

## UNAFFORDABLE HOUSING AND POLITICAL KICKBACKS ROCKED THE AMERICAN ECONOMY

DARRELL ISSA\*

The economic earthquake that shook the world financial markets and bankrupted seemingly invulnerable multinational corporations exposed perilous fault lines of the federal government's own creation. Under mounting pressure, at a critical moment, the fault lines cracked and took down everything from auto manufacturers to insurance providers.

Now that the Obama Administration's comprehensive regulatory reform proposals are making their way through Congress, the time has come to identify the root causes of the most recent economic downturn. Many leading economists agree: The economic crisis we are experiencing is directly tied to an over-inflated housing bubble wherein mortgage lenders made reckless, high-risk loans. These loans were given in record number to over-extended, under-qualified borrowers to satisfy an increasingly aggressive government drive for home ownership. Why the lenders adopted such counterintuitive and irresponsible business practices is the critical question. The answer reveals the disastrous folly of government intervention in the housing market spanning more than three quarters of a century.

To secure affordable housing, Congress created a new Government Sponsored Enterprise (GSE) known as the Federal National Mortgage Association (Fannie Mae) during the Great Depression to purchase and securitize home mortgages and promote greater liquidity in the mortgage market.<sup>1</sup> At a time of unprecedented economic strain, the nation welcomed this fundamental component of President Franklin Delano Roosevelt's New Deal.

For thirty years, Fannie Mae had a near-monopoly on the secondary mortgage market and, with the backing of the fed-

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\* United States Representative (R-CA); Ranking Member, House Committee on Oversight and Government Reform.

1. *See* National Housing Act, ch. 847, § 301, 48 Stat. 1246 (1934) (codified as amended at 12 U.S.C. § 1701 (2006)).

eral budget, an ostensibly endless supply of capital. In 1965, President Lyndon Johnson established the Department of Housing and Urban Development (HUD) as a part of his Great Society plan to eradicate poverty and promote homeownership through a government-run housing program and government subsidized mortgage lending. Facing mounting debt, however, Johnson later contrived a scheme to privatize Fannie Mae, removing the corporation's liabilities from the federal balance sheets without limiting the potential for a taxpayer bailout.<sup>2</sup>

By 1970, Congress was pushing Fannie Mae to purchase conventional mortgages, though the effort was complicated by federal restrictions on numerous primary lenders that were unable to work with Fannie Mae. The solution? Congress created the Federal Home Loan Mortgage Corporation (Freddie Mac) as a wholly-owned government-run mortgage lender,<sup>3</sup> and then re-chartered it in 1989 as a publicly traded enterprise.<sup>4</sup>

As the market for secondary mortgages grew, Fannie Mae and Freddie Mac nearly achieved monopoly results thanks to numerous competitive advantages guaranteed through their unique relationship with the federal government.<sup>5</sup> Among these advantages were government-backed lines of credit equal to a whopping \$2.25 billion and a corollary market reputation that led investors to believe the GSEs were too big to fail.<sup>6</sup> This inflated investor confidence and exclusive government protection resulted in an unnatural expansion of Fannie Mae and Freddie Mac's market dominance, and by the time the 1990s rolled around, the corporations together held more than three quarters of the secondary market for prime mortgages.<sup>7</sup>

The GSEs were aided immensely by the federal government because Congress charged Fannie Mae and Freddie Mac with

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2. Peter J. Wallison & Charles W. Calomiris, *The Last Trillion-Dollar Commitment: The Destruction of Fannie Mae and Freddie Mac*, AEI FIN. SERVICES OUTLOOK, Sept. 2008, at 2, [http://www.aei.org/docLib/20080930\\_Binder1.pdf](http://www.aei.org/docLib/20080930_Binder1.pdf).

3. See Emergency Home Financing Act of 1970 §§ 301–10, Pub. L. No. 91-351, 84 Stat. 450 (1970) (codified as amended at 12 U.S.C. §§ 1451–59 (2006)).

4. Wallison & Calomiris, *supra* note 2, at 2.

5. Jonathan G.S. Koppell, *Hybrid Organizations and the Alignment of Interests: The Case of Fannie Mae and Freddie Mac*, 61 PUB. ADMIN. REV. 468, 469–72 (2001).

6. W. Scott Frame & Lawrence J. White, *Fussing and Fuming over Fannie and Freddie: How Much Smoke, How Much Fire?*, 19 J. ECON. PERSP. 159, 163–64 (2005).

7. Robert Van Order, *The U.S. Mortgage Market: A Model of Dueling Charters*, 11 J. HOUSING RES. 233, 235 (2000).

keeping the secondary mortgage market liquid and increasing the availability of affordable housing. No other private companies could borrow money at such an affordable rate. Private debt markets were willing to lend the GSEs money at an interest rate not much higher than the relatively risk-free rate they charged the U.S. government itself.<sup>8</sup>

As a matter of regular business, Fannie Mae and Freddie Mac sold their bonds in the debt markets at relatively low price points and used the borrowed money to purchase mortgages from primary lenders like Countrywide Financial that dealt directly with customers seeking home loans. They then bundled many of these mortgages into securities and sold them to investors who paid Fannie Mae and Freddie Mac a fee to guarantee payment in the event of a mortgage default.<sup>9</sup> The GSEs could also hold the securities in their own portfolios,<sup>10</sup> making profits from the difference between their low cost of debt and the higher rates borrowers paid on their mortgages.

Along the way, Congress continued to impose requirements on Fannie Mae and Freddie Mac to guarantee affordable housing opportunities to more and more Americans, including those whose credit ratings and annual income could not sustain a traditional mortgage. Under increased pressure to lower underwriting standards and to meet congressional mandates for loans to low-income families, the GSEs fell victim to successive administrations' campaign promises to increase home ownership regardless of the individual or systemic risk.<sup>11</sup>

Meanwhile, Congress exempted Fannie Mae and Freddie Mac from key regulations and responsible market oversight. For example, their congressional charters exempted them from Securities and Exchange Commission (SEC) oversight, making the GSEs the only exempt publicly traded corporations. It was not until scandals in 2003 and 2004 revealed the use of unapproved accounting practices to manipulate earnings that Fannie Mae and Freddie Mac

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8. Koppell, *supra* note 5, at 469; Frame & White, *supra* note 6, at 164.

9. Frame & White, *supra* note 6, at 160.

10. *Id.*

11. See *The Role of Fannie Mae and Freddie Mac in the Financial Crisis: Hearing Before the H. Comm. on Oversight & Gov't Reform*, 110th Cong. 186–87 (2008) (prepared statement of Edward J. Pinto, former Chief Credit Officer, Fannie Mae).

agreed to “voluntary” SEC filings.<sup>12</sup> The GSEs were also protected from market oversight regarding the quality of their mortgage-backed security issuances, resulting in the packaging of \$5 trillion in mortgages into mortgage-backed securities.<sup>13</sup> These securities were then sold to investors who received the interest and principal payments. Bit by bit the bubble began to expand.

The politicization of mortgage lending reached its zenith during the Clinton Administration through major alterations of the Community Reinvestment Act of 1977,<sup>14</sup> a piece of legislation originally passed to prevent banks from discriminating against otherwise credit-worthy borrowers in lower-income neighborhoods. The Clinton-era policies emphasized, on the other hand, performance-based standards of evaluation that tied bank ratings to the volume rather than the fairness of the banks’ mortgage lending.<sup>15</sup> As subprime lending increased to meet the Clinton Administration’s standards, so did the pressure on Fannie Mae and Freddie Mac to purchase those loans on the secondary market to promote liquidity, regardless of the loans’ quality and sustainability.<sup>16</sup>

This “affordable housing” scheme inevitably started a mortgage bonanza, just as it was designed to do. Unexpectedly, however, borrowers from every income bracket, sensing a near-inevitable investment return facilitated by federal guarantees, seized the opportunities originally created for the poor. As requirements for down payments plummeted, so too did the home equity stake of the average American family.<sup>17</sup> And as home prices continued their dizzying rise, many people decided to cash

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12. *The OSHA Report of the Special Examination of Fannie Mae: Hearing Before S. Comm. on Banking, Hous. & Urban Affairs*, 109th Cong. 7 (2006) (testimony of Christopher Cox, Chairman, SEC).

13. Carol D. Leonnig, *How HUD Mortgage Policy Fed the Crisis*, WASH. POST, June 10, 2008, at A1.

14. Pub. L. No. 95-128, 91 Stat. 1147 (codified at 12 U.S.C. §§ 2901–2908).

15. AKM Rezaul Hossain, *The Past, Present and Future of Community Reinvestment Act (CRA): A Historical Perspective* 47, 53–54 (U. Conn. Dept. of Econ. Working Papers Series, Paper No. 2004-20).

16. *Collapse of Fannie Mae and Freddie Mac: Hearing Before the H. Comm. on Oversight & Gov’t Reform*, 110th Cong. 11 (2008) (statement of Dr. Arnold Kling); see also Steven A. Holmes, *Fannie Mae Eases Credit To Aid Mortgage Lending*, N.Y. TIMES, Sept. 30, 1999, at C2.

17. See STAN J. LIEBOWITZ, ANATOMY OF A TRAIN WRECK: CAUSES OF THE MORTGAGE MELTDOWN 4–5, 17–18 (2008), [http://www.independent.org/pdf/policy\\_reports/2008-10-03-trainwreck.pdf](http://www.independent.org/pdf/policy_reports/2008-10-03-trainwreck.pdf).

in by buying a house with an adjustable-rate mortgage featuring a low introductory teaser rate set to increase after a few years.<sup>18</sup>

These borrowers, confident in the oft-cited assertion that U.S. home values had never before fallen in the aggregate, planned to sell or refinance their investment before the mortgage rate adjusted upward, pocketing the difference between the initial purchase price and the subsequent appreciation in value. But buyers failed to grasp the effect of a government policy that had quietly eroded the prudential limits on mortgage leverage. Indeed, the government had helped create a dangerous speculative bubble across the entire financial system.

Once government-sponsored efforts to decrease down payments spread to the wider housing market, home prices became increasingly untethered from borrowers' ability to pay. Instead, borrowers could make increasingly smaller down payments and take on higher debt, allowing home prices to continue their unrestrained rise.<sup>19</sup> Some statistics help illustrate how this price increase occurred. Between 2001 and 2006, median home prices increased by an inflation-adjusted fifty percent, yet at the same time Americans' income failed to keep up.<sup>20</sup> For the thirty years prior to 2000, the ratio of U.S. home prices to income averaged only about 4-to-1.<sup>21</sup> In other words, the average American lived in a home costing four times his annual income. In just five years, from 2000 to 2005, that ratio doubled to 8-to-1.<sup>22</sup> As a result of homes becoming more expensive, the only way for many Americans to buy a home during the housing bubble was to dramatically increase their leverage. It is not surprising, then, that between 2000 and 2006, mortgage debt in the United States increased by eighty percent.<sup>23</sup> According to one early warning in 2006, such an increase in the price-to-income ratio had a less than one in three hundred chance of occurring and is essentially inexplicable by economic fundamentals.<sup>24</sup>

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18. Andrew Laperriere, *Housing Bubble Trouble: Have We Been Living Beyond Our Means?*, WKLY. STAND., Apr. 10, 2006, at 25, 27.

19. LIEBOWITZ, *supra* note 17, at 4, 17–18.

20. See Laperriere, *supra* note 18, at 25–26.

21. *Id.* at 26.

22. *Id.*

23. *Id.*

24. *Id.*

Thus more and more Americans had less and less skin in the game, which increased the ease with which borrowers could walk away from their mortgages with no significant loss.<sup>25</sup> And walk away they did. By the time the myth of these “affordable” housing policies is fully realized, GSE mortgages could result in nearly 8.8 million foreclosures.<sup>26</sup> So far, the fallout has led to the injection of billions of taxpayer dollars and a government takeover of Fannie Mae and Freddie Mac in September 2008 to prevent their total collapse and dissolution.<sup>27</sup>

Fannie Mae and Freddie Mac had gambled on zero down payment mortgages to subprime borrowers with assurances that the unprecedented risk would be absorbed by the U.S. taxpayers in the end. A trifecta of irresponsible congressional mandates, ill-advised executive policies, and illusory market confidence provided both the rationale and the capital for dangerous leveraging and overexposure. But why did Congress doom the GSEs to fail? Why did successive administrations push them to the brink and thus jeopardize the entire U.S. economy? The answers to these questions are disconcerting.

Quite simply, a nexus of “affordable” housing mortgage lenders, the homebuilding industry, and major investment firms created a powerful “affordable” housing coalition led by Fannie Mae, Freddie Mac, and their political allies in Washington, D.C. This group used its money and power to buy influence on Capitol Hill. Between 1998 and 2008, Freddie Mac and Fannie Mae spent as much as \$176 million on lobbying efforts<sup>28</sup> to block legislative reform that would have stripped them of their preferential advantages.

Perhaps the most prominent partner for Fannie Mae and Freddie Mac was Countrywide Financial, a now defunct corporate behemoth. Former CEO Angelo Mozilo initiated a VIP loan program to purchase political favors and reduced oversight from high-powered elected and appointed government offi-

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25. See LIEBOWITZ, *supra* note 17, at 4–5, 13.

26. EDWARD PINTO, HOW SERIOUS IS THE MORTGAGE PROBLEM THAT WILL CONFRONT PRESIDENT OBAMA? (2009), [http://www.aei.org/docLib/20090116\\_kd3.pdf](http://www.aei.org/docLib/20090116_kd3.pdf).

27. Peter J. Wallison, *Cause and Effect: Government Policies and the Financial Crisis*, AEI FIN. SERVICES OUTLOOK, Nov. 2008, at 4–6, <http://www.aei.org/outlook/29015>.

28. OpenSecrets.org, Lobbying Database, <http://www.opensecrets.org/lobby/clientsum.php?year=2008&lname=Freddie+mac> (last visited Feb. 23, 2010); OpenSecrets.org, Lobbying Database, <http://www.opensecrets.org/lobby/clientsum.php?year=2008&lname=Fannie+mae> (last visited Feb. 23, 2010).

cials. After the Savings and Loan crisis of the 1980s, lenders like Countrywide rose to fill the void in subprime mortgage lending.<sup>29</sup> They even expanded some of the risky lending practices that brought the earlier crisis to a head.<sup>30</sup> A symbiotic relationship thus developed between these non-bank lenders and the GSEs. For example, under former CEO Jim Johnson, Fannie Mae reached a “strategic agreement” with Countrywide CEO Angelo Mozilo in which “Countrywide agreed to deliver a large portion of Fannie’s annual loan volume in exchange for special financing terms.”<sup>31</sup> In fact, Countrywide regularly accounted for ten to thirty percent of all the loans Fannie Mae purchased in a given year.<sup>32</sup> In the words of Angelo Mozilo: “If Fannie and Freddie catch a cold, I catch the . . . flu.”<sup>33</sup>

Freddie Mac likewise joined in the subprime action, partnering with non-bank mortgage lender Ameriquest to install its automated underwriting software onsite. Fannie Mae and Freddie Mac both used Ameriquest’s software to divert subprime loans from private label securitizers on Wall Street, driving up demand for risky junk mortgages.<sup>34</sup>

Eventually, observant analysts and scrupulous political leaders smelled something rotten in the growing “affordable housing” scandal. Yet those who attempted to expose it and push for substantive reforms of housing policies met incredible resistance and often faced well-financed political retribution. Congressman Jim Leach (R-IA), for instance, proposed assessing a fee on the GSEs to offset federal subsidies. Fannie Mae and Freddie Mac killed the idea in only twelve hours.<sup>35</sup> Fannie Mae also coerced then-Treasury Secretary Larry Summers—now Director of the White House Council of Economic Advisors—to “tone down” a report

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29. PAUL MUOLO & MATTHEW PADILLA, CHAIN OF BLAME: HOW WALL STREET CAUSED THE MORTGAGE AND CREDIT CRISIS 112–13 (2008).

30. See LIEBOWITZ, *supra* note 17, at 10.

31. Glenn R. Simpson, *Countrywide Made Home Loans to Gorelick, Mudd*, WALL ST. J., Sept. 25, 2008, at A10.

32. MUOLO & PADILLA, *supra* note 29, at 113.

33. *Id.* at 114.

34. Letter from James Wiener, Managing Dir. of Freddie Mac, and Michael Poulos, Dir. of Freddie Mac, to Margaret Colon, Chief Admin. Officer of Freddie Mac, and Michael C. May, Senior Vice President of Freddie Mac (Apr. 1, 2004) (on file with the Harvard Journal of Law & Public Policy).

35. Owen Ullmann, *Crony Capitalism: American Style*, INT’L ECON., July/Aug. 1999, at 11.

that originally criticized the cozy relationship between the federal government and the GSEs.<sup>36</sup> When Congressman Paul Ryan (R-WI) sought to increase regulation of the GSEs, Fannie Mae sent lobbyists to stalk him and to call every mortgage holder in his district to claim falsely that he was trying to increase their mortgage rates, generating six thousand responses to Congressman Ryan's office.<sup>37</sup> When Ryan transferred to a committee without direct oversight of the GSEs, Fannie CEO Franklin Raines sent him a congratulatory note, as if to say "good riddance."<sup>38</sup> When Congressman Christopher Shays (R-CT) introduced legislation to end the GSEs' unique exemption from SEC registration, he "had lobbyists literally barging into [his] room," while Raines reportedly called the lawmaker to ask "What the hell have [you] done?"<sup>39</sup> The GSEs also retaliated by ending their home-buying forums in Shays' congressional district.<sup>40</sup>

Meanwhile, GSE employees contributed nearly \$15 million between 1998 and 2008 to the campaigns of dozens of members of Congress serving on key committees responsible for oversight of Fannie Mae and Freddie Mac.<sup>41</sup> By the time federal regulators seized the insolvent companies, sitting members of Congress had received over \$4.8 million in political contributions since 1989, including over \$3 million from the GSEs' political action committees.<sup>42</sup> Of that total, fifty-seven percent went to Democrats, and forty-three percent to Republicans.<sup>43</sup> Some of these contributions did not pass muster with the Federal Elections Commission (FEC), and in 2006 Freddie Mac paid the largest fine in FEC history: \$3.8 million.<sup>44</sup> Yet as the money flowed into campaign coffers, the favors flowed out.

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36. *Id.*

37. Paul A. Gigot, *The Fannie Mae Gang*, WALL ST. J., July 23, 2008, at A17.

38. *Id.*

39. Matthew Murray, *A \$90 Million Package Gets Lambasted Again*, ROLL CALL, Dec. 10, 2008, [http://www.rollcall.com/issues/54\\_64/vested/30709-1.html](http://www.rollcall.com/issues/54_64/vested/30709-1.html).

40. *Id.*

41. Wallison & Calomiris, *supra* note 2, at 3.

42. Lindsay Renick Mayer, *Update: Fannie Mae and Freddie Mac Invest in Lawmakers*, OPENSECRETS.ORG, Sept. 11, 2008, <http://www.opensecrets.org/news/2008/09/update-fannie-mae-and-freddie.html>.

43. *Id.*

44. Press Release, FEC, Federal Home Loan Mortgage Corporation ("Freddie Mac") Pays Largest Fine in FEC History (April 18, 2006), available at <http://www.fec.gov/press/press2006/20060418mur.html>.



Additionally, Fannie Mae and Freddie Mac regional partnership offices provided millions in additional contributions to politicians who supported them by funding affordable housing projects in congressional districts. For example, one press release from the office of Senator Charles Schumer (D-NY) read: "Schumer Announces Up to \$100 Million Freddie Mac Commitment to Address Fort Drum and Watertown Housing Crunch."<sup>45</sup> The release touted that "Schumer has frequently partnered with Freddie Mac on creative, affordable housing initiatives around the state," and stated that Freddie Mac had committed to purchase \$100 million of loans originated by HSBC bank, including loans with very low down payments.<sup>46</sup> These politicians then claimed credit with their constituents for bringing home these earmark-like subsidies that did not have to go through the scrutiny of the usual appropriations process.

Fannie Mae and Freddie Mac also served as a revolving door for powerful former politicians, their aides, and even their family members. Former Freddie Mac CEO James Johnson managed Walter Mondale's 1984 presidential campaign, chaired the vice presidential selection committee for presidential candidate John Kerry, and was involved in President Barack Obama's vice presidential selection process.<sup>47</sup> Former Fannie Mae CEO Franklin Raines previously served as President Clinton's Director of the Office of Management and Budget.<sup>48</sup> Former Clinton Deputy Attorney General Jamie Gorelick<sup>49</sup> served as vice chairman of Fannie Mae and earned over \$26 million in compensation.<sup>50</sup> Former Fannie Mae senior vice president John Buckley had served as a Republican congressional staffer and senior advisor to the presidential campaigns of Ronald Reagan in 1984 and Bob Dole in 1996.<sup>51</sup> Another former Fannie senior vice president,

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45. Press Release, Sen. Charles Schumer, *Schumer Announces Up to \$100 Million Freddie Mac Commitment to Address Fort Drum and Watertown Housing Crunch* (November 20, 2006), available at [http://schumer.senate.gov/new\\_website/record.cfm?id=266131](http://schumer.senate.gov/new_website/record.cfm?id=266131).

46. *Id.*

47. Leslie Wayne, *Vetting a Vetter: Obama's Pick Fuels G.O.P. Criticism*, N.Y. TIMES, June 11, 2008, at A21.

48. Ullmann, *supra* note 35, at 9.

49. *Id.* at 8.

50. OFFICE OF FED. HOUS. ENTER. OVERSIGHT, REPORT OF THE SPECIAL EXAMINATION OF FANNIE MAE 58 (2006).

51. Ullmann, *supra* note 35, at 9.

Arne Christenson, had been a senior advisor to Republican House Speaker Newt Gingrich.<sup>52</sup> The son of Republican Senator Bob Bennett worked for Fannie Mae's Utah regional office.<sup>53</sup> Democratic Representative Barney Frank's partner, Herb Moses, worked at Fannie Mae from 1991 to 1998 as Assistant Director for Product Initiatives while Congressman Frank sat on the House Committee with responsibility for oversight of the GSEs.<sup>54</sup> Today, Congressman Frank is the powerful chairman of the House Financial Services Committee with primary responsibility for moving the Obama Administration's comprehensive regulatory reform through the House. On December 11, 2009, the House voted by a narrow 223-202 margin to approve Congressman Frank's 1,279 page bill, a piece of legislation that has been called "the most sweeping overhaul of the nation's financial regulatory system since the Great Depression."<sup>55</sup>

Governance of Fannie Mae and Freddie Mac has long been subjected to political cronyism. Until President George W. Bush ended the practice, the President of the United States appointed five members to the GSEs' boards.<sup>56</sup> This arrangement was unique among publicly traded companies and solely a function of their hybrid public-private nature. These board positions were highly lucrative sinecures that presidents had used for decades to reward loyal political allies. Typically, those appointed to the board by the President served for very short periods of time and contributed very little to the day-to-day operations of the company, yet they were paid handsomely. For example, current White House Chief of Staff Rahm Emanuel was appointed to the board of Freddie Mac by President Clinton in February 2000, where he served for only fourteen months but received \$320,000 in compensation.<sup>57</sup> Emanuel also sold Freddie Mac stock valued between \$100,000 and \$250,000.<sup>58</sup> Emanuel did not serve on any of the board's work-

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52. *Id.* at 8.

53. Bethany McLean, *Fannie Mae's Last Stand*, VANITY FAIR, Feb. 2009, at 145.

54. Bill Sammon, *Lawmaker Accused of Fannie Mae Conflict of Interest*, FOX NEWS, Oct. 3, 2008, <http://www.foxnews.com/story/0,2933,432501,00.html>.

55. Brady Dennis, *House Votes to Reform Financial Regulations*, WASH. POST, Dec. 12, 2009, at A1.

56. Bethany McLean, *The Fall of Fannie Mae*, FORTUNE, Jan. 24, 2005, at 134.

57. Bob Secter & Andrew Zajac, *Emanuel's Freddie Mac days*, CHI. TRIB., Mar. 26, 2009, at 17.

58. *Id.*

ing committees, and the board itself met no more than six times a year.<sup>59</sup> Clinton also appointed lobbyist and golfing partner James Free and former aide Harold Ickes to the Freddie Mac board.<sup>60</sup> Lead investigators working for the House Committee on Oversight and Government Reform are amassing volumes of paper that trace the practice of political favoritism and preferential treatment that stemmed from government interference in the mortgage lending industry.

For the first ten months of the 111th Congress, it appeared that House Speaker Nancy Pelosi and Democrats in Congress were circling their wagons to block a full-scale investigation into how Countrywide Financial, Fannie Mae, Freddie Mac, and a nexus of government officials created the economic storm that now rains hell on American taxpayers. After months of mounting pressure, Republicans on the House Oversight Committee finally were able to prevail upon Chairman Edolphus Towns (D-NY) to issue a wide-ranging subpoena to secure a majority of the records required to conduct a thorough investigation.<sup>61</sup>

Getting to the root causes of the global financial crisis has been the stated goal of both Congress and the White House. Already, however, the Obama Administration is attempting to enact sweeping regulatory reforms and create a host of new regulatory agencies with only nominal reference to the systemic problems in the “affordable” housing policies that triggered our economic crisis and defrauded American taxpayers.

All told, the government’s experiment in unsustainable affordable mortgage lending based on low down payments and “flexible” credit criteria has sucked the equity out of the U.S. housing market, trapped millions of Americans under crushing debt, and seriously damaged global financial markets. In 2006, the value of U.S. housing was estimated at \$22.9 trillion.<sup>62</sup> By late 2009, this number had collapsed to \$16.6 trillion.<sup>63</sup> Outstanding mortgage debt in late 2009 was still \$10.3 trillion,

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59. *Id.*

60. *Id.*

61. Edward L. Andrews, *Housing Oversight Leader Agrees to Subpoena Documents on Mortgage Deals*, N.Y. TIMES, Oct. 24, 2009, at A12.

62. BD. OF GOVERNORS OF THE FED. RESERVE SYS., FEDERAL RESERVE STATISTICAL RELEASE Z.1 FLOW OF FUNDS ACCOUNTS OF THE UNITED STATES: FLOWS AND OUTSTANDINGS FOURTH QUARTER 2009, at 104 (2010).

63. *Id.*

however, higher than it was at the height of the housing bubble in 2006—\$9.8 trillion.<sup>64</sup> Thus, the total loan-to-value ratio of the U.S. residential housing market in late 2009 was 62%, up from just 42.9% in 2006. This trend demonstrates that what was once unthinkable—a U.S. housing market in negative equity—is now an alarming possibility. Rather than pursuing policies that would restore the U.S. housing market to firm footing, the Obama Administration has pumped over \$1.5 trillion into the housing market to artificially prop up prices. This stealthy stimulus, which is completely separate from the \$787 billion boondoggle passed by Democrats last year, has been used to buy up Fannie and Freddie mortgage-backed securities, Fannie and Freddie corporate debt, and Fannie and Freddie preferred equity.<sup>65</sup> When this government housing stimulus is inevitably withdrawn, we may yet have a double-dip in housing prices, bringing the market dangerously close to negative equity.

These statistics are alarming enough on their own, but the real tragedy of the government's affordable housing policy is its impact on average Americans, particularly those of modest means. Millions of these borrowers, who were supposedly helped by federal affordable housing policies, have now been forced into delinquency and foreclosure, destroying their asset base, their credit, and in some cases, their families. For example, Latino homeowners, who once appeared to be among the most frequent beneficiaries of affordable housing policies, are now the victims of the policies that their political representatives in Washington once championed. According to the Pew Hispanic Center, nearly one in ten Latino homeowners said they had missed a mortgage payment or were unable to make a full payment, and three percent said they have received a foreclosure notice in the past year.<sup>66</sup> At the same time, sixty-two percent of Latino homeowners said there have been foreclo-

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64. *Id.*

65. BD. OF GOVERNORS OF THE FED. RESERVE SYS., FEDERAL RESERVE STATISTICAL RELEASE H.4.1 FACTORS AFFECTING RESERVE BALANCES OF DEPOSITORY INSTITUTIONS AND CONDITION STATEMENT OF FEDERAL RESERVE BANKS, MARCH 4, 2010 (2010); U.S. TREASURY, MONTHLY TREASURY STATEMENT OF RECEIPTS AND OUTLAYS OF THE UNITED STATES GOVERNMENT FOR FISCAL YEAR 2010 THROUGH JANUARY 31, 2010, AND OTHER PERIODS (2010).

66. MARK HUGO LOPEZ ET AL., PEW HISPANIC CTR., HISPANICS AND THE ECONOMIC DOWNTURN: HOUSING WOES AND REMITTANCE CUTS, at i (2009).

tures in their neighborhoods, and thirty-six percent say they are worried about their own homes going into foreclosure.<sup>67</sup>

The consequences of these policies brought the entire global financial system to the brink of collapse, destroying trillions in equity and disrupting untold numbers of lives. It is essential to reexamine the borrow and spend, high-leverage policies that became prevalent in the mortgage market as a result of well-intentioned but reckless decisions made by elected officials. Without a return to fiscal discipline and prudent, responsible housing policies, we will continue to make the same mistakes that led to the current financial crisis.

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67. *Id.*