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CRISIS MANAGEMENT: PRINCIPLES THAT SHOULD GUIDE THE DISPOSITION OF FEDERALLY OWNED, FORECLOSED PROPERTIES*

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INTRODUCTION

Residential home values in the United States have fallen considerably from their highs in the mid-2000s. This has had profound effects on consumer wealth and spending, creating a significant drag on the U.S. economy. What is worse, this loss in values corresponded with a steep rise in unemployment, which started in late 2007,¹ and has yet to fall considerably. The loss in home values has wreaked havoc on household finances and bank ledgers, as the outstanding principles of the mortgages those banks hold and service all too often exceed the current value of the homes against which they are secured. This has proven a toxic mix, as foreclosure rates in residential homes in the United States have reached highs not seen since the Great Depression.² Foreclosures have

* This Article is adapted, in part, from a policy paper drafted by the authors on behalf of the Eugene and Carol Ludwig Center for Community and Economic Development at Yale Law School in response to a Request for Information promulgated by the U.S. Department of Housing and Urban Development and other federal agencies. While the text and import of these documents are very similar, reference is made to that prior work here without further attribution.

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1. For an overview of unemployment during the most recent recession, see *Long-Term Unemployment: Causes, Consequences, and Solutions: Hearing Before the J. Econ. Comm.*, 111th Cong. 7-8 (2010) (statement of Dr. Lawrence F. Katz, Elisabeth Allison Professor of Economics, Department of Economics, Harvard University).

2. *Current Trends in Foreclosures and What More Can Be Done to Prevent Them: Hearing*

devastated families and whole communities. The surplus stock on the market, often available at depressed prices, means the housing market suffers from a glut of homes, further depressing sales and values.

Since the New Deal, the federal government has become involved in all aspects of housing policy—from providing affordable housing, spurring new housing construction, encouraging housing rehabilitation to promoting homeownership.³ On the rental front, the federal government has built rental housing,⁴ offered tax breaks for the construction of low-income housing,⁵ funded rental assistance programs in the private rental market,⁶ and regulated discrimination in rental practices through the Fair Housing Act of 1968.⁷ On the homeownership front, the federal government's involvement is pervasive, particularly in the wake of the present financial crisis. The government's involvement ranges from federally backed mortgage loans and participation in the secondary mortgage market, to the regulation of mortgages, the provision of federal loan guarantees and the offer of new federal incentives to modify mortgages.⁸ Given the extent of federal involvement in the home mortgage market, there can be no doubt that, at present, the federal government is the largest single actor in this market.⁹

One of the present features of this market and the result of the federal government's dominance in it, is that the U.S. government has under its control a large quantity of foreclosed housing stock—over one-quarter-million properties, many the result of failed federally backed mortgages.¹⁰ Because the

Before the J. Econ. Comm., 111th Cong. 8 (2009) (statement of Dr. Susan Wachter, Professor, Finance and Real Estate, The Wharton School, University of Pennsylvania).

3. For a brief, but comprehensive, history of federal housing policy and programs, see John D. Landis & Kirk McClure, *Rethinking Federal Housing Policy*, 76 J. AM. PLAN. ASS'N 319, 320-40 (2010).

4. For an overview of the history of the construction of public housing, together with an analysis of the extent to which such construction furthered racial segregation in housing, see Jon C. Dubin, *From Junkyards to Gentrification: Explicating a Right to Protective Zoning in Low-Income Communities of Color*, 77 MINN. L. REV. 739 (1993).

5. For an overview of the low income housing tax credit, see Tracy A. Kaye, *Sheltering Social Policy in the Tax Code: The Low-Income Housing Credit*, 38 VILL. L. REV. 871, 877-84 (1993).

6. For an overview of rental assistance programs, see *Federal Rental Assistance: Overview of the Section 8 Program*, 76 CONG. DIG. 229, 229-31 (1997).

7. See 42 U.S.C. §§ 3601-19 (2006).

8. For an overview of the role of the federal government in promoting homeownership, particularly in the lead up to the financial crisis, see ALYSSA KATZ, *OUR LOT: HOW REAL ESTATE CAME TO OWN US* 54-77 (2009).

9. See *id.*

10. Many of these mortgages are a product of defaulted Federal Housing Agency (FHA) loans. See Nick Timiraos, *U.S. Weighs Renting Out Foreclosed Homes*, WALL ST. J., Aug. 10, 2011, at A2. For an overview of federal lending programs and how the federal government comes to foreclose on loans generated under such programs, see JOHN RAO ET AL., NAT'L CONSUMER LAW

federal government has guaranteed roughly 90% of the new home mortgages currently being written,¹¹ this number could grow if the housing market is not stabilized or the health of the overall economy does not improve. At the same time, there is increasing political pressure to end the federal government's role in the housing market, despite the fact that there are no viable alternatives at this time to step in to ensure access to credit and liquidity in the market. Given the size of federal holdings, figuring out an effective way to manage and dispose of this portfolio of housing stock is critical to preserving home values, protecting the financial interests of local communities and governments, and invigorating the home mortgage market.

This Article is an attempt to identify the principles and practices that should inform any ultimate response from the federal government to the backlog of foreclosed homes on its books,¹² as well as the current housing crisis, where millions of borrowers owe more on their mortgages than their homes are worth. We have identified these guiding principles by reviewing the lessons learned from government responses to several historical precedents to the current situation. The lessons learned from these precedents should offer insights into the best practices for addressing the current crisis. These historical precedents include the following: first, the federal government's response, through the Home Owners' Loan Corporation, to the foreclosure crisis that arose during the Great Depression; second, the actions of the Resolution Trust Corporation in response to the Savings & Loan Crisis of the 1980s; and third, the local response to the vacant properties crisis that grips New Orleans in the wake of Hurricane Katrina.

This Article proceeds as follows. Part I describes the current state of the crisis in the home mortgage and home sales markets. Part II provides an overview of government responses in three crises, which were, in large part, housing crises: (1) the creation of the Home Owners' Loan Corporation in the wake of the Great Depression; (2) the creation of the Resolution Trust Corporation in the wake of the Savings & Loan Crisis of the 1980s; and (3) the government response to the housing crisis in New Orleans in the wake of Hurricane Katrina. Part III then provides a series of lessons learned from the governmental responses to these crises. As set forth more fully below, any approach to dealing with the federal portfolio of foreclosed properties must be informed by several principles. These principles suggest that, in any response to the current crisis, the federal government must:

- (1) Ensure an adequate return on investments for the federal government and preserve home values to the greatest extent possible by holding properties and converting them to rentals until the housing market

CTR., FORECLOSURES: DEFENSES, WORKOUTS, AND MORTGAGE SERVICING § 1.3 (3d ed. 2010 & Supp. 2011).

11. CONG. BUDGET OFFICE, FANNIE MAE, FREDDIE MAC, AND THE FEDERAL ROLE IN THE SECONDARY MORTGAGE MARKET, at IX (2010), available at <http://www.cbo.gov/ftpdocs/120xx/doc12032/12-23-FannieFreddie.pdf>.

12. See *infra* notes 15-16 and accompanying text.

- recovers;
- (2) Consider more aggressive preventative strategies to reduce the number of foreclosures in the future, even incurring more federal debt if necessary;
 - (3) Give organizations the autonomy to operate flexibly and adjust to unexpected conditions;
 - (4) Decentralize operations to allow tailoring to individual housing markets, based on detailed market data, and to address significant regional obstacles to disposition;
 - (5) Clearly prioritize the creation of affordable housing;
 - (6) Partner with neighborhood-based leadership, resources, creativity, and initiative;
 - (7) Ensure local government and private sector entities charged with implementing programmatic objectives have basic core competencies; and
 - (8) Allow displaced homeowners to return to former homes.

I. THE MORTGAGE FORECLOSURE CRISIS

A. *The Current State of the Crisis*

There are approximately seventy-five million owner-occupied residential properties in the United States.¹³ Less than 70% of those, roughly fifty-one million properties, have outstanding mortgages on them.¹⁴ Of those, roughly one in eleven, nearly eight million, are presently in some stage of the foreclosure process, or are at least thirty days delinquent on a mortgage payment.¹⁵ Furthermore, more than one in five mortgaged properties are presently “underwater”—that is, the owner owes more on the mortgage than the property is worth.¹⁶

However, these foreclosure and delinquency statistics tell only one part of the story. Residential foreclosures impact more than just the foreclosed homes and the families displaced from them. When a home is lost to foreclosure, it reduces the property values of neighboring properties. Estimates of the cost of foreclosures on neighboring properties suggest that such foreclosures reduce the property values of homes in close proximity to the foreclosed property (as far

13. *Selected Housing Characteristics: 2005-2009*, U.S. CENSUS BUREAU, http://factfinders2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_09_5YR_DP5YR4&prodType=table (last visited Mar. 6, 2012).

14. *Id.*

15. See Press Release, Mortgage Bankers Association, Delinquencies Rise, Foreclosures Fall in Latest MBA Mortgage Delinquency Survey (Aug. 22, 2011), available at <http://www.mbaa.org/NewsandMedia/PressCenter/77688.htm>.

16. John Gittelsohn, U.S. ‘Underwater’ Homeowners Increase to 28 Percent, Zillow Says, BLOOMBERG (May 9, 2011), <http://www.bloomberg.com/news/2011-05-09/u-s-underwater-homeowners-increase-to-28-percent-zillow-says.html>.

away as one eighth of a mile) from .9% to 1.3% for each foreclosure.¹⁷ One estimate puts the total loss to U.S. homeowners in property values as a result of the foreclosure crisis at nearly \$2 trillion.¹⁸ Local governments are also hit hard by foreclosures and falling home values, as municipal coffers are diminished by a reduction in the tax base at the same time that foreclosed properties create a drain on municipal services, like police and fire protection.¹⁹ Already depressed home prices are further impacted by the simple laws of supply and demand. As more properties are foreclosed upon and enter the market as sale properties, the increase in the sale stock translates to lower prices generally.

*B. Overview of Recent Government Programs to Address
the Foreclosure Crisis*

In response to the mortgage foreclosure crisis, the federal government has launched several major initiatives, including the Home Affordable Modification Program (HAMP),²⁰ the Emergency Homeowners' Loan Program, the "Short Refinance" Program, the Home Affordable Refinance Program (HARP), and the Neighborhood Stabilization Program.²¹ Generally speaking, these responses were

17. DAN IMMERGLUCK & GEOFF SMITH, THERE GOES THE NEIGHBORHOOD: THE EFFECT OF SINGLE-FAMILY MORTGAGE FORECLOSURES ON PROPERTY VALUES 9 (2005), *available at* http://www.nw.org/foreclosuresolutions/reports/documents/TGTN_Report.pdf. For assessments of the impacts of foreclosures on neighboring properties and local tax bases, see generally, for example, WILLIAM C. APGAR & MARK DUDA, COLLATERAL DAMAGE: THE MUNICIPAL IMPACT OF TODAY'S MORTGAGE FORECLOSURE BOOM (2005), *available at* http://www.995hope.org/wp-content/uploads/2011/07/Apgar_Duda_Study_Short_Version.pdf; John P. Harding et al., *The Contagion Effect of Foreclosed Properties*, 66 J. URB. ECON. 164 (2009), *available at* http://papers.ssrn.com/S013/papers.cfm?abstract_id=1160354.

18. *See* CTR. FOR RESPONSIBLE LENDING, SOARING SPILLOVER: ACCELERATING FORECLOSURES TO COST NEIGHBORS \$502 BILLION IN 2009 ALONE; 69.5 MILLION HOMES LOSE \$7,200 ON AVERAGE 2 (2009), *available at* <http://www.responsiblelending.org/mortgage-lending/research-analysis/soaring-spillover-3-09.pdf>.

19. *See* WILLIAM C. APGAR ET AL., THE MUNICIPAL COST OF FORECLOSURES: A CHICAGO CASE STUDY 10-11 (2005), *available at* http://www.995hope.org/wp-content/uploads/2011/07/Apgar_Duda_Study_Full_Version.pdf; *see also* APGAR & DUDA, *supra* note 17, at 11-12.

20. *See* PATRICIA A. MCCOY, BARRIERS TO FEDERAL HOME MORTGAGE MODIFICATION EFFORTS DURING THE FINANCIAL CRISIS 9-10 (2010), *available at* <http://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/mf10-6.pdf>.

21. The Bush and Obama Administrations have minted an array of programs responsive to the mortgage foreclosure crisis. This discussion focuses on still-extant programs. The Bush Administration's FHASecure program, which was started in August 2007, and Home for Homeowners (H4H) program, commenced in October 2008, are now defunct and not discussed. They are both generally considered to have "had a dismal rate of success." *Id.* at 5; *see also* Kristopher Gerardi & Wenli Li, *Mortgage Foreclosure Prevention Efforts*, 95 ECON. REV. 1, 3-4 (2010). Other potential approaches to addressing the mortgage foreclosure crisis never made it through Congress. *See* MCCOY, *supra* note 20, at 9. In the spring of 2009, Congress considered a

formulated: (1) to prevent foreclosures by promoting loan modification or delaying mortgage payments without modification; and (2) to mitigate the secondary effects of the foreclosure crisis.²²

HAMP was the centerpiece of the Obama Administration's efforts.²³ Launched in February 2009, HAMP was intended to help three to four million homeowners avoid foreclosure by lowering their monthly payments.²⁴ The program incentivizes "participating mortgage servicers [to] renegotiate terms with struggling homeowners, give them three months at a [reduced] trial rate, [and then] make the new terms permanent."²⁵

But as the Troubled Assets Relief Program (TARP) Special Inspector General Neil Barofsky testified before the House Financial Services Committee: "HAMP has been beset by problems from the outset and, despite frequent retooling, continues to fall woefully short of meeting its original expectations. . . . [The program] benefits only a small portion of distressed homeowners, offers others little more than false hope, and in certain cases causes more harm than good."²⁶ As of March 2011, only 540,000 families had benefited from permanent ongoing modifications, and almost 800,000 trial and permanent modifications had been cancelled.²⁷ Many of these failed modifications left borrowers with more principal outstanding, less home equity, worse credit scores, and, in some cases, with back payments, penalties, and late fees.²⁸ Moreover, despite HAMP, foreclosures continued to climb. In fact, 2.9 million homes received foreclosure notices in 2010, as compared to 2.8 million in 2009 and 2.3 million in 2008.²⁹

Critics attribute HAMP's troubled track record to what are perceived as several fundamental design flaws, as well as what is considered by some to have been a rushed, poorly planned rollout. The program is voluntary, and depends on the active participation of mortgage servicers, but government incentive payments to servicers have been insufficient to maximize participation.³⁰ The

proposal to allow bankruptcy judges to modify mortgages, reducing the outstanding principal on first-liens. *Id.* The Senate defeated this so-called "bankruptcy cram-down" measure. *Id.*

22. *See id.* at 1.

23. *Id.* at 9.

24. *Legislative Proposals to End Taxpayer Funding for Ineffective Foreclosure Mitigation Programs: Hearing Before the Subcomm. on Ins., Hous., and Cmty. Opportunity of the H. Comm. on Fin. Servs.*, 112th Cong. 32 (2011) [hereinafter *Legislative Proposals to End Taxpayer Funding*] (prepared statement of Hon. Neil Barofsky, Special Inspector General, Troubled Asset Relief Program).

25. Ezra Klein, *Column: Four Ways the Foreclosure Mess Could Be Used to Help Homeowners*, WASH. POST, Oct. 15, 2010, http://voices.washingtonpost.com/ezra-klein/2010/10/column_four_ways_the_foreclosu.html.

26. *Legislative Proposals to End Taxpayer Funding*, *supra* note 24, at 31-32.

27. *Id.* at 2-3.

28. *See id.* at 24.

29. Editorial, *Giving Hamp the Hook*, WALL ST. J., Feb. 7, 2011, at A18.

30. *See* Neil Barofsky, Editorial, *Broken Promises*, N.Y. TIMES, July 11, 2011, <http://www.nytimes.com/roomfordebate/2011/07/11/hanging-on-to-houses/the-treasurys-political-theater>.

servicers, not the government, decide who is eligible for help, and banks routinely reject qualified applicants, often after stringing them along for up to a year.³¹ Yet the U.S. Department of Treasury (“Treasury”) has failed to impose meaningful sanctions on participating mortgage servicers who perform poorly or violate the program’s rules. Treasury also consistently refused to adopt meaningful goals and benchmarks for HAMP.³² Finally, the complexity of the program makes HAMP a challenge for servicers, housing counselors, and homeowners.³³

The Treasury defends the program. The department claims that HAMP was intended to address foreclosures due to predatory lending, not the foreclosures due to unemployment and negative equity that currently predominate.³⁴ Furthermore, Treasury maintains that HAMP sparked private mortgage modifications—a claim for which there is no clear causal link.³⁵

HAMP remains under intense political scrutiny, and according to Barofsky, the current debate centers “on whether the program should be terminated, replaced or revamped.”³⁶ In late March 2011, in a largely symbolic move, the House of Representatives voted 252-170 to end HAMP, but the Senate did not take up the issue.³⁷

Whereas HAMP was ostensibly aimed at subprime mortgage borrowers, the U.S. Department of Housing and Urban Development’s (HUD) Emergency Homeowners’ Loan Program targets victims of foreclosure’s other chief cause—unemployment or underemployment.³⁸ The Emergency Homeowners’ Loan Program assists homeowners who lack the financial resources to keep up with their mortgage payments.³⁹ The Program provides zero interest loans for up to \$50,000.⁴⁰ This program has been criticized as too little, too late for the

31. Chris Arnold, *TARP Watchdog Says Foreclosure Plan is Failing*, NPR, Feb. 18, 2011, <http://www.npr.org/2011/02/18/133839730/tarp-watchdog-says-foreclosure-plan-is-failing>.

32. See Barofsky, *supra* note 30 (recommending that the Department of Treasury instead make principal reduction mandatory in certain instances and impose meaningful penalties on infringing servicers).

33. Ruth L. Griffin, Editorial, *So Many Documents*, N.Y. TIMES, July 11, 2011, <http://www.nytimes.com/roomfordebate/2011/07/11/hanging-on-to-houses/its-all-in-how-its-carried-out>.

34. See Ezra Klein, *The Treasury’s Defense of HAMP*, WASH. POST, Oct. 15, 2010, http://voices.washingtonpost.com/ezra-klein/2010/10/the_treasurys_defense_of_hamp.html.

35. *Id.*; see also *Legislative Proposals to End Taxpayer Funding*, *supra* note 24, at 12.

36. *Legislative Proposals to End Taxpayer Funding*, *supra* note 24, at 31.

37. Meredith Shiner, *House Votes to End HAMP*, POLITICO (Mar. 29, 2011, 7:05 PM), www.politico.com/news/stories/0311/52178.html.

38. See Andrew Martin, *For the Jobless, Little U.S. Help on Foreclosure*, N.Y. TIMES, June 5, 2011, at A1, available at http://www.nytimes.com/2011/06/05/business/economy/05housing.html?_r=1&pagewanted=all.

39. Alan Zibel, *Foreclosure Relief Effort Finally Kicks Off*, WALL ST. J., June 20, 2011, <http://blogs.wsj.com/developments/2011/06/20/foreclosure-relief-effort-finally-kicks-off/>.

40. *Id.*

estimated one million homeowners forced into foreclosure by unemployment.⁴¹ The Dodd-Frank bill authorized the program in 2010, but HUD did not open applications to struggling homeowners until June 2011.⁴² The application deadline was less than three months later.⁴³

Upside down or underwater homeowners represent another category of borrowers highly susceptible to foreclosure,⁴⁴ and these homeowners require their own discrete government response. The 2007-2008 housing bust triggered a steep tumble in real estate values.⁴⁵ By June 2011, an estimated 10.9 million borrowers were underwater, meaning they owed significantly more on their mortgages than their homes' newly deflated fair market values and, therefore, had negative equity in their homes.⁴⁶ Many of these homeowners are pushed toward foreclosure if their personal financial situation deteriorates.⁴⁷ The Home Affordable Refinance Program (HARP) is the federal government's main program for assisting "underwater" homeowners.⁴⁸ HARP is available only to loans owned by Fannie Mae or Freddie Mac.⁴⁹ It allows those homeowners to refinance underwater loans, even if the loans secure values up to 125% of the home's current market value.⁵⁰ But the homeowner must be current on her home

41. See Martin, *supra* note 38 ("Critics of the Obama [A]dministration's approach to preventing foreclosures have pressed for two years to get officials to focus more of their attention on unemployed homeowners, with meager results.").

42. See Zibel, *supra* note 39; see also Martin, *supra* note 38.

43. See Julie Schmit, *\$1B Foreclosure Aid Program Helps Fewer Than Planned*, USA TODAY, Sept. 20, 2011, <http://www.usatoday.com/money/economy/housing/story/2011-09-20/hud-foreclosures/50484090/1>.

44. See Catherine Reagor, *More Owners Opt to Walk and Leave Mortgages Behind*, ARIZ. REPUBLIC, Mar. 17, 2010, <http://www.azcentral.com/arizonarepublic/news/articles/2010/03/16/20100316homeowners-walk-away-from-mortgages.html> (referring to homeowners who are financially able to make their payments, but elect not to because they owe more than the value of their home).

45. See Press Release, CoreLogic, *New CoreLogic Data Reveals Q2 Negative Equity Declines in Hardest Hit Markets and 8 Million Negative Equity Borrowers Have Above Market Rates* (Sept. 13, 2011), available at <http://www.corelogic.com/about-us/news/new-corelogic-data-reveals-q2-negative-equity-declines-in-hardest-hit-markets-and-8-million-negative-equity-borrowers-have-above.aspx>.

46. *Id.*

47. Nick Timiraos, *Government to Deploy Broader Mortgage Aid*, WALL ST. J., Sept. 4-5, 2010, at A5, available at <http://online.wsj.com/article/SB10001424052748704323704575461920164400014.html>.

48. See Mitchell Remy et al., *An Evaluation of Large-Scale Mortgage Refinancing Programs* 9 (Cong. Budget Office, Working Paper No. 2011-4, 2011) (discussing background of HARP).

49. *Home Affordable Refinance Program (HARP)*, MAKING HOME AFFORDABLE, www.makinghomeaffordable.gov/programs/lower-rates/Pages/harp.aspx (last updated Jan. 6, 2012). HARP does not apply to FHA, VA, or USDA loans. See Remy et al., *supra* note 48, at 9 (noting that HARP "extends only to existing [government-sponsored enterprise (GSE)] . . . borrowers").

50. Remy et al., *supra* note 48, at 1.

loan.⁵¹ Through the first quarter of 2011, the government had refinanced approximately 750,000 borrowers.⁵² Significantly, 700,000 of the homeowners served—more than 93%—had homes with loan-to-value ratios (LTVs) of less than 105%.⁵³ Thus, only 7% of program participants had LTVs between 105% and 125%.⁵⁴ This underscores one of the ways in which HARP has fallen short of serving a large population of homeowners. According to the Congressional Budget Office (CBO), at the end of the fourth quarter of 2010, there may have been as many as five million underwater mortgages; that is, mortgages with a current LTV greater than 100%.⁵⁵ The CBO suggests that to bring meaningful relief to underwater homeowners, the Obama Administration needs to consider a refinance program that provides not only relaxed LTV requirements—allowing the program to serve homeowners with greater than 125% LTV—but also allows delinquent borrowers to participate in the program.⁵⁶

The Federal Housing Administration (FHA) rolled out its own program for negative equity borrowers, the so-called “short refinance” program.⁵⁷ This program, which commenced in September 2010, assists homeowners still meeting their monthly payment obligations, but who owe more than their homes are worth.⁵⁸ Under this program, the bank or investor servicing the borrower’s loan agrees to reduce the principal amount owed by at least 10% so that the new loan does not exceed 97.75% of the home’s current value.⁵⁹ The servicer can then transfer the reduced loan to the federal government.⁶⁰ This FHA program has been criticized because it does not extend to loans held by Fannie Mae and Freddie Mac.⁶¹ Further, mortgage servicers holding these underwater mortgages often cannot agree to modifying mortgages that are current—even if underwater—because the servicers’ investors risk losing the beneficial terms of their investment.⁶²

The mortgage foreclosure crisis’ principal casualties are the millions who have lost, or will lose, their homes.⁶³ But bystanders to foreclosures also suffer

51. *Home Affordable Refinance Program (HARP)*, *supra* note 49.

52. Remy et al., *supra* note 48, at 9.

53. *See id.*

54. *See id.*

55. *Id.* at 1.

56. *Id.*

57. Timiraos, *supra* note 47.

58. *Id.*

59. Nick Timiraos, *The FHA’s ‘Short Refinance’ Program: Frequently Asked Questions*, WALL ST. J., Sept. 6, 2010, <http://blogs.wsj.com/developments/2010/09/06/the-fhas-short-refinance-program-frequently-asked-questions/>.

60. Timiraos, *supra* note 47.

61. *Id.*

62. *See id.*

63. *See* Editorial, *Homeowners Need Help*, N.Y. TIMES, Aug. 22, 2011, at A18, available at www.nytimes.com/2011/08/22/opinion/homeowners-need-help.html (noting that as of August 2011, nearly six million borrowers had lost their homes and that 3.5 million more borrowers were in some

significant harm.⁶⁴ The foreclosure crisis has precipitated widespread neighborhood disintegration marked by unoccupied and poorly maintained homes.⁶⁵ Congress conceived the Neighborhood Stabilization Program (NSP) to promote acquisition and redevelopment of vacant and abandoned properties, including properties shuttered following foreclosure.⁶⁶ It wanted HUD to make the most informed funding decisions possible.⁶⁷ Congress instructed HUD to deploy funds to communities based on hard data identifying neighborhoods harboring the greatest needs.⁶⁸ The NSP programs have deployed nearly \$6.9 billion in three phased programs, NSP-1, NSP-2, and NSP-3.⁶⁹ The NSPs furnish funds to implement programs that promise to turn back the tide of neighborhood decline by redeveloping and rehabilitating vacant and abandoned properties.⁷⁰ The NSPs' ultimate goal is to ensure that the targeted neighborhoods become sustainable within a revitalized community.⁷¹

The Obama Administration continues to craft its response to the mortgage

stage of foreclosure).

64. See MCCOY, *supra* note 20, at 3.

65. See Eric Dash, *As Lenders Hold Homes in Foreclosure, Sales Are Hurt*, N.Y. TIMES, May 23, 2011, at A1, available at www.nytimes.com/2011/05/23/business/economy/23glut.html (explaining that distressed properties depress home values and documenting the poor condition of properties going through the foreclosure process); see also ALAN MALLACH, STABILIZING COMMUNITIES: A FEDERAL RESPONSE TO THE SECONDARY IMPACTS OF THE FORECLOSURE CRISIS 3 (2009), available at http://www.brookings.edu/reports/2009/02_foreclosure_crisis_mallach.aspx (specifying the range of negative secondary impacts on neighborhoods that are associated with foreclosures); MCCOY, *supra* note 20, at 3 (noting that “[v]acant foreclosed homes . . . breed squatters, vandalism, and crime”).

66. See MALLACH, *supra* note 65, at 2-3.

67. See *id.* at 3.

68. IRA GOLDSTEIN, MAXIMIZING THE IMPACT OF FEDERAL NSP INVESTMENTS THROUGH THE STRATEGIC USE OF LOCAL MARKET DATA, in REO & VACANT PROPERTIES: STRATEGIES FOR NEIGHBORHOOD STABILIZATION 65, 65 (Anne O’Shaughnessy et al. eds., 2010), available at <http://www.bos.frb.org/commdev/REO-and-vacant-properties/index.htm>.

69. NSP Laws and Federal Register Notices, NEIGHBORHOOD STABILIZATION PROGRAM: RESOURCE EXCHANGE, <http://hudnshelp.info/index.cfm?do=viewLawsandNotices> (last visited Jan. 11, 2012). NSP1 provided for \$3.92 billion in neighborhood stabilization programs and was created by the Housing and Economic Recovery Act (HERA) of 2008. *Id.* NSP2 was authorized by Division A, Title XII of the American Recovery and Reinvestment Act (ARRA) of 2009, and is expected to deploy \$1.93 billion in funds. *Id.* NSP3 is the most recent NSP program. See *id.* It was funded as part of section 1497 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. *Id.* One billion dollars were allocated for NSP3 programs. *Id.*

70. Notice of Availability: Notice of Funding Availability (NOFA) for the Neighborhood Stabilization Program 2 Under the American Recovery and Reinvestment Act, 2009, 74 Fed. Reg. 21,377, 21,377 (May 7, 2009).

71. See *id.*; see also Alan Mallach, Thinking Strategically About the Neighborhood Stabilization (NSP) Program 14, available at www.stlouisfed.org/RRRSeries/event5/Event5_Mallach.pdf.

foreclosure crisis. In August 2011, the Federal Housing Finance Agency (FHFA) issued a Request for Information seeking strategies to improve the real estate-owned (REO) asset disposition strategies of Fannie Mae, Freddie Mac, and the FHA.⁷² Although the Administration's information request cast a broad net to identify all ranges of proposals to help it reduce the government's REO portfolios and diminish loan losses, the request focused specifically on strategies that would allow conversion of REO properties to rentals.⁷³ Early discussions concerning some of the request's responses suggest there are strong differences of opinion regarding the federal government's next steps.⁷⁴ Realtors and home builders generally support rental and lease-to-own disposition strategies and oppose bulk sales of REO properties for fear that such mass sell-offs will diminish real estate prices.⁷⁵ Meanwhile, some affordable housing advocates voiced support for large-scale dispositions.⁷⁶ Responses were due by September 15, 2011,⁷⁷ and it is anticipated that the Administration will use ideas presented in the request's responses to issue a request for proposals to implement one or more of the proposed REO disposition strategies. The authors responded to this information request;⁷⁸ and this Article is based, in part, on their submission.

It is in this context that the federal government's acquisition of roughly one-quarter of a million properties presents itself. The following discussion recounts three historical moments, and the government responses to those historical precedents. It is the authors' belief that these precedents can offer insights into some of the policy discussions moving forward.

II. HISTORICAL PRECEDENTS

The following section analyzes three historical precedents to the current crisis and the government responses to each.

72. Fed. Hous. Fin. Agency, Request for Information: Enterprise/FHA REO Asset Disposition 1 (Aug. 10, 2011) [hereinafter REQUEST FOR INFORMATION], available at www.fhfa.gov/webfiles/22366/RFIFinal081011.pdf.

73. See *id.* at 2.

74. See Robbie Whelan, *Can the Foreclosure Crisis Be Solved?*, WALL ST. J., Sept. 22, 2011, <http://blogs.wsj.com/developments/2011/09/22/can-the-foreclosure-crisis-be-solved/> (reporting that a U.S. Senate subcommittee convened a hearing to consider the range of ideas that may have been submitted to the Administration on September 15, 2011).

75. *Id.*

76. *Id.*

77. REQUEST FOR INFORMATION, *supra* note 72, at 4.

78. E-mail from Raymond Brescia, Professor, Yale Law Sch. Ludwig Ctr. for Cmty. & Econ. Dev. to Fed. Hous. Fin. Agency (Sept. 15, 2011, 20:36 EST) (on file with authors).

A. The Home Owners' Loan Corporation

Congress created the Home Owners' Loan Corporation (HOLC) in 1933.⁷⁹ The explicit goals of the HOLC, set forth in this statute, were as follows:

To provide emergency relief with respect to home mortgage indebtedness, to refinance home mortgages, to extend relief to the owners of homes occupied by them and who are unable to amortize their debt elsewhere, to amend the Federal Home Loan Bank Act, to increase the market for obligations of the United States and for other purposes.⁸⁰

In the deepest days of the Great Depression, the residential housing market was in shambles, mostly because of the state of the economy, but also because of the mortgage products used at the time, which were not suitable in settings where housing values were falling.⁸¹ Residential mortgage products at the time were different from today, although some of their worst features were similar to some of the riskiest subprime products that proliferated throughout the country in the 2000s.⁸² In the 1920s, a typical mortgage was non-amortizing, meaning the borrower made payments on interest and not principal.⁸³ At the end of the loan term, which was typically five years, the borrower had to make a large "balloon" payment to satisfy the outstanding principal balance.⁸⁴ All parties to the mortgage entered into the credit agreement with the belief that rising home values would permit the borrower to refinance his or her mortgage before the balloon payment became due.⁸⁵ When the stock market crashed and unemployment was rampant throughout the United States, property values fell, banks failed as borrowers could not make their mortgage payments, and those banks still in existence were unwilling to refinance existing mortgages where the home was worth less than the outstanding mortgage debt secured by the property.⁸⁶

79. Home Owners' Loan Act of 1933, ch. 64, 48 Stat. 128, 128 (1933) (codified as amended at 12 U.S.C. § 122a (2006)).

80. *Id.*

81. See Richard K. Green & Susan M. Wachter, *The American Mortgage in Historical and International Context*, 19 J. ECON. PERSP. 93, 94-95 (2005).

82. Compare Fred Wright, *The Effect of New Deal Residential Finance and Foreclosure Policies Made in Response to the Real Estate Conditions of the Great Depression*, 57 ALA. L. REV. 231, 232-38 (2005) (describing features of the U.S. home mortgage market immediately preceding the Depression), with Raymond H. Brescia, *Tainted Loans: The Value of a Mass Torts Approach in Subprime Mortgage Litigation*, 78 U. CIN. L. REV. 1, 3-8 (2009) (describing features of the U.S. home mortgage market in the 2000s).

83. See Green & Wachter, *supra* note 81, at 95.

84. David C. Wheelock, *The Federal Response to Home Mortgage Distress: Lessons from the Great Depression*, 90 FED. RES. BANK ST. LOUIS REV. 133, 138 (2008), available at <http://research.stlouisfed.org/publications/review/08/05/Wheelock.pdf>.

85. See *id.*

86. *Id.*

The HOLC utilized a range of strategies to help achieve the varied goals of protecting homeowners, supporting the financial system, reforming the home mortgage system and preserving home values.⁸⁷ HOLC played a critical role through a range of essential tactics.

First, the HOLC was created through the issuance of stock valued at \$200 million, purchased by the Treasury, which served as initial operating funds (\$3.46 billion in 2011 dollars).⁸⁸ More importantly, Congress granted HOLC the authority to issue debt in the form of bonds.⁸⁹ At its peak, HOLC issued bonds for the purposes of purchasing mortgages from lenders in the amount of roughly \$3.1 billion.⁹⁰ In 2011, the size of the mortgaged residential real estate in the United States was ten times its size in 1933.⁹¹ As a result, an equivalent bond issuance in today's economy, and in 2011 dollars, would amount to over \$500 billion.⁹²

This bond authority proved essential for HOLC to fulfill its primary function—relieving distressed homeowners from the burden of onerous debt they could not afford.

The bonds—HOLC's debt and the corresponding promise to pay—became the primary form of payment for outstanding mortgage debt on the books of mortgage lenders and other financial institutions reeling under the weight of non-performing loans.⁹³ HOLC would appraise the value of the property securing the outstanding mortgage using professional appraisal methods, which are described in detail below.⁹⁴ HOLC's authorizing statute limited the amount that could be

87. See HOME LOAN BANK BD., FINAL REPORT TO THE CONGRESS OF THE UNITED STATES RELATING TO THE HOME OWNERS' LOAN CORPORATION 4-5 (1952) [hereinafter REPORT TO CONGRESS], available at http://fraser.stlouisfed.org/docs/publications/holc/hlc_final_report_1952.pdf; see also Robert Hockett, *A Jeffersonian Republic by Hamiltonian Means: Values, Constraints and Finance in the Design of a Comprehensive and Contemporary American "Ownership Society"*, 79 S. CAL. L. REV. 45, 107-08 (2005) (providing background of the creation of the HOLC).

88. REPORT TO CONGRESS, *supra* note 87, at 4.

89. *Id.* at 4-5.

90. *Id.* at 3; see also C. LOWELL HARRISS, HISTORY AND POLICIES OF THE HOME OWNERS' LOAN CORPORATION 29-30 (1951).

91. As stated earlier, by recent count, the number of mortgaged residential units in the United States is fifty-one million. See *Selected Housing Characteristics: 2005-2009*, *supra* note 13. In 1930, it is estimated that there were approximately 4.7 million mortgaged residential units. See HARRISS, *supra* note 90, at 16 (estimating "that 45 percent of the country's 10.5 million nonfarm, owner-occupied one- to four-family dwellings were mortgaged in 1930").

92. There are a number of websites that can calculate a figure in present dollars. The figures used throughout this Article were calculated using the internet site of the U.S. Bureau of Labor Statistics. See *CPI Inflation Calculator*, BUREAU OF LABOR STATISTICS, http://www.bls.gov/data/inflation_calculator.htm (last visited Jan. 12, 2012).

93. See HARRISS, *supra* note 90, at 11-12.

94. See *id.* at 25.

refinanced for any particular property to 80% of its appraised value.⁹⁵ Properties that exceeded \$20,000 in appraised value (\$347,500 in 2011) were ineligible for the program, and loans could not exceed \$14,000 on any property (\$243,300 today).⁹⁶ A lending bank would receive bonds equal to the amount of the outstanding debt on its books for any particular loan.⁹⁷ Typically, these bonds paid a decent return at the time: 4%.⁹⁸ By holding such bonds, banks were able to stabilize their balance sheets, as opposed to holding unperforming notes.⁹⁹ Furthermore, these bonds were easily sold by the banks on the bond market, allowing banks to liquidate these assets if necessary to free up capital.¹⁰⁰

The second tactic deployed by HOLC involved issuing new mortgages for the borrowers whose loans HOLC had purchased from the banks using the bonds, as described above.¹⁰¹ Initially, the terms of these mortgages represented a radical departure from the norm in the industry.¹⁰² Mortgages were at low, fixed interest rates (mostly at 5% or below), and for fifteen years.¹⁰³ Payments were fixed throughout the life of the loan, and there were no variable rates or balloon payments at the end of the mortgage term.¹⁰⁴ Payments were applied to both the interest and principal, reducing the overall debt throughout the life of the loan.¹⁰⁵ Later, Congress created the FHA, which authorized the issuance of loans with twenty-year terms.¹⁰⁶ The overall purposes of this federal debt-induced, bond-for-mortgage transfer were varied: easing the mortgage debt on borrowers, thereby reducing the number of families losing their homes through foreclosure; aligning such debt with property values; and relieving the banks of burdensome, non-performing paper on their books.

HOLC's approach to appraising properties constituted a third tactic it deployed to fulfill its mission.¹⁰⁷ Similar to its mortgage reform, its appraisal approach brought reforms to an industry the practices of which helped to fuel the speculation that was rampant in, and which helped to later cause the collapse of, the housing market.¹⁰⁸ HOLC trained its own, in-house appraisers as well as a cadre of private appraisers in the methodology it would use in determining the

95. *Id.*

96. REPORT TO CONGRESS, *supra* note 87, at 1.

97. *Id.*

98. *See id.* at 4-5.

99. *See generally id.* (providing information on interest return).

100. *See* HARRISS, *supra* note 90, at 25-29.

101. REPORT TO CONGRESS, *supra* note 87, at 1-3.

102. *See id.* at 22.

103. *Id.*

104. *Id.* at 21-22.

105. *See id.* at 1.

106. ROBERT J. SHILLER, THE SUBPRIME SOLUTION: HOW TODAY'S GLOBAL FINANCIAL CRISIS HAPPENED, AND WHAT TO DO ABOUT IT 15 (2008).

107. *See* HARRISS, *supra* note 90, at 45-48 (providing an overview of HOLC's appraisal methods).

108. *See generally id.* (providing an overview of lending practices).

value of homes that would serve as collateral on the mortgage refinance agreements it would write.¹⁰⁹ HOLC's formula took into account the present value of a particular property when assessing its value, but also considered the value of rent that could have been collected at the property over the previous ten years.¹¹⁰ It is unquestionable that this methodology generated higher appraised values than any particular property could have garnered on the open market through an arms-length sale in the depth of the Great Depression.¹¹¹ As a result, HOLC was able to write refinance agreements that might have been larger than had it simply taken into account just the present value of the property, given the depressed state of the housing market.¹¹² Higher appraised values meant more families were able to obtain refinance agreements from HOLC.¹¹³

At this point, it is important to note that not all aspects of HOLC's appraisal processes were praiseworthy. HOLC's appraisers also color-coded neighborhoods based on perceived credit risks, often marking neighborhoods occupied by African Americans and immigrants with the color red, signifying a poor credit risk.¹¹⁴ While some may debate the impact of these practices on the mortgage industry and mortgage lending per se, many attribute this color coding system as the origin of the term "redlining": the systematic exclusion of certain neighborhoods—typically communities of color—from banking and credit services.¹¹⁵

Because HOLC was dependent on the revenue from the loans it issued to satisfy its obligations to its bond holders, HOLC had to cut its losses on those refinanced loans that were underperforming.¹¹⁶ In response to such delinquencies, the fourth tactic HOLC deployed was to foreclose on non-performing loans.¹¹⁷ Consistent with its mandate, however, HOLC was extremely generous in dealing with delinquent borrowers. HOLC allowed borrowers to fall into arrears for up to one year before seeking to foreclose, and

109. *See id.* at 42-44.

110. *Id.* at 41; *see also id.* at 41-48 (providing a description of the HOLC's appraisal policies).

111. *See* MARK K. CASSELL & SUSAN M. HOFFMANN, IBM CTR. FOR THE BUS. OF GOV'T, *MANAGING A \$700 BILLION BAILOUT: LESSONS FROM THE HOME OWNERS' LOAN CORPORATION AND THE RESOLUTION TRUST CORPORATION* 16 (2009).

112. *See id.* at 15-17.

113. *Id.* at 15-16.

114. Amy E. Hillier, *Redlining and the Home Owners' Loan Corporation*, 29 J. URB. HIST. 394, 395 (2003).

115. For a discussion of HOLC's practices in terms of classifying communities, see KENNETH T. JACKSON, *CRABGRASS FRONTIER: THE SUBURBANIZATION OF THE UNITED STATES* 197-98 (1985); DOUGLAS S. MASSEY & NANCY A. DENTON, *AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF THE UNDERCLASS* 51-52, 199-201 (1993). For an argument that HOLC had little impact on any bank redlining practices, see Kristen B. Crossney & David W. Bartelt, *The Legacy of the Home Owners' Loan Corporation*, 16 HOUSING POL'Y DEBATE 547 (2005).

116. *See* HARRISS, *supra* note 90, at 71-81.

117. *See id.*

the foreclosure process itself often lasted another year.¹¹⁸ Its generous forbearance practices likely kept tens of thousands of families from losing their homes. Yet, despite these practices, over the course of its existence HOLC foreclosed on nearly 200,000 homes for the borrowers' failure to maintain their obligations under their HOLC-issued refinance mortgages, or one in five mortgages it held.¹¹⁹ Since HOLC held 20% of all outstanding mortgages at the time,¹²⁰ if the federal government's holdings were equivalent to the size of HOLC's holdings in the late 1930s, as a percentage of all outstanding mortgages, the federal government would hold two million foreclosed units of housing in its portfolio.¹²¹

One of the final tactics HOLC deployed when dealing with foreclosed properties in its portfolio was to hold properties and rent them out until the housing market stabilized.¹²² This tactic is most pertinent to the question of what to do with the holdings currently on the federal books. The purpose behind this strategy was two-fold. First, attempting to sell these properties on the open market immediately after foreclosure would produce a glut on the market during a time where housing prices were depressed.¹²³ More supply would only drive prices down farther. Second, if HOLC sold these properties during the depths of the housing crisis of the 1930s, it would create a fire sale of federal properties, costing HOLC hundreds of millions of dollars as the value of the debt it held would far exceed the compensation it would receive at a sale.¹²⁴

The following chart shows, first, the number of properties seized through foreclosure by year, and then the number sold in that same year. The net holdings column is an estimate of the federal holdings in any given year. Notably, the number of properties foreclosed on each year grew considerably during the worst years of the depression, then slowed considerably once the economy started to recover in 1939 and 1940.¹²⁵ Moreover, once market conditions warranted the sale of these foreclosed properties, HOLC began to divest itself of these properties at a much faster pace throughout the recovery, the war years and beyond.¹²⁶

118. *Id.* at 72-74.

119. *Id.* at 72.

120. *See id.*

121. As stated earlier, *supra* note 91, the number of mortgaged residential units in the U.S. in the 2000s was roughly ten times the number in the late 1920s.

122. *See* HARRISS, *supra* note 90, at 105-07.

123. REPORT TO CONGRESS, *supra* note 87, at 25-26.

124. *Id.*

125. *Id.* at 26.

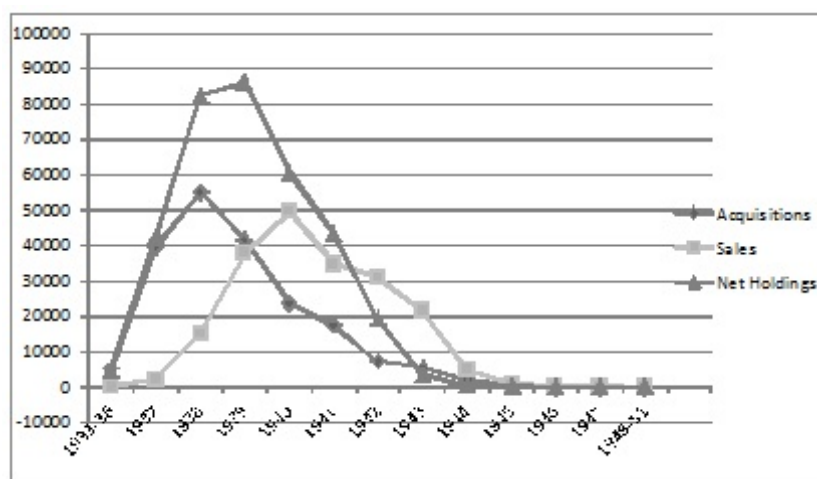
126. *See id.*

Table 1: Table of Federal Acquisitions, Sales, and Net Holdings¹²⁷

<u>Fiscal Year</u>	<u>Acquisitions</u>	<u>Sales</u>	<u>Net Holdings</u>
1934-1936	5,275	142	5,133
1937	39,534	2,231	42,436
1938	55,190	15,159	82,467
1939	41,743	37,771	86,439
1940	23,826	49,716	60,549
1941	17,382	34,745	43,186
1942	7,241	30,857	19,570
1943	5,452	21,620	3,402
1944	1,963	4,990	375
1945	432	736	71
1946	84	173	-18*
1947	10	52	-60*
1948-1951	9	28	-79*
	<u>198,141</u>	<u>198,200*</u>	

* The discrepancies reflect that HOLC obtained a small number of properties through other means than foreclosure and an even smaller number of properties were destroyed and not sold.

Chart 1: Federal Government Acquisitions, Sales, and Net Holdings of Residential Properties, 1933-1951



127. *Id.*

Once again, the size of all mortgaged properties in 2011 is roughly ten times the number in the 1930s.¹²⁸ Thus, a comparable portfolio today to the HOLC's holdings of 1939, the peak in the portfolio, would be over 800,000 properties.

B. Resolution Trust Corporation

The 1980s savings and loans (S&L) crisis brought about the greatest collapse of U.S. financial institutions since the Great Depression.¹²⁹ Savings and loan associations, also known as S&Ls or thrifts, were historically solid institutions that accepted savings deposits and made mortgage, car, and personal loans to community members.¹³⁰ But in the S&L crisis, hundreds of thrifts made bad loans that led to a government takeover and bailout, and their eventual dissolution.¹³¹

Explanations for the S&L crisis are myriad, including: high and volatile interest rates and thrifts' resulting interest-rate risk; the 1980s elimination of the Federal Reserve's Regulation Q, which increased the costs associated with thrift liabilities; poor economic conditions in certain regions; state and federal deregulation that allowed depository institutions to enter riskier markets; the combination of deregulation and decreasing examiner resources; reduced regulatory capital requirements; increased chartering of thrifts; and the negative effects of the Tax Reform Act of 1986 on commercial real estate investments.¹³² The simpler story is as follows. In the early 1980s, in response to thrifts' difficulties in attracting money, the federal government removed its caps on the interest rates that thrifts could offer on federally guaranteed accounts.¹³³ At the same time, state and federal deregulation allowed thrifts to diversify their investments.¹³⁴ These changes enabled a new, "aggressive" species of S&Ls.¹³⁵ The new S&Ls offered higher returns in order to attract large deposits, then used these proceeds to invest in junk bonds and real estate development, among other business ventures.¹³⁶ When the real estate boom came to an end, the thrift industry experienced unprecedented losses on loans and investments.¹³⁷ These losses, which were estimated at \$60 billion by 1988 (\$114.9 billion today), ultimately led to the failure of hundreds of thrift institutions and the eventual bankruptcy of the Federal Savings and Loan Insurance Corporation (FSLIC), the

128. See *supra* note 91 and accompanying text.

129. Timothy Curry & Lynn Shibut, *The Cost of the Savings and Loan Crisis: Truth and Consequences*, FDIC BANKING REV., 2000, at 26, 26.

130. *Savings and Loan Associations*, N.Y. TIMES, http://topics.nytimes.com/top/reference/timestopics/subjects/s/savings_and_loan_associations/index.html (last visited Mar. 13, 2012).

131. *Id.*

132. Curry & Shibut, *supra* note 129, at 27.

133. *Savings and Loan Associations*, *supra* note 130.

134. *Id.*

135. *Id.*

136. *Id.*

137. *Id.*

thrift industry's insurer.¹³⁸

In 1989, in response to the worsening crisis, Congress abolished FSLIC and the Federal Home Loan Bank Board (FHLBB) and created the Resolution Trust Corporation (RTC).¹³⁹ The enabling legislation, the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), tasked RTC with two functions: (1) shuttering failed small banks insured by FDIC or FSLIC and inherited by the government; and (2) liquidating the real estate and other assets of these thrifts.¹⁴⁰ By 1995, when it dissolved a year ahead of schedule, RTC had seized and resolved 747 savings and loan institutions (approximately 40% of the industry) with assets of over \$465 billion in 1989 dollars (\$807 billion today).¹⁴¹ The eventual cost to taxpayers totaled \$124 billion.¹⁴² RTC was widely regarded as a success, for its timely asset disposition, the minimal costs it incurred, and the likelihood that it averted worse consequences.¹⁴³ Former Federal Reserve Chairman Paul Volcker, former Treasury Secretary Nicholas Brady, former Comptroller of the Currency Eugene Ludwig, and economist Paul Krugman, among others, therefore suggested RTC as a model for addressing the 2008 financial crisis: An RTC-like government entity would buy up bad assets of troubled banks in order to increase liquidity and restore market confidence.¹⁴⁴

Apart from serving as a potential model for resolving the overall financial crisis, as some of these commentators have suggested, RTC's experience is also instructive for the Enterprises' and FHA's current efforts to enhance their REO asset disposition. Though also charged with resolving failed banks, RTC's primary responsibility—and biggest challenge—was to quickly dispose of the thrifts' assets at the best price possible with minimal dislocation in markets.¹⁴⁵ Forty-eight percent of RTC's assets were commercial and residential mortgages; the other half consisted of REOs "(properties foreclosed upon by failed banks as well as bank real estate such as branch locations), other loans, securities, and other assets."¹⁴⁶

138. *Id.*; see also Bert Ely, *Concise Encyclopedia of Economics: Savings and Loan Crisis*, LIBRARY OF ECON. & LIBERTY, <http://econ.lib.org/library/Enc/SavingsandLoanCrisis.html> (last visited Mar. 8, 2012).

139. See *Savings and Loan Associations*, *supra* note 130.

140. Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), Pub. L. No. 101-73, 103 Stat. 183 (codified as 12 U.S.C. § 1441a (2006 & Supp. 2010)).

141. MARK CASSELL, *HOW GOVERNMENTS PRIVATIZE: THE POLITICS OF DIVESTMENT IN THE UNITED STATES AND GERMANY* 231 (Barry Rabe ed., 2002); Curry & Shibut, *supra* note 129, at 26.

142. Michael A. Hiltzik, *Is a Relief Agency the Right Answer?*, L.A. TIMES, Sept. 19, 2008, at A1, A20.

143. See *id.*

144. See Nicholas F. Brady et al., Op-Ed, *Resurrect the Resolution Trust Corp.*, WALL ST. J., Sept. 17, 2008, at A27; Paul Krugman, Op.-Ed, *Wall Street Voodoo*, N.Y. TIMES, Jan. 19, 2009, at A25.

145. See *Savings and Loan Associations*, *supra* note 130.

146. Ellen Seidman & Andrew Jakabovics, *Learning from the Past: The Asset Disposition Experiences of the Home Owners' Loan Corporation, the Resolution Trust Corporation, and the*

The RTC employed an array of methods to dispose of assets: “direct sales, auctions, securitization, and a small number of joint ventures with private firms.”¹⁴⁷ Its disposition strategy varied by asset and continually evolved.¹⁴⁸ RTC originally focused on individual and bulk sales of its assets. In response to the increasing number of bank failures, and therefore assets of which to dispose, RTC gradually transitioned to securitized sale of assets, particularly mortgage loans, and equity partnerships with private-sector firms.¹⁴⁹ RTC employed seven different equity partnerships, in which RTC served as a limited partner, contributed asset pools (usually sub-performing loans, non-performing loans, and earned real estate), and arranged financing.¹⁵⁰ The general partner invested equity capital and asset management services.¹⁵¹ These equity partnerships were intended to yield higher values than conventional sales methods by harnessing the expertise of the private sector while reserving some of the profit from improvement for RTC.¹⁵² In the FDIC’s analysis, the RTC experience proved that “partnership programs [are] . . . a viable alternative to conventional methods of asset disposition.”¹⁵³ The RTC also contracted with the private-sector through Standard Asset Management and Disposition Agreements (SAMDA).¹⁵⁴ SAMDA contracts paid management, disposition, and incentive fees to contractors in exchange for the management and sale of a portfolio of distressed assets of any size.¹⁵⁵

By contrast, RTC originally relied on broker listings to dispose of real estate-owned (REO) properties, e.g., hotels, mini-warehouses, shopping centers, and nursing homes.¹⁵⁶ Though REOs constituted only a small percentage of RTC assets, RTC attracted criticism for holding REO properties too long. During RTC’s early years, auctions were prohibited due to fears that auctions would worsen already distressed markets, reduce sale prices and surrounding property values, and further harm thrifts’ financial standing.¹⁵⁷ But broker listings could not keep up with the volume of properties, and FIRREA’s mandate that RTC sell

Asset Control Area Program, 5 COMMUNITY DEV. INVESTMENT REV. 43, 46 (2009).

147. *Id.* at 47.

148. *See id.*

149. *See id.*

150. *See* Mary Ledwin Bean et al., *Partnership Programs*, in *MANAGING THE CRISIS: THE FDIC AND RTC EXPERIENCE 1980-1994*, at 433, 434-35 (1998) [hereinafter *MANAGING THE CRISIS*].

151. *Id.* at 433, 435.

152. *Id.* at 433-34.

153. John F. Bovenzi et al., *Evolution of the Asset Disposition Process*, in *MANAGING THE CRISIS*, *supra* note 150, at 289, 303.

154. *See* Henry W. Abbot et al., *Asset Management Contracting*, in *MANAGING THE CRISIS*, *supra* note 150, at 333, 333-34.

155. *Id.* at 354.

156. *See* Gary P. Bowen, *Auctions and Sealed Bids*, in *MANAGING THE CRISIS*, *supra* note 150, at 313, 328-29.

157. *Id.* at 328.

properties for no less than 95% of market value further slowed sales.¹⁵⁸ In order to speed asset disposition, Congress amended FIRREA to allow sales at no less than 70% of market values, and RTC began to rely primarily on national and regional auctions, rather than broker listings, to dispose of properties.¹⁵⁹ RTC's auctions of non-distressed properties were largely successful: average sale prices were around 90% of appraised values.¹⁶⁰ Assets generally brought a better price when RTC had good information with which to market properties to bidders, but the volume of assets and time constraints often precluded such information gathering.¹⁶¹ In 1991, RTC also began offering seller financing to encourage sales.¹⁶²

All residential real estate (0.5% of RTC assets) was funneled through RTC's Affordable Housing Disposition Program (ADHP), in keeping with FIRREA's mandate to increase the availability and affordability of homes for low- and moderate-income individuals.¹⁶³ Besides the Farmers Home Administration, no federal agency disposing of foreclosed properties had ever targeted so many properties as affordable housing.¹⁶⁴ RTC sold a total of 81,156 multi-family units and 27,985 single-family properties to, or for the benefit of, very low- to moderate-income families.¹⁶⁵

Under ADHP's original incarnation, single-family and multi-family properties were sold with affordability deed restrictions to the highest bidder.¹⁶⁶ Any buyer pledging to rent at least 35% of units to low-income families and at least 20% of units to very low-income families for forty to fifty years could bid on multi-family properties.¹⁶⁷ Only qualifying low-income families (up to 115% of AMI) and nonprofits or public agencies agreeing to rent or sell to eligible households could purchase single-family properties.¹⁶⁸ The program was slow

158. *Id.*

159. *Id.* at 329.

160. See John F. Bovenzi et al., *Evolution of the Asset Disposition Process*, in *MANAGING THE CRISIS*, *supra* note 150, at 305-06.

161. Gary P. Bowen, *Auctions and Sealed Bids*, in *MANAGING THE CRISIS*, *supra* note 150, at 330-31.

162. *Id.* at 326-27.

163. Seidman & Jakabovics, *supra* note 146, at 48; see also CASSELL & HOFFMANN, *supra* note 111, at 21 (describing the RTC's responsibilities, as required by FIRREA).

164. Stephen S. Allen & Deidra Young, *Affordable Housing Programs*, in *MANAGING THE CRISIS*, *supra* note 150, at 373, 373.

165. *Id.* RTC defined families as low-income if their household income was less than or equal to 80% of area median income (AMI), as defined by the U.S. Department of Housing and Urban Development (HUD). *Id.* "[V]ery low-income" families had household incomes below 50% of AMI. *Id.* at 374.

166. Seidman & Jakabovics, *supra* note 146, at 48.

167. Stephen S. Allen & Deidra Young, *Affordable Housing Programs*, in *MANAGING THE CRISIS*, *supra* note 150, at 376.

168. *Id.* at 375-76. The 1991 FIRREA amendments created an exception to that requirement, allowing current renters to purchase the single-family property, regardless of their income level, if

to be implemented, however, and early iterations did not produce substantial net gains in affordable housing. RTC was reluctant to discount pricing for low-income purchasers, as allowed under ADHP, citing responsibility to maximize sale prices in order to reduce cost to taxpayers.¹⁶⁹ By selling properties in bulk at auction and housing fairs, RTC favored for-profit buyers over non-profit purchasers, most of whom did not possess the technical, institutional, and financial capacity required for such a bulk sale and lacked the financial flexibility to gamble at auction on properties for which little information was available.¹⁷⁰ Critics attributed ADHP's lackluster track record to "the conflicting mandates to which the RTC had to respond and the relative strength of some interest groups in the operations and oversight structure of the RTC."¹⁷¹

In response to these criticisms, ADHP changed course. Among its new strategies were establishing seller financing, paying for repairs, providing technical assistance, reducing sales prices, establishing a donation program, and employing a tiered direct sales process in lieu of auctions.¹⁷²

First, recognizing that many ADHP properties could not attract low-income and non-profit buyers and that they were often not eligible for conventional financing, RTC established a seller-financing program for both single- and multi-family properties.¹⁷³ The seller-financing program provided 97% financing to single-family buyers and 95% financing on multi-family properties sold to nonprofits and public agencies; it also covered closing costs for low-income purchasers.¹⁷⁴ RTC ultimately financed 25% of single-family properties and 33% of multi-family properties sold.¹⁷⁵ RTC also pledged up to \$5000 to repair each of its single-family properties.¹⁷⁶

Second, RTC employed local nonprofits to provide technical assistance in both its single-family and multi-family ADHP programs. These "technical assistance advisers" (TAAs) provided potential low-income, single-family buyers with pre-purchase financial counseling and post-purchase training on owner responsibilities like maintenance, insurance, etc.¹⁷⁷ TAAs assisted RTC with its

they would occupy the property for at least one year. *Id.* at 375.

169. See Heather MacDonald, *The Resolution Trust Corporation's Affordable-Housing Mandate: Diluting FIRREA's Redistributive Goals*, 30 URB. AFF. REV. 558, 570-71 (1995).

170. *Id.* at 566; see also JOSIAH MADAR ET AL., NYU FURMAN CTR. FOR REAL ESTATE & URBAN POL'Y, *TRANSFORMING FORECLOSED PROPERTIES INTO COMMUNITY ASSETS* 22-24 (2008).

171. MacDonald, *supra* note 169, at 569. FIRREA required RTC to maximize returns and control losses, minimize asset disposition's potentially negative effects on local housing markets, and further affordable housing preservation. See *id.*

172. Stephen S. Allen & Deidra Young, *Affordable Housing Programs*, in *MANAGING THE CRISIS*, *supra* note 150, at 377-78.

173. *Id.* at 378; see also MacDonald, *supra* note 169, at 563.

174. Stephen S. Allen & Deidra Young, *Affordable Housing Programs*, in *MANAGING THE CRISIS*, *supra* note 150, at 379.

175. *Id.*

176. *Id.* at 380.

177. *Id.* at 378.

multi-family ADHP program by identifying nonprofits and public agencies interested in acquiring multi-family properties and helping these organizations conduct feasibility analysis and secure state and federal financing.¹⁷⁸ Through such actions, TAAs helped create a market for the sale of RTC's single- and multi-family properties.¹⁷⁹

RTC also lowered its target sales price for residential properties. Whereas RTC had solicited bids and sold multi-family properties for the best offer, beginning in 1994, RTC set the purchase price at affordable market value (AMV) and transferred the property to the most qualified applicant.¹⁸⁰ To arrive at AMV, RTC decreased the appraised value to reflect lost income due to the 35% low-income set-aside, operating costs, interest rates, and physical condition.¹⁸¹ The average AMV was 66.7% of appraised value.¹⁸² For single-family properties, Congress had initially required a sales price of no less than 80% of appraised value but subsequently amended FIRREA to allow RTC to sell single-family properties to the most eligible buyer at no fixed price.¹⁸³ A 1991 amendment to FIRREA expanded the pool of eligible buyers by allowing the sale of a single-family property to the household currently renting the property, regardless of income, provided the household agreed to occupy the property for at least one year.¹⁸⁴

Finally, RTC began to sell multi-family properties through a tiered sale process, giving first opportunity to public agencies, then local nonprofits, then the general public.¹⁸⁵ To facilitate this non-competitive, direct sale approach, RTC required each interested agency and nonprofit to submit a Notice of Serious Intent (NOSI).¹⁸⁶ This form detailed the organization's community service track record, experience with property ownership and management, legal status, and financing needs.¹⁸⁷ RTC then negotiated a sale with the organization with the highest total score.¹⁸⁸ If, after the tiered sales process, the property was still not purchased, then the residential real estate property could be sold outside of the ADHP program.¹⁸⁹ RTC also donated 1000 single-family and seventy-three multi-family assets of nominal value to nonprofit organizations and public agencies that pledged to use the properties as affordable housing, homeless shelters, open urban spaces, or for some other public good.¹⁹⁰

178. *Id.*

179. *Id.*

180. *Id.* at 381.

181. *Id.*

182. *Id.*

183. *Id.*

184. *Id.* at 375.

185. *See id.* at 380.

186. *Id.*

187. *Id.*

188. *Id.*

189. *See* Seidman & Jakabovics, *supra* note 146, at 49.

190. Stephen S. Allen & Deidra Young, *Affordable Housing Programs*, in *MANAGING THE*

Though the commercial-backed mortgage security is RTC's best-remembered innovation, RTC deserves credit for its pioneering approaches in residential real estate and affordable housing, particularly its provision of technical assistance, use restrictions, the tiered sales process, and preference for nonprofits and public agencies.¹⁹¹ Additionally, like HOLC, RTC provided seller financing and rehabilitation funds to upgrade properties.¹⁹²

C. New Orleans

On August 29, 2005, Hurricane Katrina roared ashore.¹⁹³ It caused multiple levee failures in New Orleans that killed approximately 1500 people, flooded 80% of the city, and damaged 134,000 housing units—70% of all its occupied units.¹⁹⁴ The flood waters rushed through New Orleans's neighborhoods without regard to then-extant market conditions. More than two weeks following the levee failures the water had not yet receded completely.¹⁹⁵ It disproportionately impacted the city's poorest areas, but festered in a range of neighborhoods: those strong and vibrant and others weak, moribund, and blighted.¹⁹⁶ Some

CRISIS, *supra* note 150, at 381.

191. See Seidman & Jakabovics, *supra* note 146, at 49.

192. *Id.*

193. DOUGLAS BRINKLEY, *THE GREAT DELUGE: HURRICANE KATRINA, NEW ORLEANS, AND THE MISSISSIPPI GULF COAST* 129-35 (2006) (describing in comprehensive detail Hurricane Katrina's catastrophic landfall in Mississippi and Louisiana).

194. Press Release, Greater New Orleans Cmty. Data Ctr., Hurricane Katrina Impact (Aug. 19, 2011), available at <http://www.gnocdc.org/Factsforfeatures/HurricaneKatrinaImpact/index.html>; see also Mary Foster, *Experts: Katrina Death Toll Still Rising*, WASH. POST, June 2, 2007, <http://www.washingtonpost.com/wp-dyn/content/article/2007/06/02/AR2007060200749.html>.

195. Jodie Smith & James Rowland, *Temporal Analysis of Floodwater Volumes in New Orleans After Hurricane Katrina*, in *SCIENCE AND THE STORMS: THE USGS RESPONSE TO THE HURRICANES OF 2005*, at 57, 57-60 (G.S. Farris et al. eds., 2007) (analyzing satellite images showing that a wide swath of New Orleans neighborhoods proximate to Lake Pontchartrain were still sitting in floodwaters on September 15, 2005).

196. *Orleans Parish Sept 11th Flood Extent with Neighborhoods & Major Roads*, GREATER NEW ORLEANS COMMUNITY DATA CENTER (Nov. 2005), https://gnocdc.s3.amazonaws.com/maps/PDFs/flood_extent.pdf (showing flood waters covering the vast majority of the city's neighborhoods); see also Eugenie L. Birch & Susan M. Wachter, *Introduction: Rebuilding Urban Places After Disaster*, in *REBUILDING URBAN PLACES AFTER DISASTER: LESSONS FROM HURRICANE KATRINA* at 1, 2-4 (Eugenie L. Birch & Susan M. Wachter eds., 2006) (quoting *New Orleans Times Picayune* columnist Martha Carr's reflection that Katrina's flood waters had devastated the lives of all New Orleanians, destroying their homes or school or churches and depriving many of their jobs); Allison Good, *Lakeview Sees Flood of Young Homeowners, New Businesses Since Hurricane Katrina Nearly Wiped the Slate Clear*, TIMES-PICAYUNE, Sept. 27, 2011, http://www.nola.com/katrina/index.ssf/2011/09/lakeview_sees_flood_of_young_h.html (discussing the revitalization of one of New Orleans's large, wealthy neighborhoods that was almost completely destroyed by ten feet of standing flood waters); Bruce Katz, *Concentrated Poverty in New Orleans and Other*

neighborhoods' housing stock was historic,¹⁹⁷ some had 1960s brick ranch houses, and some consisted of newer construction.¹⁹⁸ All of the neighborhoods had in common that they lost all their residents and businesses—many temporarily and some permanently.¹⁹⁹

Katrina turned the real estate market in New Orleans on its head overnight.²⁰⁰ The national mortgage foreclosure crisis, in contrast, has unfolded over many months, progressively compromising neighborhood real estate markets nationwide.²⁰¹ The recovery from both crises will take years.²⁰² The local, state, and federal efforts to revitalize New Orleans have been ongoing for almost six years.²⁰³ The government response to the neighborhood devastation in New Orleans offers at least five lessons that should be heeded as the federal government further implements its strategy for disposition of federally owned, REO properties.

The first is that efforts in New Orleans to revive neighborhoods through disposition of vacant properties suffered from a lack of detailed neighborhood-

American Cities, BROOKINGS (Aug. 4, 2006), http://www.brookings.edu/opinions/2006/0804cities_katz.aspx (citing Brookings Institution research that suggests Katrina's flood waters had a disparate impact on the city's poorest, minority households).

197. BRING NEW ORLEANS BACK COMM'N, URBAN PLANNING COMM., ACTION PLAN FOR NEW ORLEANS: THE NEW AMERICAN CITY 9 (Jan. 11, 2006) (highlighting that New Orleans includes nineteen historic districts on the National Register, which contain 38,000 properties and Hurricane Katrina's winds and floodwaters damaged up to 25,000 of those properties); *see also* Michelle Krupa, *New Orleans Neighborhoods that Suffered Worst Flooding Lost Most Residents*, *Census Data Show*, TIMES-PICAYUNE, Feb. 6, 2011 [hereinafter Krupa, *New Orleans Neighborhoods*], http://www.nola.com/politics/index.ssf/2011/02/new_orleans_neighborhoods_that.html (discussing how flood waters spread persistent blight beyond older neighborhoods west of the Industrial Canal into the city's newer neighborhoods such as Gentilly and Lakeview).

198. *See* Krupa, *New Orleans Neighborhoods*, *supra* note 197.

199. *See id.*

200. *See* Press Release, *supra* note 194 (explaining that Katrina caused the displacement of nearly the city's entire population and a year after the storm was still less than half its pre-storm size, as evidenced by New Orleans's population falling "from 484,674 before Katrina . . . to an estimated 208,548 after Katrina").

201. *See Anatomy of a Meltdown: The Credit Crisis*, WASH. POST, <http://www.washingtonpost.com/wp-srv/business/creditchris/> (last visited Jan. 14, 2012) (providing a detailed timeline of the events leading up to and chronicling the mortgage foreclosure crisis as beginning in 2006 and progressing from that date forward).

202. *See* Patrik Jonsson, *Private Dollars Leading Recovery of New Orleans*, CHRISTIAN SCI. MONITOR (June 27, 2007), <http://www.csmonitor.com/2007/0627/p01s06-usec.html> (noting that in 2007, the city's then-"recovery czar," Dr. Edward Blakely estimated that it could take twenty years for the city to recover); James Joseph & Phyllis Taylor, Editorial, *New Orleans Embodies Nation's New Spirit*, TIMES-PICAYUNE, Oct. 15, 2009, http://www.nola.com/opinions/index.ssf/2009/10/city_embodies_nations_new_spir.html (estimating that it will take ten years for New Orleans to recover from Katrina).

203. *See* Jonsson, *supra* note 202; Joseph & Taylor, *supra* note 202.

level market data.²⁰⁴ Government agencies and nonprofits focused on revitalizing New Orleans's neighborhoods did not have the benefit of detailed data to guide their decisions on how best to return storm damaged homes to commerce.²⁰⁵ New Orleans housing vacancy levels immediately after the flood were so high and widespread that pre-Katrina data concerning housing markets—recent sales, rental rates, housing prices, vacancy, and abandonment rates—were almost useless.²⁰⁶ The upshot was that those responsible for deploying hundreds of millions in donations, subsidy, tax credits, and federal recovery funds earmarked for housing were largely flying blind.²⁰⁷

Not until 2010—five years after Katrina—was there a comprehensive study of neighborhood housing conditions and housing markets specifically addressing the impact of vacant homes and lots.²⁰⁸ This study used housing sales and vacancy data to develop basic New Orleans neighborhood typologies.²⁰⁹ The typologies suggested three general neighborhood classifications: “[l]ow-demand markets” (poorly performing neighborhood markets with significant existing vacancy and increasing vacancy rates), “[m]ixed markets” (significant number of vacant properties, but moderate rate of sales and moderate housing prices), and “[h]igh-priced markets” (low vacancy with strong sales prices).²¹⁰ These classifications were used as a tool both by the New Orleans Redevelopment Authority (NORA) to refine its strategy for 5000 Orleans Parish homes it was charged with disposing, as well as others committed to rebuilding the city's neighborhoods.²¹¹

In “high-priced markets” NORA is pursuing at least three strategies:

- a. “Lot Next Door” and “Growing Home” Program Discounted Sales to Adjacent Homeowners.²¹² This first order disposition strategy has been

204. See ALLISON PLYER ET AL., OPTIMIZING BLIGHT STRATEGIES: DEPLOYING LIMITED RESOURCES IN DIFFERENT NEIGHBORHOOD HOUSING MARKETS 4 (2010) (reporting that the city lacked parcel-level real estate data necessary to develop “a rough typology of current market strengths across New Orleans neighborhoods”).

205. See TRANSITION NEW ORLEANS TASK FORCE, HOUSING 19 (2010) (noting that during the Katrina recovery the city suffered from a “dearth of information” with which to make policy decisions regarding housing).

206. PLYER ET AL., *supra* note 204, at 10.

207. See TRANSITION NEW ORLEANS TASK FORCE, *supra* note 205, at 19, 28 (pointing to the lack of data city staff had in their possession to make coordinated decisions regarding allocation of limited federal disaster resources and recommending then Mayor-elect Landrieu's staff commit themselves to “data-based decision-making”).

208. See PLYER ET AL., *supra* note 204, at 10-17.

209. See *id.*

210. *Id.* at 16-17.

211. See New Orleans Redevelopment Auth., Presentation to Select Committee on Recovery 4 (Mar. 24, 2010) [hereinafter Recovery Presentation] (on file with authors) (describing NORA's redevelopment strategy as “[n]eighborhood-specific” and “[t]ailored to address the varied levels of housing demand, rate of recovery and projected growth”).

212. *Id.* at 19-20, 25 (highlighting the “Lot Next Door” and “Growing Home” programs as

implemented city-wide in strong, mixed, and low-demand neighborhoods. It is described in more detail below.²¹³

- b. Strategic Citywide Live Auction of Vacant Homes and Lots. To date, NORA has implemented its live auction strategy cautiously.²¹⁴ Auctions are commonly a forum where speculators make purchases.²¹⁵ NORA has avoided auctioning large numbers of properties in any one neighborhood at any single time to prevent “flooding” the neighborhood market, which could potentially diminish neighborhood housing prices and trigger lower neighborhood appraisals.²¹⁶ Further, NORA sells vacant properties via auction only on the condition that the purchaser: (1) agrees to maintain the property in accordance with the city’s code or ordinances; (2) achieves substantial progress toward construction or rehabilitation of the property within 365 days of closing; (3) pays NORA a cash penalty for failure to timely commence construction or rehabilitation; and/or (4) allows NORA to revert the property to NORA’s ownership for failure to commence repairs.²¹⁷

critical to NORA’s redevelopment and blight fighting strategies in both high- and low-priced markets).

213. See *infra* notes 230-33 and accompanying text.

214. See Michelle Krupa, *NORA Auction of Vacant Homes Kindles Hopes for Eastern New Orleans*, TIMES-PICAYUNE, July 11, 2011 [hereinafter Krupa, *NORA Auction*], http://www.nola.com/politics/index.ssf/2011/07/nora_auction_of_vacant_homes_k.html (discussing NORA’s measured approach to auctions, including sealed bid auctions).

215. See PARISH REDEVELOPMENT AND DISPOSITION PLAN FOR LOUISIANA LAND TRUST PROPERTIES 6 (2007) (on file with the authors) (enumerating NORA’s key disposition principles for returning the Parish’s 5000 Road Home properties to commerce, including its resolve to discourage speculation associated with auctions).

216. Krupa, *NORA Auction*, *supra* note 214 (discussing NORA’s concern with avoiding any potential “flooding” of the real estate market). But there is disagreement regarding NORA’s phased disposition approach. See David Hammer, *Officials Hope to Put Sale of Road Home Properties on the Fast Track*, TIMES-PICAYUNE, Aug. 4, 2011, http://www.nola.com/politics/index.ssf/2011/08/agency_short_on_money_unveils.html. The *Times-Picayune* reported in August 2011 that the state-created entity charged with maintaining Orleans Parish homes sold to the state by their owners following Katrina was running out of funds to maintain these homes a year earlier than anticipated. *Id.* That entity, the Louisiana Land Trust (LLT), proposed auctioning hundreds of Orleans LLT properties each month to make sure all properties were transferred from its ownership prior to running out of funds. *Id.*

217. See Agreement to Purchase and Sell (on file with authors), available at http://static.auctionservices.com/documents/34393/Agreement_20to_20Purchase_20and_20Sell_20NORA_20Auction_20LLT_20andC-Files_03-14-11_1.pdf. NORA, in conjunction with the Louisiana Land Trust (LLT), is responsible for the disposition of all properties that the State of Louisiana purchased from homeowners who wished to leave the city following Katrina and sell their home to the state. See *supra* note 211. NORA uses several distinct agreements to purchase and sell depending on the type of disposition, e.g., live auction, sealed bid auction, competitive request for proposals, or Lot Next Door Sale. Agreement to Purchase and Sell, *supra*; see also Michelle

- c. Controlled neighborhood-specific sealed bid auctions. NORA has used this particular disposition mechanism in conjunction with efforts to incorporate neighborhood input on the terms of its vacant property dispositions, as well as to control sales prices and impose conditions on purchasers.²¹⁸ Sealed bid auctions have been staged over time to allow the strengthening of a neighborhood's real estate market.²¹⁹ The approach is described more fully below in mixed-market disposition strategies.

In mixed-markets, NORA employs strategies to achieve results where sales are moderate and vacant properties are a significant, but generally stable concern:

- a. "Lot Next Door" and "Growing Home" programs sales to adjacent homeowners.²²⁰
- b. Controlled neighborhood-specific sealed bid auctions. NORA moves properties in stages to avoid flooding and destabilizing the market.²²¹ This requires holding some properties for future sale. Sealed bid auctions sales are subject to the following restrictions:
 - (1) stringent deadlines for rehabilitation or development;
 - (2) requirement to maintain the properties according to city code;
 - (3) minimum appraised value bidding requirements to avoid depressing neighborhood housing prices; and
 - (4) a restriction against reselling the property for at least three years depending on the neighborhood's decision.²²²

A large number of properties NORA administers are located in low-demand markets.²²³ These neighborhoods barely have a functioning real estate market.²²⁴

Krupa, *Brisk Sales of Abandoned Properties at Recent New Orleans Redevelopment Authority Auction*, TIMES-PICAYUNE, Apr. 12, 2011, http://www.nola.com/politics/index.ssf/2011/04/brisk_sales_of_abandoned_prope.html (noting NORA's requirements dictate, that among others things, prospective purchasers agree to rehabilitate homes on a strict timeline and occupy the homes after the rehabilitation is complete).

218. See Krupa, *NORA Auction*, *supra* note 214 (explaining that the east neighborhood of New Orleans wished to discourage investors and absentee landlords and endorsed NORA requiring owner-occupancy for at least three years following acquisition).

219. See *id.* (discussing the use of sealed bid auctions in the Lakeview and Gentilly neighborhoods).

220. See *infra* notes 230-33 and accompanying text.

221. Krupa, *NORA Auction*, *supra* 214 (explaining that NORA had previously completed sealed bid and live auctions in New Orleans's Lakeview, Gentilly, Mid-City and Uptown neighborhoods, but delayed auctioning New Orleans East homes to avoid depressing real estate market values).

222. See generally NEW ORLEANS REDEVELOPMENT AUTH., NEW ORLEANS EAST PHASE II—BID INSTRUCTIONS (2011), available at http://www.noraworks.org/public/files/general-uploads/NewOrleansEast_Phase2_Participation_Requirements.pdf (discussing the terms and conditions of NORA's New Orleans East neighborhood sealed bid auction, including the requirement that prospective purchasers bid at least the property's appraised value).

223. See Recovery Presentation, *supra* note 211, at 18 (showing graphic detailing two of the

They have historically suffered from blight or abandonment or have not gained traction in recovering from Katrina's flood waters.²²⁵ There are three main aspects to NORA's strategy:

- a. "Lot Next Door" and "Growing Home" program sales to adjacent homeowners.²²⁶
- b. Package lots for sale at discount where those lots are proximate to substantial public or private investments, such as new schools, parks, transportation infrastructure, commercial projects, or institutional developments.²²⁷
- c. Long term land stewardship. Where no plans exist for immediate disposition, hold the properties.²²⁸ Although New Orleans does not currently have a public land bank, the Mayor has taken the position that a land bank must be established to address the city's serious challenge in addressing blight, abandonment, and vacancy.²²⁹

The second lesson is that the city's recovery and its disposition of vacant properties were advanced significantly by tapping neighborhood-based resources, creativity, and capital. New Orleans's "Lot Next Door" ordinances and "Growing Home" incentive programs provide the homeowners living immediately adjacent to improved *or* unimproved residential lots the opportunity to purchase vacant homes or lots at a discount.²³⁰ In exchange, the neighbor agrees to make repairs to dilapidated structures and/or to green and fence the abandoned property.²³¹ In a little over two years, NORA signed 1000 purchase agreements (closing 560 sales, as of June 2011) to sell vacant homes and lots to

low-price markets in which NORA holds properties: New Orleans Central City and Lower Ninth Ward neighborhoods).

224. See NEW ORLEANS REDEVELOPMENT AUTH., TRANSITION REPORT 6-7 (2010) [hereinafter TRANSITION REPORT], available at <http://www.noraworks.org/resources/studies-and-analytics> (describing a neighborhood type characterized by low housing prices and high incidence of blight; these neighborhoods suffered from homeowner neglect prior to Hurricane Katrina and the storm exacerbated the neighborhoods' poor conditions).

225. See *id.* at 5-7.

226. See *infra* notes 230-33 and accompanying text.

227. TRANSITION REPORT, *supra* note 224, at 8 ("Severely distressed areas . . . require comprehensive and narrowly targeted redevelopment efforts around strong anchors.").

228. *Id.* at 10 (recognizing that another tool for responsible redevelopment of "severely distressed communities" is "long-term . . . stewardship" of properties).

229. TRANSITION NEW ORLEANS TASK FORCE, *supra* note 205, at 26.

230. NEW ORLEANS, LA., ORDINANCE 22605 (2007), available at http://www.noraworks.org/public/files/general-uploads/LND_Ordinance1.pdf; see also NEW ORLEANS REDEVELOPMENT AUTH., LOT NEXT DOOR POLICIES AND PROCEDURES 6 [hereinafter LOT NEXT DOOR POLICIES AND PROCEDURES] (on file with authors) ("Through 'Growing Home' [Lot Next Door] purchasers can receive up to a \$10,000 credit towards a qualifying Lot Next Door property for landscaping improvements . . .").

231. See LOT NEXT DOOR POLICIES AND PROCEDURES, *supra* note 230, at 6-7.

adjacent homeowners and businesses.²³² This is a modest accomplishment in a city that may have as many as 48,000 vacant housing units.²³³ However, it represents a meaningful tool in the larger toolbox that government uses to fight vacancy and blight.

The third New Orleans lesson acknowledges a fundamental oversight. New Orleans's pre-Katrina track record for coordinating deployment of federal funds should have foretold post-storm frustrations with slow project implementation.²³⁴ Congress appropriated almost \$13 billion in Disaster Community Development Block Grant (DCDBG) funds to help Louisiana rebuild.²³⁵ Of that sum, \$411 million in federal disaster funding was set aside for New Orleans's discretionary economic development and non-flood protection infrastructure recovery projects.²³⁶ Prior to Katrina and the levee failures, the city faced challenges deploying its annual HUD entitlement funds, a mere fraction of the \$411 million.²³⁷ While there is no doubting that HUD, the State of Louisiana, the City of New Orleans's implementing agencies, and non-profit partners had the will to put these disaster recovery funds on the street, the city and its local partners struggled to coordinate with federal and state funding agencies.²³⁸ In August 2009—four years after Katrina—major local philanthropic funders criticized that “effective use of . . . [federal recovery funds was] hampered by the regulations and policies governing them and by complications in lining up city, state, and

232. Michelle Krupa, *Anti-blight Program Lot Next Door Reaches 1,000 Purchase Agreements in New Orleans*, TIMES-PICAYUNE, June 13, 2011, http://www.nola.com/politics/index.ssf/2011/06/anti-blight_program_lot_next_d.html.

233. *Id.*

234. See Kalima Rose & Laura Tuggle, *Community Action: Bringing People Home to Stronger Neighborhoods*, NEW ORLEANS INDEX FIVE, Aug. 2010, at 2-4, available at http://www.policylink.org/site/c.lkIXLbMNJrE/b.5160103/k.6C6A/New_Orleans_and_Gulf_Coast_Overview.htm (describing the city's pre-Katrina deployment of federal resources as often influenced more by ineptitude, carelessness, or at best, lack of strategic coordination).

235. Memorandum from the La. Hous. Alliance on Policy Recommendations About the LRA's Affordable Hous. Res. 1 (Apr. 16, 2010), available at <http://www.policylink.org/atf/cf/%7B97c6d565-bb43-406d-a6d5-eca3bbf34af%7D/LRA%20MEMO%2004%2016%2010%20FINAL.PDF>.

236. See Ariella Cohen, *'Reinventing' New Orleans? Landrieu Team Steers Dwindling Recovery Dollars to Humdrum Projects*, THE LENS (Apr. 4, 2011), <http://thelensnola.org/2011/04/04/dcdbg-spending/>.

237. Rose & Tuggle, *supra* note 234, at 3 (noting that prior to Hurricane Katrina, the City of New Orleans did not effectively spend the federal resources allocated to it and left funds unspent).

238. See Wayne Curtis, *The Savior of New Orleans?*, ARCHITECT (Aug. 6, 2007), <http://www.architectmagazine.com/educational-projects/the-savior-of-new-orleans.aspx> (quoting the City of New Orleans's chief hurricane recovery official in describing the federal government's role in the recovery as a “big[] disappointment” and the State of Louisiana as “total[] incompet[ent]”); Patrik Jonsson, *Private Dollars Leading Recovery of New Orleans*, CHRISTIAN SCI. MONITOR (June 27, 2007), <http://www.csmonitor.com/2007/0627/p01s06-usec.html> (noting that twenty-two months after Hurricane Katrina made landfall the City of New Orleans had not yet received any federal funds to promote neighborhood recovery).

federal governments to work together.”²³⁹ The City of New Orleans’s pre-Katrina track record for timely spending federal block grant funds suggested that there was reason to doubt that local government could timely spend the allocated disaster block grant funds at the increased level and volume demanded by the crisis.

The fourth lesson recognizes that dramatically higher post-storm insurance rates were one of the substantial obstacles to disposition and redevelopment. Increased insurance costs in the wake of Katrina made buying and rehabilitating a home substantially more difficult for families and contributed to an increase in rental costs.²⁴⁰ A recent study of the factors underlying insurance rates suggests that Louisiana property insurers may be charging homeowners more than two times the amount called-for based on the actuarial risk associated with hurricane wind damage.²⁴¹ The study also detailed minor adjustments that could be made to housing stock, such as using larger nails and larger quantities of nails, to decrease the property insurance costs for those homes.²⁴² It is important to note that higher insurance rates were not just a New Orleans problem. Homes located across the Gulf Coast states were subject to higher insurance rates due to the risk associated with hurricane wind damage.²⁴³ Data from studies such as the one completed for New Orleans may furnish insurers with data necessary to offer lower rates for pools of homes that incorporate the recommended retrofits for mitigating wind damage.

The fifth lesson observes that displaced homeowners want to return to their former home, even when the circumstances causing them to vacate are traumatic. Attachment to neighborhood is a strong sentiment and motivator among those who have been displaced, particularly for the elderly and families with children.²⁴⁴ The great majority of those displaced by the levee failures chose to return.²⁴⁵ In most cases, the returning families lost their homes and almost all of their possessions; however, they were drawn back to the city by the promise of reuniting with their neighbors, schools, local parks, stores and libraries.

239. Memorandum from La. Disaster Recovery Found. & Greater New Orleans Found. on Rethinking Fed. Urban Strategy: New Orleans as a Model City 6 (Aug. 17, 2009), *available at* <http://www.gnof.org/wp-content/uploads/2009/06/nola-as-a-model-city.pdf>.

240. See Kathy Chu, *New Orleans Home Sellers Struggle*, USA TODAY, July 27, 2007, http://www.usatoday.com/money/economy/housing/2007-07-24-katrina-real-estate_N.htm.

241. Rebecca Mowbray, *New Study Finds that Storm Risk Stats for New Orleans May Be Skewed*, TIMES-PICAYUNE, Feb. 20, 2011, http://www.nola.com/business/index.ssf/2011/02/new_study_finds_that_storm_ris.html.

242. *Id.*

243. See ROBERT W. KLEIN, HURRICANE RISK AND THE REGULATION OF PROPERTY INSURANCE MARKETS 48-55 (2009), *available at* <http://rmictr.gsu.edu/Papers/WP09-1.pdf> (noting that the 2005 hurricane season resulted in insurance rate increases in Gulf and Atlantic coast states).

244. Rose & Tuggle, *supra* note 234, at 2 (emphasizing that “New Orleans is a city of unique neighborhoods with long histories, deep loyalties, and family lineages over generations”).

245. Birch & Wachter, *supra* note 196, at 4 (noting that a year after Katrina, 900,000 of the New Orleans metro area’s 1.3 million residents had returned to re-establish their homes).

III. RECOMMENDATIONS FOR A REFOCUSED RESPONSE TO THE MORTGAGE FORECLOSURE CRISIS

As millions more face the threat of foreclosure or the impact of living in neighborhoods pocked with foreclosed properties, frustration is understandably high that the government response has not yet stemmed the tide of foreclosures. The Home Owners' Loan Corporation, the Resolution Trust Corporation, and the federal government's reaction to Katrina's levee failures each impart that there is no silver bullet solution to large scale real estate crises. They also teach that government responses to real estate crises unfold and are implemented over a course of years. Now roughly four years into the mortgage foreclosure crisis, this is a critical juncture for the Obama Administration to make further adjustments to its strategy. In crafting that strategy, it is important to heed historical and recent experiences in crisis response. The authors have distilled the following eight recommendations for incorporation into the Administration's comprehensive strategy:

Recommendation 1:

Preserve home values and protect taxpayer investments to the greatest extent possible by holding properties and converting them to rentals until the housing market recovers.

While not every tactic utilized by HOLC was profitable, when HOLC finally liquidated all of its holdings and closed its books, it paid back all of its debt to the U.S. Treasury and even returned a surplus of over \$14 million (\$122 million in 2011).²⁴⁶ A critical aspect of HOLC's ability to remain solvent and actually turn a small profit for the federal government was the fact that it held and managed properties that it had foreclosed upon until property values strengthened and the national economy began to grow in the late 1930s and early 1940s. By not dumping properties onto an already saturated and depressed market in the mid-1930s, and choosing, instead, to hold onto many of its holdings, refurbish them as appropriate, and rent them out until housing values increased, the federal government was able not only to protect taxpayer investments in properties, but also to prevent a glut of properties from flooding the sale market, which would have only further depressed home values.

Recommendation 2:

Consider more aggressive preventative strategies to reduce the number of foreclosures in the future, even incurring more federal debt if necessary.

Another important lesson to be drawn from the HOLC experience bears noting. If not for HOLC's programs, which relieved roughly one million homeowners of onerous debt obligations, many more homeowners would have likely faced foreclosure. Such a flood of foreclosures would have meant a far more saturated sale market as those hundreds of thousands of homes entered the sale pipeline. Such an overburdened market might not have recovered as it did by the beginning of the 1940s. While the Obama Administration considers

246. REPORT TO CONGRESS, *supra* note 87, at vi.

strategies to dispose of properties it currently holds, there are still millions of American homeowners underwater on their mortgages and staggering under the weight of heavy mortgage debt and high monthly mortgage payments. Any initiative that seeks to improve the federal government response to the foreclosed homes it currently holds should consider more aggressive approaches that would limit the number of homes entering foreclosure, as many could easily end up in the federal portfolio given the enterprises' significant stake in the housing market. HOLC's debt-for-debt approach would seem to make sense in today's climate.

Of course, such an approach would require action by Congress to permit the issuance of such debt. If the most recent debt ceiling debate is any indicator of the willingness of Congress to increase the federal debt, such a foreclosure fix would appear doomed. Yet, as the HOLC experience shows, aggressive housing measures, even when fueled by debt, can help staunch the flow of foreclosures generally, in addition to the ultimate size of the federal housing portfolio, and can even pay for themselves, as was the case with HOLC's initiatives.

Recommendation 3:

Give organizations the autonomy to operate flexibly and adjust to unexpected conditions.

Several factors explain RTC's speedy and cost-effective asset disposition and offer lessons for the current situation. Most importantly, RTC possessed the autonomy and expertise necessary to operate flexibly and adjust to unexpected conditions or mistakes. For instance, faced with ballooning assets, RTC abandoned the direct sales approach and instead began to sell assets in bulk, pool large numbers of assets for transfer to private contractors, securitize real assets, and enter into joint ventures. The corporation's pay-for-performance wage structure and competitive compensation attracted qualified workers able to operate flexibly and incentivized to quickly dispose of assets.²⁴⁷ Prior mortgage foreclosure programs have encountered unexpected conditions on the ground. RTC's autonomy and resulting adaptability seems key to the successful disposition of REO assets.

Recommendation 4:

Decentralize operations to allow tailoring to individual housing markets based on detailed market data and to address significant regional obstacles to disposition.

RTC's decentralized operations—85% of personnel worked at its four regional and fifteen consolidated field offices²⁴⁸—also deserve credit for its efficient asset disposition. The approach further hastened sales by cultivating regional buyers. Decentralization also allowed RTC to tailor disposition to individual housing markets and avoid dumping assets on the sale market. In high-cost markets, RTC could create much needed affordable housing.²⁴⁹ In low-

247. See CASSELL & HOFFMANN, *supra* note 111, at 23.

248. *Id.* at 29; see also John F. Bovenzi et al., *Evolution of the Asset Disposition Process*, in MANAGING THE CRISIS, *supra* note 150, at 289, 297.

249. MADAR ET AL., *supra* note 170, at 21.

cost markets, RTC could hold on to properties for longer periods of time, explore development opportunities with adjacent parcels, and demolish or deconstruct undesirable homes.²⁵⁰

As New Orleans's experience illustrates, the benefits of decentralized operations can be maximized through careful collection and use of neighborhood-level data and awareness of regional obstacles to disposition. New Orleans underscores that each neighborhood containing vacant properties often possesses distinct characteristics from adjacent neighborhoods. Thus, one disposition strategy is unlikely to work for a single city, never mind a metro area or a particular state or region of the country. New Orleans's experience teaches that real estate data—particularly data on sales and vacancies—is critical to calibrating effective disposition strategies. The good news is that some cities fighting the foreclosure crisis already have highly developed databases that can be mined for indicia of strong and weak real estate markets. These cities include Cleveland, Philadelphia, Chicago, and Dallas.²⁵¹ Potential government REO partners must show how their proposed strategy is supported by existing local real estate market conditions. They must also construct disposition strategies on a neighborhood-by-neighborhood basis. The experience in post-Katrina New Orleans may provide helpful guidance regarding the particular strategies employed in the three neighborhood classifications outlined by Plyer, Ortiz, and Pettit.²⁵²

It is also important to consider how such detailed neighborhood-level information is used. Several overarching principles must guide data collection when formulating and implementing an REO disposition strategy: (1) REO property disposition strategies cannot be crafted without considering adjacent tax delinquent, blighted, or abandoned properties, and should complement the local government's efforts for addressing non-REO sources of vacant properties; and (2) the tipping point for recovering neighborhoods may be reached when approximately 80% of homes have been rebuilt or are in the process of being rebuilt.²⁵³ Although the disaster recovery and mortgage foreclosure recovery contexts are distinct, the ability to document a neighborhood's momentum toward more complete recovery from foreclosure vacancies is critical for smart deployment of government and private sector resources now and in the future.

Further, successful disposition of REO properties could be augmented by addressing significant regional obstacles to disposition. Absorption of vacant properties nationwide may be limited by critical regional factors such as the high cost of insurance. Given that there may be tens of thousands of REO properties across particular regions, such as the Gulf Coast, the government and its REO disposition partners should examine what regional factors, if any, may contribute to increased dispositions costs. Additionally, they should work together to study

250. *Id.*

251. PLYER ET AL., *supra* note 204, at 10.

252. *See generally id.*

253. Letter from Douglas Ahlers, Senior Fellow, John F. Kennedy Sch. of Gov't, to Capt. Ethan Frizzell, Area Commander, Salvation Army (undated) (on file with author).

ways to remove obstacles that substantially increase disposition costs. For example, using house construction retrofits recommended in the NORA-commissioned study²⁵⁴ could enable the Enterprises and the FHA to substantially reduce the cost of insurance on those homes and create a competitive advantage for resale that could also benefit future owners or renters of those homes.

Recommendation 5:

Clearly prioritize the creation of affordable housing.

RTC quickly disposed of assets while incurring minimal losses, but the corporation mostly ignored its ancillary goals of providing affordable housing and employing women- and minority-owned businesses.²⁵⁵ Only after a good portion of the assets had been sold did RTC make progress in developing its affordable housing program.²⁵⁶ RTC's focus on asset disposition over other goals can be explained by politics between oversight agencies (the Department of Treasury exercised more authority over RTC than did HUD), organizational structure, weak oversight, the hiring of private-sector employees with a strictly profit mindset, and incentives rewarding asset sale rather than affordable housing goals, among other factors.²⁵⁷ RTC began to emphasize affordable housing only after pressure from Congress.²⁵⁸ The RFI for FHA and Enterprise asset disposal should clearly prioritize goals to avoid single-minded focus on profit and speed at the expense of other important social policy objectives. Based on RTC's experience, the Enterprises and FHA should also consider: giving first option to nonprofits and public agencies (as in ADHP's tiered sales process); accepting lower sales prices from qualified buyers promising to set-aside affordable housing; providing technical assistance to nonprofits, public agencies, and low-income buyers who might otherwise miss out on assets' sale; and donating unmarketable, low-value properties.

Recommendation 6:

Partner with neighborhood-based leadership, resources, creativity, and initiative.

The Enterprises and FHA should employ disposition strategies similar to the Lot Next Door and Growing Home programs to take advantage of existing neighborhood economic and social capital. The government's plan for REO inventory must consider opportunities to harness local neighborhood-based capacity for REO purchase or rental. The Enterprises and FHA should consider offering immediately adjacent homeowners the chance to purchase the adjacent house for a discounted price below the current fair market value. These programs tap the strong interest that families living next to vacant properties have in assuring that the properties are maintained and improved. Homeowners living next door to foreclosed properties have a strong interest to see those properties maintained to the highest possible standards. While mindful that foreclosed

254. See *supra* notes 230-33 and accompanying text.

255. CASSELL, *supra* note 141, at 5-6.

256. *Id.* at 6.

257. See CASSELL & HOFFMANN, *supra* note 111, at 32.

258. CASSELL, *supra* note 141, at 6.

homes are often situated in neighborhoods facing tough economic circumstances, the government should offer homeowners immediately adjacent to foreclosed properties the opportunity to purchase those homes for a significant discount in return for the homeowners' promise to:

- (a) Complete specified repairs and energy efficiency upgrades (not to exceed half the amount of the discounted purchase price);
- (b) Keep the home in compliance with local ordinances;
- (c) Rent the home for a pre-determined affordable rate (adjusted yearly and not to increase by more than a set amount each year, e.g., 3% or 4%);
- (d) Honor fair housing laws, and
- (e) Not sell the property for a desired period of time (three to five years) to avoid flipping.

If the homeowner fails to honor any covenant, then the appropriate governmental entity could sue to rescind the sale or obtain liquidated damages in the amount of the discount provided at sale.

Recommendation 7:

Ensure local government and private sector entities charged with implementing programmatic objectives have basic core competencies.

Effective crisis response requires core competencies from local government and private sector entities who are implementing programmatic objectives. If the federal government's REO strategy ultimately requires partnerships with state and local governments, non-profit entities, or for-profit firms, then it is critical to conduct an early evaluation to ensure organizational capacity exists within such entities to implement programmatic objectives. Or, alternatively, such expertise can be timely developed with technical assistance from the federal government or qualified third parties. Well before the program implementation stage, the federal government must evaluate partners' capacity to the GSEs' chosen solutions. Such threshold questions that the federal government must answer include whether an implementing agency have adequate staffing, baseline policies and procedures, and basic legal and procurement documents in place to implement the mortgage foreclosure solution with minimal delay.

Recommendation 8:

Allow displaced homeowners to return to former homes.

Homeowners displaced by foreclosure should have the chance to return to their former home. Any plan to rent REO properties should include making initial offers to former owners to return at a rent that would be significantly below what their mortgage payment had been previously. Like New Orleans families, the families that suffered foreclosure have experienced great hardship, but it is likely that many former homeowners—particularly the elderly and families with children—would welcome the chance to return to their former home. As under RTC, the property's current renters should also be treated as priority buyers; these individuals are more likely to be invested in the home and could help contribute to the broader goal of neighborhood stabilization.

CONCLUSION

The mortgage foreclosure crisis threatens the health and vitality of thousands

of neighborhoods across the nation. Recent and historic precedents illustrate ways in which aggressive and creative government intervention succeeded, or could have been more effective, in stitching neighborhood fabric back together. The question is not whether, but when, we will turn back the distressing tide of vacancies brought about by the mortgage foreclosure crisis. We posit that there is a critical storehouse of national experience and precedent with current mortgage foreclosure issues, and that this precedent can teach us a great deal about how to craft the most effective response to the mortgage foreclosure crisis.