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PREDATORY MORTGAGES AND FORECLOSURES -- (House of Representatives - May 06, 2009)

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The SPEAKER pro tempore. Under the Speaker's announced policy of January 6, 2009, the gentleman from Missouri (Mr. **Cleaver**) is recognized for 60 minutes as the designee of the majority leader.

Mr. **CLEAVER**. Mr. Speaker, when Barack Obama was sworn in as the 44th President of the United States, there were a number of statements that were subliminally made to the Nation and, indeed, to the world. And one of the statements was that we, as a Nation, had moved significantly from the days of not only chattel slavery but even the days of Jim Crow and the bitter segregation that enveloped the entire United States.

I can remember growing up in Texas, in Wichita Falls, Texas, and my father purchased a home in what was then, very clearly, what was known as a white neighborhood. And when my father purchased the home across the street from, I think, a shopping center that was going to be built, a strip shopping center, he had to move the home from its location to the east side of the tracks, where the African American community lived.

He purchased the home, hired a moving company that moved homes, and the home in which my father lives in today, the home in which I and my three sisters grew up in now stands at 818 Gerald Street in Wichita Falls, Texas, and it has been moved, probably, 8 miles from where it was built,

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because in those days African Americans could not live on the other side of the tracks.

[Time: 17:45]

Now while I speak very clearly and experientially about Wichita Falls, Texas, please understand that was the case all over the length and breadth of the United States. We had problems where the banks would not lend money to purchase homes in certain neighborhoods. It was called ``red-lining," where if a white homebuyer wanted a home, it was clear that the banks would not sell them a home or would not finance the home in certain areas, and they would only finance homes in certain areas for African

Americans and to some degree to Hispanics. And this went on in our country for years and years and then decades and decades.

And then, finally, as our Nation began to experience what I like to call the ``Great Awakening," we found that Martin Luther King, Jr. and Whitney Young really began to change things. And things began to change, really, in the 1950s with Brown v. Topeka Board of Education. And then with the movement, the Southern Christian Leadership Conference, Martin Luther King, Jr., when you look at what was going on with the NAACP, the Urban League, and I think a beginning of an awakening by all of the country, things began to change, albeit very slowly. And we had the Voting Rights Act approved. We had the Civil Rights Act of 1964, 1965.

And then by the 1970s, there was, for the first time, a very clear movement of the United States Congress toward creating some kind of a society that would allow all Americans to enjoy the benefits of America. And so, in 1977, the Congress of the United States put in place something called the Community Reinvestment Act. It is called CRA. And in this act, there was an attempt by Congress to address discrimination in loans made to individuals and businesses from low to moderate income neighborhoods.

Now, this is important because finally in 1977--and I know probably for young people who may be watching this broadcast on C-SPAN, they probably are having difficulty even grasping the fact that in 1977 the Congress of the United States had to pass a law that would stop the redlining that pretty much pushed African Americans and Hispanics in certain neighborhoods. They don't see that as much today, although we are still, unfortunately, still bitterly segregated in terms of housing. But in 1975, to reduce discrimination, Congress moved to pass the Community Reinvestment Act. That was a major piece of legislation.

And while many Americans probably don't even know what CRA is, this is an opportunity for you to understand what began to change the whole housing drama in the United States of America, the Community Reinvestment Act.

This act began to cancel out, to erase, the practice known as ``red-lining." And in this Community Reinvestment Act, it required that appropriate Federal financial supervisory agencies would regulate financial institutions to meet the credit needs of the local community in which they were chartered, consistent with, I might add, safe and sound operations. And that is important, and I will get to that in just a moment.

The agencies that have been commissioned with the responsibility for regulating these agencies, I think most people would know who they are. They would be the FDIC, they would be the Federal Reserve, they would be the Office of the Comptroller of the Currency, the OCC, and the Office of Thrift Supervision, the OTS. And those agencies would have the responsibility

to monitor what banks in the United States did to make sure that they did not arbitrarily and capriciously exclude entire segments of cities for loans both in terms of residential homes and in terms of businesses. And therein, Mr. Speaker, we began a new chapter in the United States.

At this time, Mr. Speaker, I would like to yield time to my friend and colleague from Houston, Congressman *Al Green*.

Mr. AL GREEN of Texas. Thank you so much, Congressman *Cleaver*. I greatly appreciate the history that you have afforded us. It is meaningful for us to understand history, because in understanding history, we can understand the benefits that have been accorded by way of the CRA. The CRA has clearly been of great benefit to all Americans, because when you help some Americans, you really do help all Americans. Dr. King reminded us that "life is an inescapable network of mutuality tied to a single garment of destiny." Whatever impacts one directly impacts all indirectly. So by directly helping some, we have indirectly helped all Americans.

And I regret that there are many who contend that the current credit crisis is based upon some of the actions that the CRA might have mandated, which is totally not true. It really is not. And there does come a time, there really does come a time when every woman and every man must on truth stand. So tonight, I appreciate what you have said because I think we have to take the ax of truth and slam it into the tree of circumstance. And we just have to let the chips fall wherever they may, because there really is some truth in the notion that the truth will set you free. So let us see if we can free some souls as it relates to the CRA and its benefits to all Americans.

You see, the truth is that the Community Reinvestment Act that Congressman *Cleaver* has given us a great recitation of its history, of the history of the act itself, the Community Reinvestment Act did not cause the current credit crisis. Now if you don't believe me, perhaps you will believe the Honorable Mark Morial. I have in my hand a copy of his testimony before the Senate Banking Committee on Thursday, October 16, 2008. In his testimony, he indicates that the CRA is not the cause of the current crisis. This may not be enough for some people. If you don't believe Mark Morial and you don't believe me, then maybe you will believe the Honorable Ben Bernanke, who is, of course, the head of the Fed. He has a letter that he has written to the Honorable **ROBERT MENENDEZ**, who is a member of the United States Senate. And he indicates that the CRA is not the cause of the crisis and that there is no evidence to support this.

And if this is not enough, then perhaps a summary from the analysts over at the Board of Governors of the Federal Reserve system. They have indicated by way of a report that the CRA is not at the root of the current crisis.

So the truth, you see, is this, that the CRA has been of great benefit, that it does not regulate lending, that it does not legislate and that it does not mandate. The CRA does not even apply to all financial institutions. And I can really understand how some people might conclude, based on some of the propaganda that I have heard, that the CRA regulates lending worldwide. But it really does not. It doesn't apply to all institutions within this country. For example, it doesn't apply to financial institutions like the defunct Countrywide, which at one time was one of the largest lending institutions with reference to mortgages in this country. It does not apply to financial institutions like the ruined Bear Stearns. It doesn't apply to AIG. It did not apply to Lehman's.

The CRA has been an institution and, if you will, it requires lending institutions to lend money into areas that had been redlined, as you indicated, and had literally been locked out of receiving the financial bootstraps that many communities receive so as to lift themselves out of poverty by way of wealth building through home purchases, as well as some other things that

transform houses into worthwhile neighborhoods to live in.

Approximately 70 percent of the foreclosure filings from January 6 to September 8 took place in middle to high income, non-CRA-related neighborhoods. Now it is important to note that the CRA, while it does encourage lending, it doesn't mandate it. And the lending that did take place with reference to foreclosures, 70 percent of this lending that took place between September of 2008 and January of 2006 was in higher income neighborhoods, income neighborhoods that the CRA did not address. I will call them non-CRA neighborhoods.

The CRA doesn't regulate. It simply says that banking institutions are encouraged to cover and relate to and lend to all segments of the communities that they serve. And they are to do so without goals, they are to do so without targets, they are to do so without quotas. The CRA doesn't encourage

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bad lending. It doesn't mandate bad lending. It doesn't condone bad lending. It doesn't generate any loans. The CRA does not regulate nor does it create any of these exotic loans that we are aware of. And many of them are at the root of this subprime crisis.

So I'm honored to tell you, Mr. **Cleaver**, and I thank you for your history, that the CRA has been of great benefit to us. And I regret that there is a distortion of the facts that relate to the CRA and what it has meant to us. I think that we have an opportunity tonight to clear up some of the confusion and to make clear what the benefits of the CRA are and to also talk about some of the areas wherein the other institutions, other than the CRA--and I

call it an institution, it is really an act of Congress--but wherein other institutions have created products that have created a lot of the subprime crisis that we suffer from today.

So I will yield back to you and trust that as we go through this process tonight, we can talk about some of these products. And I'm prepared to talk about a few of them. I will go ahead and talk about just a couple if I may.

I will talk about the exploding ARMs that were not created by the CRA and not regulated by the CRA. You're aware of them, the 327s and the 228s wherein persons literally had 2 years of a fixed rate and 28 years of a variable rate. They had a teaser rate that would, at the end of 2 years, an entry level rate that was usually low, at the end of 2 years would increase to sometimes 30 to 40 percent of what that teaser rate was. And there were many other products like this that the CRA had nothing at all to do with that have helped to create this crisis that we have to contend with.

Mr. **CLEAVER** . Would the gentleman yield?

Congressman, it may be of some value for you to share with us the yield spread premium, which is one of the critical developments that we find that people suffer as they are losing their homes. And what has happened over the past year is that in the middle of a tidal wave of foreclosures, people have sought to place the blame on somebody or somebodies. And tragically and painfully, it has fallen on the poor and the minorities. They are being blamed for the crisis.

One of the people I really liked a lot, and we had a very good relationship, was former Congressman Jack Kemp, the former Secretary of the Department of Housing and Urban Development. He, of course, died, and I think all of Capitol Hill is mourning Jack Kemp. He was a former quarterback in the NFL, and he was a great guy.

[Time: 18:00]

He wrote a book where he talked about what happens to the poor and how the poor get blamed. I have that autographed book in my office in my basement in Kansas City. He lays out clearly how the poor always seem to get the blame. When we say that CRA caused this tidal wave of foreclosures, it is a way of blaming poor people because what that means is when the government passed the Community Reinvestment Act and said you cannot discriminate any more, what is being suggested from Capitol Hill, and you can hear it at night on the television and radio talk shows, is that banks and Fannie Mae and Freddie Mac were forced to make bad loans, and there were a lot of bad things happening, including the yield spread premium.

Mr. AL GREEN of Texas. You are exactly correct. Poor people did not create this crisis, and people living in areas covered by the CRA did not create this crisis. Let us take a look at the yield spread premium. The yield spread premium says that if you are a seeker of a loan for a home mortgage and your originator can qualify you for a 5 percent loan, by way of example, if that originator can get you to take a loan for 8 percent when you qualified for 5 percent, that originator will get a lawful kickback by causing you to go into a higher mortgage than you qualified for, and never have to tell you that you qualified for the 5 percent premium.

That premium that is paid to the originator is a part of this process which we now call the yield spread premium.

This was invidious, and it did cause a lot of persons to take out loans that were much higher than the loans that they qualified for. But to further evidence the fact that poor people didn't create this problem, negative amortization, many people received loans that were negative in the sense that you could pay your principal, pay your interest, but if you didn't pay enough interest, you would find that that which you didn't pay would be tacked on to your principal.

So you had a loan where your principal was growing, and it was growing such that you could literally never pay for the loan and always owe more than you actually decided that you wanted to have as a mortgage amount.

We also had the situation with the no-document loans. Poor people didn't get a lot of no-document loans, loans wherein you didn't have to prove that you were working. Usually these were persons said to be associated with some sort of business and they had difficulty verifying income, but no-document loans were made and they were usually in the subprime market, they were either the Alt-A loans or subprime because they were said to be riskier. But these loans were not originated because of the CRA. They loans were not mandated because of the CRA.

I would also call to your attention prepayment penalties. There were loans that had prepayment penalties that coincided with these teaser rates. None of this was mandated by the CRA. The CRA did not require teaser rates. It did not require loans to have prepayment penalties at all. When these prepayment penalties coincided with the teaser rate, it simply meant that the person who wanted to refinance the loan when you were getting to that period or that time when the loan would adjust, would have to pay a large penalty just to get out of the loan into another loan. These teaser rates and prepayment penalties became a detriment to many people who were locked into these 327s and 228s.

I would call to your attention also the fact that there were loans that were interest only. The CRA did not mandate interest-only loans. These loans were loans created by mortgage companies. They were loans that were originated

by entities that were not covered by the CRA for the most part. And these loans, if they were covered by the CRA, institutions that were regulated by the CRA, the CRA did not mandate an interest-only loan which means you would simply pay interest, not pay the principal and you would continually owe after some period of time what you started out with as your loan amount.

The CRA did not require credit default swaps wherein one party would agree to pay a second party if a third party defaulted. This is what AIG was infamous for, these notorious credit default swaps, not mandated by the CRA.

The CRA did not cause us to conclude that hedging was a good means of managing risk. The CRA didn't have any mandates with reference to hedging and hedge funds.

It did not require outsourcing as a risk management means.

Some of these large institutions were literally allowing credit rating agencies to manage their risk because they would ask a credit rating agency to give them an opinion about a certain instrument, and they were relying on that as their risk management tool. The CRA did not mandate any of this.

One really important thing, CRA did not create the circumstance wherein the lender was no longer concerned about whether the borrower could repay his or her loan. This was not in any way mandated by the CRA. It wasn't regulated by the CRA. It had nothing to do with the CRA. When this occurred, lenders no longer had to concern themselves with the liability associated with the loan if there was a default.

So originators started simply originating loans so they could put them in the secondary market, and by getting them out in that market, they would get payment for the loan itself. Somebody else was now responsible for the loans, and the loans were bundled. The CRA did not mandate nor did it require that these loans be placed in these bundles called securities and sold to investors. The CRA had nothing to do with any of these things. The CRA simply said if you are a lending institution covered by the CRA, you must lend to all persons within your area of influence.

And thank God the CRA did this because there are many persons who but

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for the CRA wouldn't have homes. There are many communities that would not have been revitalized by dollars that were actually made available to communities to revitalize them. Nursing homes received CRA moneys by way of loan, and the elderly, homes for the elderly received CRA moneys. The CRA has been a benefit to all Americans, and I just regret there is this notion afoot by many that the CRA somehow created a crisis that it had absolutely

nothing to do with. The empirical evidence is completely contrary to this notion that the CRA created the crisis.

Mr. **CLEAVER**. Mr. Speaker and Mr. *Green*, I flew into Washington on Monday of this week and sat next to a gentleman who serves on a board of a bank. When he found out that I was on the Financial Services Committee, we began to talk about the crisis, and I am sure that happens to you and all of us who end up on this committee at this particular time in history.

During the conversation he said to me that at a recent bank board meeting, one of his colleagues on the bank board said to him: CRA is going to ruin this bank. It is forcing us to give loans to people who don't qualify.

And he said no matter how he argued, the man would not release the notion that somehow the requirement that is placed on institutions to be fair caused the financial crisis.

I think that the Members of Congress in 1977 who had the vision of creating or beginning the task of creating an America where people could live where they wanted

would be pleased today to know that we have made significant progress. We have not made the ultimate progress, but we have made significant progress.

Imagine this, Minneapolis, Minnesota, having an entire section of the city where banks are not making loans. And then as that city goes into decay, people would drive back and say, You know, poor people don't take care of their property. See what is going on over there, not understanding that banks were not making loans to that area. That was supposed to stop in 1977.

Now there are banks in my hometown who are very active in making loans in the urban core. There are other banks that I think are prodded by the passage and the enforcement of the CRA.

I did not have this on the airplane, but I wanted to bring it here tonight. This comes from chapter 20 of the Community Reinvestment Act, section 2901, Congressional Findings and Statement of Purpose. It reads: ``It is the purpose of this chapter to require each appropriate Federal financial supervisory agency," those are the agencies that I mentioned earlier, ``to use its authority when examining financial institutions to encourage such institutions to help meet the credit needs of the local communities in which they are chartered consistent with the safe and sound operation of such institutions."

This is in the language of the law. And in spite of the clarity of this statement, there are people, even unfortunate and tragically who are part of

this body, who are still going around on TV shows saying that CRA caused the financial crisis.

I would yield to my colleague *Keith Ellison* from Minnesota.

Mr. ELLISON. Mr. Speaker, what else are these purveyors of confusion supposed to say?

They have had an opportunity to spread deregulation all over. They have declined the opportunity for many years to pass an antipredatory lending bill. They have promoted tax breaks for the wealthiest among us. And now that they have had the opportunity to have a House and a Senate in which their particular caucus was in the majority, they have had a full opportunity to manifest their economic ideas, and what those ideas have come to has been the largest foreclosure crisis since the Great Depression. What these economic ideas that the poor have too much and the rich don't have enough is that we have had serious unemployment spikes higher than any that we have seen since the early eighties, which was the Reagan recession. What we have seen is record lows in consumer confidence.

The fact is you can't expect the people who are purveying confusion regarding the CRA to come clean because then they would have to admit that it is their economic policies that have brought forth the economic malaise that America is in now.

In fact, the Community Reinvestment Act is good economics. The Community Reinvestment Act says that what we are going to do is we are going to ask banks who draw deposits from neighborhoods to also loan to that neighborhood.

The Community Reinvestment Act came about based on statistically documentable evidence of red-lining, which is a process whereby lenders and sometimes insurance companies systematically denied credit to certain communities, particularly low-income and minority communities. Importantly, the Community Reinvestment Act does not prescribe minimum targets nor dictate specific underwriting policies. It doesn't even set goals for lending or investment. Instead, it gives considerable discretion to bank regulators and examiners, and ensures that loans are made in a manner consistent, as you pointed out, Congressman *Cleaver*, with safe and sound banking practices.

Let me just quote from somebody who ought to know a little bit about banking and the financial markets, and that is Fed Governor Elizabeth Duke. Fed Governor Elizabeth Duke is a person with a Ph.D. in economics who studied these issues, is not known for wild statements, and is essentially a paragon of reliability and stability.

Here is her analysis. She says that the claim that the CRA, the Community Reinvestment Act, caused the current crisis is a ``misperception promulgated by many who either do not know much about the law or don't like it."