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Racial Disparities in Subprime Home Mortgage Lending in New York City: Meaning and Implications

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I. INTRODUCTION

The recent turmoil in the financial markets related to rising default rates on subprime home purchase loans[1] should not obscure the fact that study after study has shown African-Americans, Latinos, and residents of predominantly minority neighborhoods[2] receive a disproportionately high percentage of subprime home purchase loans.[3] Not only do African-Americans, Latinos, and residents of predominantly

1. This study looks at home purchase loans and subprime home purchase loans. A home purchase loan is a first-lien, conventional loan secured by and made for the purpose of purchasing a one- to four-family, owner-occupied dwelling. 12 C.F.R. § 203.2(h) (2008). A subprime home purchase loan has an interest rate that is three percentage points or more higher than the interest rate on the treasury bill of comparable maturity. *Id*. § 203.4(a)(12) (requiring a lender to report the difference between a loan's interest rate and the yield on Treasury securities having comparable periods of maturity, and a difference equal to or greater than three percentage points for loans secured by a first lien on a dwelling).

2. For purposes of this essay these groups are defined as follows: an African-American person has origins in any of the black racial groups of Africa. Fed. Fin. Inst. Examination Council, HDMA 2004: Revisions to Regulation C, at 7 (2004). A Latino person is of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race. *Id*. A predominantly minority neighborhood is a neighborhood with a racial composition of 80% minority or higher.

3. *See* Robert B. Avery, Kenneth Brevoort & Glenn B. Canner, *The 2006 HMDA Data*, 93 Fed. Res. Bull. A73, A75, A94–96 (2007) [hereinafter *2006 HMDA Data*]; Robert B. Avery & Glenn B. Canner, *New Information Reported Under HMDA and Its Application in Fair Lending Enforcement*, 91 Fed. Res. Bull. 344 (2005); William C. Apgar, Jr. & Christopher E. Herbert, U.S. Dep't of Hous. & Urban Dev., Subprime Lending and Alternative Financial Service Providers: A Literature Review and Empirical Analysis (2006); U.S. Dep't of Hous. & Urban Dev., Unequal Burden: Income and Racial Disparities in Subprime Lending in America (2000) [hereinafter HUD Report], *available at* http://www.huduser.org/Publications/pdf/unequal_full.pdf; ACORN, Separate and Unequal: Predatory Lending in America (2004), *available at* http://www.acorn.org/fileadmin/Community_Reinvestment/Reports/S_and_E_2004/separate_and_unequal_2004.pdf; Debbie Gruenstein Bocian et al., The Ctr. for Responsible Lending, Unfair Lending: The Effect of Race and Ethnicity on the Price of Subprime Mortgages (2006), *available at* http://www.responsiblelending.org/pdfs/rr011-Unfair_Lending-0506.pdf; Calvin Bradford, Neighborhood Revitalization Project of the Ctr. for Cmty. Change, Risk or Race? Racial Disparities and the Subprime Refinance Market (2002), *available at* http://www.butera-andrews.com/legislative-updates/directory/Background-Reports/Center%20for%20Community%20Change%20Report.pdf; Cal. Reinvestment Coal. et al., Paying More for the American Dream: A Multi-State Analysis of Higher Cost Home Purchase Lending (2007), *available at* http://www.calreinvest.org/system/assets/125.pdf; Jim Campen, Mass. Cmty. Banking Council, Borrowing Trouble VII: Higher-Cost Mortgage Lending in Boston, Greater Boston and Massachusetts, 2005 (2007), *available at* http://site.www.umb.edu/gastonwebsite/articles/BT7--Jan07-final%20web.pdf; Daniel Immergluck & Marti Wiles, Woodstock Inst., Two Steps Back: The Dual Mortgage Market, Predatory Lending, and the Undoing of Community Development (1999), *available at* http://www.woodstockinst.org/publications/research-reports/5/55/date/DESC/; Nat'l Cmty. Reinvestment Coal., The 2004 Fair Lending Disparities: Stubborn and Persistent (2005) [hereinafter 2004 Fair Lending Disparities], *available at* http://www.ncrc.org/images/stories/pdf/research/ncrc%202004%20hmda%20report.pdf; Nat'l Cmty. Reinvestment Coal., The 2005 Fair Lending Disparities: Stubborn and Persistent II (2006), *available at* http://www.ncrc.org/images/stories/pdf/research/ncrc%202005%20hmda%20report.pdf; Nat'l Cmty. Reinvestment Coal., The CRA and Fair Lending Performance of Financial Institutions in the City of Philadelphia (2006), *available at* http://www.ncrc.org/images/stories/mediaCenter_reports/ncrc%20philly%20report_5_06.pdf; Nat'l Cmty. Reinvestment Coal., Fair Lending Disparities by Race, Income, and Gender in All Metropolitan Areas in America (2005), *available at* http://www.ncrc.org/pressandpubs/press_releases/documents/2005/Fairlend_disparityMarch05.pdf; Nat'l Cmty. Reinvestment Coal., Income Is No Shield Against Racial Differences in Lending: A Comparison of High-Cost Lending in America's Metropolitan

minority neighborhoods receive disproportionately high numbers of subprime home purchase loans, they also have traditionally received a disproportionately low number of all home purchase loans.[4]

Disproportionately high subprime lending and disproportionately low home mortgage lending to African-Americans, Latinos, and residents of predominantly minority neighborhoods create a triple negative impact on homeownership among these populations and communities: homeownership is less likely, less valuable, and less likely to be sustained for these groups compared with whites[5] and residents of predominantly white neighborhoods.[6]

As of 2004, 75.7% of white families owned their own homes, compared with 49.5% of African-American families,[7] and as of March 2005, 49.7% of Latino families owned their homes.[8] African-Americans and Latinos thus do not enjoy the benefits of homeownership—including protection from the unpredictable rental housing market; financial stability; a source of capital for starting a business, financing an education, or making a loan to children; and a vehicle for passing wealth from one generation to the next—to the same degree as whites. This helps explain our country's wealth gap: as of 2002, white families had, on average, nearly fifteen times the assets of African-American families and nine times the assets of Latino

Areas (2007), *available at* http://www.ncrc.org/images/stories/mediaCenter_reports/ncrc%20metro%20study%20race%20and%20income%20disparity%20july%2007.pdf; Nat'l Cmty. Reinvestment Coal., Preapprovals and Pricing Disparities in the Mortgage Marketplace: A NCRC Follow-Up Report for National Homeownership Month (2005); Nat'l Cmty. Reinvestment Coal., The Opportunity Agenda & Poverty & Race Research Council, Homeownership and Wealth Building Impeded (2006), *available at* http://www.opportunityagenda.org/atf/cf/%7B2ACB2581-1559-47D6-8973 70CD23C286CB%7D/Subprime%20Lending%20Report.PDF; *NCRC Fair Lending Testing Reveals Discrimination by Mortgage Brokers*, Reinvestment Works (Nat'l Cmty. Reinvestment Coal.), Summer 2006, at 1; *New Mortgage Pricing Data Shields Light on Subprime Market*, Reinvestment Alert, (Woodstock Inst.), May 2005.

4. *See* Jim Campen, Changing Patterns XIV: Mortgage Lending to Traditionally Underserved Borrowers & Neighborhoods in Boston, Greater Boston and Massachusetts, 2006 (2008); Nat'l Cmty. Reinvestment Coal., 2004 Fair Lending Disparities, *supra* note 3, at 3; Richard D. Marsico, *New York Metropolitan Area Lending Scorecard: 1998*, 16 N.Y.L. Sch. J. Hum. Rts. 769 (2000); Richard D. Marsico, *Patterns of Lending to Low-Income and Minority Persons and Neighborhoods: The 1999 New York Metropolitan Area Mortgage Lending Scorecard*, 17 N.Y.L. Sch. J. Hum. Rts. 199 (2001); Richard D. Marsico, *Shedding Some Light on Lending: The Effect of Expanded Disclosure Laws on Home Mortgage Marketing, Lending, and Discrimination in the New York Metropolitan Area*, 27 Fordham Urb. L.J. 481 (1999); Thomas M. Shapiro, *Race, Homeownership and Wealth*, 20 Wash. U. J.L. & Pol'y 53, 66–67 (2006).

5. For purposes of this essay, a white person has origins in any of the original peoples of Europe, the Middle East, or North Africa and is not a person of American Indian or Alaska Native, Asian, Black or African-American, Native Hawaiian or other Pacific Islander, or Hispanic or Latino culture or origin. Fed. Fin. Inst. Examination Council, *supra* note 2, at 6–7.

6. For purposes of this essay, a predominantly white neighborhood as a neighborhood whose racial composition is less than 20% minority.

7. Shapiro, *supra* note 4, at 65.

8. Press Release, Cong. Hispanic Caucus Inst., Hispanic Homeownership Barriers Start to Fall (Sept. 12, 2005).

families.[9] Even when African-Americans and Latinos own homes, they disproportionately pay more for their loans, reducing the value of their homes, and further contributing to the wealth gap.[10]

Subprime loans have higher foreclosure rates than prime loans.[11] Concentrations of subprime loans in particular neighborhoods lead to higher foreclosure rates and negative collateral effects in those neighborhoods such as disinvestment, deterioration, and increased crime rates.[12] To the extent that predominantly minority neighborhoods receive disproportionately high percentages of subprime loans, they are more likely to face high foreclosure rates and the consequent harm. For example, a study of Los Angeles from 2001–2004 shows that 45% of all foreclosures were in predominantly minority neighborhoods and that overall, foreclosures occurred twelve times more often in predominantly minority neighborhoods than in predominantly white neighborhoods.[13]

Data made public pursuant to the Home Mortgage Disclosure Act (HMDA)[14] about home purchase lending in New York City in 2006 shows that New York City is no exception to the national prime and subprime lending trends.[15] African-Americans, Latinos, and residents of predominantly minority neighborhoods received disproportionately higher percentages of subprime home purchase loans than whites and residents of predominantly white neighborhoods. Several individual lenders contributed to these disparities by making disproportionately high percentages of subprime home purchase loans to African-Americans, Latinos, and residents of predominantly minority neighborhoods. This essay illustrates these disparities by providing an analysis of the aggregate lending practices[16] and individual lending practices in New York City in 2006, and offers a brief analysis of this data as it relates to disparate treatment of minority groups and the possibilities of reforming subprime lending practices.

9. Shapiro, *supra* note 4, at 63 n.51 (reporting that in 2002, the net worth of white households was $88,651, Latino households was $7932, and African-American households was $5988).

10. *Id*. at 67 (reporting that African-Americans pay approximately $12,000 more for an average thirty-year mortgage than whites).

11. Bradford, *supra* note 3, at vi; *2006 HMDA Data*, *supra* note 3, at A76, A102–08; Vikas Bajaj, *More Trouble in Subprime Mortgages*, N.Y. Times, June 15, 2007, at C1.

12. *See* Bradford, *supra* note 3, at vi–vii; Elvin K. Wyly et al., *Low- to Moderate-Income Lending in Context: Progress Report on the Neighborhood Impacts of Homeownership Policy*, 12 Hous. Pol'y Debate 87 (2001).

13. Shapiro, *supra* note 4, at 70–71.

14. 12 U.S.C. §§ 2801–2810 (2006).

15. *See* 2006 Peer Mortgage Data Northeast Region (PCi Corporation CRA *Wiz* and Fair Lending *Wiz* CD-ROM, Version 6.6). The source of the HMDA data in this paper is the CRA *Wiz* and Fair Lending *Wiz* CD-ROM.

16. For the purposes of this essay, "aggregate lending" is combined lending by all lenders who reported HMDA data for New York City in 2006.

II. AGGREGATE LENDING IN NEW YORK CITY IN 2006

Overall, African-Americans and Latinos in New York City in 2006 had lower market shares of home purchase loans than subprime home purchase loans, and the reverse was true for whites. The pattern was similar for residents of predominantly minority neighborhoods: they also had a lower market share of home purchase loans than subprime home purchase loans, while residents of predominantly white neighborhoods enjoyed the reverse. In addition, the percentages of all home purchase loans that African-Americans, Latinos, and residents of predominantly minority neighborhoods received that were subprime were higher than the percentages received by whites and residents of predominantly white neighborhoods that were subprime.

A. Market Share of Home Purchase Loans Compared with Market Share of Subprime Home Purchase Loans: The Disparity Index

The percentage of all home purchase loans a particular group received—also known as the group's market share—compared with its market share of subprime home purchase loans, should ideally be identical. The greater the difference in the two market shares, the greater the disparate treatment; unfavorable treatment is indicated when the group's market share of all home purchase loans is smaller than its market share of subprime home purchase loans. It is possible to develop this analysis further and calculate the home purchase loan market share/subprime home purchase loan market share ratio for a particular group and compare it with the ratio for another group. This comparison yields a disparity index, which is the ratio of the two groups' individual ratios. For example, if the ratio of white borrowers' market share of home purchase loans to subprime home purchase loans is two and the ratio of African-American borrowers' market share of home purchase loans to subprime home purchase loans is one-half, the magnitude of the difference—the disparity index—between whites and African-Americans is four.

African-Americans, Latinos, and residents of predominantly minority neighborhoods had smaller market shares of all home purchase loans than subprime purchase loans; the reverse was true for whites and residents of predominantly white neighborhoods. These results yielded disparity indices that were favorable to whites and residents of predominantly white neighborhoods and unfavorable to African-Americans, Latinos, and residents of predominantly minority neighborhoods.

African-Americans received 17.6% of all home purchase loans and 38.8% of all subprime home purchase loans, a ratio of 0.5. In contrast, whites received 36.4% of all home purchase loans and 17.0% of all subprime home purchase loans, a ratio of 2.1. This yields a disparity index of 4.2.

Latinos received 13.8% of all home purchase loans and 22.2% of all subprime home purchase loans, a ratio of 0.6. In contrast, as described above, the ratio for whites was 2.1. This yields a disparity index of 3.5.

Residents of predominantly minority neighborhoods received 37.9% of all home purchase loans and 69.7% of all subprime home purchase loans, a ratio of 0.5. In contrast, residents of predominantly white neighborhoods received 17.5% of all home purchase loans and 5.7% of all subprime home purchase loans, a ratio of 3.1. This yields a disparity index of 6.2.

These results are depicted on the following chart:

	Market Share of Home Purchase Loans	Market Share of Subprime Home Purchase Loans	Ratio: Market Share of Home Purchase Loans to Market Share of Subprime Loans	Disparity Index
African-Americans	17.6%	38.8%	0.5	4.7
Latinos	13.8%	22.2%	0.6	3.5
Whites	36.4%	17.0%	2.1	N/A
Predominantly Minority Neighborhoods	37.9%	69.7%	0.5	6.2
Predominantly White Neighborhoods	17.5%	5.7%	3.1	N/A

B. Percentage of Loans Received That Were Subprime

The percentage of home purchase loans that a particular group received that were subprime can be compared with the percentage another group received to measure the magnitude of differential treatment. For example, if 50% of all home purchase loans that African-Americans received were subprime and 10% of all home purchase loans that whites received were subprime, African-American borrowers were five times more likely than whites to receive a subprime home purchase loan.

Overall, African-Americans, Latinos, and residents of predominantly minority neighborhoods were much more likely to receive subprime home purchase loans than whites and residents of predominantly white neighborhoods.

Slightly more than half of all home purchase loans to African-Americans (50.5%) were subprime. Only 10.7% of all home purchase loans to whites were subprime. African-Americans were 4.7 times more likely than whites to receive subprime loans.

Nearly 37% of all home purchase loans to Latinos were subprime. This was 3.4 times higher than the 10.7% of all home purchase loans to whites that were subprime. Latinos were over three times more likely than whites to receive subprime loans.

Over 42% of all home purchase loans to residents of predominantly minority neighborhoods were subprime. Only 7.5% of all home purchase loans to residents of predominantly white neighborhoods were subprime. Residents of predominantly minority neighborhoods were 5.8 times more likely than residents of predominantly white neighborhoods to receive subprime home purchase loans.

The following charts summarize these results:

	African-Americans	Whites	Ratio: African-Americans to Whites	Latinos	Ratio: Latinos to Whites
% of all Loans that were Subprime	50.5%	10.7%	4.7	36.9%	3.4

	Predominantly Minority Neighborhoods	Predominantly White Neighborhoods	Ratio
% of all Loans that were Subprime	42.2%	7.5%	5.8

III. INDIVIDUAL LENDERS

Although there are several hundred home mortgage lenders in New York City, a relatively small number of them control more than half of the home mortgage loan market. The top ten home purchase loan lenders in 2006 made 34,000 loans—58% of all home purchase loans. The ten lenders who made the most subprime home purchase loans in 2006 made 8050 subprime home purchase loans—64.3% of all subprime loans. More than half of these lenders made disproportionately high numbers of subprime home purchase loans to African-Americans, Latinos, and residents of predominantly minority neighborhoods. This disproportionality is shown by using one of two criteria: either 1) a disproportionately high percentage of the lender's home purchase loans were subprime home purchase loans made to each of these groups or 2) the percentage of all the home purchase loans the lender made to a particular group that was subprime was disproportionately high.

The difference between these two criteria is subtle but important. The first criterion uses the total number of home purchase loans the lender made as the denominator of the fraction and the total number of subprime home purchase loans it made to a particular group as the numerator of the fraction. This fraction is the percentage of the lender's total number of home purchase loans that were subprime loans to the particular group. The second criterion uses the total number of home purchase loans the lender made to a particular group as the denominator and the number of subprime home purchase loans it made to the group as the numerator. This fraction is the percentage of home loans made to the particular group that were subprime.

The difference between the two criteria captures different groups of lenders. The first criterion generally captures lenders that specialize in subprime lending. Because virtually all of their loans are subprime, nearly all borrowers who receive a home purchase loan from these lenders receive a subprime loan. In order to determine whether such a subprime loan specialist is making a disproportionately high percentage of subprime loans to a particular group, it is necessary to compare the percentages of all the home purchase loans the lender made that were subprime loans to African-Americans, Latinos, and residents of predominantly minority neighborhoods to the percentages made to whites and residents of predominantly white neighborhoods and to the aggregate percentages.

The second criterion generally captures lenders that do not specialize in subprime lending. Because the percentage of all their home purchase loans that are subprime is generally small, the percentage of all these lenders' home purchase loans that are subprime to any particular group is also relatively small. In order to determine whether one of these lenders is making a disproportionately high number of subprime loans to any particular group, it is necessary to determine the percentage of the home purchase loans they make to a particular group that are subprime and compare it to the percentages they make to other groups.

A. Percentage of All Home Purchase Loans the Lender Made That Were Subprime

The percentages of all home purchase loans that eight high-volume lenders made that were subprime home purchase loans to African-Americans and Latinos were disproportionately high. The percentages were higher than the aggregate percentages to each group and higher than each lender's percentage to whites. The following chart shows, for each of the eight lenders, the percentage of all home purchase loans it made that were subprime home purchase loans to African-Americans, Latinos, and whites. It also shows the ratio of the lender's percentages to African-Americans and Latinos to the aggregate percentages.

Lender	African-Americans	Ratio: Lender to Aggregate	Latinos	Ratio: Lender to Aggregate	Whites
Fremont	45.3%	5.1	19.6%	3.8	11.2%
WMC	39.5%	4.4	23.5%	4.6	15.3%
New Century	40.3%	4.5	21.5%	4.2	13.1%
National City	36.6%	4.1	17.4%	3.4	11.9%
Option One	43.7%	4.9	23.9%	4.7	14.3%
Argent	31.6%	3.6	19.1%	3.7	27.9%
Accredited Home	31.4%	3.5	21.6%	4.2	16.9%
Long Beach	43.5%	4.9	25.6%	5.0	12.1%

Thus, for example, 45.3% of all home purchase loans that Fremont made were subprime home purchase loans to African-Americans. This figure is 5.1 times higher that the aggregate percentage and 3.8 times higher than Freemont's percentage of subprime home purchase loans made to whites (11.2%).

The percentages of nine high-volume lenders' home purchase loans that were subprime home purchase loans to residents of predominantly minority neighborhoods were disproportionately high. The percentages were higher than their percentages to predominantly white neighborhoods and higher than the aggregate percentage. The following chart shows, for each of the nine lenders, the percentage of all home purchase loans they made that were subprime home purchase loans to residents of predominantly minority neighborhoods and predominantly white neighborhoods. It also shows the ratio of each lender's percentage to the aggregate percentage.

Lender	Minority Neighborhoods	Ratio: Lender to Aggregate	White Neighborhoods
Fremont	71.5%	4.5	4.4%
WMC	70.6%	4.4	5.3%
New Century	65.7%	4.1	3.7%
National City	60.5%	3.8	4.3%
Option One	65.9%	4.1	6.8%
Indymac	21.4%	1.3	2.5%
Argent	65.4%	4.1	4.9%
Accredited Home	64.7%	4.0	2.4%
Long Beach	75.9%	4.7	3.8%

Thus, for example, 75.9% of all home purchase loans that Long Beach made were subprime home purchase loans to residents of predominantly minority neighborhoods. This figure is 4.7 times higher than the aggregate percentage and 20 times higher than the 3.8% Long Beach made to residents of predominantly white neighborhoods.

B. *Percentage of All Home Purchase Loans the Lender Made That Were Subprime*

The percentage of all home purchase loans that six high-volume lenders made to African-Americans and Latinos that were subprime were significantly higher than their percentages to whites. The following chart shows the percentage of all home purchase loans each lender made to African-Americans, Latinos, and whites that were subprime and the ratio of each lender's percentages of home purchase loans to African-Americans and Latinos that were subprime to its percentages of home purchase loans to whites that were subprime.

Lender	African-Americans	Ratio: African-Americans to Whites	Latinos	Ratio: Latinos to Whites	Whites
JP Morgan Chase	15.6%	5.6	12.4%	4.5	2.8%
Citimortgage	1.7%	5.7	1.6%	4.9	0.3%
Wells Fargo	23.0%	17.7	10.9%	8.4	1.3%
HSBC	2.6%	6.4	2.3%	5.7	0.4%
Countrywide	33.7%	3.3	18.4%	1.8	10.8%
Greenpoint	19.7%	3.9	14.3%	2.9	5.0%

Thus, for example, African-Americans were 17.7 times more likely and Latinos were 8.4 times more likely than whites to receive a subprime home purchase loan from Wells Fargo.

The same six lenders showed a similar trend in their lending practices to residents of predominantly minority neighborhoods compared with residents of predominantly white neighborhoods. The following chart shows the percentage of all home purchase loans each lender made to residents of predominantly minority neighborhoods and residents of predominantly white neighborhoods that were subprime, and the ratio of this percentage to the lender's percentage of home purchase loans to residents of predominantly white neighborhoods that were subprime.

Lender	Minority Neighborhoods	White Neighborhoods	Ratio: Minority to White Neighborhoods
JP Morgan Chase	13.0%	1.5%	8.7
Citimortgage	1.1%	0.2%	7.4
Wells Fargo	12.0%	1.2%	10.0
HSBC	1.6%	0.5%	3.2
Countrywide	31.8%	7.6%	4.2
Greenpoint	17.5%	4.4%	4.0

Thus, for example, residents of predominantly minority neighborhoods were ten times more likely than residents of predominantly white neighborhoods to receive subprime home purchase loans from Wells Fargo.

IV. MEANING AND IMPLICATIONS OF THE HMDA DATA

The 2006 HMDA data show that, in New York City, African-Americans, Latinos, and residents of predominantly minority neighborhoods received significantly higher percentages of subprime home purchase loans than whites and residents of predominantly white neighborhoods. The data also show that several of the largest lenders in New York City made disproportionately high percentages of subprime home purchase loans to African-Americans, Latinos, and residents of predominantly minority neighborhoods.

Two important questions arise from these findings. First, does the data demonstrate that lenders are discriminating against African-Americans, Latinos, and residents of predominantly minority neighborhoods? Second, are these results relevant in developing solutions to the subprime lending crisis? If so, how?

A. Discriminatory Treatment

Regarding lending discrimination, the HMDA data alone is not sufficient to allow a conclusion that these racial disparities are the result of illegal discrimination. This is because HMDA data lack information about borrower creditworthiness—most importantly the borrower's credit score—that is necessary to reach such a conclusion.[17] Without information about a borrower's creditworthiness, it is difficult to determine whether a borrower who received a subprime home purchase loan was eligible for a prime loan. And without this information, it is difficult to determine if a lender is treating similarly situated borrowers differently based on race, which is the essence of discrimination. Despite these shortcomings in the HMDA data, the disparities are in some instances so large that they invite action by government enforcement agencies that have access to the necessary data and by private parties who

17. *2006 HMDA Data*, *supra* note 3, at A99.

have the right to commence administrative or judicial litigation alleging discrimination and can obtain the necessary data in discovery.

Nevertheless, despite some noteworthy exceptions, government investigation and enforcement has been sluggish. Exceptions include former New York State Attorney General Elliot Spitzer's investigation of subprime lending disparities using 2004 HMDA data.[18] He subsequently brought and settled a claim against Countrywide in 2006.[19] Current New York State Attorney General Andrew Cuomo stated that his office is planning to investigate subprime mortgage lenders.[20] Between January 1, 2004, and June 30, 2007, the four federal banking regulatory agencies referred 134 potential discrimination cases to the Department of Justice for investigation.[21] However, the Department has not filed any cases.

Private enforcement efforts have also been slow to develop, but recently the efforts have accelerated. For example, the National Community Reinvestment Coalition filed an administrative complaint with the Department of Housing and Urban Development. The complaint alleged that Allied Home Mortgage Capital Corporation often steered minority mystery shoppers to subprime loans even though they were qualified for prime loans and referred white mystery shoppers to prime loans.[22] In July 2007, the NAACP filed a class action lawsuit against eleven mortgage lenders, alleging that African-Americans received a higher percentage of subprime loans than whites.[23] These lenders include Ameriquest, Fremont Investment and Loan, Option One, WMC Mortgage, Long Beach Mortgage, BNC Mortgage, Accredited Home Lenders, Encore Credit, First Franklin Financial, HSBC Finance, and Washington Mutual, several of which are major lenders in New York City.[24]

B. *Impact on Solutions to the Subprime Lending Crisis*

The second significant issue is the effect the findings of racially disproportionate subprime lending should have on proposed solutions to the subprime lending crisis. Discriminatory subprime lending means that borrowers who were eligible for prime loans received subprime loans, resulting in more subprime loans than there should

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18. *See* Ameet Sachdev, *Bias Probe Looks at Household Acquirer's Loan Pricing*, Chi. Trib., Apr. 29, 2005, at C1.

19. Kate Berry, *Countrywide Spitzer Deal a Disclosure Precedent?*, Am. Banker, Dec. 6, 2006, at 1.

20. Karen Freifeld, *N.Y. Plans Probe of High-Risk Lenders*, Wash. Post, Mar. 16, 2007, at D01.

21. Cheyenne Hopkins, *HMDA Suits Backdrop for Committee Hearings Class Actions Mount; "Exactly What the Industry" Had Feared*, Am. Banker, July 25, 2007, at 1 (noting that three out of the four banking regulatory agencies—the Federal Deposit Insurance Corp., the Federal Reserve, and the Office of Thrift Supervision—referred cases to the Justice Department).

22. Nat'l Cmty. Reinvestment Coal. v. Allied Home Mortgage Capital Corp. (June 14, 2006), *available at* http://www.ncrc.org/pressandpubs/press_releases/documents/2006/HUDComplaint.pdf. "Mystery shoppers" are individuals who pose as loan applicants in order to gather information about loans to compare how lenders treat applicants of different races.

23. Bob Tedeschi, *The N.A.A.C.P. vs. 11 Lenders*, N.Y. Times, Sept. 23, 2007, § 11, at 12.

24. *Id.*

be. In the long run, eliminating or reducing discriminatory subprime lending should reduce the number of subprime loans and the negative collateral consequences they create, including default and foreclosure. In the short term, programs that would bail out or otherwise assist borrowers who are having trouble paying back subprime loans by, for example, refinancing them at affordable rates, face opposition on the grounds that borrowers are at least partially at fault. Opponents argue that bailing out such borrowers would not deter future borrowers from accepting risky loans. However, if borrowers received subprime loans because lenders exploited the lack of traditional banks in predominantly minority neighborhoods, targeted them for subprime loans, or steered them toward subprime loans, the borrower's culpability is eliminated. This, in turn, might make it easier to pass programs that assist such borrowers.

V. CONCLUSION

The HMDA data for New York City show subprime lending disparities based on race that are high enough for government agencies to exercise their enforcement authority and for private parties to exercise their rights and identify and eliminate discriminatory subprime lending. Additionally, policymakers should consider these results when considering both long and short term solutions to the subprime lending crisis. Eliminating discriminatory subprime lending should help in the long term to reduce subprime lending and the subsequent defaults and other negative consequences. In the short term, recognizing that many borrowers who received subprime loans were eligible for prime loans could reduce resistance to short term solutions such as borrower refinance programs.