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How Predatory Mortgage Lending Changed African American Communities and Families

Cheryl L. Wade

HOW PREDATORY MORTGAGE LENDING CHANGED AFRICAN AMERICAN COMMUNITIES AND FAMILIES

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I. INTRODUCTION

This symposium focuses on efforts to reform the secondary mortgage market in the aftermath of the most potent economic downturn in U.S. history since The Great Depression. One question posed at the symposium in several forms was whether low-income Americans should be encouraged to own a home. Implicit in this question is the idea that low-income homebuyers were responsible for the losses that investors in mortgage-backed securities incurred. This question is part of a familiar narrative: investors in mortgage-backed securities suffered, and the economy suffered, because low-income homebuyers defaulted. My essay, however, looks beyond the alleged irresponsibility of homebuyers and considers the role that lenders played in precipitating the economic downturn. I explore how predatory mortgage lending changed African American communities and families.

Mortgage lenders, commercial banks, and other financial institutions helped to precipitate the economic downturn of 2008 when they pooled mortgages, created securities, and sold them to investors. Banks and lenders were able to transfer the risk that borrowers would default on the underlying loans by selling the pooled mortgages. Mortgage originators relaxed their standards, and in some instances, engaged in fraud so that they could make more loans and therefore more money. Predictably, many borrowers could not repay the underlying mortgages. Housing prices fell. Investors who purchased mortgage-backed securities lost billions. The lending institutions'

[*] Cheryl L. Wade is the Harold F. McNiece Professor of Law at St. John's University School of Law. Professor Wade is a member of the American Law Institute.
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shareholders lost money also. These practices harmed local, national, and global economies.

Even as we enter into the second decade of the twenty-first century, the median African American family owns only ten cents for every dollar the median white family owns.[1] The twenty-first century recession helped to increase this already wide racial wealth gap. My focus in this essay, however, is on the impact of the downturn on the wealth of African American communities and families. This is a story of race and racism and class. It is a story of hope. It is a story of shame. It is a story that starts with acknowledging the fact that African American and Latino communities were targeted for subprime loans. African American and Latino homebuyers were targeted for subprime loans, even when they qualified for prime loans. Even middle and upper-income African Americans and Latinos were twice as likely to receive subprime mortgages as similarly-situated white borrowers.[2]

The wealth gap between African American and white Americans is likely to get even wider because African Americans lost billions of dollars as a result of subprime lending.[3] Homebuyers and homeowners suffered devastating losses as a result of predatory lending practices. Investigations across the U.S. revealed that mortgage loan originators targeted African Americans for subprime mortgages. For example, in 2004, African Americans were "four times as likely as whites to pay subprime rates on their mortgage loans."[4] Even middle and upper-income people of color were twice

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[1] TIM SULLIVAN ET AL., STATE OF THE DREAM 2012: THE EMERGING MAJORITY 12 (2012), *available at* http://faireconomy.org/sites/default/files/State_of_the_Dream_2012.pdf. For every dollar the median white family owns, the median Latino family owns twelve cents. *Id.*

[2] *See, e.g.*, MONIQUE W. MORRIS, NAT'L ASSOC. FOR THE ADVANCEMENT OF COLORED PEOPLE, A SUMMARY OF THE DISPARATE IMPACT OF SUBPRIME MORTGAGE LENDING ON AFRICAN AMERICANS 2–3 (March 2009) (finding that African American borrowers were more likely to receive subprime loans than similarly-situated white borrowers); DEBBIE GRUENSTEIN BOCIAN, KEITH S. ERNST & WEI LI, CTR. FOR RESPONSIBLE LENDING, UNFAIR LENDING: THE EFFECT OF RACE AND ETHNICITY ON THE PRICE OF SUBPRIME MORTGAGES 3–4 (2006), *available at* http://www.responsiblelending.org/mortgage-lending/research-analysis/unfair-lending-the-effect-of-race-and-ethnicity-on-the-price-of-subprime-mortgages.html (evaluating several studies and finding that higher-income African American and Latino borrowers were more likely to receive higher-rate loans than similarly-situated white borrowers).

[3] *See* Alan M. White, *Borrowing While Black: Applying Fair Lending Laws to Risk-Based Mortgage Pricing*, 60 S.C. L. REV. 677, 680 (2009) (noting that the wealth gap has increased because foreclosures have disproportionately impacted African Americans); *infra* text accompanying note 4 (stating that African Americans were much more likely to pay subprime rates on mortgages than white borrowers).

[4] White, *supra* note 3, at 683.

as likely as middle and upper-income whites to receive high cost loans.[5] Some African Americans were steered into subprime loans even when they had good credit histories and qualified for prime loans. "Slightly more than half of all home purchase loans to African-Americans (50.5%) were subprime. Only 10.7% of all home purchase loans to whites were subprime."[6]

Reform efforts and litigation have focused on Wall Street's role in the process of securitizing mortgage loans and its contribution to the 2008 economic downturn.[7] For example, The Federal Housing Finance Agency filed litigation against several banks who sold investor-pooled mortgages, alleging that the banks failed to adequately assess the quality of the underlying mortgages as required under securities law.[8] In these suits, the federal agency's goal was to recoup the billions of dollars that Fannie Mae and Freddie Mac lost when they purchased mortgage-backed securities from the banks. Private investors have brought similar litigation against big banks. The shareholders of financial institutions have filed derivative litigation against boards and managers. Fifty state attorneys general filed suits seeking to assist distressed homeowners who were facing foreclosure.[9] The NAACP sued several banks seeking to hold them accountable for forcing African Americans into subprime mortgages while giving prime mortgages to

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[5] *See id.* ("Even after controlling for both borrower factors and the concentration of minorities in the portfolios of high cost lenders, the FRB staff's analysis [using 2004-2007 data] still showed blacks twice as likely as whites to get subprime mortgages.").

[6] Richard Marsico & Jane Yoo, *Racial Disparities in Subprime Home Mortgage Lending in New York City: Meaning and Implications*, 53 N.Y.L. SCH. L. REV. 1011, 1016 (2009).

[7] The nonbank lenders who engaged in fraudulent and predatory lending thrived because of the help they received from Wall Street's financial institutions. Wall Street firms such as Lehman Brothers, Bear Stearns, and Merrill Lynch provided large loans to nonbank mortgage lenders that enabled them to make predatory loans to prospective homeowners. Also, many nonbank lenders who made predatory loans were funded when they sold mortgages to major financial institutions as part of the securitization process in which investors purchased interests in pooled mortgages. *See generally* PAUL MUOLO & MATHEW PADILLA, CHAIN OF BLAME: HOW WALL STREET CAUSED THE MORTGAGE AND CREDIT CRISIS (2008) (explaining which parties contributed to the mortgage crisis).

[8] Nelson D. Schwartz, *U.S. Is Set to Sue a Dozen Big Banks Over Mortgages*, N.Y. TIMES, Sept. 2, 2011, at A1.

[9] In February 2012, the federal government and 49 state attorneys general reached a "landmark" $25 billion settlement with the five largest mortgage servicers for abuses regarding loan servicing and foreclosures. Press Release, U.S. Dep't of Justice, Federal Government and State Attorneys General Reach $25 Billion Agreement with Five Largest Mortgage Servicers to Address Mortgage Loan Servicing and Foreclosure Abuses (Feb. 9, 2012), *available at* http://www.justice.gov/opa/pr/2012/February/12-ag-186.html.

similarly-situated whites. The NAACP did not seek damages in its suit. It filed the litigation to force banks to reform their lending practices.

II. PREDATORY LENDING, FAMILIES, AND NEIGHBORHOODS

1. Baltimore, Maryland

Several U.S. cities have filed litigation that attempts to hold banks accountable for originating predatory subprime mortgages or for their participation in the securitization and sale of the mortgages. The suits reveal evidence of discriminatory and predatory lending practices that targeted African American communities. For example, a former Wells Fargo credit officer revealed in a sworn statement that the bank targeted African American borrowers for high-interest loans they could not afford because the "prevailing attitude was that African-American customers weren't savvy enough to know they were getting a bad loan."[10] Another loan officer revealed that she and her colleagues targeted working-class African Americans for subprime loans even when they qualified for prime mortgages. Yet another loan officer said that African Americans were called "mud people" and the subprime loans were labeled "ghetto loans." "Wells Fargo mortgage had an emerging-markets unit that specifically targeted black churches, because it figured church leaders had a lot of influence and could convince congregants to take out subprime loans."[11] Loan officers also disclosed that they and their colleagues earned bonuses when they referred borrowers who qualified for low-interest loans to the subprime division.[12] Predictably, the foreclosure rate in targeted neighborhoods skyrocketed because so many borrowers were unable to repay the high-interest mortgages.

In separate suits, the mayor and city council of Baltimore, Maryland, and the city of Memphis, Tennessee sued Wells Fargo. Los Angeles brought its claim against Deutsche Bank. Cleveland filed actions against JPMorgan Chase and Ameriquest. Birmingham, Alabama and Buffalo, New York filed and lost suits against Citigroup and ABN AMRO Mortgage, respectively.[13] To varying degrees, the cities argued that the banks' predatory lending practices spiked the number of foreclosures in intentionally-targeted neighborhoods.[14] This meant that already vulnerable neighborhoods became

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[10] Thom Weidlich, *Foreclosures Prompt Four U.S. Cities to Sue Banks for Mowing, Home Repairs*, BLOOMBERG (May 11, 2011), http://www.bloomberg.com/news/2011-05-12/foreclosures-prompt-four-u-s-cities-to-sue-banks-for-mowing-home-repairs.html.

[11] Michael Powell, *Suit Accuses Wells Fargo of Steering Blacks to Subprime Mortgages in Baltimore*, N.Y. TIMES, June 7, 2009, at A16.

[12] *Id.*

[13] Weidlich, *supra* note 10 (listing the various lawsuits filed).

[14] *Id.*

even more troubled because of the increase in abandoned and vacant homes. The cities were forced to spend money to maintain the properties. Police and fire departments were frequently called to abandoned properties. The cities wanted banks to be held accountable for these municipal losses.

Consider the statements of J. Frederick Motz, a United States District Judge who dismissed an early version of the case filed by Baltimore against Wells Fargo.[15] Judge Motz concluded that the causal connection between Wells Fargo's unethical practices and harm to the city of Baltimore is "implausible when considered against the background of other factors leading to the deterioration of the inner city, such as extensive unemployment, lack of educational opportunity and choice, *irresponsible parenting, disrespect for the law, widespread drug use, and violence*."[16] Judge Motz explained his statement:

> [T]he severe problems faced by the inner city preexisted the making of Wells Fargo's loans. That is not to say, however, that improper lending activities are actionable only where loans are made in stable communities. Conceivably, there might be situations in which a significant amount of improper lending activity in a particular neighborhood caused then ongoing rehabilitation efforts by other home owners in that neighborhood to fail or caused a deteriorating neighborhood to become dramatically worse.[17]

Judge Motz dismissed Baltimore's complaint but noted that the city had the right to file an amended complaint for specific damages allegedly suffered by the City in regard to specific houses that became vacant allegedly because of Wells Fargo's lending activities or a claim for damages allegedly caused to a specific neighborhood in which Wells Fargo made enough allegedly improper loans that its activities bear a plausible causal relationship to the destruction of that neighborhood . . . .[18] The city did in fact amend its complaint by narrowing its claim.

Judge Motz's decision to dismiss Baltimore's broader complaint may have been correct, but his reasoning must be examined. His assertions ignore the complexity of economic reality in African American neighborhoods. Invisible to Judge Motz are the inner-city residents who respect the law and are *not* violent, drug users, or irresponsible parents. The Judge seems blind to the "ongoing rehabilitation efforts by other" residents of the Baltimore neighborhoods that were targeted for predatory subprime loans. The Judge's comments dismiss the economic and ontological suffering of the citizens who bring stability to the targeted communities. Like many who have

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[15] Mayor of Balt. v. Wells Fargo Bank, N.A., 677 F. Supp. 2d 847 (D. Md. 2010).

[16] *Id.* at 850 (emphasis added).

[17] *Id.* at 850–51 n.2.

[18] *Id.* at 851.

questioned the borrowers' personal responsibility without examining lenders' culpability, Judge Motz seems to view the communities most impacted by predatory lending as a monolith.

I visited East Baltimore, Maryland in June, 2011. East Baltimore is an inner-city neighborhood where working-class African Americans live with abjectly-poor African Americans. This was not an economically stable neighborhood before the height of subprime lending. In 2011, it had deteriorated even more. The windows of some houses were boarded. Some houses were just empty shells. On one block I found only two or three occupied homes. On another block, nestled between several abandoned houses, I saw a small attached house with beautiful red flowers thriving in two small window flower boxes.

As I drove on East North Avenue, I heard gospel music blaring from loud speakers set up in front of a church. In front of the church, several people were cooking, serving, or eating food prepared on barbeque grills set up on the sidewalk. I got out of the car in order to talk to the people I saw about their neighborhood. I had many questions. What is it like to live among so many abandoned houses? What is it like to see your children playing next door to vacant, boarded-up structures? What does this do to your sense of security, and your sense of self-worth? Can you ever relax in this kind of environment? Are you anxious about your own financial stability?

I was in front of Restoration Christian Ecclesia, at 1249 East North Avenue. As I approached, a woman greeted me. I told her that I had some questions about the impact of subprime lending on the community. She invited me inside the church and asked one of the church's deacons to join us. Both women were in their forties and married with children. The deacon just received her degree in early-childhood education, and she talked to me about her plans to expand her small family daycare center into a preschool. After a few minutes of conversation, the deacon told me that she and her family were in the middle of foreclosure proceedings. The realtor who sold them their home recommended ASC Lending, a nonbank mortgage originator. The deacon and her husband took out a subprime mortgage.

After we talked for a while, the minister's wife revealed that her family had used the same lender and taken out a subprime mortgage. They lost their home. It was obvious that she wanted to talk about the problem of subprime lending in general, but she did not want to talk about her family's ordeal. Both women were witty, smart, and warm. We talked about politics in general and President Obama in particular. But when I tried to ask the minister's wife about the emotional aftermath of losing her home, her openness vanished. She became quiet and I stopped asking questions. I was only able to find out that she and her husband were living in a small apartment with their two children. I told them that I planned to write about the stories of the victims of predatory lending. They seemed anxious to be included in the narrative. I decided to leave some of my questions for another time. I wanted them to get to know me. I wanted them to open up about the details of their ordeal and reveal their personal stories about the impact of predatory lending.

Before I left, the women told me that the barbeque in front of the church was for "less fortunate" neighborhood residents. They used their own money and the money their underemployed husbands earned to buy most of the food they served in order to help their neighbors who had no jobs, no income, and no food. It is important to acknowledge the stories of these women, victimized by predatory lending practices, in order to understand communities like East Baltimore. East Baltimore, like many African American neighborhoods, is racially homogenous, but it is diverse in terms of the socioeconomic status, educational background, and value systems of its residents. This is what Judge Motz failed to understand. It is true that some of East Baltimore's residents have no respect for the law, use drugs, are neglectful parents, and perhaps are even violent. But *they* were not the victims of predatory subprime lending. The victims of predatory lending are people like the women I met. The minister's wife and the church's deacon demonstrated a love for their community that inspired them to devote their limited money and time to helping their neighbors. Subprime lending destroys neighborhoods by destroying the economic lives of the people who work hard to rehabilitate their communities.

Motz's comments in the Baltimore case dismissed the citizens who bring stability to the neighborhoods targeted by predatory lenders. It is not likely that Judge Motz has spent time in conversation with people like the women of Restoration Church. That is why he does not understand the economic complexity of African American communities. He does not understand because subprime lending victims do not want to tell their stories. The national discourse that has assigned blame to the victims of predatory lending makes them ashamed and reticent about disclosing their narratives. It is a discourse that questions the personal responsibility of borrowers while ignoring the greed and criminality of mortgage lenders and the failure of Wall Street to perform basic due diligence with respect to the loans they securitized.

Mike Stanley, a community organizer who works for Equal, part of the nonprofit organization Industrial Areas Foundation, spoke to me about the shame that haunts predatory lending victims. Stanley has worked with New York City ministers who have attempted to get more information about predatory subprime lending. Two pastors with hundreds of congregants in neighborhoods that were targeted for subprime loans and in which foreclosures are extremely high have invited parishioners to come forward with their stories. No one came forward in one of the churches. In the other church, Shiloh Baptist, a survey of senior citizens was taken and analyzed. Two hundred fifty-two seniors responded to the survey with only five admitting that they had faced foreclosure. (The survey protected their privacy by allowing participants to respond anonymously.) But fifty percent said they knew someone in foreclosure or in danger of foreclosure.

I have tried on several occasions to follow up with the women of Restoration Church. The church's phone numbers have been disconnected. My email messages to them are unanswered. I do not know how their circumstances have changed. Perhaps things are even worse. I pray not. Maybe they are so busy trying to help their neighbors while keeping their own families afloat that they have no time for an academic's questions. Or maybe the shame and the pain prevent them from talking about it anymore.

2. New York, New York

Three neighborhoods in Queens, one of New York City's five boroughs, have been hit especially hard by predatory lending practices in the housing market. Predatory subprime mortgages and home equity loans, and the refinancing of mortgages, have adversely impacted Springfield Gardens, St. Albans, and South Jamaica. I grew up in Springfield Gardens.

My parents bought their first home in Springfield Gardens in the 1950s. They were the first African Americans on their block, which was part of a two-block street called Anderson Road. The house was a three-bedroom, one-bath unattached home with an attic, basement, and backyard. In the second block of Anderson Road, a small number of African American families lived on the tree-lined street with attached brick houses. Eventually, in the late 1960s and early 1970s, all the white families fled the neighborhood. Like the East Baltimore community I described earlier in this essay, our all-African American neighborhood was socioeconomically diverse. My father was an occupational therapist and my mother was a science teacher. My best friend lived on the same street. Her father was a police officer. A New York State Supreme Court judge lived on Anderson Road.

My parents were the first to go to and graduate from college in their extended families. Springfield Gardens was where a new generation of African American achievers lived. Most of the residents were just one generation away from the poverty in which their parents had lived. In fact, my parents lived in a New York City housing project before they bought their home. Springfield Gardens became a neighborhood in which African American families bought their first homes before moving to more affluent communities. Springfield Gardens was a paradigm of upward mobility for African American families.

I went back to Springfield Gardens in September 2011. In the block of Anderson Road where my family had lived, new houses had been built and the block was much more crowded and much less peaceful. On the corner, a house had been abandoned and torn down, and the property was encased in tall wooden boards. On the second block, where the now retired Supreme Court Justice still lives, three homes were up for sale. The grass was overgrown at those houses. They were in varying states of disrepair. On both sides of each of the vacant houses were well-maintained homes with manicured lawns and neatly-trimmed hedges. All of the other homes on the block were beautifully maintained. I drove two blocks to the east and west of Anderson Road. In this five-block area, thirteen homes were vacant.

I decided to go in to one of the vacant houses on Anderson Road. An African American woman was holding an open house. She introduced herself as the salesperson and said that she worked for Great Success Realty. She also lived nearby. I asked her how the neighborhood had changed. She acknowledged that the area was in decline. Springfield Gardens and the immediately surrounding areas were no longer neighborhoods in which upwardly mobile African Americans bought first homes before transitioning to more affluent communities. I asked the salesperson about the seller. Was he or she African American? No, she responded. The realty company for whom she worked was not an African American-owned business, but the company did own over two hundred homes in the almost all-African American neighborhoods of Southeast Queens.

I drove several blocks away from Springfield Gardens to Jamaica, Queens. This is the neighborhood in which my grandparents lived. It too was an area where African American families made the transition from poverty to the working and middle classes. Jamaica was harder hit than Springfield Gardens as a result of the economic downturn. On many blocks, I saw a home with a new fence, a new screen door, new aluminum siding, or new windows sandwiched between abandoned and boarded-up houses. In a two-block area on 164th Street between 109th Avenue and South Road, for example, ten houses were boarded up and abandoned. Some of the abandoned houses were attached to homes where children played while their parents watched them. On another street, a vacant and dilapidated house stood next to a well-maintained house in which the occupants ran a daycare center. On 160th Street between 111th and 110th Avenues, I found a home sandwiched between two unsightly vacant houses. I got out of the car to take pictures of the home in the middle. The owner was just returning home as I snapped photos. She smiled and waved at me and asked hopefully whether I was planning to buy one of the vacant houses. I told her that I was writing about the impact of predatory lending on communities like Jamaica, Queens and asked her to talk to me about the neighborhood. She explained that she was anxious to get neighbors on either or both sides of her home. She had recently bought new doors for the home and had installed a small rock garden in the front.

In all of the neighborhoods I visited there were handwritten signs posted on almost every block. Some signs offered cash for homes. Other signs offered help for homeowners faced with foreclosure. A St. John's University employee told me about another worker who had called one of these numbers in 2010 when his bank threatened to foreclose on his home. They assured him that they could help and convinced him to pay them six thousand dollars in the course of a year in order to rectify the problem. He still faces foreclosure, and the number of the persons to whom he gave his savings was no longer in service. He was supposed to call me to tell me his story, but I have not heard from him. And in Springfield Gardens, in September 2011, I saw a for-sale sign in front of a house luring potential buyers with the promise of "no $ down" and "no closing costs." With all the talk of reform, it seems that very little has changed.

When I talked with community activist Mike Stanley about my visit to my old neighborhood he was very curious about Great Success Realty and the fact that their salesperson claimed that the company owns two hundred homes in Southeast Queens. According to Stanley, "we need to know who they are and how they are doing business. Are they ethical and honest? How did they get the homes? How are they selling them? If they are good people, we can find good buyers. We can help them revive these neighborhoods if they are ethical. We'll go to war with them if they are not."[19]

3. Race, Families, and Predatory Subprime Lending

Meaningful reform of the secondary mortgage market requires consideration of all of the constituencies that were impacted by predatory lending and the mortgage originators' practice of securitizing loans and selling them to Wall Street's most venerable financial institutions for sale to investors. This consideration must include the racial implications of predatory subprime lending. African Americans were easy prey because of the continuing reality of racially-segregated neighborhoods. The story of race and predatory lending is a terrible combination of hope and shame. Predatory lenders sell hope to individuals who are desperately close to poverty. The hope sold to them is that they too can take part in the American dream of homeownership. When they are victimized, shame prevents them from coming forward with their stories.

It is important to understand the continuing myth of African American intellectual inferiority and its role in the targeting of African American homebuyers. A Wells Fargo loan officer acknowledged that African Americans were targeted because loan officers concluded that they were not "savvy enough to know" that they were offered bad loans.[20] Are African Americans less savvy than whites with respect to mortgage lending? A definitive answer to this question is impossible because white working-class neighborhoods were not targeted.

Mortgage lenders who targeted African American communities harmed those neighborhoods by destroying the economic futures of the most promising households. The families who brought stability to the fragile economic and social life in those areas have had to move. They are no longer able to help their more vulnerable neighbors. Neighborhoods suffer, and

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[19] Interview with Mike Stanley, Cmty. Activist and Organizer, Equal, St. John's Univ. Sch. Of Law, in Queens, N.Y. (Sept. 27, 2011).

[20] *See supra* text accompanying note 10.

more devastating is the suffering of children whose families face foreclosure. The minister's wife with whom I spoke in East Baltimore told me that her son's grades fell after the family lost their home. And what about the children whose families have managed to hold onto homes in the neighborhoods targeted by subprime lenders? What goes on in the minds of children who live and play among so many abandoned and deteriorated homes?[21]

Reforming the secondary mortgage market will be futile if we do not understand what went wrong in the years leading up to the 2008 downturn. What would have happened if African American and other minority borrowers were treated fairly? Affordable housing programs in New York provide an answer. "Of more than 60,000 New York homes built or rehabilitated by the city in partnership with nonprofit groups . . . over three decades, fewer than one percent have fallen into foreclosure."[22]

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[21] We should also attempt to understand the impact that predatory lending has had on women. "Though women and men have roughly the same credit scores, the Consumer Federation of America found that women were 32 percent more likely to receive subprime loans than men. The disparity existed within every income and ethnic group." John Leland, *Baltimore Finds Subprime Crisis Snags Women*, N.Y. TIMES, Jan. 15, 2008, at A1.

[22] Michael Powell, *Old-Fashioned Bulwark in a Tide of Foreclosures*, N.Y. TIMES, Mar. 7, 2010, at MB1; *see also* Jim Zarroli, *Low-Cost Brooklyn Housing Sees Few Foreclosures*, NPR.ORG (Oct. 20, 2009), http://www.npr.org/templates/story/story.php?storyId=113931948 (explaining the success of a particular affordable housing program that has experienced low foreclosure rates).