OFC Economic Stabilization

White Paper Series

Recommendations to

Stem the Foreclosure Crisis and Rebuild Wealth

in America's Communities of Color

November 30, 2010

Washington, D.C

Foreword

This OFC Economic Stabilization White Paper culminates an intense six-month collaborative effort by more than seventy Thought Leaders assembled by the Opportunity Funding Corporation (OFC) to examine the net worth implications for African-American and Hispanic-American communities flowing from the foreclosure crisis. These Thought Leaders spent hours "drilling down" on the causes and effects of the crisis and crafting mitigating strategies. This White Paper memorializes this extraordinary effort and the participants' short-term and long-term recommendations.

The Opportunity Funding Corporation, a forty-year old nonprofit focused on capital access and wealth generating methodologies for communities of color, once again turned to its strategic partner, the Yale School of Management (SOM), as well as the Ludwig Community & Economic Development (CED) Clinic at Yale Law School, to help lead this collaborative study around this historic loss of wealth.

OFC, Yale SOM and the CED Clinic began by obtaining the support and engagement of critical Thought Leaders. After conducting one-on-one interviews with a range of Thought Leaders, OFC and its strategic partners formed Working Committees, which shared their insights with industry, government, and community leaders in a full day of panel presentations at the U.S. Capitol on July 27, 2010. Participating Thought Leaders included Congresswoman Maxine Waters, Congressman Elijah Cummings, and Congressman Gregory Meeks, as well as leaders from the Center for Responsible Lending, the National Urban League, the National Community Reinvestment Coalition, National Council of La Raza, Neighborworks® America, HUD, Goldman Sachs, and many more.

The July 27th public conversation at the U.S. Capitol underscored the historic levels of African-American and Hispanic-American net worth loss and the corresponding perils this posed not only for gains in education and economic development in the hardest hit communities but also for the recovery of the U.S. economy as a whole. Participating Thought Leaders resolved to work together for purposes of identifying strategies to mitigate this unprecedented crisis, while identifying initiatives for re-building wealth post-crisis.

Thought Leaders from the advocacy community, public and private foundations, financial services firms, think tanks, local and national government, and academe have generously given their time, insights and resources to produce this document. However, a few of these Thought Leaders and contributors have emerged as quintessential stars in this extraordinary endeavor.

Anchor Thought Leaders:
These Thought Leaders served as the intellectual guides who brought focus and definition to the organization of the White Paper and refinement to the evolving Recommendations.

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Exceptional Thought Leaders:
These Thought Leaders were "hands on" intellectual contributors who helped OFC, Yale SOM and the CED Clinic at Yale Law School "drill down" on recommended strategies to mitigate the crisis and reclaim net worth post crisis:

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John Rooney, Yale SOM (2010), and Caroline Novogrod, Yale Law School (2012) and CED Clinic Student, served as raconteurs of countless insights harvested from interviews with Thought Leaders and working committee sessions. They assembled and analyzed data, researched the relevant literature, and drafted and edited multiple iterations of this report. Their yeoman's effort memorializing this collaborative process made possible this OFC Economic Stabilization White Paper.

On November 30, 2010, the OFC will again convene the OFC Economic Stabilization White Paper Thought Leaders on Capitol Hill to present the White Paper. On this occasion, Thought

Leaders from Boston Community Capital, Department of Treasury, Annie E. Casey Foundation, Bank of America, and more will also be joining us. These meetings could not have occurred without the continued support of Ashley Lawrence in Congressman Gregory Meeks office.

The OFC family has been honored to work with these truly extraordinary professionals and leaders.

Sharon Pratt

President
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Contributors and Thought Leaders

The OFC Economic Stabilization White Paper examines the foreclosure crisis and the net worth implications for African American and Hispanic communities. The net worth implications are extraordinary. These communities have experienced the greatest loss of wealth in modern history.

OFC convened Thought Leaders to “drill down” on why African American and Hispanic Americans are disproportionately impacted by the crisis; what strategies might be deployed or expanded upon in order to mitigate the crisis; and what net worth building post crisis initiatives might be considered.

The White Paper engaged Thought Leaders from the worlds of financial services, advocacy groups, foundations, academe, the U.S. Congress and the Obama Administration. More than 70 Thought Leaders have been actively involved in this six-month project. They are:

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The 3 executive “safety clips” in this endeavor have been Carolyn Bowden, Jodi Samuda, and Monda Raquel Webb. They kept the many points of data and schedules coordinated and bound together; allowing this collective of many to collaboratively author the OFC Economic Stabilization White Paper.

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Executive Summary

The 2008 financial meltdown, started by the foreclosure crisis and resulting in the Great Recession, has Americans of all races facing the most significant financial uncertainty since the Great Depression. A majority now lives in fear of not being able to pay their mortgage or rent. The continuing foreclosure crisis, while having consequences for all Americans, has completely devastated communities of color. Therefore, this OFC Economic Stabilization White Paper considers the full and broad import of this crisis, with particular focus on the unprecedented loss of net worth in African-American and Hispanic-American communities.

African Americans and Hispanic Americans did not cause the economic meltdown: While many ill-advisedly embraced predatory financing instruments, they were not the driving force behind the financial crisis. Yet, as a result of this crisis, these communities have lost almost all of the wealth that had been built up in them for over a generation.

The implications of this loss are far-reaching and alarming. African Americans and Hispanic Americans must now engage an increasingly competitive, "globe-flattening" twenty-first century economic environment with fewer resources. The correlation between race and wealth is troubling: Hispanic Americans have twelve cents for every dollar in net worth non-Hispanic whites have. African Americans have just ten cents. Historic discrimination may be the root of these disparities, but the foreclosure crisis has certainly served to exacerbate them. These communities represent a significant portion—and the fastest growing segment—of the American population. It is becoming increasingly clear that the obstacles faced by these communities pose a threat to the well being of America as a whole.

Just as Americans closed ranks and found the resolve required to create legislation to re-stabilize private sector institutions deemed "too big to fail," the same pragmatism must be embraced when addressing the economic hemorrhaging that continues to engulf low- and moderate-income (LMI) communities, many of which are disproportionately Hispanic-American and African-American. Our nation has spent a half-trillion dollars bailing out its financial institutions and auto industry. In order to preserve and grow the broader economy, America's public and private sector leaders must now deploy resources, policies and programs to stabilize these derailed communities. It is the morally correct thing to do; it is also the economically sound thing to do.

Notwithstanding the stability and growth issues that have arisen in the last few years, homeownership remains the single most powerful means of wealth creation currently available for LMI communities of color. It also offers long-term family security as well as stabilization for entire neighborhoods. If we do not support community stabilization and housing-stock rehabilitation in the communities hardest hit by the mortgage foreclosure crisis, large amounts of our nation's housing infrastructure will deteriorate beyond restoration. This will result in an

enormous dead-weight loss to our whole society, not just a loss for the minority communities immediately affected.

We thank all Contributors to this White Paper, identified in the Foreword, who participated in the kick-off summit on July 27, 2010, or have joined or added to this work since then, for their insights and contributions. This paper is organized into two major sections: (1) Stemming the Foreclosure Crisis and (2) Investing in Distressed Communities and Building Wealth. The Contributors crafted the ten key recommendations set forth below. We believe that the adoption and implementation of these recommendations will make it possible to reclaim our nation's capacity for building wealth and net worth for all Americans.

With great success, resilience and resolve, America has risen to challenges of this magnitude in the past, from the Great Depression, to World War II, to September 11th. We can and must do so again. We owe it to the economic well-being of our entire nation and, in particular, to the communities most egregiously harmed by this crisis, to identify a road map out of this crisis and towards a future with promise for all Americans.

TEN KEY RECOMMENDATIONS

- **EXPAND** nonprofit programs that leverage increased housing affordability in hard-hit neighborhoods to replace troubled mortgages and keep eligible homeowners in place, thereby avoiding further vacancies and evictions.
- **INCREASE** the use of minority-owned firms in the maintenance and disposition of real estate owned (REO) properties, and increase sale of these properties to owner-occupants.
- **STRENGTHEN** oversight of servicers participating in the Home Affordable Modification Program (HAMP) and other government foreclosure mitigation programs by creating an independent office to oversee compliance and by giving rejected homeowners access to an appeals process.
- **INCREASE** the reach of housing counselors to help distressed homeowners to avoid foreclosure when possible. Going forward, implement counseling programs to promote financial literacy for prospective homebuyers and to ensure that they will not fall victim to unscrupulous lending practices.
- **ENCOURAGE** servicers to avoid unnecessary foreclosures by changing accounting rules that discourage loan modification.
- **REFORM** bankruptcy laws to allow court modification of underwater mortgages, thereby encouraging servicers to negotiate such modifications themselves.
- **REGULATE** more vigorously the origination of mortgages to prevent predatory lending, and ensure that low- and moderate-income communities and communities of color are adequately served by financial institutions.
- **ESTABLISH** a National Home Accounts program to increase the ability of low- and moderate-income families to save for down payment on a home.
- **INVEST** in minority-community-focused small business initiatives and targeted infrastructure projects to reduce elevated unemployment rates and stabilize communities most affected by this crisis.
- **MODERNIZE** and more effectively enforce the Community Reinvestment Act to revise the incentives for financial institutions to comply, and award CRA credit for effective foreclosure-prevention activities.

The Way Forward: Proposals to Resolve the Crisis and Rebuild Wealth

I. Stemming the Foreclosure Crisis

Today, 5.7 million borrowers are at imminent risk of foreclosure.[1] Almost one in four mortgages is underwater,[2] a significant predictor of default.[3] By reducing nearby property values, foreclosures spread negative equity and spur additional foreclosures. The spillover costs of the two-and-a-half million foreclosures between 2007 and 2009 are massive.[4] High vacancy rates, property abandonment, vandalism, and diminishing tax revenues are blighting neighborhoods across the country.[5] Uncertainty in the housing sector has reduced bank lending and threatened capital and debt markets. With continuing housing price depreciation,[6] the pace of foreclosures is likely to continue well into 2012. In fact, industry analysts estimate thirteen million foreclosures will have occurred by 2014.[7]

Stemming the crisis requires preventing the domino effect of individual foreclosures. This starts with keeping more borrowers in their homes by modifying or replacing the mortgages of those who have sufficient income to meet new, reasonable payment terms. Government and proprietary loan modification programs provide insufficient incentives to servicers to make appropriate modification decisions. Furthermore, none of these modification programs effectively addresses principal reductions,[8] resulting in many modified mortgages that are susceptible to redefault.[9] Not surprisingly, these programs have had limited impact on the crisis. For every homeowner receiving a permanent modification, ten more are delinquent or have received foreclosure notices.[10] Too many borrowers who could afford modified mortgages are not seeking them soon enough or at all. Servicers, too often, are denying loan modifications to those who meet qualifications. By and large, there is no malfeasance by the servicers or irresponsibility by the homeowners. It is simply an epidemic of daunting proportions that has left all sectors, public and private, in disarray. Indeed, recent news highlights servicers' institutional incapacity to manage mass mortgage reviews and processing, resulting in incorrect rejections and foreclosures.[11]

Stemming the crisis also requires addressing vacancies—and the destabilization they cause to neighborhoods—by quickly getting owner-occupants into real-estate-owned (REO) properties. In contrast to investor-ownership of homes, owner-occupancy at high rates has been linked to better education outcomes for children and less crime.[12] Owner-occupants are also widely considered to invest more in the maintenance of their homes and communities than investor-owners.[13] Yet, uncertainty in the housing sector leads REO sellers to favor quick, investor-driven cash

purchases.[14] Today, investors dominate the REO market—so much so that some neighborhoods, formerly predominantly owner-occupied, are turning into rental zones.[15]

The initiatives and policies identified below are designed to keep more borrowers in their homes by alleviating the challenges that hinder current efforts. The recommendations call for (A) expanding public-private partnerships that enable nonprofits to purchase mortgage notes and REOs to keep homeowners in place; (B) increasing the disposition of REOs to owner-occupants; (C) strengthening foreclosure prevention counseling and advocacy resources to help borrowers prevent avoidable foreclosures; and (D) addressing both existing disincentives for servicers to reduce principal and inadequate loss mitigation capacity. In addition, Part II of the White Paper includes a recommendation for addressing the crisis by awarding bank-owned servicers with credit under the Community Reinvestment Act for preventing foreclosures.

A. Expand Public-Private Partnerships that Purchase and Refinance Distressed Assets in America's Hardest Hit Neighborhoods

The public and private sectors should partner to replicate the initiatives of pioneer Community Development Financial Institutions (CDFIs) such as Boston Community Capital and Self-Help, which purchase troubled mortgage notes and REOs for resale to owner-occupants. By keeping owner-occupants in their homes, these programs reduce the stock of vacant properties, mitigate local foreclosure spirals, and help rehabilitate neighborhoods. They provide a necessary complement to the Neighborhood Stabilization Program (NSP), which provides nonprofits with funding to purchase *already vacant* properties for resale to homebuyers.

Programs that prevent vacancies address a current gap in loss mitigation efforts in highly distressed communities—where foreclosures often occur even when it is not the most economically efficient outcome. These CDFIs conduct rigorous market research to identify and procure distressed assets from banks at discounts. They help restructure mortgages more in line with current market values that existing homeowners can afford. With respect to homeowners with credit scores damaged in the crisis or who cannot immediately afford a new mortgage, there are programs that enable them to stay on as renters as they save towards a downpayment and the ultimate repurchase of the property. For mortgage investors, offloading distressed mortgage notes and REOs can reduce the costs associated with loss mitigation efforts, lengthy foreclosure processes, and REO maintenance and disposition.[16]

The success of these CDFIs has attracted significant private investment capital. Government could help CDFIs attract additional private investment by awarding grants, low-cost loans, and guarantees. Furthermore, broadening and facilitating CDFIs' access to secondary markets, and thereby increasing liquidity, would enable these programs to expand. CRA-covered institutions should also be granted credit for funding CDFIs, as discussed *infra* in Part II.

B. Promote REO Strategies that Increase Owner-Occupancy

Increased use of management and disposition services that focus on selling REOs to owner-occupants would help stabilize distressed neighborhoods. Many of the most distressed neighborhoods are low-income neighborhoods with predominantly minority residents. Companies such as New Vista Asset Management also help stabilize these communities, which suffer disproportionately from unemployment, by contracting local brokers and asset managers of color.

The market for REO properties is quite large—Fannie Mae alone disposed of 123,000 REOs in 2009. However, banks frequently rely on national REO management services and brokerage firms from outside these communities.[17] Many abandoned properties are not being maintained at all, further destabilizing neighborhoods. Creating targeted coalitions of Minority Business Enterprises (MBEs) providing brokering and REO management services will better enable MBEs to negotiate with large banks for contracts. In Los Angeles, the Consolidated Board of Realtors, with the support of Congresswoman Maxine Waters, worked with four major banks[18] to add twenty-two brokerages to the banks' vendor lists.

Using local brokers may also increase the likelihood of REO sales to owner-occupants. Real estate brokering is a relationship-oriented business. Local brokers know the community and can tap the local network to find a buyer.[19] Outside brokers have networks centered elsewhere and, as a result, tend to sell to investors who have no intention of living in the community. A recent study of REO sales in Fulton County, Georgia, for example, found that a few sellers accounted for most sales, and that these sales were mainly to investors.[20]

C. Strengthen Borrower Advocacy Resources and Foreclosure Prevention Counseling

The Home Affordable Modification Program (HAMP) has had limited success. The program relies too much on guidelines and not enough on compliance oversight.[21] Setting guidelines for servicers without providing recourse for homeowners does not work. To improve HAMP, homeowners must be equipped with comprehensive support resources, including access to an independent appeals process, housing counselors, and legal assistance. Implementation of the Dodd-Frank Wall Street Reform and Consumer Protection Act's ("Dodd-Frank") provisions expanding foreclosure prevention resources should be expedited immediately.

1. Create the Office of the Homeowner Advocate to Help Homeowners Resolve Problems with Servicers

The Office of the Homeowner Advocate (OHA)[22] should be created to help homeowners, housing counselors, and housing lawyers resolve problems with servicers. HAMP loan modification denials would be appealable to OHA. Based on feedback from homeowners,

housing counselors, and housing lawyers, OHA could work to identify systematic issues obstructing modifications and alert relevant agencies. Most importantly, this office would provide homeowners with access to a formal appeals process. Recent changes in HAMP require servicers to provide homeowners with more information on the basis for their rejection, but homeowners remain powerless to challenge a denial—even if the denial is made in error.

2. Expand the Reach of Foreclosure Prevention Counseling

The Urban Institute has found that homeowners who receive counseling through the congressionally funded National Foreclosure Mitigation Counseling (NFMC) program have a much better chance of averting foreclosure.[23] NFMC counseling also increased the amount by which the modification reduced a borrower's monthly payments.[24] However, these services are reaching many borrowers far too late. In its May 2010 report to Congress, NeighborWorks® America, which manages NFMC, indicated that more than one in five homeowners reaching out to NFMC-funded counseling agencies were already more than 120 days delinquent.[25] The National Community Reinvestment Coalition (NCRC) found that homeowners who are severely delinquent or already in foreclosure are significantly less likely to receive HAMP modifications.[26] Still others fall victim to fraudulent "rescue" scams.

Innovative multimedia campaigns and education programs, as called for in Dodd-Frank, could raise homeowner awareness of local programs, help persuade homeowners that seeking unbiased counseling is worthwhile, and alert homeowners to scams. Local partnerships between non-profits and television networks would help housing counselors reach key demographics efficiently.[27] Multi-lingual public service announcements, advertisements in local newspapers, and inserts in servicers' mail to homeowners will increase the probability that homeowners turn to their local counseling centers when first facing default.

D. Alter Servicers' Incentives to Promote Principal Reduction

1. Address the Disincentive for Principal Reductions Created by Accounting Write-down Rules

Federal regulatory agencies should remove a deterrent to adjusting the book values of distressed mortgage assets by temporarily allowing banks to amortize write-downs over a period of years. Incorporating the true market values of these assets would be a huge shock to bank balance sheets under current rules. Federal Deposit Insurance Company (FDIC) postmortems show that failed banks' assets are often worth significantly less than that listed in the balance sheet.[28] Accounting rules, which require banks to immediately acknowledge capital losses arising from permanent, but not temporary, loan modifications, likely play a role in limiting the conversion of modifications from temporary to permanent status. Although the rate of conversion has improved since January 2010,[29] failed trial modifications continue to outpace new permanent modifications

and foreclosure starts continue to outpace new permanent modifications.

2. Strengthen Incentives for Reducing Loan Principal by Enabling Modification in Bankruptcy

Empowering bankruptcy judges to modify mortgages on primary residences makes sense. It may also incentivize servicers to reduce principal through loss mitigation programs. One report estimates that allowing principal reduction in bankruptcy would cut foreclosures by at least twenty percent.[30]

The Bankruptcy Code enables judges to modify loans on vacation homes, farms, and commercial properties, but not on primary residences. Congress carved out primary residences in 1978 to promote the flow and reduce the cost of credit in the housing market. However, according to a recent study by the Federal Reserve Bank of Cleveland, the use of bankruptcy courts to address the farm foreclosure crisis in the 1980s did not negatively impact the availability or cost of credit.[31] In today's crisis, removing this exception could promote stability in the housing market, which may encourage financial entities to begin lending again.[32]

II. Investing in Distressed Communities and Building Wealth

The foreclosure crisis has resulted in the greatest loss of wealth for communities of color in the history of the United States.[33] Between 2009 and 2012, Hispanic-American and African-American communities will have lost $180 and $193 billion, respectively, from just the spillover costs of foreclosures.[34] The crisis has wiped out decades of hard-won gains in minority communities. In the five-year period before the crisis the number of companies owned by African Americans and Hispanic Americans increased by sixty percent and forty-four percent, respectively.[35] Yet today opportunities for upward mobility are largely out of reach for those in minority communities. In the wake of the foreclosure crisis, many families who would have used their home equity to grow their businesses, fund retirement, or help with college tuition, are without those options.

Many believe the financial meltdown was triggered by too many borrowers of color buying too much house. However, drilling down on the data reveals the meltdown's causes to be varied and nuanced. With full information, one thing is clear: while defaulting subprime mortgages accelerated the meltdown and African Americans and Hispanic Americans had a disproportionate number of subprime mortgages, they did not have them because they were ineligible for traditional mortgages. African-American and Hispanic-American borrowers were thirty percent more likely than non-Hispanic whites with similar credit profiles to receive subprime mortgages.[36] One study identified fifteen metropolitan areas where upper income African Americans were at least five times more likely to receive high cost home-purchase loans than upper income whites.[37] From 2006 to 2008, prime lending decreased by sixty percent in communities of color but by only twenty-eight percent in predominantly non-Hispanic white communities.[38]

These racial and ethnic disparities continue today. The impact of the crisis on African Americans and Hispanic Americans is disproportionate to their share of mortgage origination.[39] These disparities hold even after controlling for differences in income patterns across demographic groups.[40] Opportunities for recovery are also fewer in communities of color. Minority Business Enterprises (MBEs) are often unable to compete for government sponsored projects because they do not have access to the necessary capital, equipment or bonding requirements.[41] Hispanic-American-owned businesses, which account for seven percent of all U.S. businesses, have received only 1.7 percent of the $46 billion in federal stimulus contracts recorded in U.S. government data, and African-American-owned businesses, which account for five percent of businesses, have received just 1.1 percent.[42]

The future expansion of housing investment and growth in the broader economy will depend on reducing the significant income and wealth disparities between non-Hispanic whites and

minorities.[43] Such disparities, wide and growing, increase the polarization of American society and limit economic potential. This section of the White Paper identifies opportunities for rebuilding wealth in America, but particularly in LMI and minority communities hardest hit by the foreclosure crisis and Great Recession. Recommendations include (A) advancing safe and sustainable homeownership policies through expedited implementation of the Dodd-Frank legislation, creation of downpayment saving accounts, and increased access to counseling services; (B) investing in critical infrastructure projects to provide immediate relief to unemployment and to save heavily impacted communities; (C) investing in small business initiatives in minority communities; and (D) updating and better enforcing the Community Reinvestment Act to promote lending activities in communities most in need.

A. Generate Wealth Through Sustainable Homeownership

Opportunities to rebuild and sustain assets are more important than ever. Housing is the primary asset of most Americans. It is often the only asset class in which LMI minorities are able to invest after meeting monthly expenses.[44] Unlike renters, homeowners build equity in a tax-advantaged way while paying monthly housing costs.[45] For people of color, who continue to face greater difficulty obtaining credit than their white counterparts with similar credit scores, homeownership has also been a critical source of credit for business start-ups and higher education. Finally, homeownership carries wealth across generations, improving prospects for children and reducing the likelihood of poverty in old age.[46]

Enabling low-to-middle income Americans to own the homes in which they live can be achieved responsibly, benefiting the homeowner and increasing America's financial stability. Predatory subprime loans caused the crisis—not first-time homebuyers in low-to-middle income America. Most of these predatory loans were not used to purchase homes, but to refinance mortgages on homes people already owned.[47] Since these loans were prone to default, predatory subprime loans stripped existing housing wealth from the LMI communities of color in which they proliferated. Moreover, most of these loans were issued to people who qualified for more traditional loans on better terms.[48] Finally, perverse incentives in the lending industry propelled the use of unnecessary and reckless loan terms that make it more difficult for borrowers to repay.[49]

A reformed homeownership system that emphasizes fair and safe access to credit, consumer education, and safety and soundness in the banking system would enable many low-to-middle income Americans to build wealth safely. Making sustainable homeownership available to borrowers of color and LMI Americans is critical to growing wealth in these communities.

1. Implement Dodd-Frank's Mortgage Origination Provisions to Foster a Mortgage Market that is Safe but not Unduly Restrictive

The newly created Consumer Financial Protection Bureau (CFPB) has a broad mandate to develop strong anti-predatory lending protections and apply the protections across a large swath of the lending industry. In implementing consumer financial laws, CFPB should protect consumers and the mortgage market while ensuring that rules do not unnecessarily close off minority and LMI homebuyers' access to credit. By correcting perverse incentives, installing important safeguards, and encouraging efforts to more accurately determine risk profiles, Dodd-Frank can provide a secure environment that promotes innovative but responsible lending as well as research on how to responsibly lend to LMI and minority borrowers. A recent study conducted by the Joint Center for Housing Studies at Harvard University found that mortgage loan products aimed at expanding access to homeownership should still be available, provided that they conform to the guidelines outlined in Dodd-Frank.[50]

It is important to preserve access to credit, even at higher prices. Higher-priced products can work fairly, provided: (1) the prices accurately reflect default risk; (2) the loans are made with enhanced disclosures and take into account the borrower's ability to pay the mortgage over the long term; and (3) the products are not offered in a discriminatory or predatory manner. These loans should be fixed-rate, since it is difficult for LMI borrowers to keep pace with fluctuating payments associated with variable-rate loans. Used properly, a higher-priced loan can give the borrower an opportunity to build up or repair credit history. The CFPB should encourage innovative ways for determining default risk of borrowers for whom credit scores do not accurately capture the likelihood of repayment.[51] The CFPB should use data generated by the Home Mortgage Disclosure Act (HMDA) and other data to determine whether new rules adversely affect access to and affordability of credit in LMI communities and communities of color. It should also closely monitor the mortgage market for evidence of "innovations" in predatory lending, especially those aimed at LMI communities or communities of color.

Finally, although the CFPB does not have jurisdiction over the Community Reinvestment Act (CRA), this legislation remains one of the primary tools aimed at ensuring access to credit for underserved communities. The CFPB should share data with HUD and other agencies to maximize CRA's impact (see Heading D, *infra*, on updating and enforcing the Community Reinvestment Act).

2. Support Sustainable Homeownership Through a National Home Accounts Program Promoting Savings[52]

Many low-income and even middle-income families have life situations that make it difficult to save enough for a ten to twenty percent downpayment on a home. Yet, studies show the extent of housing wealth gain is a direct function of the initial down payment.[53] Home Accounts could help fill this gap. Home Accounts are Individual Development Accounts (IDAs) specifically

meant for accumulating the funds required to make downpayment on a house. Under the terms of this product, as designed by the Aspen Institute's Initiative on Financial Security, the government matches funds saved by the prospective homeowner at fifty percent, with a maximum contribution of $5,000. The Aspen Institute Home Accounts proposal would enable prospective homeowners to accumulate up to $15,000 in five years for funding downpayments. This not only serves to put homeownership within the reach of more families, but also increases the chance that the borrower will qualify for more affordable loan terms. The foreclosure crisis has made clear the benefits of IDAs: Foreclosure rates for homeowners with IDAs were one-third to one-half the rates for other low-income homebuyers in the same communities.[54] The Aspen Institute projects that in the first five years of the program 4.5 million accounts, thirty-five billion dollars in assets, and sixty billion dollars in new mortgages would be created.

3. Increase Pre- to Post-Homeownership Counseling Services

The new Office of Housing Counseling at the Department of Housing and Urban Development should prioritize and promote greater involvement of counselors throughout the homeownership lifecycle. Furthermore, limited knowledge of and experience with mortgage finance, nonstandard loan products with arcane terms that mask the true cost of loans, and cognitive biases about future consumption needs all impair rational decision-making.[55] Therefore, financial literacy for all consumers is critical. Counselors can and do fill that role. In addition, homebuyers should have their loan documentation reviewed by counselors to ensure they have products and terms appropriate for their circumstances. Effective counseling would also help some potential purchasers appreciate the importance of waiting in order to allow time to improve their credit rating and qualify for loans on better terms. Post-purchase counseling should also be encouraged for those considering refinancing or obtaining a home equity loan since refinancing and home equity loans can operate perversely to erase the forced savings component of homeownership.

The format of counseling is important. Face-to-face housing counseling has been shown to be most effective.[56] Telephone or workbook counseling, which is used by much of the lending industry, has not been correlated with any reduction in credit risk.[57] And, while it may not be feasible to mandate counseling universally, it should be a requirement for access to any public subsidy for home purchases.

B. Invest in National and Local Infrastructure Projects

While there are mixed opinions regarding another stimulus bill, there is overwhelming agreement regarding the benefits of investment in America's infrastructure. Investment in infrastructure offers significant short and long-term returns. One study estimates that every billion dollars spent on infrastructure generates $1.6 billion in economic activity and creates an average of 18,000 jobs.[58] If all infrastructure investment created jobs at this rate, $200 billion in

new infrastructure spending annually would create enough jobs to put the economy back onto the path of full employment while building assets for our future.[59]

According to the American Society of Civil Engineers, the nation requires a $2.2 trillion investment in vital and deteriorating infrastructure—ranging from mass transit, bridges, and roads, to schools and drinking water systems.[60] For example, more than one out of every four of the nation's bridges was structurally deficient or obsolete in 2007. Current plans introduced by President Obama would only provide $50 billion specifically for transportation infrastructure.[61] Regions throughout the world are exceeding America's investment in infrastructure, potentially putting American firms at a competitive disadvantage if we fail to keep pace.[62] It is a good time to invest in these job-generating projects and thereby reverse the trend of underinvestment that threatens the long-term economic viability of the United States.

Under the Troubled Asset Relief Program (TARP), funds were used to shore up major institutions and thereby save our financial system and jobs. Most of those TARP funds have been, or are now in the process of being, repaid. Why not reinvest a comparable amount in the infrastructure, the community and business renewal, and the other initiatives proposed in this White Paper? We could thereby enable our nation's hardest-hit communities and businesses to access the same opportunities for recovery generated by TARP's assistance to major financial institutions and businesses while creating new jobs and assisting the overall economic recovery. Notwithstanding legislative constraints on reallocation of TARP monies, it would be a just result to provide similar funding to mitigate the economic hemorrhaging experienced by communities disproportionately harmed by the foreclosure crisis on a scale comparable to that which was successfully deployed to bail-out major financial institutions and businesses. In fact, the amount of TARP funds disbursed to these institutions is comparable to the total amount of wealth lost in Hispanic-American and African-American communities from the crisis. Most significantly, this crisis-related funding offers not just a one-time repayment of the investment but enormous societal returns extending generations into the future.

1. Put People to Work Immediately While Planning for the Long-Term

Infrastructure investments generate traditional construction projects, which can immediately abate unemployment. Unlike the green technology and health technology initiatives established under the American Recovery and Reinvestment Act, these projects do not require time-intensive training before employment.[63] Furthermore, state and local governments can quickly ramp up to push such projects out the door because they possess the experience to vet these projects.

Finally, construction is not exportable. It requires workers in America. In contrast, jobs in manufacturing, technology, and business support are harder to create exclusively in the United States and those that are created are at risk of being shipped overseas. Building and repairing schools, community colleges, and state-of-the-art job training facilities would help prepare

America's workforce to compete in the global economy.[64] The time bought with an infrastructure initiative can also be used to carefully design workforce development initiatives to train competitive 21st century American workers.

2. Invest in Public Transportation

Expanding and improving public transportation recognizes the realities of a twenty-first century America—one of rapidly growing urban centers requiring energy-efficient modes of transport. Investment in public transportation would create twice as many jobs as investment in highway infrastructure.[65] Expanding public transportation also promotes employment by increasing access to centers of job creation, which are often geographically separated from areas with high rates of unemployment. Gaining access to new job opportunities—especially for African Americans and Hispanic Americans—increasingly requires long commutes and high transportation costs. This geographic isolation of people in distressed communities from centers of job creation has dramatically increased over the past two decades and needs to be addressed.

3. Invest in Local Revitalization Projects

Neighborhoods most affected by foreclosures and unemployment should receive priority attention in disbursements of infrastructure dollars.[66] The foreclosure crisis has given rise to circumstances in which the communities that are the most likely to need investment in local infrastructure are also the least likely to be able to afford it.[67] Studies show that neighborhood investment is self-financed over the long-term through increases in property tax revenue collected by local governments.[68] Therefore, a federal loan fund program replenished over time with a portion of increased property tax revenues may be a viable way to finance neighborhood-level infrastructure investment.

4. Coordinate Federal Funding

To be effective, data-driven investment should target specific neighborhoods rather than thinly spread funds across multiple areas. Coordination among federal agencies, states, and local government would maximize development per dollar of funding. The Sustainable Communities Initiative and the Neighborhood Revitalization Initiative highlight the efficiency and effectiveness collaboration offers.[69]

Rigorous data collection and carefully calibrated models for prioritizing projects, monitoring progress, and measuring return on investment against set goals should drive funding decisions. Weighting of variables should ensure that the LMI and minority neighborhoods and public transportation receive their fair share of project funding.

C. Invest in Minority-Community Focused Small Business Initiatives

Before the crisis, African-American-owned businesses were the fastest growing segment of new businesses, growing over sixty percent from 2002 to 2007.[70] Hispanic-American-owned businesses grew forty-four percent over the same period.[71] These trends are encouraging; but they still reflect a pace of growth insufficient to meaningfully create jobs. Only six percent of African-American-owned businesses and eleven percent of Hispanic-American-owned businesses had employees. Therefore, effective policies and private-sector programs geared towards increasing the number of minority-owned employer firms will provide the support required for these firms to become engines of growth and stabilization that communities of color sorely need.

Minority-owned firms are less likely to receive loans than non-minority owned firms and receive them in lower amounts. This holds true even when minority-owned firms are growing faster than their non-minority counterparts—like during the 2001 recession, when employment at minority-owned firms increased by four percent while employment among non-minority firms declined by seven percent.[72]

Minority businesses continue to grow in spite of incredible challenges. The capacity for growth is clear. It is in America's interest to help these businesses become even greater job-generating engines for these hard-hit communities. In the wake of post-bailout criticism,[73] many of the largest U.S. banks announced plans to meaningfully increase availability of credit to small businesses.[74] Also, in September, President Obama signed the Small Business Jobs Act creating a $30 billion dollar program to help community banks make more loans to small companies.

However, these initiatives, by and large, do not specifically address the challenges and barriers faced by African-American and Hispanic-American communities. These communities could achieve dramatically greater business growth if *customized* business development support and targeted capital-access programs were available. In spite of the challenges, both African-American and Hispanic-American communities have achieved significant business development records. With targeted support and programs, these communities can meaningfully generate jobs by doing what Americans do best: starting and growing businesses.

D. Modernize and Enforce the Community Reinvestment Act

In enacting the Community Reinvestment Act (CRA) in 1977, Congress and the President recognized that LMI communities could not advance economically without an affirmative obligation for depository institutions to serve them in a safe and sound manner. Lenders and community organizations have made more than $6 trillion in CRA agreements since enactment.[75] Unfortunately, financial services not covered by CRA have jeopardized these gains by infecting

LMI communities with predatory subprime loans. CRA-covered lending accounted for only six percent of these loans.[76]

The foreclosure crisis has destroyed much of the wealth that CRA helped build in LMI communities. There is a growing fear that the crisis will cause a significant contraction in the availability of capital and credit in these communities—further limiting their ability to stabilize and recover. The small community banks that account for sixty percent of the nation's small business loans[77] are failing—one every two days, according to FDIC data.[78] These banks are being replaced with bigger banks that are less likely to possess the community knowledge and focus necessary to extend credit to smaller borrowers within these communities. The cornerstone of U.S. recovery and financial reform legislation, the Dodd-Frank Act, prohibits the bad practices that proliferated in lending to LMI communities and mandates that depositories track lending activities to minority and women-owned businesses. Only CRA requires bank depositories to *provide* services to LMI communities.

Yet changes in how financial service institutions conduct business have weakened CRA's impact. CRA modernization is thus the critical next step after Dodd-Frank.[79] Congress should modernize CRA so that it can fulfill its original purpose—to safely and effectively expand access to capital, credit and banking services in LMI communities.

1. Update Types of Financial Services Providers Covered by CRA[80]

CRA should apply to all mortgage lenders, loan servicers, payday lenders, investment banks, securities companies, credit unions,[81] and insurance companies, to ensure that a broader range of financial institutions have affirmative obligations to *responsibly* expand access to their products and services in LMI communities. Currently, families in LMI communities either lack significant access to financial products and services provided by these institutions, or they have access to products that are unsafe.[82] Strengthened CRA coverage would change this.

Presently, CRA is too easy to circumvent. The repeal of the Glass-Steagall Act in 1999 enabled lending institutions to evolve away from CRA by acquiring or creating subsidiaries—such as mortgage originators—that function outside CRA's purview. A number of these now-bankrupt mortgage originators participated in predatory lending. CRA oversight of these entities would ensure that they are not again used as an outlet through which otherwise-CRA-covered institutions can conduct bad lending.

2. Eliminate Examiners' Conflicts of Interest

Revising CRA so that covered institutions can no longer choose the regulatory agency monitoring them would improve the rigor and reliability of compliance evaluations. A depository should not be able to change its charter in order to get a new CRA regulator. Depositories pay their regulators and cover their operating costs. This funding model[83] reduces regulatory rigor

when banks have the option to switch regulators—incentivizing agencies to produce favorable evaluations in order to maintain good relationships with institutions and thereby protect revenue. The conflict is greater for large banks whose fees comprise a sizeable portion of the revenue regulators use to pay employees and fund operations.

3. Increase the Range of CRA Grades

Regulators should standardize and elaborate CRA evaluations to encourage more consistent, robust, and transparent evaluations of performance. As it stands now, regulated institutions have little motivation to set themselves apart through CRA performance—"satisfactory" has proven a catchall category.[84] Adopting more nuanced scoring than the current four-tier system[85] could enhance regulator accountability. Utilizing a 100-point scale or, at the very least, a system with additional tiers, would introduce a new dynamic into the evaluation process. A broader and more discrete rating scale will generate greater variation in scores, spurring ratings competition among banks while making it incumbent upon regulators to be able to explain why one bank deserves a higher score than another. Increased transparency will put more focus on discrepancies that currently exist across regulators in weighting various tests that make up the CRA score.

4. Update CRA's Definition of Assessment Area so Regulators Can Accurately Assess Institutional Performance

CRA should be revised so that significant portions of a lending institution's activities are no longer excluded from credit eligibility. CRA's assessment areas should be redefined as any state, urban or rural area where an institution enjoys market share in CRA-covered products and services above a threshold set by regulators. By contrast, a bank's assessment area is currently determined by the presence of physical branches, even though a significant portion of bank activity occurs outside of these geographic areas.

In 2007, federal regulators indicated that banks and thrifts that transition homeowners from high-cost to low-cost loans would receive favorable consideration under CRA as long as the lenders made the loans in a safe and sound manner.[86] However, banks service loans and own foreclosed properties outside their assessment areas, and any associated loss mitigation or neighborhood stabilization activities related to these properties are ineligible for CRA credit. Redefining a bank's assessment area would allow CRA to play a more prominent role in mitigating the crisis. In addition to expanding loan modification efforts, the change could ensure that REOs are offloaded in a way that contributes to the stabilization of LMI communities—through a sale to owner occupants or nonprofits.

5. Award CRA Credit for Funding CDFIs

Full CRA credit should be awarded to institutions that fund Community Development Financial Institutions (CDFIs) regardless of the lack of overlap in assessment area. Starting in 1995, depositories were able to receive CRA credit by lending funds at discounted rates, or by making grants to CDFIs. CDFIs have made remarkable progress within LMI communities as noted *supra* at 5, and they have proven so effective in small business lending that policy makers expect them to play an increasingly important role in this space.[87] The increased importance of CDFIs has spurred financial innovation and increased access to hard-to-serve markets. Often trailblazers in LMI communities, CDFIs reduce information asymmetries that keep for-profit institutions out of these areas. Banks view this information gathering as costly and find the prospect of gaining CRA credit for lending to CDFIs to do this work attractive. However**,** because larger CDFIs work over areas that do not sit neatly within an assessment area, banks currently cannot receive full CRA credit for working with them.

6. Award CRA Credit for Affordable Lending to Minority Borrowers

CRA should be revised so that affordable lending to minorities is eligible for credit, a step similar to that enacted in the 1995 reform that expanded credit eligibility to include lending to LMI individuals, regardless of location. Data on current lending patterns show substantial discrepancies across race. Provisions in Dodd-Frank, which require publicly available data on the race and gender of small business borrowers as well as data enhancements to the Home Mortgage Disclosure Act (HMDA), can help with the assignment of CRA credit for targeted lending and investment.

Conclusion

This document reflects months of collaborative effort across a wide spectrum of leaders in academe, government, private industry and the non-profit sector. Despite the complexity of the issues, a high level of consensus was achieved about what must be done now to put our entire country, all communities, on the road to recovery and stability. The recommendations are straightforward and designed for direct and immediate implementation. Their implementation will benefit our whole nation even as they target the grievous injury inflicted by this crisis on low- and moderate-income communities of color. We call for a continued collective effort, among all levels of government, the business community and the public sector, to embrace these recommended strategies and solutions. These changes will offer hope to those most impacted, energize our economy, and stabilize our communities for future generations.

[1] *HAMP, Servicer Abuses and Foreclosure Prevention Strategies: Hearing Before the Cong. Oversight Panel for Troubled Asset Relief Program*, 111th Cong. (Oct. 27, 2010) [hereinafter *Hearing*] (testimony of Julia Gordon, Senior Policy Counsel, Center for Responsible Lending), http://cop.senate.gov/documents/testimony-102710-gordon.pdf.

[2] *Id.* (*citing* Press Release, CoreLogic, Negative Equity Report Q2 2010 (Aug. 26, 2010), http://www.corelogic.com/uploadedFiles/Pages/About_Us/ResearchTrends/CL_Q2_2010_Negative_Equity_FINAL.pdf).

[3] U.S. Office of the Special Inspector General for the Troubled Asset Relief Program, SIGTARP-10-005, *Factors Affecting Implementation of the Home Affordable Modification Program* (2010) [hereinafter SIGTARP, *Factors Affecting HAMP Implementation*]; *Hearing*, *supra* note 1 (testimony of Julia Gordon, Senior Policy Counsel, Center for Responsible Lending); Press Release, CoreLogic, *Negative Equity Report Q2 2010* (Aug. 26, 2010), http://www.corelogic.com/uploadedFiles/Pages/About_Us/ResearchTrends/CL_Q2_2010_Negative_Equity_FINAL.pdf.

[4] The Center for Responsible Lending (CRL) estimates that between 2009 and 2012, nearby foreclosures will cost 91.5 million homes $20,000 each from nearby foreclosures. *Hearing*, *supra* note 1 (testimony of Julia Gordon, Senior Policy Counsel, Center for Responsible Lending). States and local governments confront large foreclosure-related expenses, while their revenues from property taxes diminish. *Id.* The Urban Institute estimates that a foreclosure results in an average of $19,229 in direct costs to the local government. G. Thomas Kingsley et al., Urban Institute, *The Impacts of Foreclosures on Families and Communities: A Primer* (2009), http://www.urban.org/UploadedPDF/411910_impact_of_foreclosures_primer.pdf.

[5] Expense items can include property inspections, court actions, demolitions, unpaid water and sewer charges, trash removal, and expanded police and fire department services to prevent arson and vandalism. With the resulting mismatch in revenues and expenses, states are forced to cut spending that should be increased.

[6] Analysts at Standard & Poor recently projected a seven to ten percent drop in home prices in 2011. Jon Prior, *S&P Predicts More Home Price Declines Through 2011*, HousingWire.com (Nov. 15, 2010, 1:55 PM), http://www.housingwire.com/2010/11/15/sp-predicts-more-home-price-declines-through-2011.

[7] Jan Hatzius & Michael A. Marschoun, Goldman Sachs Global ECS Research, *Home Prices and Credit Losses: Projections and Policy Options* (2009), media.garygreene.com/file.php/216/Global+Paper+No++177.pdf.

[8] SIGTARP, *Factors Affecting HAMP Implementation*, *supra* note 3. Servicers resist principal reductions in part because some investors want to avoid having to reflect the reductions on their balance sheets. This is particularly true for the conservator of Fannie Mae and Freddie Mac, which permits no principal reduction at all. Principal reductions are also rare because investors are often unwilling to write down a first lien mortgage if the holder of the second lien mortgage does not first extinguish that lien. The same banks that own the servicing companies own most of these second liens. The potential impact of extinguishing second liens on the banks' balance sheets further disincentivizes principal reductions.

[9] Principal reduction is the "primary method" for "quickly addressing negative equity." Because the average mortgage in the Home Affordable Modification Program is underwater and principal reductions are rare, "homeowners may be increasingly more likely to strategically default on their homes. Given the amount of negative equity in the mortgages under trial modifications, strategic default may become a factor in HAMP re-defaults, as borrowers decide that it makes more economic sense for them to walk away from their mortgages, and rent at a lower cost, rather than continue to make higher payments that may never result in them obtaining equity in their mortgage." SIGTARP, *Factors Affecting HAMP Implementation*, *supra* note 3.

[10] *Hearing*, *supra* note 1 (testimony of Julia Gordon, Senior Policy Counsel, Center for Responsible Lending).

[11] The very ability of financial institutions to substantiate rights to foreclose on many defaulted mortgages may now be in serious question. The apparently major loss of crucial mortgage documentation that is just now being identified is causing serious disruption in the foreclosure process. The extent of disarray in the industry and the haphazard way in which many institutions and servicers handled basic mortgage issuance and documentation procedures presents a strong reason why they and their mortgage securities holders might now be more amenable to this White Paper's recommendations.

[12] Jim Park, Voices, *Why Do Owner-Occupant Buyers Matter to the Housing Recovery?*, HousingWire.com (May 7, 2010, 2:13 PM), http://www.housingwire.com/2010/05/07/why-do-owner-occupant-buyers-matter-to-the-housing-recovery.

[13] *See* Alan Mallach, Brookings Institution, *REO Properties, Housing Markets, and the Shadow Inventory*, *in* Federal Reserve Bank of Boston, Federal Reserve Bank of Cleveland & Federal Reserve Board, *REO & Vacant Properties: Strategies for Neighborhood Stabilization* (2010).

[14] Owner-occupants often experience difficulties in securing mortgage financing, especially for foreclosed properties. Sarah Treuhaft et al., PolicyLink, *When Investors Buy up the Neighborhood: Preventing Investor Ownership from Causing Neighborhood Decline* (2010), http://www.policylink.org/atf/cf/%7B97c6d565-bb43-406d-a6d5-eca3bbf35af0%7D/WHENINVESTORSBUYUPTHENEIGHBORHOOD.PDF. See also Stergios Theologides, CoreLogic*, Servicing REO Properties: the Servicer's Role and Incentives*, in Federal Reserve Bank of Boston et al., *supra* note 13.

[15] Dan Immergluck, Georgia Institute of Technology, *Holding or Folding? Foreclosed Property Durations and Sales During the Mortgage Crisis*, *in* Federal Reserve Bank of Boston et al., *supra* note 13.

[16] Moreover, while banks are required to maximize shareholder profits, nonprofits are able to consider societal gains. Nonprofits can factor long-term social benefits into their decision-making. It therefore makes sense for banks to offload distressed assets to community-based nonprofits.

[17] Because brokers are frequently responsible for contracting a REO management company, hiring brokers from outside the neighborhoods likely decreases the use of local REO management firms. Outside brokers may not have the relationships with local REO firms that

local brokers would have. In addition, in distressed neighborhoods, resident-brokers would also be personally motivated to maintain and quickly sell REOs.

[18] The four banks are Bank of America, Citibank, JPMorgan Chase and Wells Fargo.

[19] "First Look" programs run by FHA and Fannie Mae, which offer local governments, nonprofits, and those interested in occupying REOs the option to buy before the sale is open to investors, are a step in the right direction. Even so, a study released by New Vista Asset Management, a San Diego-based real estate disposition company, shows that the share of sales to owner-occupants has declined substantially in virtually all highly distressed markets since 2009. New Vista Asset Management, Inc., Owner Occupancy Execution in REO Asset Disposition (2010) (on file with editors). "First Look" could be more effective if REO brokers were incentivized to sell to owner-occupants, as recommended in this White Paper.

[20] Dan Immergluck, Georgia Institute of Technology, *Holding or Folding? Foreclosed Property Durations and Sales During the Mortgage Crisis in* Federal Reserve Bank of Boston et al., *supra* note 13.

[21] In its June 2010 report, the U.S. Government Accountability Office detailed several shortcomings in Treasury's oversight of servicers and servicers' treatment of borrowers. U.S. Government Accountability Office, GAO-10-634, *Troubled Asset Relief Program: Further Actions Needed to Fully and Equitably Implement Foreclosure Mitigation Programs - Part I* (2010).

[22] *See Hearing*, *supra* note 1 (testimony of Julia Gordon, Senior Policy Counsel, Center for Responsible Lending).

[23] During the first year of the NFMC Program, NFMC-counseled homeowners were "about 1.6 times as likely to get out of foreclosure, and avoid a foreclosure completion, than they would have been had they not received NFMC counseling." Neil Mayer et al., The Urban Institute, *National Foreclosure Mitigation Counseling Program Evaluation: Preliminary Analysis of Program Effects* (2009), *available at www.urban.org/uploadedpdf/411982_NFMC_program_evaluation.pdf.*

[24] *Id.*

[25] NeighborWorks® America, *National Foreclosure Mitigation Counseling Program Congressional Update: Activity Through January 31, 2010*, at 46 (2010), http://www.nw.org/network/nfmcp/documents/CongressionalReportandAppendices.pdf.

[26] National Community Reinvestment Coalition, *HAMP Mortgage Modification Survey 2010*, http://www.ncrc.org/images/stories/mediaCenter_reports/hamp_report_2010.pdf. NCRC's 2010 survey of almost two hundred distressed homeowners found that "fifty percent of those who had a foreclosure pending and seventy percent of those who had a foreclosure judgment received no modification on their loan, compared to twenty-five percent of respondents who were current on their mortgage. Also, 43.7 percent of the respondents that were delinquent on their mortgage payment received no modification." *Id.*

[27] Graciela Aponte, National Council of La Raza, *Important Role of Media for Latino Families to Recover* (July 27, 2010) (on file with the Opportunity Funding Corporation).

[28] A 2009 FASB rule change relaxes fair-value accounting, giving banks more leeway in determining the value of assets.

[29] Patricia A. McCoy, Barriers to Federal Home Mortgage Modification Efforts During the Financial Crisis (unpublished manuscript) (on file with the editors).

[30] *See* Cong. Oversight Panel, *Foreclosure Crisis: Working Toward a Solution* (2009) (*citing*

Credit Suisse Fixed Income Research, *Bankruptcy Law Reform: A New Tool for Foreclosure Avoidance* (Jan. 26, 2009), http://www.affil.org/uploads/3r/NH/3rNHuGFNnZ2Of5BEwiAeqw/Credit-Suisse-1.29.09-Bankruptcy-Reform.pdf), *available at* http://cop.senate.gov/documents/cop-030609-report.pdf).

[31] *Hearing*, *supra* note 1 (testimony of Julia Gordon, Senior Policy Counsel, Center for Responsible Lending) (*citing* Thomas J. Fitzpatrick IV & James B. Thomson, Federal Reserve Bank of Cleveland, *Stripdowns and Bankruptcy: Lessons from Agricultural Bankruptcy Reform* (2010), available at http://www.clevelandfed.org/research/commentary/2010/2010-9.cfm).

[32] For reasons to pursue principal reductions through bankruptcy courts see *id.* The number of Americans in personal bankruptcy has increased during the financial crisis. Sara Murray, *Personal Bankruptcies Rise, Reversing Trend*, WSJ.com, Aug. 5, 2010, http://online.wsj.com/article/SB10001424052748704741904575409390418052032.html.

[33] Amaad Rivera et al., United for a Fair Economy, *Foreclosed: State of the Dream 2008* (2008), http://www.faireconomy.org/files/StateOfDream_01_16_08_Web.pdf.

[34] Debbie Gruenstein Bocian et al., Center for Responsible Lending, *Foreclosures by Race and Ethnicity: The Demographics of a Crisis* (2010), http://www.responsiblelending.org/mortgage-lending/research-analysis/foreclosures-by-race-and-ethnicity.pdf.

[35] Carol Morello, *Businesses Owned by Minorities, Women Boomed Before Recession, Census Says*, Wash. Post (July 14, 2010), http://www.washingtonpost.com/wp-dyn/content/article/2010/07/13/AR2010071302389.html. Revenues of African-American firms grew from $89 billion in 2002 to $137 billion in 2007. Hispanic-American firms increased forty-four percent. *Id.*

[36] Bocian et al., *supra* note 34.

[37] Sarah Ludwig, *Losing Ground,* Shelterforce Online (Summer 2007), http://nhi.org/online/issues/150/losingground.html.

[38] California Reinvestment Coalition et al., *Paying More for the American Dream IV: The Decline of Prime Mortgage Lending in Communities of Color* (2010), http://www.woodstockinst.org/publications/download/paying-more-for-the-american-dream-iv%3a-the-decline-of-prime-mortgage-lending-in-communities-of-color/.

[39] Bocian et al., *supra* note 34.

[40] *Id.*

[41] Jesse Washington, *Less Stimulus for Minority Business*, The Huffington Post (March 7, 2010, 3:31 PM), http://www.huffingtonpost.com/2010/03/07/less-stimulus-for-minorit_n_489328.html.

[42] *Id.* (*citing* Advanced Recipient Reported Data Search, Recovery.gov, http://www.recovery.gov/Pages/TextViewProjSummary.aspx?data=recipientAwardsList&RenderData=ALL&AwardType=C (last visited Nov. 28, 2010)).

[43] Joint Center for Housing Studies, Harvard University, *The State of the Nation's Housing 2010* (2010), http://www.jchs.harvard.edu/publications/markets/son2010/son2010.pdf.

[44] Wilhelmina A. Leigh & Anna L. Wheatley, Joint Center for Political and Economic Studies, *Explaining the Racial/Ethnic Wealth Gap* (2010) (on file with the Opportunity Funding Corporation).

[45] Habitat for Humanity, *Shelter Report 2010: The Case for Low Income Homeownership*, http://www.habitat.org/gov/suppdocs/2010_Shelter_Report_full-length.pdf.

[46] Wilhelmina A. Leigh & Anna L. Wheatley, *supra* note 44.

[47] Approximately sixty percent of all subprime loans were used to refinance existing debts. Applied Research Center, *Race and Recession: How Inequality Rigged the Economy and How to Change the Rules* (2009), http://arc.org/downloads/2009_race_recession_0909.pdf. Therefore, these loans did not affect the overall homeownership rate. The extent to which subprime lending increased homeownership is not certain. *See* Susan Block-Lieb & Edward Janger, *Demand-Side Gatekeepers in the Market for Home Loans*, 82 Temp. L. Rev. 465 (2010).

[48] In 2005, at the peak of the subprime boom, fifty-five percent of subprime borrowers qualified for better loans; in 2006, sixty-one percent. Rick Brooks and Ruth Simon, *Subprime Debacle Traps Even Very Credit-Worthy*: *As Housing Boomed, Industry Pushed Loans to Broader Market*, Wall St. J., Dec. 3, 2007, at A1, *available at* http://online.wsj.com/article/SB119662974358911035.html. *See* Naomi Cytron & Laura Lanzerotti, Federal Reserve Bank of San Francisco, *Homeownership at High Cost: Recent Trends in the Mortgage Industry* (2006), www.frbsf.org/publications/community/.../cytron_homeownership.pdf.

[49] Risky loan characteristics include balloon payments and prepayment penalties, both of which have been shown to increase mortgage foreclosure risk by twenty to fifty percent. Allen Goodman & Brent Smith, Federal Reserve Bank of Richmond, *Housing Default: Theory Works and So Does Policy* (2010), *available at* http://www.richmondfed.org/images/icons/pdf.gif.

[50] Eric S. Belsky & Nela Richardson, Joint Center for Housing Studies, Harvard University, *Understanding the Boom and Bust in Nonprime Mortgage Lending* (2010), www.jchs.harvard.edu/publications/finance/UBB10-1.pdf.

[51] Community organizations, such as Neighborhood Housing Services, look for ways to address the credit barriers faced by minority communities. NHS uses manual underwriting to look beyond credit scores and find other ways of determining creditworthiness. Katie Bultrago, *Leaders Come Together to Find Solutions to Credit Barriers*, Woodstock Institute (Nov. 19, 2010), http://www.woodstockinst.org/blog/blog/leaders-come-together-to-find-solutions-to-credit-barriers/.

[52] Lisa Mensah, Aspen Institute, *Back to Basics: A Savings Approach to Homeownership* (2010), http://www.aspeninstitute.org/sites/default/files/content/docs/pubs/Back%20to%20Basics%20Home%20Accounts_AspenIFS.pdf.

[53] Raphael Bostic & Kwan Lee, National Poverty Center, Policy Brief #15, *Homeownership: America's Dream?* (2008), www.npc.umich.edu/publications/policy_briefs/.../PolicyBrief15.pdf.

[54] Ida Rademacher et al., Urban Institute, *Weathering the Storm: Have IDAs Helped Low Income Homebuyers Avoid Foreclosure?* (2010), http://www.urban.org/url.cfm?ID=412064.

[55] Belsky & Richardson, *supra* note 50; Susan Block-Lieb & Edward Janger, *supra* note 47.

[56] Alan Mallach, *Building Sustainable Ownership: Rethinking Public Policy Toward Lower Income Homeownership* (July 16, 2010) (unpublished manuscript) (on file with OFC).

[57] *See id.*

[58] Robert Pollin, James Heintz & Heidi Garrett-Peltier, Political Economy Research Institute, University of Massachusetts-Amherst, *How Infrastructure Investments Support the U.S. Economy; Employment, Productivity and Growth* (2009), www.americanmanufacturing.org/.../peri_aam_finaljan16_new.pdf. By contrast, a rise in household spending levels generated by a tax cut will create, at most, about 14,000 total jobs per one billion dollars in spending, twenty-two percent less than infrastructure investments. *Id.*

[59] *See* Sherle Schwenninger, *A Stimulus-Led Way Out*, Room for Debate, nytimes.com (Aug. 26, 2010, 3:27 AM), http://www.nytimes.com/roomfordebate/2010/08/25/does-the-recovery-depend-on-the-housing-market/a-stimulus-plan-would-create-jobs-and-help-housing.

[60] American Society of Civil Engineers, *Report Card for America's Infrastructure* (2009), http://www.infrastructurereportcard.org/sites/default/files/RC2009_full_report.pdf.

[61] Sheryl Gay Stolberg, *Obama Offers Transit Plan to Create Jobs*, N.Y. Times (Sept. 6, 2010), http://www.nytimes.com/2010/09/07/us/politics/07obama.html.

[62] America's Infrastructure: Ramping Up or Crashing Down, Bernard L. Schwartz Forum on U.S. Competitiveness No. 3, Brookings Institution, *available at* http://www.brookings.edu/~/media/Files/events/2007/1010infrastructure/20071010infrastructure.pdf.

[63] According to the Bureau of Labor Statistics, the unemployment rate in the construction industry is 17.3 percent as of October 2010. Bureau of Labor Statistics, U.S. Department of Labor, http://www.bls.gov/iag/tgs/iag23.htm (last visited Nov. 28, 2010).

[64] James Carr & Michelle Mulcahy, National Community Reinvestment Coalition, *Rebuilding Communities in Economic Distress: Local Strategies to Sustain Homeownership, Reclaim Vacant Properties, and Promote Community-Based Employment* (forthcoming) (on file with OFC).

[65] Smart Growth America, *What We Learned From the Stimulus*, http://www.smartgrowthamerica.org/documents/010510_whatwelearned_stimulus.pdf.

[66] Carr & Mulcahy, *supra* note 64.

[67] Kingsley et al., *supra* note 4.

[68] George Galster et al., *Targeting Investments for Neighborhood Revitalization*, 72 J. Am. Plan. Ass'n 457 (2006), http://www.connectrichmond.org/Portals/1/Reports/Accordino_report.pdf.

[69] In the Sustainable Communities Initiative, established under the Consolidated Appropriations Act of 2010, Housing and Urban Development (HUD), the Department of Transportation (DOT), and the Environmental Protection Agency (EPA) coordinated funding for regional planning initiatives. The result of such coordination is initiatives for metropolitan and multi-jurisdictional planning efforts that integrate housing, land use, economic and workforce development, and transportation and infrastructure investment. *See Urban Update: Sustainable Communities*, WhiteHouse.gov (July 9, 2010, 11:37 AM), http://www.whitehouse.gov/blog/2010/07/09/urban-update-sustainable-communities. The Neighborhood Revitalization Initiative is another such effort. Under this initiative, The White House Domestic Policy Council and Office of Urban Affairs, HUD, and the Departments of Education, Justice, Health and Human Services, and Treasury utilize a collaborative and holistic approach to propel the rehabilitation of low-income communities. These initiatives should be closely monitored, improved and expanded to maximize the synergies that could be produced when federal, state and local funding and programs are complementary in nature and of a size sufficient to make a real difference both in employment and in the rebuilding of the core of our economy and our communities. *See The White House Neighborhood Revitalization Initiative,* WhiteHouse.gov, www.whitehouse.gov/sites/default/files/nri_description.pdf.

[70] Minority Business Development Agency, U.S. Department of Commerce, *The State of Minority Business* (2008), http://www.mbda.gov/sites/default/files/The_State_of_Minority_Business%5B1%5D.pdf.

[71] *Id.*

[72] In January 2010, the Minority Business Development Agency (MBDA) commissioned a study co-authored by Drs. Robert Fairlie and Alicia Robb, entitled *Disparities in Capital Access between Minority and Non-Minority Owned Businesses*. Key findings include: (1) minority-owned firms are less likely to receive loans than non-minority owned firms; (2) the denial rate for minority-owned firms with less than $500,000 in annual revenues is 41.9 percent compared to sixteen percent for non-minority-owned firms; (3) the denial rate for minority-owned firms with more than $500,000 in annual revenues is 14.9 percent compared to 8.4 percent for non-minority-owned firms; (4) the average loan amount for minority-owned firms with less than $500,000 in annual revenues is just over $9,000 while the average loan amount for non-minority owned firms of the same size is more than $20,000; and (5) for firms with annual revenues

exceeding $500,000, the average loan amount for minority-owned firms is approximately $150,000 compared to more than $310,000 for non-minority owned firms. Robert Fairlie & Alicia Robb, *Disparities in Capital Access between Minority and Non-Minority Owned Businesses* (2010), http://www.mbda.gov/sites/default/files/DisparitiesinCapitalAccessReport.pdf.

[73] The four largest U.S. banks have been criticized by some entrepreneurs for tightening credit to small businesses after taking a combined $140 billion of federal bailout money. Bradley Keoun, *Citigroup Hires 200 Bankers to Target Small Business*, Bloomberg Businessweek (Nov. 15, 2010, 11:28 AM), http://www.businessweek.com/news/2010-11-15/citigroup-hires-200-bankers-to-target-small-business.html.

[74] Recently Bank of America, JP Morgan Chase and Wells Fargo have announced significant small business initiatives. Likewise, Goldman Sachs recently launched an aggressive program of supporting 10,000 small businesses.

[75] National Community Reinvestment Coalition, *Expanding and Strengthening the Community Reinvestment Act, A Resource Toolbox* (2010).

[76] Staff analysis of the relationship between the CRA and the subprime crisis, Board of Governors of the Federal Reserve (Nov. 21, 2008), *available at* http://www.federalreserve.gov/newsevents/speech/20081203_analysis.pdf.

[77] Bob Ivry, *Small Business Can't Get Loans from Bailed out Banks*, Bloomberg Businessweek (Sept. 16, 2010, 1:04 PM), http://www.businessweek.com/news/2010-09-16/small-business-can-t-get-loans-from-bailed-out-banks.html?campaign_id=smallbiz_related (relying on data from the Independent Community Bankers of America).

[78] There were 140 small bank failures in 2009, and 149 as of the writing of this paper in 2010. Number of Failed Institutions, Federal Deposit Insurance Corporation, http://www.fdic.gov/bank/statistical/stats/2010jun/fdic.html.

[79] CRA Public Hearings Held Summer 2010, Federal Financial Institutions Examination Council, http://www.ffiec.gov/cra/hearings.htm.

[80] The proposed American Community Investment Reform Act (ACIRA), while taking the positive step of including these mortgage lenders, in addition to loan servicers, payday lenders, investment banks, and securities companies, under CRA's purview, does not include national credit unions and insurance companies, as did the 2009 version of a proposed CRA modernization bill. Yet national credit unions, despite their mission to serve people of "small means," lag banks in meeting the credit needs of LMI and minority borrowers. National Community Reinvestment Coalition, *infra* note 81. A CRA-covered insurance industry would reduce the disparate access to affordable insurance products in LMI communities and communities of color. Letter from Dory Rand, President of the Woodstock Institute, to the Board of Governors of the Federal Reserve System (Aug. 31, 2010). That these entities are left out is a significant shortcoming of the proposed legislation.

[81] National credit unions, despite their mission to serve people of "small means," as noted *supra*, n. 80, lag banks in meeting the credit needs of LMI and minority borrowers. National

Community Reinvestment Coalition, *Credit Unions: True to Their Mission, Part II* (2009), http://www.ncrc.org/images/stories/mediaCenter_reports/creditunionreport090309.pdf .

[82] Tom Feltner and Katie Buitrago, The Woodstock Institute, *Why We Must Modernize CRA: More and More Financial Activity Is Taking Place at Non-CRA-Regulated Institutions* (2010), http://www.woodstockinst.org/blog/blog/why-we-must-modernize-cra-more-and-more-financial-activity-is-taking-place-at-non-cra-regulated-institutions/.

[83] This Friendly Regulator Hypothesis is rooted in the argument that bank regulators are more interested in appeasing and becoming friendly with banks by inflating ratings than objectively evaluating and rating them. Such behavior, it is argued, makes the regulators' examination job much easier and less stressful. Examinations resulting in low CRA ratings are often confrontational, especially at the face-to-face exit interview with management. Low ratings are most likely to result in unwanted scrutiny from superiors at the regional (and sometimes even Washington, D.C. headquarters) office, who may receive complaints and even formal appeals from upset bankers. There is little upside to being an objective CRA examiner under this analysis, but the opposite is true for a friendly examiner. Kenneth H. Thomas, *CRA Grade Inflation* (The Wharton School, Working Paper No. 313, 2000).

[84] Grade inflation is the probable by-product of regulatory capture. In practice, ninety-eight percent receive a "satisfactory" or "outstanding" grade on CRA exams.

[85] Under this system, examiners assign a rating of Substantial Noncompliance, Needs Improvement, Satisfactory, or Outstanding to each CRA-covered institution.

[86] Board of Governors of the Federal Reserve System, *Federal Regulators Encourage Institutions to Work with Mortgage Borrowers Who Are Unable to Make Their Payments,* Joint Press Release (Apr. 17, 2007), http://www.federalreserve.gov/newsevents/press/bcreg/20070417a.htm.

[87] Lending to CDFIs gives banks a low-risk way to reach businesses that may become customers. Bankers say their CDFI portfolios have low loss rates, because community lenders take the first losses and because nonprofits provide technical assistance to entrepreneurs. John Tozzi, *How Goldman Profits from Nonprofits,* Bloomberg Businessweek (Feb. 4, 2010, 5 PM), http://www.businessweek.com/magazine/content/10_07/b4166064319146.htm.