conduct court ordered foreclosure actions on homeowners even though his office is charged with the sole responsibility of conducting these auctions. See, Michael M. Phillips, He's Taking Law Into His Own Hands To Help Broke Homeowners, Wall Street Journal, June 6, 2008, p. 1.

Although some commentators have highlighted the paradoxical (subprime borrowers are thought to be a more risky investment so there should be no surprise when the loans go into default) and tautological (loan underwriting is irresponsible when a subprime borrower defaults because they cannot afford the loan)[141] aspects of the cities' cases, these accusations only have merit if the underwriting of the loans was based solely on financial criteria. Study after study has shown that there is more than economics at play here. Yes, the cities are "walking a fine line"[142] but individual owners bringing suit lacks efficiency to tackle large scale problems. Intervention by the cities allows the courts to address the wider societal ramifications of subprime mortgage penetration in urban minority neighborhoods. The foreclosures are a symptom, continued racial and ethnic profiling is the underlying problem.[143]

IV. Rethinking the path of Urban Homeownership

This section begins with an assumption: as it pertains to metropolitan residential patterns there is a conflation of race/ethnicity and socio-economic status that permits the discussion to be as much about race/ethnicity as it is about class. There is ample evidence of some minority penetration into suburban neighborhoods.[144] There are some cities where the where people of color do not constitute the majority of the urban poor.[145] However, by and large, when we discuss the topic of homeownership in American

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141 Richard E. Gottlieb, Andrew J. McGuinness, Subprime Lending As A Public Nuisance: Casting Blame Mortgage On Lenders And Wall Street For Inner City Blight, 62 Consumer Fin. L.Q. Rep. 4, 8-9 (2008)

142 Richard E. Gottlieb, Andrew J. McGuinness, Subprime Lending As A Public Nuisance: Casting Blame Mortgage On Lenders And Wall Street For Inner City Blight, 62 Consumer Fin. L.Q. Rep. 4, 6 (2008)

143 Another scholar sees the problem slightly differently. To her the problem is "an irrational obsession with attaining the status of homeownership" See, A MECHELE DICKERSON, *The Myth Of Home Ownership And Why Home Ownership Is Not Always A Good Thing*, 84 Indiana Law Journal 189, 232 (2009). While I do not disagree with her premise I submit that the foreclosure rate that disproportionately plagues city minority neighborhoods could have been diminished with non-racially based lending criteria.

144 Sheryll D. Cashin, Middle-Class Black Suburbs and the State of Integration: A Post-Integrationist Vision for Metropolitan America, Georgetown University Law Center 2000 Working Paper Series No. 241245, (Sept. 2000) 9, available at http://papers.ssrn.com/papers.taf?abstract_id=241245. See also Sheryll D. Cashin, *Localism, Self-Interest, and the Tyranny of the Favored Quarter: Addressing the Barriers to New Regionalism,* 88 Geo. L.J. 1985-2048 (2000).

145 For example, Portland, Salt Lake City, and Seattle. VERIFY.

cities we are talking about the plight of LMI people of color. This conflation is especially apt since the root of the patterns of housing segregation were explicitly base on race/ethnicity. There may come a time where race is not a satisfying proxy for socio-economic status (and vice versa) in the urban core but that day is not today.

With that caveat in mind a rethinking of the goal of urban homeownership acknowledges that the laudable goals of individual wealth creation and neighborhood social stability have all but evaporated in light of the massive foreclosures that have swept across American cities. As one commentator noted, "The oft-stated benefits of home ownership are largely inconsistent with recent trends that indicate that, for many, attempting to become a homeowner is a painfully short and ultimately unwise investment."[146] The similarities shown above between the HOLC map and the foreclosure map indicate that minority neighborhoods are once more being shut out of the homeownership market. After that sober acknowledgement the dichotomy between place based strategies and people based strategies becomes relevant.[147]

Place based homeownership strategies focus on empowering neighborhoods. Examples from previous programs include:

HMDA
CRA
Public Housing Demonstration (Reagan, 1986 sale of public housing units to tenants)
Nehemiah
HOME (1990; block grants)

People based strategies focus on empowering the individual.[148] Examples from previous programs include:

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[146] A Mechele Dickerson, *The Myth Of Home Ownership And Why Home Ownership Is Not Always A Good Thing*, 84 Indiana Law Journal 189, 207(2009)

[147] There is one mixed strategy: Farmer's Home. However, its rural focus makes it inapplicable to the current discussion.

[148] There is a very strong argument to include the tax advantages of home ownership as a people based program. See, Gyourko, et al. **[get cite**] However, since the deductibility of mortgage interest and local taxes depends on the taxpayer itemizing deductions this benefit is all but lost for LMI homeowners. Even those taxpayers itemize the

FHA
VA
Fannie/Freddie
Section 235
ECOA
National Homeowner Strategy (Clinton, 1995)
Blueprint for American Dream (George W. Bush 2002)

As it relates to urban homeownership none of these programs can be deemed a resounding success. What little impact that some programs might have had was lost in the foreclosure crisis.[149] The stubborn truth about place based initiative is that they doesn't allow for wealth creation due to neighborhood limitations. The stubborn truth about people based initiatives is that those that can afford to leave the distressed area leave; those that can't afford to leave get stuck with marginal neighborhoods and financial instability. Such parallelism forces the issue of crystallizing the goal of urban homeownership program: is it to help people or it is to help neighborhoods. I respectfully submit that while it is difficult to do both simultaneously we have suffered though choosing one over the other with less than resounding results. One avenue of inquiry might be to split this middle with ideas such as shared ownership, subsidized co-ops with limited transferability, shared appreciation financing.[150] However, these ideas are impractical on wide scale basis.

If the choice is to promote place based policies the first order at hand would be to eliminate differences between city and suburbs. Previous attempts at place based strategies have left intact the legacy advantages enjoyed by the suburbs and have instead focus on subsidizing the urban core. One solution might to go the other way and strip the suburbs of the value of past policies in order to level the playing field. Gone are the disparities between federal highway dollars and subsidies for mass transit. Zoning

value is lower because the marginal tax rate is lower. See, JOHN A. POWELL, *Reflections On The Past, Looking To The Future: The Fair Housing Act At 40*41 Indiana Law Review 605, 624 (2008).
[149] See citations supra.
[150] For more ideas in this vein see, J. PETER BYRNE, MICHAEL DIAMOND, *Affordable Housing, Land Tenure, And Urban Policy: The Matrix Revealed*, 34 Fordham Urban Law Journal 527 (2007)

and land use laws would be regionalized. In this way cities can compete for more of the share of metropolitan homeowners. On the other hand, some commentators have advocated abandoning people based homeownership programs all together. Instead of incentivizing homeownership for urban residents, housing policy should focus on providing quality affordable rental housing.[151] This approach accepts that some people should not be home owners but still have the right to decent affordable housing. Since suburbs can successfully zone out low income rental housing[152], this makes the city the repository of the metropolitan poor renters. Both extremes are not only politically unfeasible but unsatisfying from a social welfare perspective.

It might be instructive to turn attention away from the housing purchase market and look at the rental housing market. Here the same people/place decisions are made. To address the multitude of social, economic and legal woes mass produced public housing several policies address the housing of the nation's poor. For example policies such as Gatreaux[153] and Moving to Opportunity (MTO)[154] are both people based programs. Both programs build upon the Section 8 voucher program that empowers tenants to find housing outside of traditional public housing projects. The important step of Gatreaux and MTO is that both explicitly push residents outside their urban neighborhoods and into more economically diverse neighborhoods and even into the suburbs. In contrast HOPE VI is a place based strategy. It targets the nation's worst public housing projects. The projects are demolished (or

[151] A Mechele Dickerson, *The Myth Of Home Ownership And Why Home Ownership Is Not Always A Good Thing*, 84 Indiana Law Journal 189, 233-234(2009)
[152] Subject to any limitations that might be in place such as Mount Laurel type fair share regulations.
[153] A metropolitan wide remedy to "white flight" by dispersing lower income tenants in Chicago was upheld in Hills v. Gautreaux, 425 US 284 (1976). For discussion see, Georgette C. Poindexter, Deconstructing the Legal City, 145 U. Penn. L. Rev. 607, 628 (1997)
[154] 5 cities (Baltimore, Boston, Chicago, Los Angeles, and New York City) were chosen to participate in this program under Section 152 of the Housing and Community Development Act of 1992.

substantially renovated) and the resulting development has both low income and market rate units for rent.[155] Existing tenants are given the opportunity to return.[156]

Homeownership Zone Program

One ownership program that began to tie both people and place is the Homeownership Zone demonstration project. Homeownership Zone (HOZ) demonstration program was launched in 1996 by the U.S. Department of Housing and Urban Development under Secretary Henry Cisneros as part of a national strategy to expand homeownership utilizing New Urbanist concepts. It's goal is to subsidize homeownership while building economic and social capital in the neighborhood by facilitating new housing construction (or substantial rehabilitation).According to the HUD website, "The HOZ initiative is to test the idea that cities can transform their blighted areas into vibrant communities by creating entire new neighborhoods of mixed-income single-family homes, called Homeownership Zones. Homeownership Zones usually consist of several hundred new homes in a concentrated target area near major employment centers."[157] HUD issued an interim report on the initiative in 2007 indicating that, on the whole, the program achieved its goals of providing opportunities to LMI families and market rate buyers in the purchase of their first home.[158] Eleven cities were granted funding for their projects.[159] Projects ranged in size from 121 units (New York) to 465 units (Cleveland).[160] HOZ is a demonstration project with funding of a total of $50 million. HUD money was leveraged with private capital and public capital from other sources. Participating cities utilized various capital structures including CDBG grants,

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[155] For a complete description see, Jerry J. Salama, The Redevelopment of Distressed Public Housing: Early Results from HOPE VI Projects in Atlanta, Chicago, and San Antonio, 10 Housing Policy Debate 95 (1999)
[156] See, Susan J. Popkin, et al, The Hope VI Program, What About the Residents? 15 Housing Policy Debate 385 (2004). See also, Georgette C. Poindexter, *Who Gets the Final No: Tenant Participation in Public Housing Redevelopment*, 9 Cornell Journal of Law and Public Policy 659(2000)
[157] http://www.disasterhousing.gov/offices/cpd/affordablehousing/programs/hoz/index.cfm
[158] Interim Evaluation of HUD's Homeownership Zone Initiative, March 2007
[159] Baltimore, Buffalo, Cleveland, Flint, Indianapolis, Louisville, New York, Philadelphia, Sacramento, San Juan, Trenton.
[160] An Interim Evaluation of HUD's Homeownership Zone Initiative, HUD, U.S. Department of Housing and Urban Development Office of Policy Development and Research, March 2007

108 loans, low income tax credits (when rental units were part of development). Affordability was addressed through construction subsidies, down payment assistance, subsidized mortgages and "soft second" mortgages.[161] Specifically the goals included:

- Provide for significant new single-family (1-to-4 unit) homeownership opportunities (an application that includes at least 300 new single family homes will be presumed to meet this standard; others may demonstrate how a smaller number of units will suffice to create visible change and revitalize the neighborhood).
- Result in measurable, visible improvement in the neighborhood.
- Provide for a mix of income levels.
- Leverage significant public and private resources.
- Establish extensive partnerships with business, lending institutions, real estate professionals, builders, educational institutions, religious entities, and/or other private or nonprofit organizations.
- Provide opportunities for participation by community residents, including opportunities for homeownership.
- Include the development of housing opportunities as part of a comprehensive, coordinated approach to the overall revitalization of the neighborhood.
- Show streamlined local processes to ensure rapid construction and program implementation.
- Begin development within 60 days of grant approval.
- Establish clear benchmarks for measuring performance.
- Use innovative construction techniques and land use planning to reduce the cost of housing construction and minimize regulatory barriers.
- Take advantage of the most recent advances in urban housing design to create a sense of neighborhood and community throughout the overall plan for the area.[162]

Although there were significant issues encountered (including but not limited to delays in construction, difficulty in site acquisition, and relocation of existing residents during the construction) most projects achieved the stated goals. In interviews with local Housing Authority officials there was unanimous

[161] For example a "soft second" mortgage of up to $25,000 was given to homeowners in Louisville with the requirement that the homeowner remain in the house for 10 years with a percentage of the loan forgiven each year. Telephone interviews with Housing Authority directors in relevant cities. Notes on file with author

[162] Interim Evaluation of HUD's Homeownership Zone Initiative, March 2007

agreement that they would participate in the program again if offer the opportunity.[163] Foreclosures have been virtually non-existent. Crime decreased. Neighborhoods were revitalized with parks.[164] Neighborhoods that once had residents by default now had residents by choice. In the words of one Housing official: "You must give incentive to people who have choice to come back."[165]

Perhaps the most exciting use of this program was when Louisville tied HOZ development with HOPE VI development. Likewise in Baltimore a HOPE VI project sits adjacent to the home ownership zone (but was developed separately). In their assessment of the project HUD reviewers stated in their interim evaluation in 2005 that "…the HOZ approach has resulted in significant, positive changes in most of the target areas." The report praised "how the HOZ approach can be combined with HOPE VI development to integrate public housing rental units with middle-income homeownership housing in a totally rebuilt neighborhood."[166]

According to HUD, HOZ was a demonstration project and no additional funding is proposed. The Obama Administration has, instead, enlarged Neighborhood Stabilization Program (NSP2)(ownership) and the Choice Neighborhood Initiative (rental) and incorporated some HOZ-type elements.[167] In 2009, NSP2 was established through the American Recovery and Reinvestment Act of 2009.[168] On January 14, 2010, HUD awarded $1.93 billion in grants to 56 nationwide grantees.[169] NSP2 funds were also

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[163] Telephone interviews with Housing Authority directors in relevant cities. Notes on file with author
[164] Some of the developments (notably Baltimore and Sacramento initially hoped to attract commercial activity but were, as yet, unable to clear this hurdle.
[165] Interview with Tim Barry, Director of Lousiville Metro Housing Authority. Notes on file with author.
[166] Interim Evaluation of HUD's Homeownership Zone Initiative, March 2007
[167] Interview with Ginger Macomber, HOZ coordinator. Notes on file with author.
[168] "Neighborhood Stabilization Program 2," *U.S. Department of Housing & Urban Development*, http://www.hud.gov/offices/cpd/communitydevelopment/programs/neighborhoodspg/arrafactsheet.cfm.
[169] "Neighborhood Stabilization Program 2," *U.S. Department of Housing & Urban Development*, http://www.hud.gov/offices/cpd/communitydevelopment/programs/neighborhoodspg/arrafactsheet.cfm.

distributed to consortiums, not only state and local governments.[170] NSP2 funds are intended to be used over a three-year period, with over 50% of the grant needing to be spent within the first two years.[171]

While NSP2 targets vacant, abandoned and dilapidated housing (place based) it also incorporates people based strategies by including consortium of local leaders in the development process. Expansion of the demonstration program provides an exciting opportunity to rethink our approach to urban homeownership. First of all, the program addresses one of the major detriments of current urban homeownership problems—the dilapidated state of available housing stock. After all, one of the big attractions of the push to suburban living was a new house; this program offers the same to urban residents. Secondly it addresses the proper use of federal financial intervention. Indirect market intervention (through Fannie and Freddie) proved disastrous. Regulatory intervention (through CRA) was spotty. HOZ program uses the federal money as leverage. Different communities utilized a range of funding sources but all relied on a mix of some sort.

The final, and perhaps most important, the bundling component with other rental based programs such as HOPE VI is extended through the Choice Neighborhood Initiative. The Choice Neighborhood Initiative was passed as an extension of HOPE VI to "expand on the legacy of HOPE VI by expanding the range of activities eligible for funding and capitalize on the full range of stakeholders we know are needed and want to be involved - from local governments and non-profits to private firms and public housing agencies."[172] The Choice Neighborhood Initiative is essentially HOPE VI funding with available funds being able to be used for early childhood education programs and criteria that also take

[170] "FAQs on NSP2," *U.S. Department of Housing & Urban Development*, http://www.hud.gov/offices/cpd/communitydevelopment/programs/neighborhoodspg/nsp2_quest_answers.pdf.
[171] "FAQs on NSP2," *U.S. Department of Housing & Urban Development*, http://www.hud.gov/offices/cpd/communitydevelopment/programs/neighborhoodspg/nsp2_quest_answers.pdf.
[172] Shaun Donovan, "From Despair to Hope: Two HUD Secretaries on Urban Revitalization and Opportunity," *U.S. Department of Housing & Urban Development*, http://www.hud.gov/news/speeches/2009-07-14.cfm.

into account "green development and energy efficiency strategies."[173] HUD's proposed fiscal 2010 budget has funding for the Choice Neighborhood Initiative and HOPE VI funding at $250 million, compared to the $120 million used for HOPE VI funding in fiscal 2009.[174]

Home ownership anchors neighborhoods and can, given the right set of circumstances, permit owners to build capital. However, homeownership is not for everyone. But at the same time decent affordable neighborhoods are the right of all citizens—not just those able to buy a home. A sound approach to urban policy ties together both owner and rental programs. Such a holistic approach would not only build city neighborhoods and while at the same time empower city residents. HOZ demonstrated that such an approach can have profound positive effects in cities as disparate as Trenton and Sacramento. Such opportunities should be replicated nationwide.

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[173] "HUD Announces $113 Million Available for Public Housing Transformation, Community Revitalization," *U.S. Department of Housing & Urban Development*, http://www.hud.gov/news/release.cfm?content=pr09-119.cfm.
[174] "HUD Announces $113 Million Available for Public Housing Transformation, Community Revitalization," *U.S. Department of Housing & Urban Development*, http://www.hud.gov/news/release.cfm?content=pr09-119.cfm.

Photographs ofHOZ Developments

Philadelphia –Cecil B Moore

293 units (214 new construction, 79 rehabilitation)

Trenton—Canal Banks

306 units (212 new construction, 94 rehabilitation)

Baltimore—Sandtown Westchester
236 units (200 new construction, 36 rehabilitation)

Sacramento—Del Paso Nuevo
300 units (300 new construction)

Louisville—Park DuValle
300 units (300 new construction), 150 HOPE VI