

Redlining: Should Local Government Become Involved?

REDLINING: SHOULD LOCAL GOVERNMENT BECOME INVOLVED? stresses the important role of local government in reversing the spiral of neighborhood decay caused by private disinvestment through a cooperative but aggressive approach that includes improving municipal services, monitoring the information disclosed by federal and state disclosure regulations, and encouraging community-wide participation.

The causes of urban decay are complex. Most authorities agree, however, that the decision by financial institutions to deny loans for the purchase or improvement of homes located in city neighborhoods is a significant factor.¹ When loans are not available to purchase or repair existing properties, a neighborhood often deteriorates rapidly.

Some commentators have depicted the process of neighborhood deterioration as a six-phase cyclinical process.² According to this model, phase one consists of a "healthy" community for which conventional financing is readily available. Phase two begins when small

¹See, e.g., *Hearings on S. 1281 Before the Senate Comm. on Banking, Housing, & Urban Affairs*, 94th Cong., 1st Sess. 50 (1975) (Report of the Governor's Commission on Mortgage Practices to Governor Dan Walker of Illinois, commenting on the findings of several studies) [hereinafter cited as *S. 1281 Hearings*]; *id.* at 581-64 (prepared paper, *The Urban Financing Dilemma*, by George Sternlieb, Professor of City Planning and Director, Center for Urban Policy Research at Rutgers University); *id.* at 618-620 (summary & conclusions of the M.I.T.-Harvard Joint Center report, *Financial Institutions and Neighborhood Decline: A Review of the Literature*, prepared for the Federal Home Loan Bank Board, November, 1974) (concluding that disinvestment occurs late in the decline process but that continued investment arrests the process); *id.* at 1187-1193 (Library of Congress, Congressional Research Service, M. Agelasto, Analyst, Government and General Research Division, *Geographical Discrimination in Mortgage Lending (Redlining)*) (emphasizing the speculative nature of the literature on redlining pending the availability of more unassailable data). See also Werner, Frej, & Madway, *Redlining and Disinvestment: Causes, Consequences, and Proposed Remedies*, 10 CLEARINGHOUSE REV. 501 (1976) (reprint of a comprehensive background paper prepared by the authors as staff members of the National Housing and Economic Development Law Project, Earl Warren Legal Institute, U.C. Berkeley, for hearings held in Philadelphia, July 14-26 1976 by HUD's Office for Fair Housing and Equal Opportunity).

²See Werner, *supra* note 1, at 502-03; *S. 1281 Hearings*, *supra* note 1, at 295-300, 366-72, 485-88, 562, 1242-43.

lenders make the decision to withdraw investment capital, perhaps because of the age of the housing stock or a changing racial composition or a decline in municipal services. This disinvestment³ makes conventional financing somewhat more difficult to obtain. At phase three conventional financing is not available at all, with the result that real estate values drop and residents panic-sell. Phase four finds only contract and government-insured loans available for home financing. At phase five many owners are forced to rent out or subdivide their homes or even to abandon them.⁴ Businesses leave the neighborhood and city services decline. At phase six the deterioration is complete. The community is then marked for urban renewal and the process is ready to begin again.

The decision by lenders to withhold investment capital from an area has come to be known as "redlining."⁵ The term originally referred to the purported practice by lending institutions of circumscribing with red lines on a map those areas of a city considered too risky for mortgage loans. Its usage, however, has been broadened to include more subtle forms of geographic discrimination, such as lower loan to value ratio, lower appraisals, higher interest rates, shorter loan maturities, and diversion of creditworthy applicants to other areas considered more desirable by lending institutions.⁶

³This article follows the practice of most commentators in using the terms "disinvestment" and "redlining" interchangeably. A few writers, however, distinguish the terms. According to one commentator, "redlining" refers to the practice by lenders of refusing to make loans or imposing more stringent loan terms in geographically defined areas, whereas "disinvestment" means the practice by lenders of taking money from depositors in one community and investing it in another community. *S. 1281 Hearings, supra* note 1, at 1242. Others use "redlining" to describe the denial of home financing for arbitrary reasons, reserving "disinvestment" for the neutral practice of withholding credit for justifiable economic reasons. See Michael Agelasto II and Davis Listoken, *Redlining in Perspective—an Evaluation of Approaches to Deal with the Urban Financing Dilemma* (Draft of report, July 16, 1976) (on file at the National Housing and Economic Development Law Project Library, U.C. Berkeley).

⁴Housing abandonment has become a national phenomenon. One survey revealed that "entire neighborhoods housing hundreds of thousands of central city dwellers are in advanced stages of being abandoned by their owners." CENTERS FOR COMMUNITY CHANGE, NATIONAL URBAN LEAGUE, *THE NATIONAL SURVEY OF HOUSING ABANDONMENT 1* (1971) [hereinafter cited as *ABANDONMENT SURVEY*]. See also Nachbaur, *Empty Houses: Abandoned Residential Buildings in the Inner City*, 17 *HOW. L.J.* 3, 10-11 (1971).

⁵Although the term "redlining" is of relatively recent origin, the practice has been recognized for years. Redlining was mentioned as early as 1961 in U.S. COMMISSION ON CIVIL RIGHTS, *HOUSING* 30 (1961). Cf. Note, *Building Abandonment in New York City*, 16 *N.Y.L.F.* 798, 818 (1970) (referring to the practice as "blacklisting"); *ABANDONMENT SURVEY, supra* note 4, passim (citing mortgage disinvestment as one of the forces contributing to urban deterioration). This article uses "redlining" in its broad sense to refer to any discriminatory practice by lending institutions which is based on geographic criteria.

⁶See, e.g., Werner, *supra* note 1, at 501-02. Low loan to value ratio means requiring a higher down payment than would be required for property under other conditions.

The effects of redlining on neighborhood stability have been assessed at all levels of government.⁷ Both the federal government and the state of California have taken actions that require financial institutions to disclose certain mortgage lending information. In addition, California regulations specifically prohibit state-chartered savings and loan associations from practicing redlining. However, because of inadequate enforcement mechanisms, the federal and state regulations are insufficient to reverse the disinvestment process. In the absence of effective state and federal solutions, affected cities must themselves develop programs to insure that financial institutions provide capital to neighborhoods populated by working-class and low-income families. Moreover, city government has a unique vantage point from which it can ascertain the extent of disinvestment and develop appropriate solutions.⁸

⁷Congress has passed the Home Mortgage Disclosure Act of 1975, 12 U.S.C. §§ 2801-2809 (Supp. V 1975) [hereinafter cited as HMDA] (see text accompanying notes 62-73 *infra* for a discussion of the HMDA). States which have passed anti-redlining or mortgage disclosure schemes include California, Colorado, Illinois, Massachusetts, New York, and Wisconsin. For further discussion, see Werner, *supra* note 1, at 517; Comment, *Red-lining and the Home Mortgage Disclosure Act of 1975: A Decisive Step Toward Private Urban Redevelopment*, 25 EMORY L.J. 667, 699 n.187 (1976); Note, *Urban Housing Finance and the Redlining Controversy*, 25 CLEV. ST. L. REV. 110, 120-22 (1976). Anti-redlining ordinances have been passed by Chicago (CHICAGO, ILL. MUNICIPAL CODE ch. 7, §§ 7-30 - 7-40, *as amended* June 26, 1974) and Cleveland (CLEVELAND, OHIO ORDINANCE no. 1135-75, §§ 1.231601-1.231603 (Apr. 28, 1976)). For a discussion of the Chicago ordinance see Note, *Redlining—The Flight Against Discrimination in Mortgage Lending*, 6 LOY. U.L.J. 71, 71-72, 78-79 (1975). For a comparison of the Chicago and Cleveland ordinances, see Note, *Urban Housing Finance and the Redlining Controversy*, 25 CLEV. ST. L. REV. 110, 122-23 (1976). These and other governmental actions have occurred in response to concerted lobbying by numerous community action groups, including a national network called the National People's Action on Housing (NPAH). Similar lobbying groups in California include the California Citizens Action Group of San Francisco, and Sacramento; the Midpeninsula Citizens for Fair Housing of Palo Alto; the East Oakland Housing Committee; the Oakland Training Institute; United Neighbors in Action of Oakland; and the Center for New Corporate Priorities and the Community Information Project of Los Angeles.

⁸The extent of redlining and, hence, the solution will vary from city to city. For example, one-tenth of Sacramento has been redlined, as compared to one-third of the Los Angeles area, according to Roberto Moreno, Senior Project Coordinator of the Los Angeles Mayor's Office of Urban Development. Telephone interview (Oct. 26, 1976). Atlanta has suffered only slight disinvestment compared to cities like Chicago. *S. 1281 Hearings*, *supra* note 1, at 548 (statement of George Sternlieb); ABANDONMENT SURVEY, *supra* note 4, at 71-74. Some communities are experiencing reinvestment. For example, San Franciscans are showing renewed interest in their old housing stock. This has been evaluated in two ways. The vice-president of Domestic Funds Management of Bank of America views it as a welcome harbinger of reinvestment in other California cities. A. Rothenberg, *The Impact of Real Estate Lending Biases on the Purchase and Rehabilitation of Older Urban Residences* 2-4 (1976). Others, however, suggest that such reinvestment has unduly increased the cost of housing for the poor and for nuclear families. They refer to it as "middle-classing" a neighborhood, according to David Prowler, Housing Specialist, City of San Francisco (interview

This article considers redlining from the perspective of the role of local government. The first section outlines the principal issues surrounding the redlining controversy. The second section discusses certain practices of local governments which have contributed to the loss of investment capital. The third section considers the effectiveness of state and federal programs instituted to combat redlining. The final section proposes an integrated program which cities can undertake to insure that private lenders supply the capital needed for the preservation of city neighborhoods.

I. AN OVERVIEW OF THE REDLINING QUESTION

There are two general issues underlying the redlining question. One is the extent to which private disinvestment has contributed to the cycle of urban deterioration. The other is whether private lending institutions have a responsibility to invest in their communities and whether this responsibility is consistent with the duty the institutions owe to their investors. These two general issues have been debated in several different forums.⁹

Most community organizations and commentators view disinvestment by lending institutions as having a major impact on neighborhood stability. They claim that the decision to redline a neighborhood is often made before there is any significant evidence that the area is deteriorating. This decision operates to foster the decline of a neighborhood which otherwise might not have occurred.¹⁰ The lender's perception of the neighborhood as unworthy of investment is therefore considered to be a "self-fulfilling prophecy."¹¹

of Nov. 10, 1976). According to an article in the San Francisco Chronicle, the current enthusiasm for restoring old buildings is responsible for increasing the price of residential property in San Francisco at the rate of about one percent per month and for causing former ghetto areas to become beyond the means of the average low-income family. Feb. 28, 1977, at 4, cols. 1-6.

⁹The major national forum has been the *S. 1281 Hearings*, *supra* note 1. State of California hearings include *Special Hearings on Redlining, California Business and Transportation Agency* (June 16 and 23, 1975) [hereinafter cited as *Special Hearings*] and the California Senate Committee on Local Government Hearings on A.B. 2594 (Hughes-Torres Anti-Redlining bill, subsequently defeated in Committee) (October 12 and 13, 1976) (not transcribed).

¹⁰See description of phase two in the urban decay cyclical model in text accompanying note 2 *supra*. Some observers, in the absence of hard proof that redlining actually causes neighborhood deterioration, acknowledge that it accelerates the rate of decline. *S. 1281 Hearings*, *supra* note 1, at 595 (statement of Thomas R. Bomar, Chairman, Federal Home Loan Bank Board); *id.* at 1193 (M. Agelasto, Analyst, Library of Congress, Congressional Research Service).

¹¹This phrase recurs repeatedly in the commentaries. See, e.g., Werner, *supra* note 1, at 502; *S. 1281 Hearings*, *supra* note 1, at 1 (Senator Proxmire's opening remarks refer to "self-fulfilling reality"); *id.* at 533 (remarks by William L. Taylor, Director, Center for National Policy Review, School of Law, Catholic University); *id.* at 522 (statement of George Sternlieb).

Critics of redlining practices also contend that the decision by lenders to disinvest is often premised on two unreliable and unfair appraisal and underwriting¹² criteria which traditionally have been employed by the mortgage lending and real estate industries.¹³ The first criterion is an "obsolescence" factor which assumes the inevitable deterioration of neighborhoods. As a neighborhood ages, so the assumption goes, higher income property owners are replaced by lower income renters, with houses undergoing physical deterioration in the process. Appraisers then speculate on the "remaining economic life"¹⁴ of a neighborhood and ascribe market value to housing in accordance with this speculation.

The second criterion is a "conformity" factor which regards property value as dependent on ethnic and economic homogeneity as well as conformity in housing quality and age. Thus if the residents of a neighborhood have different income levels, ethnic heritages, or life-styles, or if the houses are not all of the same general quality, the appraised value of the house goes down.

These criteria are criticized as being unreliable indicators of the stability of a particular neighborhood. While it is true that many older urban neighborhoods populated by people of diverse ethnic and cultural backgrounds have deteriorated, it is not true in every instance. Moreover, the decision to withhold capital inevitably leads to neighborhood decline, since if capital is unavailable owners are unable to maintain their homes or market them.

The obsolescence and conformity criteria are also criticized as being unfair since they reflect subjective notions by the lenders which place little value on an urban life style. Lenders and their appraisers, likely to reside themselves in the suburbs, view cities as primarily suited for commercial development.¹⁵ They appraise city

¹²The appraiser and the underwriter perform separate but related functions. The appraiser estimates the market value of property to be used as collateral. The underwriter estimates the risks involved in making a loan. This may involve both the property and the earnings of the potential borrower.

¹³These criteria are referred to as "a product of inertia and folk wisdom or superstition" in *S. 1281 Hearings, supra* note 1, at 529 (statement of William L. Taylor). For a discussion of how both factors operate, see Werner, *supra* note 1, at 514-16. For a more sympathetic version coupled with an acknowledgment that the criteria are no longer valid, see Rothenberg, *supra* note 8, 17-33 and *passim*.

¹⁴See *Traditional Residential Appraisal and Underwriting Standards and Their Contribution to Redlining Practices: An Analysis and Recommendations for Policy Change* at 7 (statement by Darel E. Grothaus, Seattle Housing Coordinator, at HUD Administrative Meeting on Redlining, Philadelphia, July 16, 1976) (on file at National Housing and Economic Development Law Project Library, U.C. Berkeley).

¹⁵The criteria are also said to be dependent in large part on historical accident. The advent of the FHA in 1934 with its low down payment and long term financing enabled many Americans for the first time to become homeowners. FHA policies encouraged home ownership in the emergent suburbs, a develop-

housing stock as having a short economic life since, in their view, it will be inevitably torn down and replaced by commercial development. This analysis of the market unfortunately penalizes persons who genuinely prefer city living and who wish to buy or rehabilitate homes in an older or mixed neighborhood. It also lowers the property values of remaining city residents. It deprives income property owners of the ability to obtain capital to maintain their properties adequately. And, whether used purposefully to discriminate or not, it has had a disproportionate impact on the poor and on racial minorities.¹⁶

Representatives of financial institutions respond to these criticisms by either denying that redlining exists¹⁷ or defending it as a rational response to neighborhood conditions.¹⁸ Many lenders maintain that older homes are less desirable because they are more expensive to maintain and offer fewer amenities.¹⁹ Similarly, they maintain that the condition of surrounding property legitimately affects property values and that a house may be generally unmarketable because of

ment which was reinforced by the creation of new highway systems and the expansion of light industry into the suburbs. Neighborhood lending institutions began to grow into large enterprises, requiring the development of uniform appraisal standards. The growth of secondary mortgage markets likewise encouraged and served to entrench uniform appraisal standards. While the middle classes were being lured to the suburbs, minority groups emigrated to the cities, accelerating the abandonment of the central cities by the middle classes and by businesses who followed them there. See Rothenberg, *supra* note 8, at 10-16.

¹⁶See Werner, *supra* note 1, at 504-07 (Ch. V. Redlining, Race, and Class). The "conformity" principle is expressed as "neighborhood compatibility" in the FHLMC (Federal Home Loan Mortgage Corporation) Single Family Underwriting Computer Matrix, *reprinted in* Werner, *id.* at 516, which may be a euphemistic echo of official overt practices detailed in the FHA underwriting manual of 1938: "If a neighborhood is to retain stability, it is necessary that properties shall continue to be occupied by the same social and racial groups." *Reprinted in* U.S. COMMISSION ON CIVIL RIGHTS, HOUSING, at 16 (1961).

¹⁷See the statement of Grover J. Hansen, President, First Federal Savings & Loan Ass'n of Chicago, that "a few people keep the controversy alive" and that the practice is largely "imaginary." *S. 1281 Hearings, supra* note 1, at 829-33.

¹⁸Lenders single out zoning policies, housing and health code enforcement, citizen and home-owner interest, and property tax rate as neighborhood indicators to which they respond. *S. 1281 Hearings, supra* note 1, at 872 (statement of William B. O'Connell, Public Relations Counsel, U.S. League of Savings Ass'ns). Forecasting "adverse trends" in a community is justified as a prevention of loss to property values. If any of the above indicators appear, they may be "deemed a threat to the value of a property" and "influence the loan decision." *Id.* But this argument can cut the opposite way. If the decision to redline is made prematurely, the property values of all residences in an area may drop prematurely. Thus, the security of loans previously made by all lenders in an area is threatened.

¹⁹Some lenders admit candidly that "new homes" in "conforming neighborhoods" are the most desirable. See *Special Hearings, supra* note 9, Hearing No. 2, at 5 (testimony of Arthur L. Ferris, Chairman of the Board of Republic Federal Savings & Loan Ass'n). For a discussion of "conforming neighborhoods" see notes 12-15 *supra* and accompanying text.

neighborhood conditions.²⁰ The fact that poor persons and minorities suffer the most from disinvestment is regarded as a reflection of the economic disparities of society as a whole rather than of discriminatory lending practices.²¹

The second general issue underlying the redlining controversy is whether private lending institutions owe a public responsibility to their communities or are responsible only to their depositors. Many commentators contend that financial institutions owe an obligation to provide investment capital to the communities in which they are located, provided, of course, that the applicants are creditworthy and the property has sufficient value as collateral.²² This argument rests on statutory goals articulated in the enabling legislation for both federal and state savings and loan institutions. The Federal Homeowners Loan Act of 1933²³ authorized federally chartered savings and loan associations in communities inadequately served by existing lenders "[i]n order to provide local mutual thrift institutions in which people may invest their funds and in order to provide for the financing of homes"²⁴ The stated purpose of Congress was "to promote thrift of people locally, to finance their own homes and the homes of their neighbors"²⁵ Similarly, savings and loan institutions chartered by the state of California are required to include among their corporate purposes encouraging "home building" and "the loaning of money."²⁶ In addition, both federal and state regulations require an institution to demonstrate community need

²⁰See *S. 1281 Hearings, supra* note 1, at 837 (statement of Grover J. Hansen: "If the neighborhood is not one desired by individuals, [the availability of] financing will not make it attractive enough for individuals to reorder their priorities and to decide to buy a house in that neighborhood."). See also *Special Hearings, supra* note 9, Hearing No. 2, at 26-27 (statement of William Popejoy, American Savings & Loan Ass'n: "A house worth \$100,000 in Beverly Hills may be worth only \$25-30,000 in Watts").

²¹*S. 1281 Hearings, supra* note 1, at 843 (statement of Grover J. Hanson); *Special Hearings, supra* note 9, Hearing No. 2, at 10-11 (testimony of Herb Young, President, Gibraltar Savings).

²²See Werner, *supra* note 1, at 523, 530-34; see also H.R. REP. NO. 94-561, 94th Cong., 1st Sess. 19 (1975).

²³12 U.S.C. §§ 1461-1470 (1970 & Supp. V 1975), as amended by Act of Aug. 3, 1976, Pub. L. No. 94-375, § 22, 90 Stat. 1078 (1976).

²⁴*Id.* § 1464(a) (1970).

²⁵From H.R. REP. NO. 1418, 72d Cong., 1st Sess. (1932) as quoted by Senator Proxmire in *S. 1281 Hearings, supra* note 1, at 795 (in an exchange with Thomas L. Bomar, Chairman, Federal Home Loan Bank Board). See also *North Arlington Nat'l Bank v. Kearny Federal Savings & Loan Ass'n*, 187 F.2d 564 (3d Cir. 1951), cert. denied, 342 U.S. 816 (1951). The court said, "[Savings and loan] associations . . . can only be set up when . . . there is a need for the institution in the community. . . . Business with this type of institution is done, so far as payments to it are concerned, in small amounts and at frequent intervals. . . . [T]he payments on [a person's] loan or his subscription to shares will be a matter where convenience in the location of the association's office is of some concern to the customer." *Id.* at 567.

²⁶CAL. FIN. CODE § 5503 (West 1968).

before a new savings and loan association is formed or a new branch of an existing association is established.²⁷

Lenders assert that they owe a fiduciary duty to their depositors to maximize their investments.²⁸ They also maintain that they have no legal obligation to make loans in the areas in which they are located.²⁹ Accordingly, lenders feel they must consider primarily the "market salability"³⁰ of mortgages. They point to the unwillingness of the secondary mortgage market³¹ to acquire loans in urban areas and to the general proposition that property values are more likely to rise in the suburbs.³² In addition, lenders point out that urban loans are more costly.³³ Since service costs are fixed and urban loans tend to be smaller, such loans incur relatively higher administrative costs and more frequent foreclosures and repayment difficulties.³⁴

The original statutory mandates to savings and loan associations to provide for local needs have been ignored for the most part until the recent public concern over redlining.³⁵ If the lending industry

²⁷ 12 C.F.R. § 543.2(b) (1977) requires a federal association applying for a charter to show that "there is a necessity for the proposed association in the community to be served by it." A similar requirement for the opening of a branch office is imposed by *id.* § 545.14(c). California requires that "the public convenience and advantage will be promoted" before approving formation for state institutions, CAL. FIN. CODE § 5507 (West 1968), or branching, *id.* § 6001 (West Supp. 1976).

²⁸ See *S. 1281 Hearings*, *supra* note 1, at 835 (statement of Grover J. Hansen to the effect that the duty owed to depositors requires that institutions make only sound loans at maximum profit and maintain proper reserves).

²⁹ *Id.* at 856-857, pointing to the many exceptions permitted under the geographic limitation imposed on real property loans made by savings and loan institutions. On the statutory obligation of lenders to invest in particular neighborhoods, see the exchange between Thomas F. Bomar and Senator Proxmire, *id.* at 795-98.

³⁰ Rothenberg, *supra* note 8, at 36.

³¹ The secondary mortgage market consists of private and government investors who purchase mortgages from loan originators in areas where loan demand exceeds deposits and thus facilitate the flow of capital between areas. For further discussion, see Werner, *supra* note 1, at 535.

³² Rothenberg, *supra* note 8, at 36.

³³ See *S. 1281 Hearings*, *supra* note 1, at 807 (William A. Beasman, Jr., on behalf of National Association of Mutual Saving Banks).

³⁴ The problem is ascribed to lower income levels and a higher unemployment rate in the inner city in *Special Hearings*, *supra* note 9, Hearing No. 2, at 10-11.

³⁵ The federal agencies regulating financial institutions have been primarily concerned with the soundness of the financial condition of their regulatees. (See note 41 *infra* for a listing of the federal agencies and the institutions they regulate.) Increasingly, these agencies are being charged with failure to fulfill their statutory responsibilities to curtail discrimination in lending and to serve their communities adequately. See Werner, *supra* note 1, at 510-14. See also *S. 1281 Hearings*, *supra* note 1, at 61 (Illinois Governor's Commission on Mortgage Practices):

... were the FHLBB [Federal Home Loan Bank Board] to begin to regulate the attention of Federal savings and loans to their local primary service areas, redlining would cease its deleterious impact on older neighborhoods

were to be held accountable to their home localities, many of the industry's rationales for redlining would appear to be unreasonable. For example, the fact that urban loans may cost more means at the most some reduction in profit. Certainly no one seriously argues that lenders should operate at a loss or that they should risk capital indiscriminately. But it is not unreasonable to suggest that in order to serve the public they suffer a slight decline in profits. In sum, private lending policies have had serious consequences for city neighborhoods. It seems imperative, therefore, that private lenders be required to meet their statutory responsibilities and to provide loans to capital-starved city neighborhoods.

Lending institutions feel that it is unfair that they be singled out to remedy what they view as an essentially societal problem and call instead for increased government housing programs as a solution to deteriorating neighborhoods.³⁶ However, government housing programs have sometimes impaired neighborhood stability.³⁷ Furthermore, even if government housing programs achieved satisfactory results, no level of government has the funds to meet the nation's housing demands.³⁸ The capital resources necessary to meet these needs are primarily in the hands of the private sector.³⁹ The role of government, then, must be to insist that the private sector meet its public obligations. For local governments, this may involve a basic policy change. Instead of merely reacting to private market forces,⁴⁰

³⁶ See *Special Hearings*, *supra* note 9, Hearing No. 2, at 11, recommending that the state of California establish a private mortgage insurance agency.

³⁷ FHA (Federal Housing Authority) insurance, for example, though designed to supplement conventional lending, has instead often totally replaced risk capital. See *S. 1281 Hearings*, *supra* note 1, at 577 (testimony of George Sternlieb regarding neighborhoods stigmatized as "FHA neighborhoods"). See also the testimony of Jonathan Leher-Graiwer of the Western Center on Law and Poverty, *Special Hearings*, *supra* note 9, Hearing No. 1 at 19, that "because of the mortgage limits attached to FHA insured loans, the value of houses in an area receiving little conventional lending may decrease to conform to FHA loan limits." Furthermore, when a mortgage is government insured, the institution holding the mortgage will suffer no loss in the event of foreclosure. Thus the primary lender has no incentive to evaluate carefully the borrower as a credit risk or the value of the security property. The lender also has no incentive to police the property in order to maintain its value as loan collateral or to refinance the loan for the making of necessary repairs. In effect, many lenders appear to have used the government guarantee as loan collateral rather than the property and the earnings of the borrower. *S. 1281 Hearings*, *supra* note 1, at 577. The result has been a great number of FHA foreclosures compounded by shady dealings by real estate speculators. For a graphic description of how this has occurred in several cities, see S. BOYER, *CITIES DESTROYED FOR CASH: THE FHA SCANDAL AT HUD* (1973). Details about real estate speculation on FHA properties in California can be found in the testimony of Valerie Pope, Exec. Dir., San Bernardino Community Development Corporation, *Special Hearings*, *supra* note 6, Hearing No. 2, at 31-35.

³⁸ See INSTITUTE FOR LOCAL GOVERNMENT, *LOCAL GOVERNMENT'S ROLE IN HOUSING 102* (1975) [hereinafter cited as *HOUSING ROLE*].

³⁹ *Id.* at 102-03.

⁴⁰ *Id.* at 66.

city governments must define their housing needs and then communicate these needs to private lenders. They must also examine critically their own participation in the disinvestment process.

II. LOCAL GOVERNMENT AS PART OF THE PROBLEM

Activities and inactivity of local government directly affect the quality of low income inner-city housing—often in ways that are not intended. The level of normal city services in a neighborhood seems to be proportional to the income level of its residents, and this accelerates deterioration. Programs designed to improve housing sometimes make it worse. . . .⁴¹

Certain activities of local government are frequently cited as contributing factors in the disinvestment process.⁴² These activities, which include building code enforcement, zoning enforcement, urban renewal practices, delivery of municipal services, and taxing policies, directly affect the quality of neighborhood life. Beyond this direct effect, however, these activities affect the lenders' perceptions of the stability of a neighborhood and in turn the amount of loan money which is made available. It is therefore essential that local governments which are intent on attracting private reinvestment examine their own policies and practices and change those which discourage private investment.

Ironically, many policies designed to enhance the quality of housing and neighborhood life in a city have had the opposite effect. Building codes exemplify this kind of policy. If a city does not enforce its building and housing codes, deterioration of an entire neighborhood can occur; yet rigorous enforcement in poor areas without corresponding financial assistance can also result in abandonment and blight.⁴³ A recurrent phenomenon in enforcing building codes is that, after decades of non-enforcement, large scale remedial work must be done to correct the illegal building activity of prior years. At this point, the substandard buildings may be unrepairable or rehabilitation costs prohibitive. If redlining has already occurred, re-

⁴¹Nachbaur, *supra* note 4, at 66.

⁴²See note 18 *supra* and accompanying text. There appear to be no studies dealing with the relationship between local government actions and neighborhood decay, in contrast to the growing body of material on the relation between lending industry disinvestment and neighborhood decay.

⁴³Nachbaur, *supra* note 4, at 39-43. See also Note, *Enforcement of Municipal Housing Codes*, 78 HARV. L. REV. 801 (1965) [hereinafter cited as *Enforcement*]; INSTITUTE FOR LOCAL SELF-GOVERNMENT, HOUSING ASSISTANCE FOR LOCAL GOVERNMENTS 26 (1976) [hereinafter cited as HOUSING ASSISTANCE]. An incident involving the International Hotel in San Francisco exemplifies the squeeze both landlords and tenants can find themselves in, where building repairs coupled with tax increases forced a rent increase that tenants were unable to pay. See San Francisco Chronicle, May 24, 1977, at 39, cols. 1-2.

habilitation capital will be unavailable even for repairable buildings.⁴⁴ Nevertheless, aggressive code enforcement has worked well in some communities to prevent decay. This is particularly true if other public policies are supportive of property maintenance, such as tax abatement statutes which allow for a moratorium on assessment increases after completion of repairs.⁴⁵ In short, to the extent lack of building code enforcement allows properties to deteriorate and to the extent overzealous code enforcement precipitates abandonment, these practices can be said to discourage private investment.

As with building codes, the purpose of zoning ordinances is to upgrade and stabilize neighborhood life. Unfortunately, the development of most large cities preceded the advent of zoning. Consequently the neighborhoods of many cities contain a mixture of incompatible land uses. Faced with this situation, cities should at least require that incompatible uses in an area be phased out through compulsory amortization.⁴⁶ In practice, however, city zoning boards have frequently granted variances, and some have been willing even to modify their ordinances to permit hostile uses in residential areas.⁴⁷

Zoning also has worked in conjunction with other forces to create urban blight. For example, overzoning for apartments in the central city without overseeing the quality of the development or adequately planning for supportive city services can lead to deterioration.⁴⁸ The more people there are in an area, the more wear on both properties and services. Therefore, greater density should be accomplished by more zealous code enforcement and delivery of services but often is not. The result is neighborhood decline and disinvestment.

Urban renewal is another program which should arrest the processes of abandonment and decline but sometimes actually fosters it.⁴⁹ In most cases, actual acquisition of the area for redevelopment drags on for years.⁵⁰ Thus, a neighborhood which has been designated for

⁴⁴See ABANDONMENT SURVEY, *supra* note 4, at 64. In some instances code enforcement acts as the "tipping point" in the owner's decision to abandon.

⁴⁵*Enforcement*, *supra* note 43, at 856. See also ABANDONMENT SURVEY, *supra* note 4, at 73.

⁴⁶Compulsory amortization refers to the compulsory termination of a non-conforming use at the end of a specified period.

⁴⁷In Cleveland, "bars, gambling dens, and houses of prostitution were tolerated, notwithstanding better and vociferous community objections." ABANDONMENT SURVEY, *supra* note 4, at 33.

⁴⁸Nachbaur, *supra* note 4, at 33.

⁴⁹Testimony of Senator Goodell, *Subcommittee on Housing and Urban Affairs of the Sen. Comm. on Banking and Currency, Housing and Urban Development Legislation of 1970*, 91st Cong., 2d Sess. 1 (Comm. Print 1970) at 832, quoted in Nachbaur, *supra* note 4, at 34.

⁵⁰The process took ten years in a Baltimore area. 1 HEARINGS BEFORE THE NAT'L COMM'N ON URBAN PROBLEMS 69 (1967) [hereinafter URBAN HEARINGS].

urban renewal can deteriorate in the interim into a slum that lasts for years. Theoretically, the local redevelopment agency has a duty not only to provide for relocation of the residents of a designated area but also to maintain the area and provide it with adequate services until relocations are accomplished.⁵¹ In practice, however, local governments neglect to enforce code violations or to deliver an adequate level of services.⁵² Furthermore, too often the renewal neighborhoods are replaced by housing for higher-income occupants or by commercial buildings. The result is the displacement of slums into adjoining neighborhoods.⁵³ Thus, although the renewal area itself may not suffer from disinvestment, the fact that it causes deterioration to spread to adjacent areas can cause those areas to be subject to financial disinvestment.

The failure of municipal government to maintain an adequate level of essential services—such as sanitation, transportation, street maintenance, and lighting—may cause financial institutions to question the stability of a city neighborhood.⁵⁴ Although overcrowded conditions inflate the level of services needed in slum neighborhoods, the delivery is usually lower than is provided in non-slum areas.⁵⁵ Even where services are seemingly equal, as where all neighborhoods receive twice weekly garbage pickup, the overcrowded area suffers if its population density requires daily pickup in order to maintain sanitary conditions.⁵⁶

Unfortunately, city services along with other city government activities depend primarily on real property taxes for funding. Many cities find themselves confronted with the Hobson's choice of either curtailing services or increasing taxes.⁵⁷ Either alternative is likely to affect adversely the quality of life in the neighborhood. On the one hand, reduced services cause an area to degenerate rapidly. On the other hand, if a city increases its tax rate in order to upgrade services, it may discourage rehabilitation or improvement of existing property. Recent studies indicate that, although in many areas fear of a tax increase is not as serious an obstacle to rehabilitation as it is generally assumed to be, such fear is a significant deterrent in areas where pro-

⁵¹For a detailed list of the legal duties of the local public redevelopment agency, see HUBBARD, *Landlord Duties of the Local Public Agency: A Source of Protection for Residents in Urban Renewal Areas*, in HOUSING 1970-1971, AN AMS ANTHOLOGY 416 (1972).

⁵²See URBAN HEARINGS, *supra* note 50, at 69.

⁵³ABANDONMENT SURVEY, *supra* note 4, at 16.

⁵⁴This kind of municipal policy has been called a "subtle but inexorable policy of service disinvestment." ABANDONMENT SURVEY, *supra* note 4, at 93.

⁵⁵G. STERNLIEB, *THE TENEMENT LANDLORD* 231 (1966) as quoted in ABANDONMENT SURVEY, *supra* note 4, at 92.

⁵⁶See, e.g., URBAN HEARINGS, *supra* note 50, at 68.

⁵⁷Nachbaur, *supra* note 4, at 31.

erty values are already declining.⁵⁸ Absentee owners in these areas tend to let their properties deteriorate in order to maximize cash flow. Even owner-occupants may be deterred from improving their property if improvements are used by the city as the basis for a tax reassessment.

The foregoing analysis isolates certain practices of local government which have exacerbated the disinvestment process. The analysis is complicated by the fact that policies such as code enforcement which encourage abandonment and deterioration in some situations appear to encourage property maintenance in others.⁵⁹ Hence no standard solution can be developed which will work in every instance. The key to a solution may be contained in the study of a city that has escaped disinvestment.⁶⁰ The study points to the co-existence within the city of two factors. One factor is the willingness on the part of the real estate and lending industry to invest in all areas of the city, including those populated by working-class and low-income residents. The other consists of enlightened public policies that work in concert to encourage property maintenance.⁶¹ Although the study does not establish a causal relationship between the two factors, it seems plausible that a city government which demonstrates confidence in its neighborhoods might inspire a similar confidence in lenders.

In addition to attempting to attract investment capital through indirect means, cities can attack the problem of redlining more directly. Before undertaking any direct action, however, a city must be armed with the facts. Fortunately, cities now have access to information on lending practices.

III. THE FEDERAL MORTGAGE DISCLOSURE ACT AND THE CALIFORNIA ANTI-REDLINING REGULATIONS AS INFORMATIONAL TOOLS

Although the existence of redlining has been widely discussed, it has been a difficult practice to prove. Not only is redlining often manifested in very subtle ways, but basic information on lending patterns has been impossible to obtain. However, the recent enactment of the federal Home Mortgage Disclosure Act and the promul-

⁵⁸HOUSING ASSISTANCE, *supra* note 43, at 79, citing ARTHUR D. LITTLE, INC., A STUDY OF PROPERTY TAXES AND URBAN BLIGHT; PRICE, WATERHOUSE & CO., A STUDY OF THE EFFECT OF REAL ESTATE PROPERTY TAX INCENTIVE PROGRAMS UPON PROPERTY REHABILITATION AND NEW CONSTRUCTION; AND G. STERNLIEB, RESIDENTIAL ABANDONMENT.

⁵⁹See text accompanying notes 43-45 *supra* regarding the potential harm of strict code enforcement. Conversely, the policy has worked to the benefit of property values in Atlanta. ABANDONMENT SURVEY, *supra* note 4, at 73.

⁶⁰*Id.*

⁶¹Strict code enforcement, a willingness to act swiftly on tax delinquencies, and a low tax rate constitute the Atlanta formula. *Id.*

gation of regulations by the California Business and Transportation Agency make available information that should help to determine the extent of redlining practices.⁶²

In 1975, Congress passed the Home Mortgage Disclosure Act (HMDA)⁶³ for the purpose of enabling citizens and government officials to ascertain whether financial institutions are fulfilling "their obligations to serve the housing needs of [their] communities"⁶⁴ and "to assist *public officials* in their determination of the distribution of *public sector investments*."⁶⁵ Thus, although the HMDA aims at nothing more than filling an informational gap, its references to "public officials," "communities," and "public sector investments"

⁶²The applicability of these laws to individual or class actions under federal and state civil rights and fair housing laws has been treated extensively elsewhere. See, e.g., Doehrman, *Redlining: Potential Civil Rights and Sherman Act Violations Raised by Lending Policies*, 8 IND. L. REV. 1045 (1975); Duncan, Hood & Neet, *Redlining Practices, Racial Resegregation, and Urban Decay: Neighborhood Housing Services as a Viable Alternative*, 7 URBAN LAW. 510 (1975); Werner, *supra* note 1; Comment, *The Legality of Redlining Under the Civil Rights Laws*, 25 AM. L. REV. 463 (1976). In brief, these commentators suggest that redlining, where shown to have a discriminatory effect on racial minorities, would constitute a cause of action under various civil rights and fair housing laws. These include the Civil Rights Act of 1870, § 16, 42 U.S.C. § 1981 (1970), guaranteeing the right of contract; the Civil Rights Act of 1866, § 1, 42 U.S.C. § 1982 (1970), guaranteeing the right to purchase real property; Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000(d) (1970), prohibiting discrimination under any program or activity receiving federal financial assistance other than through contract of insurance or guaranty (the latter exception rules out the federal financial assistance awarded to lending institutions in the form of deposit insurance, but there is provision for direct financial advances to banks by the FHLBB provided for in 12 U.S.C. § 1429, and a recent case, *Laufman v. Oakley Building and Loan Co.* 408 F. Supp. 489 (S.D. Ohio 1976), held that such advances subjected the defendant loan company to liability under Title VI); the Fair Housing Act, Title VIII of the Civil Rights Act of 1968, §§ 801-819 and 901, 42 U.S.C. §§ 3601-3631 (1970), prohibiting discrimination on the basis of race, color, religion, sex, or national origin in the sale or rental of housing by private owners, real estate brokers, or financial institutions (§ 3605 specifically prohibits discrimination by lending institutions). California counterparts of the federal laws include the Unruh Civil Rights Act, CAL. CIV. CODE §§ 51-53 (West 1954), which prohibits discrimination by all business establishments, and the Rumford Fair Housing Act, CAL. HEALTH & SAFETY CODE §§ 35700-35743 (West 1973), providing for an administrative remedy only. Courts have held under all these statutes that the evidentiary standard need meet only the "discriminatory effects" test enunciated in *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971) (a Title VII, 42 U.S.C. § 2000(e) (1970), case.). The federal and state disclosure laws may then serve the very useful purpose of documenting a cause of action under the civil rights and fair housing laws. However, no case challenging the discriminatory effects test under these statutes has been decided since the U.S. Supreme Court ruled that discriminatory purpose must be proven under the equal protection clause in *Washington v. Davis*, 426 U.S. 229 (1976). In *Int'l Brotherhood of Teamsters v. United States*, 45 U.S.L.W. 4506 (May 31, 1977), the Court upheld a seniority system that perpetuated pre-Title VII discrimination but did not specifically overturn the *Griggs* test.

⁶³12 U.S.C. §§ 2801-2809 (Supp. V 1975).

⁶⁴*Id.* § 2801(b).

⁶⁵*Id.*, emphasis added.

appear to encourage local governments to monitor the disclosed information and to use public funds as leverage to induce lenders to provide loans in capital-deprived areas.

The HMDA itself is brief and very general. Its implementation depends primarily on the Board of Governors of the Federal Reserve System, which is given authority to develop specific regulations to meet the goals of the Act.⁶⁶ The HMDA applies to all banks, savings and loan associations, building and loan associations, homestead associations, and credit unions, which have assets of more than ten million dollars and which make federally related loans.⁶⁷ The Act requires these institutions to compile and make available certain information about their lending activity within a geographic unit called a standard metropolitan statistical area (SMSA).⁶⁸ Specifically, within each SMSA in which the institution has a home or branch office the institution must disclose the number and total amount of mortgage loans granted or purchased by the institution each fiscal year.⁶⁹ Certain categories of loans within the loanmaking office's SMSA must also be disclosed, including federally insured loans, home improvement loans, and loans to absentee owners.⁷⁰ All agencies with regulatory authority over depository institutions are empowered to enforce compliance with the Act and the implementing regulations.⁷¹

⁶⁶*Id.* at § 2804(a). The Federal Reserve System has promulgated Regulation C in 41 Fed. Reg. 23,931 (1976) to be codified in 12 C.F.R. § 203. The most important of these regulations requires that reporting be done by census tract, after an initial allowance period for reporting by zip code, at 12 C.F.R. § 203.4(3); that the data be available for personal inspection or by mail at reasonable cost to any person upon request, *id.* at § 203.5(b); and that state-chartered institutions subject to substantially similar requirements under state laws be exempted, *id.* at § 203.3(a)(3).

⁶⁷12 U.S.C. § 2802(2) (Supp. V 1975). 12 C.F.R. § 203.2(d) (1977) defines a federally related loan as

any loan (other than temporary financing such as a construction loan) which (A) is secured by a first lien on residential real property designed principally for the occupancy of from one to four families; and (B)(i) is made in whole or in part by a depository institution which is regulated by any agency of the Federal Government; (ii) is made in whole or in part, or insured, guaranteed, supplemented or assisted in any way, by the Secretary of Housing and Urban Development or any other officer or agency of the Federal Government or under or in connection with a housing or urban development program administered by any other such officer or agency; or (iii) is intended to be sold by the depository institution that originated the loan to the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, or a financial institution form which it is to be purchased by the Federal Home Loan Mortgage Corporation.

⁶⁸Statistical units defined by the Bureau of the Census, Office of Management and Budget.

⁶⁹12 U.S.C. at § 2803(a) (Supp. V 1975).

⁷⁰*Id.* at § 2803(b).

⁷¹*Id.* at § 2804(b). The regulatory agencies are the Comptroller of Currency for

Since the HMDA mandates nothing more than disclosure, its effectiveness will depend on the use public officials and citizens make of the information which the Act makes available. There is some question, however, as to whether the Act requires sufficient information to be disclosed to permit detection of many redlining practices. For example, the Act does not require disclosure of deposits on a geographic basis. Thus, it is impossible to determine whether a particular area is receiving benefits in proportion to its investments.⁷² The Act also does not require disclosure of information about loans denied. Without this information, it is impossible to determine whether or not the supply of mortgage money meets market demand. Nor does the Act require the reporting of data concerning the race, age, sex, or income level of loan recipients. This information is essential to ascertain the effect of redlining on racial minorities and other disadvantaged groups.

In 1976, the California Business and Transportation Agency and the Savings and Loan Commission promulgated "Fair Lending" regulations on redlining applicable to all savings and loan institutions chartered by the state of California.⁷³ These regulations differ from

national banks; the Federal Reserve System (FRS) for its member banks other than national banks; the Federal Deposit Insurance Commission for banks it insures other than members of the FRS; the Federal Home Loan Bank Board (FHLBB) for savings and loan institutions; and the National Credit Union Administration for credit unions. Recent testimony in *Hearings Before the Sen. Comm. on Banking, Housing, and Urban Affairs on Oversight on the Home Mortgage Disclosure Act and the Equal Credit Opportunity Act, 94th Cong., 2d Sess. (1976)* [hereinafter *Oversight Hearings*] reveals some problems with enforcement. Governor Phillip Jackson, member, Board of Governors of the FRS notes that some member banks have been examined for compliance with the implementing regulations (*id.* at 3) but that the HMDA does not provide for disclosure of enough information to serve as a useful device for the discovery of illegal discrimination (*id.* at 4-5). To date there appear to be no provisions for the central collection of data by any of the regulatory agencies. In fact there is not even a standardized reporting form. The lack of such a form is justified as a philosophical and political matter involving states' rights by Governor Jackson and Garth Marston, Acting Chairman, FHLBB, in a colloquy with Senator Proxmire. *Id.* at 32.

⁷²Original provisions requiring disclosure of geographic deposit sources were deleted because of lending industry pressure. See S. REP. NO. 94-187, 94th Cong., 1st sess. 12 (1975). The industry fears mandatory credit allocation and emphasizes the necessity for money to be freely transferrable from areas where funds are plentiful to other areas where funds are in short supply. However, the HMDA expressly repudiates credit allocation ("Nothing in this title is intended to, nor shall it be construed to encourage . . . the allocation of credit," 12 U.S.C. § 2801(c)), and few spokespersons seriously urge it as policy.

⁷³10 CAL. ADMIN. CODE §§ 245-246.7, also amending §§ 145.7, 204.2(q), 245.5, and repealing and adopting new §§ 242.2(t), 242.2(u) (April 26, 1976). Although the regulations affect only state-licensed saving and loan associations, they should have considerable impact. Savings and loan institutions are the most important source of residential mortgage loans, and state-licensed associations make an estimated 50% of all the residential mortgage loans in California. Statement of Donald E. Burns, Secretary, Business and Transportation Agency, at

the federal law in several important respects. First, California requires disclosure of much more information than is required by the federal Act. Second, specific enforcement procedures and remedies are provided. Finally and most importantly, the regulations expressly prohibit redlining, absent a showing of business necessity.

The scope of the information required to be disclosed by state-chartered institutions greatly exceeds that required by the HMDA.⁷⁴ First, the institution must provide information on all rejected loan applicants and on loans where the amount granted is less than the amount requested. This facilitates the assessment of loan demand within an area. Second, data on the nature of the security property is required. For example, information on the age of a house used to secure a loan must now be reported. Since one of the complaints against lenders has been their prejudice against older homes, this information can help to prove or disprove the charge. Finally, information about the borrower is required, including sex, age, and race. Like the HMDA, though, the California regulations fail to require disclosure of deposits, which means that no assessment of loans relative to deposits can be made. Overall, however, the California regulations provide for the disclosure of data which will permit the detection of a broad range of redlining practices.

Aside from information on loans and applicants, the California regulations require that each association make available to the public as well as furnish every applicant with a pamphlet explaining the association's criteria for approving loans.⁷⁵ Rejected applicants must be given a clear explanation of the reasons for refusal and notice of their right to file a complaint with the Savings and Loan Commissioner.⁷⁶ Each association is further required to submit a document to the Savings and Loan Commissioner describing its marketing policies and programs. The document is to include affirmative programs to encourage business from groups often discriminated against.⁷⁷ The Commissioner may use the document to assist in determining

Cal. Sen. Comm. on Local Gov't Hearings on A.B. 2594 (October, 1976). Also, most of the largest savings and loan associations in California are state-chartered. COMMUNITY INFORMATION PROJECT AND CITIZENS RESEARCH INSTITUTE of So. Cal., REDLINING AND HOUSING DETERIORATION IN GREATER LOS ANGELES 28 (October, 1976) (on file at U.C. Davis Law Review).

⁷⁴State-chartered savings and loan associations were already required to file with the Commissioner a monthly Loan Register Report containing certain data for each loan made, including census tract, purpose, type of property, loan amount, appraised value, selling price, interest rate, term to maturity, fees, and discounts. The Report's coverage was simply expanded to include the new information in Instructions for Preparing Loan Register Report Form SL200 (revised August, 1976).

⁷⁵10 CAL. ADMIN. CODE § 245.4(b) (April 26, 1976).

⁷⁶*Id.* at § 245.4(f).

⁷⁷*Id.* at § 245.5.

compliance with the regulations.⁷⁸

The second major difference between the state and federal regulations involves the enforcement procedures provided by the California regulations. These procedures include a remedy for the rejected loan applicant and possible sanctions against institutions found to engage in redlining. An applicant may appeal a rejection to the Savings and Loan Commissioner.⁷⁹ If the complaint is not resolved by the Commissioner to the satisfaction of the applicant within 21 days, the complaint will be reviewed by one of two newly established Boards of Inquiry.⁸⁰ The Boards of Inquiry investigate complaints and make findings of fact and recommendations to the Commissioner.⁸¹ The Commissioner has the discretion to seek a court order enjoining a violation,⁸² to order the association to discontinue "violations or unsafe or injurious practices,"⁸³ or even to take possession of an association that fails to obey a discontinuance order.⁸⁴

The regulations are enforced indirectly through the requirement of a public hearing and approval by the Commissioner before an association may open a new branch,⁸⁵ effect a merger,⁸⁶ or change its location.⁸⁷ Savings and loan institutions are put on notice that the Commissioner will consider their compliance with the new regulations before deciding in their favor.⁸⁸ Further, the regulations specify that the Department of Savings and Loan will publish Fair Lending Reports "at least annually" which will contain a breakdown for each association of the lending data disclosed, an analysis of lending patterns, and a summary of complaints filed.⁸⁹ These reports will be available to the public either through the Department of Savings and Loan or at the home and branch offices of each institution covered.⁹⁰ Tapes from the monthly loan register reports of each association will also be available to the public from the Department.⁹¹

Aside from these procedures, however, there is little affirmative enforcement. Although the Department of Savings and Loan has

⁷⁸*Id.* at § 245.4(b).

⁷⁹*Id.*

⁸⁰*Id.* at § 245.7(a).

⁸¹*Id.* at § 245.7(i).

⁸²CAL. FIN. CODE § 5256 (West 1968).

⁸³*Id.* at § 9000.

⁸⁴*Id.* at § 9001.

⁸⁵10 CAL. ADMIN. CODE § 145.6 (April 26, 1976).

⁸⁶*Id.* at § 204.2(q).

⁸⁷*Id.* at § 145.7. This section also requires that the savings and loan association submit a "Neighborhood Impact Statement" describing how the saving and loan institutions' "existing area" will be served after it leaves.

⁸⁸As pointed out in the text accompanying note 78 *supra*, the Commissioner will also use an association's document describing its marketing policies and programs to check its compliance with the regulations.

⁸⁹10 CAL. ADMIN. CODE § 242.2(u) (April 26, 1976).

⁹⁰*Id.* at § 245.6.

⁹¹*Id.* at § 242.2(5).

gone on record that it will monitor the lending data and issue Fair Lending Reports on a quarterly or semi-annual basis,⁹² the regulations require only an annual reporting. The Department has also stated that it will conduct on-site investigations to determine compliance with the regulations, but no reference to such a procedure is included in the text of the regulations. Furthermore, there is no provision for either the Commissioner or the Boards of Inquiry to investigate patterns and practices of discrimination that may be revealed by the data.

The most controversial aspect of the California regulations, however, is their flat prohibition of redlining.⁹³ The regulations include a statement of findings that some savings and loan institutions have practiced arbitrary geographic discrimination in the past.⁹⁴ The regulations then state that no loan shall be denied because of "consideration of the conditions . . . or trends in the neighborhood or geographic area surrounding the property" absent a showing of an unsafe or unsound business practice.⁹⁵ The regulations state further that if any lending practice is found to have a discriminatory effect, the burden of proof will be on the lender to demonstrate a legitimate business purpose.⁹⁶

Guidelines as to what constitutes business necessity are strict.⁹⁷ For example, the income level of neighborhood residents, the age of the homes in the neighborhood, the rate of foreclosures per se, would not qualify.⁹⁸ Evidence that might qualify includes a methodologically sound statistical analysis of value trend⁹⁹ and serious abandonment problems in the immediate proximity of the subject property.¹⁰⁰ However, the institution of a neighborhood preservation program will offset other negative factors that might otherwise be accepted as indicators of future decline.¹⁰¹

Although the California regulations have yet to be challenged in court, their validity has been assailed. Lenders contend that the Savings and Loan Commissioner's supervisory power over subject institutions is limited to assuring the financial soundness of the in-

⁹²See STATE OF CALIFORNIA DEPARTMENT OF SAVINGS AND LOAN, DESCRIPTIVE SUMMARY OF MAJOR ELEMENTS OF FAIR LENDING PROGRAM AFFECTING STATE-LICENSED SAVINGS AND LOAN ASSOCIATIONS 5 (July, 1976).

⁹³10 CAL. ADMIN. CODE § 245.2(a) (April 26, 1976). The regulations also prohibit discrimination on the basis of race, religion, sex, marital status, national origin, or ancestral group. *Id.* at § 245.2(b).

⁹⁴*Id.* at § 245(c).

⁹⁵*Id.* at § 245.2(a).

⁹⁶*Id.* at § 245.2(c).

⁹⁷The guidelines for business necessity on geographic discrimination are given at *id.* at § 246.1.

⁹⁸*Id.* at § 246.1(b) (4)(A).

⁹⁹*Id.* at § 246.1(b) (4)(B).

¹⁰⁰*Id.* at § 246.1(b) (4)(C).

¹⁰¹*Id.* at § 246.1(b) (4)(E).

stitution.¹⁰² They point out that all the court decisions to date which have considered the Commissioner's regulatory power have dealt with the power to protect the investing public rather than the public at large.¹⁰³ They also contend that the "business necessity" guidelines contained in the new regulations are unsound and would force them to breach their fiduciary duty to their depositors who depend on them for the safety of their investments.¹⁰⁴ Whether these objections provide a valid legal basis for challenging the regulations is open to question.

The general test for establishing the validity of administrative regulations in California is contained in section 11374 of the California Government Code.¹⁰⁵ This statute requires that an administrative regulation (1) be consistent with its authorizing statute, and (2) be "reasonably necessary to effectuate the purposes of the statute." In evaluating the first prong of the test, the California Supreme Court has applied a constitutional test to determine whether the delegation of authority by the legislature to the administrative agency has been legitimate under article III, section 3 of the California Constitution.¹⁰⁶ This section prohibits the delegation of fundamental policy decisions to an administrative agency. It has been held, however, that delegation has not occurred if the legislature has provided adequate "yardsticks" for the agency's guidance.¹⁰⁷

Express language in certain sections of the laws relating to savings and loan associations may be construed to provide the necessary yardsticks. One such yardstick is the "public convenience and advantage" which the Commissioner must find to be served before allowing the formation¹⁰⁸ or branching¹⁰⁹ of an institution. A second is the prevention of "unsafe and injurious" practices.¹¹⁰ A third yard-

¹⁰²See California Savings and Loan League, Written Comments and Objections Concerning the Regulations Proposed by the Business and Transportation Agency 2-5 (Jan. 30, 1976) (on file at the National Housing and Economic Development Law Project Library, U.C. Berkeley).

¹⁰³*Id.*

¹⁰⁴*Id.* at 6-9.

¹⁰⁵(West 1966). This discussion is based primarily on D. Madway, F. Werner, & H. Moore, Authority of California Savings and Loan Commissioner to Regulate the Practice of Redlining by State-Chartered Savings and Loan Associations (1975) (memorandum prepared by the authors as staff attorneys for National Housing and Economic Development Law Project, U.C. Berkeley).

¹⁰⁶Clean Air Constituency v. California State Air Resources Board, 11 Cal. 3d 801, 523 P.2d 617, 114 Cal. Rptr. 577 (1974).

¹⁰⁷*Id.* at 817, 523 P.2d at 626, 114 Cal. Rptr. at 586.

¹⁰⁸CAL. FIN. CODE § 5509 (West 1968).

¹⁰⁹*Id.* at § 6002.

¹¹⁰*Id.* Section 9000 authorizes the Commissioner to order a savings and loan association to cease and desist "conducting its business in an unsafe or injurious manner." This ambiguous language is, however, interpreted quite differently by spokespersons for the lending industry. See text accompanying notes 102-104 *supra*.

stick is the Commissioner's duty to "enforce all other laws relating to or affecting the . . . business [and] operation" of savings and loan associations.¹¹¹ Thus if there are sufficient yardsticks so that the administrator's authority can be said to be within the bounds of the purposes and goals of the statute, then the "consistency" prong of the test for validity has been met.

The second step of the test, that a regulation be "reasonably necessary," can be met if an agency is not "arbitrary and capricious" in its promulgation of regulations.¹¹² Here the inclusion of a "business necessity" would probably be construed as showing enough concern for the depositors and business interests of the savings and loan institution to relieve the agency of a charge of arbitrariness. Thus under the traditional California tests the regulations would probably withstand challenge.

Other individuals and groups criticize the regulations as insufficient.¹¹³ These critics feel that the outlawing of redlining should be mandated by statute rather than by administrative regulations which are susceptible to easy amendment and repeal and administrative discretion. The critics also point out that the need for a civil remedy is not satisfied by the regulations and that other important financial institutions, such as banks, are not covered. They feel that a real solution to redlining can occur only through specific legislation.¹¹⁴

However inadequate the federal and state regulations are with respect to individual remedies, they do have the potential of providing local governments with a powerful informational tool. Furthermore, since the city has intimate knowledge of the geographic areas concerned, it is in a unique position to make meaningful interpretations of the disclosed data. The next section will explore some of the ways in which cities can use the disclosed information to develop programs to prevent future redlining and to achieve reinvestment for those areas which were subject to discriminatory practices in the past.

¹¹¹CAL. FIN. CODE § 5250 (West 1968).

¹¹²Ralph's Grocery Co. v. Reimel, 69 Cal. 2d 172, 444 P.2d 69, 70 Cal. Rptr. 407 (1968).

¹¹³These include Cary Lowe, co-Director, California Public Policy Center, and Jim Lowery, President, Coalition Against Redlining, in testimony before the California Senate Local Gov't Comm. Hearings on Redlining, Los Angeles, Oct. 12, 1976.

¹¹⁴A number of bills have been introduced in the California legislature in recent years. As of May 16, 1977, AB 79 (the Hughes-Torres Anti-Redlining Act) was in the Assembly Ways and Means Committee, and SB 7 (the Holden-Hughes Anti-Redlining Act) had been passed by the Senate Local Government Committee and sent to the Finance Committee. Both bills extend coverage to banks and other financial institutions, but neither provides a civil remedy.

IV. LOCAL GOVERNMENT AS PART OF THE SOLUTION

A city is more than an aggregate of neighborhoods; it is a distinct entity with geographic and political integrity. When one or more of a city's neighborhoods is deprived of investment capital, the ramifications are felt city-wide. When loans are not available to purchase or repair existing properties, a neighborhood deteriorates rapidly.¹¹⁵ A deteriorating neighborhood causes businesses and residents to relocate, which in turn depresses property values. Owners often subdivide their properties in order to realize some financial return from them. The increased municipal services required by the crowded conditions and the rising crime and vandalism must be provided from an ever diminishing tax base. The city, therefore, has a vested interest in insuring that financial institutions provide investment capital to all its neighborhoods.

The capital needed for neighborhood preservation will not be made available unless local governments act aggressively to curtail discriminatory lending practices and reverse the process of disinvestment. Local governments cannot rely on the marginal solutions afforded by the federal and state governments. The federal Act¹¹⁶ is intended only to provide more adequate information about the magnitude of the redlining problem. Although the California regulations¹¹⁷ prohibit redlining, they lack adequate monitoring and enforcement mechanisms. In addition, city officials are most familiar with the city neighborhoods and thus have a unique vantage point from which to ascertain the extent of disinvestment and to develop appropriate solutions. City officials are also in the best position to evaluate the effectiveness of any corrective measures instituted.

This section proposes a program which cities can undertake to combat redlining. The components of the proposal are (1) a central city agency with the responsibility both to monitor the mortgage information disclosed under state and federal regulations and to coordinate the city's reinvestment efforts; (2) a program to encourage the interest and involvement of residents in preserving and upgrading their neighborhoods; and (3) a program to solicit the cooperation of financial institutions in formulating affirmative lending programs for disinvested neighborhoods.

A. *The Central Agency*

An effective solution to redlining must surmount the "fragmented nature of municipal governments."¹¹⁸ It is essential, therefore, that

¹¹⁵See text accompanying notes 2-4 *supra*.

¹¹⁶For a discussion of the federal Act, see text accompanying notes 62-72 *supra*.

¹¹⁷For a discussion of the California regulations, see text accompanying notes 73-114 *supra*.

¹¹⁸ABANDONMENT SURVEY, *supra* note 4, at 93. Elaborating on this point,

cities establish a central agency to coordinate reinvestment efforts. In many cities the framework for such an agency is already in existence. Under current California law, cities are required to formulate a general plan containing a housing element consisting of "standards and plans for the improvement of housing and for provision of adequate sites for housing," including providing for the housing needs "of all economic segments of the community."¹¹⁹ Pursuant to this requirement many cities have already created local housing agencies. These agencies often are already involved in securing assistance from various federal and state programs designed to upgrade housing stock.¹²⁰ Such an agency can be expanded and given responsibility for overseeing a city's efforts to insure that all its neighborhoods have adequate investment capital available from the private sector. The monies expended by the city to fund these activities should be more than offset by the increase in tax base and other financial benefits which should flow from improved neighborhood conditions.

A hypothetical illustration may serve to illustrate the way a central agency could coordinate the city's reinvestment efforts. Mudville, California already has a housing agency which has been given the authority to develop a housing conservation program. The agency is also charged with the task of developing a private reinvestment program.

The Mudville Housing Agency decided that its first priority was to abate the municipal activities that have contributed in the past to neighborhood instability and fostered disinvestment. It began by conducting an intensive study of one neighborhood, the Mud Flat area, an older urban neighborhood of single-family homes. Among the projects the Agency undertook in this concentrated program was

the survey states:

Typically, a lack of coordination and comprehensiveness characterizes the administration of housing programs. One agency is in charge of demolition, while another deals with construction. Industrial and commercial development are divorced from those agencies charged with increasing the supply of housing. Contradictions abound when one considers the effects of taxing, zoning, and redevelopment policies. Municipal service departments such as police, fire, health, and sanitation exist and function independent of each other and city government as a whole. Cost (social and economic) benefit analysis of contemplated policies is rarely undertaken, and when it is such analyses are characterized by either a lack of scope, or internecine, departmental warfare. The system begs for unity . . . [rather than] . . . antiquated government machinery . . . *Id.*

¹¹⁹CAL. GOV. CODE § 65302(c) (West Supp. 1977).

¹²⁰The City of Berkeley's Housing and Development Department is an example of the kind of umbrella agency needed. Created in 1974 to coordinate and administer Berkeley's housing and conservation program, it is funded by monies from the Community Development Block Grant program, from HUD approved Model Cities holdover funds, and from the city's general revenue. Programs to Conserve, Rehabilitate, and Improve the Housing Stock as of Sept. 30, 1976 (report issued monthly by the Berkeley Housing and Development Dep't).

to determine the relationship between the city's building code enforcement policy and housing deterioration in Mud Flat. The Agency found that underenforcement of building codes was apparently contributing to deterioration of the housing stock. The Agency recommended therefore that the appropriate city department step up enforcement. It also recommended a tax rebate to those property owners who undertake rehabilitation or improvement projects. The Agency is also considering a rehabilitation loan package which includes low-interest rehabilitation loans, cost estimation, contractor referrals, market loan processing, and increased public improvements.¹²¹

The Mudville Agency is also assessing the quality of municipal services in Mud Flat and will recommend improvements where appropriate. It is keeping careful records of the Mud Flat study area and will carefully evaluate them before recommending projects for other neighborhoods.

The Agency is also making comparative studies of neighborhoods in order to document the relationship between residential density and demand for services. For example, it is comparing municipal service delivery in Mud Flat with that of Central Mudville, an area zoned for apartments and with less open space. It is, however, the concentrated nature of each neighborhood project that is its most significant aspect.¹²² Concentrating resources in a given area will have greater impact on both individual neighborhoods and the city as a whole than could be obtained if the Agency's resources were scattered. First, the concentrated approach enables the city to use an area as a test area for different techniques in neighborhood improvement. Second, several rehabilitated houses on a block will stabilize a neighborhood and rekindle neighborhood pride far more than would a single rehabilitated house.

In addition to evaluating and experimenting with municipal policies, the Mudville Housing Agency monitors the mortgage lending information disclosed under the federal and state regulations. The Agency compiles the disclosed information in different combinations¹²³ in order to determine what neighborhoods, if any, lenders

¹²¹By using such an approach, "[t]he City of Berkeley . . . attained nearly 100% compliance and significantly increased property values in its San Pablo area code enforcement project." HOUSING ASSISTANCE, *supra* note 43, at 26. See note 120 *supra* for funding sources used by the City of Berkeley for its housing rehabilitation projects. For further information on state and federal funds available for housing conservation programs, see HOUSING ROLE, *supra* note 38, at 19-31.

¹²²See Rothenberg, *supra* note 8, at 47.

¹²³For example, compiling the data on a city-wide basis will enable the city to determine the extent of disinvestment throughout the city; compiling it by neighborhood will enable an analysis of the extent of redlining in particular neighborhoods as well as comparisons to be made between neighborhoods;

are redlining. It also compiles the information, wherever possible, by ethnic group, sex group, age of house, and price range of house in order to determine whether any racial minority or any other segment of Mudville's population is suffering disproportionately from redlining practices. Through monitoring, the Agency also hopes to detect early signs of disinvestment in order to recommend corrective action before the cycle of deterioration becomes irreversible.

The monitoring and analysis of the lending data and the upgrading of municipal policies and practices are crucial first steps any city must take to combat redlining. The city will gain accurate information upon which to act. Neighborhood residents will gain renewed confidence in their neighborhood's viability from the governmental interest shown.

B. Community Involvement

Without intense lobbying from grassroots groups across the nation, the current concern with redlining would not exist.¹²⁴ Continued community participation should be structured into whatever remedial measures are taken. It is unlikely that lasting reform will occur without meaningful community involvement.

The hypothetical about Mudville can again illustrate how community involvement can be encouraged. Like many other cities, Mudville has different kinds of residents, some more inclined to activism than others. Many of the residents of the Mud Flat area are activists who have often banded together to discuss ways of combatting redlining. In the process, they have devised various strategies for putting pressure on lenders to stop their disinvestment practices. Some of the activists' tactics include "greenlining," which is the withdrawal of savings from institutions thought to be engaging in redlining, and publicizing information about the lending practices of various institutions.¹²⁵

City governments often react to such citizen actions with fear and distrust. Enlightened city governments like Mudville's, however, respond with support and cooperation. Meetings of residents are not only encouraged but sponsored by the Mudville Housing Agency. Arrangements are made to provide a forum for a dialogue between

compiling the data on an industry-wide basis will enable the city to determine the prevalence of redlining as an industry practice; compiling it by institution will enable comparisons between lenders.

¹²⁴See note 7 *supra* for a partial list of community groups that have engaged in lobbying for anti-redlining legislation.

¹²⁵These tactics were employed by neighborhood groups in Chicago. See Daniel, *Redlining! Redlining Reaches Congress*, 9 J. OF HOUSING 441, 441 (1975). See also S. 1281 Hearings, *supra* note 1, at 503-05 (study by William M. Frei of the Oakland Training Institute suggesting other action strategies).

community residents, lenders, and city officials.¹²⁶ Further, the Mudville Housing Agency agrees to set up a complaint division to investigate citizen complaints, utilizing such techniques as sending test borrowers to financial institutions to evaluate the fairness of their policies. When evidence is uncovered of illegal redlining, advice will be given to the citizen complainant about his or her legal options.¹²⁷ The city may also use the evidence to challenge new charters,¹²⁸ new branch applications,¹²⁹ or change of location applications¹³⁰ from lending institutions.

Other Mudville residents are more economically depressed and apathetic. The Central Mudville neighborhood contains a majority of this type of resident. To involve the Central Mudville area in solving neighborhood problems, the Mudville Housing Agency will first hold informational meetings to publicize its existence. The Agency will then attempt to encourage Central Mudville to band together to attack neighborhood problems and to convince residents of the Agency's availability as a resource. Either directly or through community leadership it helps to develop, the Agency will encourage residents to articulate neighborhood problems and then set goals to overcome them. The residents can then be encouraged to focus on the most important of these goals and commit themselves to effectuating them. For example, local clean-up projects or neighborhood crime prevention patrols are projects that foster neighborhood solidarity. Such limited projects might grow into block clubs and service

¹²⁶Such a forum was initiated in Los Angeles by a Task Force on Reinvestment convened by Mayor Tom Bradley on Oct. 1, 1975. The 20-member Task Force was comprised of representatives from lending institutions, regional, state, and local government agencies, advocacy groups, and community residents. The Task Force issued a report entitled Mayor's Task Force on Reinvestment Final Recommendations (January 6, 1976) [hereinafter cited as L.A. Task Force Reinvestment Report].

¹²⁷For example, information could be given about the administrative remedy discussed in the text accompanying notes 79-84 *supra*. If racial or sex discrimination is involved, an action under federal or state civil rights or fair housing laws may be recommended. See note 62 *supra* regarding application of these laws to redlining. The possibility of a suit against lending institutions by a city for injury to its own financial interests has been explored but appears not to be feasible. The U.S. Supreme Court has recognized the common law doctrine of *parens patriae* as appropriate authority for an action by a state in some situations to halt injury to its economy that is separate and distinct from damages suffered by individual citizens. *Hawaii v. Standard Oil of Cal.*, 405 U.S. 251, 257-59 (1973). However, the doctrine has been rejected as inappropriate authority for a city because, as a political subdivision of the state, its power is derivative and not sovereign. *California v. Automobile Mfrs. Ass'n, Inc. (In re Multidistrict Vehicle Air pollution M.D.L. No. 31)*, 481 F.2d 122, 131 (9th Cir. 1973).

¹²⁸CAL. FIN. CODE § 5511 (West 1968) requires public hearings for applications for charters.

¹²⁹*Id.* at § 6005 (West Supp. 1976).

¹³⁰10 CAL. ADMIN. CODE § 145.7 (April 26, 1976) now provides for a public hearing for any change of location outside an institution's "existing area."

exchanges that have a continuing vitality.¹³¹

The kinds of input outlined above from different types of neighborhoods is important not only because it encourages general civic responsibility but because different neighborhoods suffer disinvestment in varying degrees of intensity. Thus, participation is essential in order that solutions be tailored to the particular needs of the various communities.

C. Lender Involvement

Along with encouraging the participation of community residents, the Mudville Housing Agency is soliciting the cooperation of lenders. The Agency has initiated a task force or policy commission which includes representatives from government, financial institutions and other businesses, labor organizations, and neighborhoods.¹³² Their goal is to arrive at solutions that are based on consensus and thus have some chance for realization.

The forum the Housing Agency provides will give lenders and residents an opportunity to confront each other and to voice their respective concerns. To the extent that lender disinvestment results from lack of identification with city neighborhoods,¹³³ this opportunity to hear the point of view of urban dwellers should be useful. Likewise, neighborhood residents may be unaware of some of the problems which confront the lenders, such as, for example, the fact that California's anti-deficiency statute¹³⁴ necessitates that the lender rely on the property as security rather than the borrower's earnings.

The Mudville Housing Agency also has asked for many different kinds of help from local lenders. The Agency has informed the lenders of neighborhoods such as the Mud Flat neighborhood which it plans to involve in concentrated rehabilitation projects and has invited their assistance. It has offered also to work with lenders in assessing and classifying according to degree of investment risk the various neighborhoods of Mudville.¹³⁵ Lenders have also been asked to perform home ownership counselling and to conduct seminars in various neighborhoods.¹³⁶ Lenders have been urged to form assigned risk pools¹³⁷ and to participate in the formation of a loan review

¹³¹The promotion of homeowners' groups and block clubs is one of the articulated goals of the L.A. Task Force Reinvestment Report, *supra* note 126, at 3.

¹³²See note 126 *supra* regarding a similar Los Angeles effort.

¹³³See note 15 *supra* and accompanying text.

¹³⁴CAL. CODE OF CIV. PROC. § 580(b) (West 1976).

¹³⁵See L.A. Task Force Reinvestment Report, *supra* note 126, at 4 for a similar suggestion.

¹³⁶See *id.* at 4-5.

¹³⁷In an assigned risk pool each participating lender would underwrite the mortgage risk on an assigned percentage of risky loans in mortgage deficient areas. The operation of such a plan is similar to the assigned risk plan operating

board, to consist of representatives from the community, local government, and lending institutions.¹³⁸

Lender cooperation, like all the other elements, is important to the success of a reinvestment program. Lender expertise in the realm of home finance and budgeting should be an asset in the planning stages of any program. Moreover, any reinvestment program which lenders have helped to create will have a better chance of success if only because lenders will have a direct stake in the outcome.

If lender cooperation is not forthcoming, however, the Mudville Housing Agency is prepared to take more coercive measures. It may, for example, propose to the city council an anti-redlining ordinance, allowing the city to use its economic leverage to achieve reinvestment. A carefully phrased ordinance that is based on a city's contracting capacity should avoid preemption problems.¹³⁹ An ordinance enacted in Chicago,¹⁴⁰ for example, provides that each lender bidding for a share as a depository of Chicago's city or school board funds must submit data on its loans and its deposits. Loans are classified by type (residential, mortgage, construction, home improvement, consumer, or commercial) and whether conventional or FHA-VA insured. Each bidder is also required to sign a pledge that it will not engage in redlining. The ordinance is chiefly advisory, however, since the Chicago Comptroller can still deposit funds where he or she feels is in the best interest of the city.¹⁴¹

The hypothetical Mudville Housing Agency's program for combating redlining is suggested as a model for California cities experiencing disinvestment. Mudville's program depends on a central coordinating agency that analyzes and makes use of the data disclosed by the state and federal regulations. The Agency also makes its own studies of city policies and practices, using a concentrated single-neighborhood approach, and recommends changes in policy to appropriate departments. The Agency organizes the community and brings it together with lenders in an effort to create cooperative solutions, but it stands ready to make use of coercive measures when all else fails.

in the field of automobile insurance. Senator Willie Brown suggested such a plan in *Special Hearings*, *supra* note 9, San Francisco, June 23, 1975, at 29.

¹³⁸The formation of such a board is advocated in Draft Report of the Mayor's Reinvestment Task Force, City of Seattle, 26 (Feb. 10, 1976) (on file at the National Housing and Economic Development Law Project Library, U.C. Berkeley).

¹³⁹*See* 42 OP. ATT'Y GEN. 169 (1963) (Berkeley Board of Education school construction contracts that contained a clause prohibiting discrimination in employment were said to be appropriate despite the state's occupation of the field of employment discrimination).

¹⁴⁰CHICAGO, ILL. MUNICIPAL CODE ch. 7, § 7-30 - 7-40, *as amended* June 26, 1974.

¹⁴¹*Id.* at § 7-36.

CONCLUSION

Most authorities agree that geographic discrimination by lending institutions is a significant factor in the deterioration of city neighborhoods. Although government has taken steps to curb the practice, the actions taken so far are inadequate to reverse the disinvestment process. Furthermore, although the federal and state governments can provide the cities with the tools for change, they do not have the familiarity with the nature and extent of the problem in individual cities to effect an adequate solution.

This article suggests a comprehensive approach to attract private capital, including the creation of a central coordinating agency which should evaluate all local government activities that may have contributed to disinvestment. The agency should monitor the information now available through the federal and state disclosure regulations to determine which lenders are redlining and which neighborhoods lack adequate capital. The agency must also work to involve local lenders and residents in formulating reinvestment policies. Only through the cooperation of all segments of the community is a lasting solution likely to emerge. The achievement of a lasting solution depends at this point on the willingness and initiative of local governments.

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