TRANSCRIPT OF THE
CONSUMER ADVISORY COUNCIL MEETING
THURSDAY, JUNE 26, 2003

The Consumer Advisory Council met at the offices of the Board of Governors of the Federal Reserve System, Washington, D.C. at 9:00 am.

Members present:
Ronald A. Reiter, Chair
Agnes Bundy Scanlan, Vice Chair
Janie Barrera
Kenneth P. Bordelon
Susan Bredehoft
Manuel Casanova, Jr.
Constance K. Chamberlin
Robin Coffey
Dan Dixon
Thomas FitzGibbon
James Garner
Larry Hawkins
Earl Jarolimek
W. James King
Ruhi Maker
Oscar Marquis
Pat McCoy
Elsie Meeks
Mark Pinsky
Elizabeth Renuart
Debra Reyes
Benson Roberts
Benjamin Robinson, III
Diane Thompson
Hubert Van Tol
Clint Walker

Others present:
Dolores S. Smith, Director, Division of Consumer and Community Affairs
Susan Schmidt Bies, member, Board of Governors
Ben S. Bernanke, member, Board of Governors

A-G-E-N-D-A

P-R-O-C-E-E-D-I-N-G-S

(8:59 a.m.)

CHAIR REITER: Good morning, everyone. It's time to convene the meeting. Would council members please take their seats?

Good morning, everyone. I'd like to begin the meeting this morning. I don't have any announcements really to make, other than a request that everyone speak loudly and distinctly and not touch the microphone, so that an accurate transcript of the proceedings can be made.

I'd like to acknowledge and welcome Governor Bies. We're very pleased to have her in attendance. And also, Governor Bernanke, we're very pleased to have him in attendance as well.

I'd like to begin the meeting by actually turning it over to Pat McCoy, who chairs the Consumer Credit Committee, to lead the discussion on the Fair Credit Reporting Act (FCRA).

MS. McCOY: Good. Thank you very much, Ron.

The issue at hand today with respect to the Fair Credit Reporting Act is: should the seven areas of federal preemption under the Act be allowed to sunset on December 31st of this year, or be extended either permanently or for a period of years?

Just very briefly, the seven areas are, first, the duty of furnishers; second, the contents of consumer reports; third, the duties of persons taking adverse action based on information in a consumer report; fourth, the use of consumer reports for prescreen solicitations; fifth, sharing of information among affiliates; six, the time to complete reinvestigations of disputed consumer reports; and, seven, form and content of the summary of consumer rights that must be provided.

The debate has broadened in the past couple of months, and what I'd like to do is first set out four different ways of possibly looking at this issue that I think would encompass various aspects of the debate as they have unfolded on the Hill and in the administration.

First, some argue that all seven areas of federal preemption should be made permanent without reexamining the underlying substantive rule. To do so would make the judgment that the current federal rule is optimal essentially.

The second way one could look at it is that we would have federal preemption of all seven areas continue, but revisit some of the underlying substantive rules. And those who argue for this argue that new problem areas and new data have emerged in the past seven years since preemption was put in place. This view has some support from Treasury Assistant Secretary Wayne Abernathy and key Congressmen and Senators on the Hill.

A third position is some argue that we lack sufficient data to make preemption permanent and that we should extend it for a fixed number of years for further study.

And then, finally, some take the view that there should be no federal preemption whatsoever that we do not yet know what optimal rules are that states serve as laboratories of experimentation. And that different citizens in different states may have different views as to what level of consumer protection they want.

With respect to substantive areas that have arisen as topics of concern, there are essentially five areas that have surfaced in debates. One is the duty of furnishers. That's an area currently covered by federal preemption.

Right now, there are no standards governing the depth of investigations by furnishers into customer complaints. And this has been tagged as an issue of concern for victims of identity theft, and also consumers who have errors in their credit reports. There are a number of studies, including a board study from this past February, that have documented levels of errors in consumer reports.

A second issue that has emerged is the use of consumer reports for prescreening solicitations of credit. Some are concerned that that may contribute to identity theft. Some consumers dislike the perception that their privacy has been invaded. It can raise targeted concerns involving affinity cards that are marketed, for example, to members of certain racial groups or ethnic identities.

I, by the way, have received the Irish affinity card solicitation.

(Laughter.)

And there are concerns about effects on consumer behavior and overuse of credit.

The third substantive issue that has arisen is privacy in terms of affiliate sharing of information in credit reports.

The fourth area is systematic data flaws in credit reports. And, again, a study that appeared in the Federal Reserve Bulletin this past February shows several types of systematic data flaws.

One type is that 70 percent of consumers in the sample had a missing credit limit in one or more of their records. One to 2 percent of the records were provided by creditors that only reported derogatories -- in other words, defaults or delinquencies but not positive payment experience.

Then, 8 percent of accounts that probably had been closed were reported as having positive balances but were not currently open. And the final systematic data flaw was multiple record items pertaining to the same episode.

These four data flaws tended to lower FICO scores and would make it either more difficult for those consumers, affected consumers, to get credit, or they would receive credit at higher rates.

And then, the final substantive area that has emerged is whether or not notices of adverse action should be expanded. Right now they have to be required -- they have to be provided if credit is denied, but not if credit is supplied at a higher than advertised rate.

So with the emergence of the subprime market, it's possible for people who have applied for credit to be granted credit at a more expensive cost and not realize that it's due to their credit record. They won't realize it because no notice of adverse action has been triggered.

So with that, I'd like to divide our discussion into two broad areas. The first is, if we're not going to amend the FCRA substantive provisions, should preemption be made permanent, or should it be allowed to lapse? And the second is, if we are going to continue preemption, should any of these federal rules be changed? And with that, I'd like to ask Oscar -- Oscar, where are you? Thank you. To open with comments.

MR. MARQUIS: Well, initially, to address your question -- or we discussed yesterday the question of preemption just as a principle. The credit reporting system has become a national system. When I was growing up, to get a credit card you had to go from bank to bank, drive from bank to bank and pick up the application and compare rates and terms and features.

Over the years, credit has become a national system. The credit granters have merged or have started competing nationally. Citibank and Chase and Bank of America compete for customers nationwide. As a result, more features, more terms, better points are available.

But to make that possible, these financial institutions and credit card issuers need information on consumers nationwide, and they have one credit central -- credit center that makes those decisions as to whether or not to grant credit.

And their systems are programmed to expect certain types of information, and if states had different standards as to what kind of information consumer reports could contain, how long derogatory information can stay in reports, and whether or not information can be in the report if it's a minor derogatory item, if a payment has been missed only once, but yet the systems expect information to be in the credit reporting network.

So having states with the option to determine -- or to establish different standards, would disrupt that national system, would make consumers appear to be eligible for credit when they're not, because the systems wouldn't be programmed properly.

But if you look at the -- so I think you need a national standard, national legal framework, for the system to operate as effectively as it has over the last 30 years.

But looking at some of the specific areas that are preempted, they really haven't created any problem with the system or with consumers. You discussed accuracy, for example, or ID theft. Neither of those items are preempted. States are free to pass legislation requiring different levels of accuracy, but they haven't. I suspect they haven't because it would dramatically disrupt the system.

They have passed legislation dealing with ID theft, but that has provided greater consumer protections and consumer rights without disrupting the national network or the system.

I frequently hear about studies of accuracy or criticism of the accuracy of the consumer reporting system, but these studies or surveys are typically done with -- by interviewing or looking at a fairly limited number of reports.

But I think we need to keep in mind that there's an accuracy study that occurs every day when millions of credit transactions occur, and financial institutions give their money to people they don't know. All they know about these people is what's in the credit report, and they trust the accuracy of the report enough to put their money on the line.

It seems to me that's the best accuracy study that we could have. People give their money away to someone they don't know. All they know is what's on that credit report, and they rely on it.

So it seems to me the challenges are somewhat misplaced. And the system is a national system, and preemption should really be allowed to continue.

MS. McCOY: Ron, do you have comments?

CHAIR REITER: I have I guess a disagreement, fundamental disagreement, with Oscar's comments. First of all, sort of as a general proposition, preemption in our system is the exception rather than the rule.

States have traditionally and historically had an important role in protecting the public, and operating in such areas as the granting of credit, and have done so responsibly and have done so in regard to the particular aspects or problems that may affect local communities.

We are a vast nation, but we do have regional differences. We do have issues that exist in certain parts of the country rather than others, differences of language, differences of temperament and needs. And to have a sort of blanket prohibition that totally ousts a state from any kind of regulation in the area that might be responsive to local needs is largely unnecessary except in those circumstances where a uniform national system is actually required.

I think, for example, we would all recognize that when it comes to the operation of the national air traffic control system we need to have a unitary system. We wouldn't want a plane going across country all of a sudden, for example, have to not fly over Oklahoma because Oklahoma had a different rule with regard to air traffic safety. I don't think we have that situation --

MR. MARQUIS: I think it's a good analogy.

(Laughter.)

CHAIR REITER: I'm sure you do, Oscar.

(Laughter.)

The states I think can operate in a way that would not interfere with the reasonable operation of the credit reporting system.

When preemption is -- one of the real risks of preemption is that having a preemptive law completely displaces the ability of states to act at all under any circumstances, whereas in the absence of preemption if states are allowed to act, and if the actions of states in general, or any state specifically, impinges upon the proper functioning of a system, Congress can then act and can address in a narrow way with a scalpel whatever the problem might be and may issue a -- may promulgate a statute that may preempt a specific problem area that might be created by states. But we haven't seen that.

When preemption is the rule, it often provides a floor rather than a ceiling for regulation. And I think we've seen in the areas that the council deals with on a fairly regular basis, like the Fair Debt Collection Practices Act as an example, the Truth in Lending Act in general as well, provide minimum levels of regulation but allow the states to come up with more protective legislation if they find that necessary.

And, indeed, with the FCRA itself, much of the FCRA does not provide for a preemption of state law, but sets a minimum standard and allows the states to regulate more if they find that necessary.

And Oscar even acknowledged this in indicating that states are free to prescribe tougher rules with regard to accuracy. They can prescribe rules with regard to identity theft and have done so, but have done so responsibly and in a way that has not wreaked havoc with the national credit reporting system. And we think that this is a much more responsible approach to the problem.

In addition, if there is to be preemption, the minimum safeguards that are provided by the federal statute have to be fairly high to protect the public in most circumstances. We found here with the FCRA that several areas where there have been complete preemption do not necessarily provide that level of protection.

And just to take one example -- and that is of the furnishers of credit -- the federal statute requires that furnishers of credit provide accurate information, rectify errors, and participate in investigations of disputes. But, in fact, there are no standards as to what the investigation should look like, and there is no civil liability to injured consumers in the event inaccurate information is provided.

The only civil liability that may exist is for the failure to participate in the investigation. And we've seen a number of circumstances in which there may be a perfunctory compliance with the investigation requirement, but that inaccurate information remains on a credit report. And so if any preemption is to be considered at all, it has to be really in the context of a much higher standard.

And the last observation I just wanted to make is that if you look at the FCRA, when it was initially enacted there was a preemption provision which allowed the states to enact more protective legislation.

In 1996, when the seven areas were added to the FCRA, there was a -- sort of a tradeoff. Those provisions came in with a preemption provision, but even the preemption provision was riddled with some exceptions, with some states being allowed by name to legislate or to have their legislation then in existence continue to apply.

Vermont has an exception from one of the provisions. California and Massachusetts have exceptions from other provisions. So what you see here in the system is really an example of politics and not policy. There was a clear tradeoff that went on, and I think what we need to look at here is not necessarily perpetuating the deal that was struck seven or eight years ago, but to really look at the policy.

And I think the policy underlying the original FCRA, which is to allow states to act where necessary to provide greater protection, should be applied more generally throughout the entire statute.

MS. McCOY: Clint.

MR. WALKER: Well, Ron, I'm glad you said that it was a tradeoff in '96, because, you know, there were a lot of protections that were added in '96. And I think that what happened with the preemption is that that preemption of those seven areas has created a system where the contents of consumer reports are uniform nationwide, and then how credit is evaluated is uniform nationwide. And that has done a lot of good things.

Oscar mentioned some of the big guys who have been able to compete nationwide. Well, little guys like Juniper Bank, where I'm from, you know, have also been able to get into the market. We compete nationwide against those people. We do the tests that Oscar talked about everyday, where we look at the accuracy of reports. We find them basically to be highly accurate.

There are -- people are being encouraged to report, which wasn't the case 10 years ago. Furnishers are encouraged to report. And, you know, as you know, we have an issue on furnisher liability issues, because I think you start creating -- when you start imposing the potential of civil liability on a furnisher who has no obligation to report, it's totally voluntary, that the attorneys for that furnisher have to really start thinking very seriously about advising their clients whether or not it's in their best interest to do it, especially when they're basically providing information about their customers, which enables the little Junipers of the world to come and try to get those customers away from them.

So I really think that if you start tinkering with just that one provision, for instance, that you could really denigrate the quality of reports.

You mentioned that, you know, some states were grandfathered with regard to various laws that it had in place as of '96. None of those laws really have impacted the quality of reports. They don't talk about, you know, whether the delinquencies should only be on for three years as opposed to seven years, and bankruptcies for seven years as opposed to 10 years, or that kind of stuff.

So that none of those laws really have impacted this nationwide system. The concern I have is when you do away with preemption -- and there's a lot of legislation that has been talked about at the various states -- that would impact the quality of reports on a nationwide basis, and when that happens you start getting Balkanization of credit.

Issuers like Juniper would have to evaluate people differently in different states. If a state enacted furnisher liability, like say in California, and, therefore, as a result certain issuers did not report their California residents on the Bureau, we'd have to enact an entirely different standard -- frankly, a tougher standard I think for California residents than other states -- because the one thing I do think the system has done is it has enabled credit to be granted very cheaply, and made it widely available in a responsible way to consumers across the country.

And I think it has really been very much a pro-consumer thing to have preemption in this instance. And I agree with you; you don't have preemption in everything. You shouldn't. But I think in this instance it really has helped people and lenders, and it's been, you know, one of those things that has been win-win for everybody.

MS. McCOY: Agnes, and then Larry.

VICE CHAIR SCANLAN: I'd like to pick up on Clint's comments, and also yours, Ron, from the standpoint of supporting national uniformity preemption. As Clint said, you don't necessarily need preemption in every case, but I agree in this case, there should be federal preemption for FCRA.

Ron mentioned Vermont, and that's where I'd like to concentrate my comments. The application of -- and the practicality of conforming with the Vermont regulation had a significant impact on most financial institutions, including mine.

The law came out -- actually, the regulation came out in November of 2001, something that was issued by the Banking Commissioner, not decided upon in the state legislature, issued and it had much more restrictive language in it than Gramm-Leach-Bliley in terms of information-sharing.

So financial institutions had to come up with additional privacy policies, issue them to their -- to the account holders or individuals in Vermont. And for an institution like mine, we had no bank branches in the state, but we had about 80,000 account holders. And just the impact of complying with the law for just 80,000 out of 20-plus million customers was significant for us.

Take that into consideration with an institution like ours and others that do business in all 50 states, and what if a state like California had a much more restrictive law that we had to conform with in terms of our systems, issuing the privacy policies, and what not. We have about three million account holders in the State of California.

I'm not suggesting that we'll stop doing business in that state, like several financial institutions did in the State of Vermont. We found out yesterday in our meeting that a couple of the members in the committee meeting -- their institutions no longer do business in Vermont. They no longer market to Vermont. Customers -- they don't contact the Vermont customers.

I'm not suggesting we'll do that in California, but we obviously will have to come up with new ways to service those customers if there are much more restrictive state laws. So from the standpoint of a large institution, or any institution that does business throughout the 50 states, from an information-sharing perspective, affiliate-sharing perspective, and the preemption of FCRA, the impact could be very significant, and the cost could then go to the customer in terms of fees to pay for systems changes and other enhancements that we'd have to undertake in order to adhere to the law.

MS. McCOY: Larry.

MR. HAWKINS: Yes. I think from sort of a common sense and practical approach, as more Americans become more transient in terms of where they live and how they move about and/or how they do business, it just seems to be sort of a natural fit to have more uniformity.

I don't see how it's very beneficial to the consumer, who now is more transient in terms of how he does business or how he moves about, to have to essentially adjust to different regulations and rules as they move about. Uniformity seems to be the practical way to go, so that essentially you don't have to deal with the changes.

If you're living on the East Coast and on the West Coast, you know, you've got to look at how you transition, or you've got to get another set of rules for where you're trying to do business. I don't believe that essentially federal preemption has ever been -- really been much of a detriment to how business is done or -- in terms of the safety for the consumer, for the general public.

I think you did make a good point, Ron, about air traffic control. You know, if the states probably had done such a wonderful job with it, probably we would use the best practices of the states to continue to improve that system.

The same thing with air quality. So I believe the same line of thought follows in terms of FCRA.

MS. McCOY: I have Earl, Elizabeth, Connie, and Ken. Earl?

MR. JAROLIMEK: Well, I guess, you know, I'm listening to the comments here this morning, and I'm not really convinced, at least from what I've heard, that there's compelling evidence that there is a broken system. States need to get involved to help fix woes or concerns on a regional or a state level.

There is tremendous risk on the other side of abandoning a federal system that, quite honestly, seems to work pretty well.

As Oscar pointed out, you know, the states can already pass some protections that are allowed. And the study that was referred to, as I heard it in March, seemed to be relatively narrow with respect to inaccurate information. So I'm not sure that we really have something that's broken that needs tremendous attention.

Now, on the risk side, you know, we're six months away from the date, and there's not a whole lot of time for us to be considering other options. As a proposal or as a possible course of action, one might take the identity theft and privacy concerns and put them perhaps where they belong, maybe in a Gramm-Leach-Bliley review or something in that nature.

But to disrupt the discussion about FCRA and those specific credit reporting system issues seems to be bogging this process down quite a bit. Now, maybe those need discussion. That's great. But I think what we're doing here with six months' time is really making this issue quite complex.

I would urge the Fed to continue to support, as Chairman Greenspan has, the renewal of federal preemption.

MS. McCOY: At this point, I'm going to ask our speakers to broaden the subject to address not only preemption straight up and down but also, if we have preemption, should the underlying federal rule in any of these areas be changed?

And with that, I'll start with Elizabeth.

MS. RENUART: Well, in terms -- I'll do both parts, but the first part is the federal preemption generally. And I want to support Ron's remarks when he talked about how Truth in Lending has a provision in it that allows states to pass additional laws, as long as they're not inconsistent with the Truth in Lending Act. The same with the Fair Debt Collection Practices Act.

A third federal statute that deals with all real estate mortgage transactions is the Real Estate Settlement Procedures Act, and that has an identical provision that allows the states to pass additional laws as long as they're not inconsistent. And "inconsistency" is defined as allowing the states to create greater consumer protections than the federal statute.

And states have not rushed into those areas and legislated. They basically have essentially kept out of it, and so Truth in Lending is a uniform law around the country. Similarly, the Real Estate Settlement Procedures Act is.

Under the Fair Debt Collection Practices Act, they, yes, have -- every state has their own state Fair Debt Collection Practices Act. And what it does is extend liability to the creditors themselves for violations of those state laws, not just limited as the federal law is to third party collectors as opposed to the creditors. And that hasn't created havoc with that system.

The one of the -- the two of those that are closest to this law -- and I would realize there are some distinctions between Fair Debt Collection Practices perhaps and this, because we're talking here about credit at the inception, the lending of credit as opposed to the collecting of credit -- of debts later.

The two that are most close to this I think are RESPA, the Real Estate Settlement Procedures Act, and Truth in Lending. They all have disclosure requirements. They have some substantive requirements. They have some substantive prohibitions. They have substantive duties. And, again, the sky has not fallen because the states were initially 30 years ago in those laws given the opportunity to legislate more.

I mean, Oscar said in his comments that the states haven't passed laws in the areas generally where they've been allowed to under the FCRA. They haven't passed laws that conflict or amplify in the areas of accuracy.

He said he suspected because the states believe this would disrupt the national system. Well, why wouldn't they think so now? Why wouldn't they -- you know, there's no evidence and there was no discussion yesterday that states are just waiting for, you know, the six months to pass and the preemption to expire, and to go into their legislatures and create havoc with our system.

So it's not broke in the sense that it's not -- nothing is going to happen. The sky is not going to fall down, and the states aren't going to rush in and create problems.

So from my perspective, I think the federal preemption should be allowed to expire for all the reasons I've said.

Now, moving on to the question of, well, if federal preemption is extended, then I think that the whole bill should -- the whole statute should be looked at. There are areas of the Fair Credit Reporting Act that need improvement.

Particularly in the area of accuracy, there should be the same standards for furnishers as there are for credit bureaus. Right now there's differing standards in terms of accuracy. That doesn't make sense.

Perhaps all furnishers are -- should be required to report. That would greatly help the situation in the subprime market where, as Pat alluded to and described, that some subprime lenders don't report favorable credit history because they want to keep those customers captive. And so that prevents people from moving up out of more expensive credit into prime credit, the prime market.

And all of the lenders now, all of the furnishers, are very much invested in having as much accuracy as possible, I assume, because they rely, as Oscar said and Clint described, on these credit reports in making credit. And these credit reports also affect your FICO score, and so we want FICO scores to be as accurate as possible.

So there's no reason now, where there may have been in the beginning of the Act, to allow furnishing to be voluntary. It should be mandatory. They're all doing it now. They all have an investment in it being accurate. A mandatory requirement would be no additional burden on any part of the industry.

And for those, again, that aren't doing it intentionally to keep their captive consumers as customers, then it would help to create or to deal with that problem.

Additionally, there should be -- we should look at -- in this reenactment process, look at a reasonable reinvestigation requirement for furnishers. Right now, there's no clear standard, and they should at least have a reasonable obligation to reinvestigate. And that investigation should include review of the original count information and documents. So that when that's done, if there's a consumer complaint, that it's done as fairly and as completely as possible.

And lastly, the private enforcement aspect of the statute. It was mentioned already that there aren't -- you can't get statutory damages against furnishers for failing to furnish accurately and to follow their obligations under the statute.

And for wilful violations we would support adding of statutory damages, which is capped in the statute, which is not unlimited statutory damages. It's capped to $1,000, and class action damages are capped as well. So we're not talking about huge liability here.

But even more importantly than that, the statute does not have authority, does not grant authority to the courts to allow for injunctive or equitable relief. So it's very important for a consumer to be able to get a furnisher or a credit bureau to stop doing something if they're continuing to do it after the consumer has given notice of an inaccuracy and it's not being fixed.

And, again, that's not a monetary damage claim against any of those parties. It's simply the courts having the authority to say, "Stop. You can't do that anymore" on a permanent basis.

MS. McCOY: I have Connie, Ken, Dan, Ruhi, Oscar, and myself.

(Laughter.)

MS. CHAMBERLIN: I guess it will be no surprise that I agree with Ron and Elizabeth. And I think we all might be able to agree on preemption, sort of depending on what it says, even though I personally would prefer to see preemption expire.

And there are some concepts that I think we might want to consider. Oscar talked about the value of uniformity, and I think that if you're going to have a national credit system, obviously there is a lot of value in uniform and accurate data.

And the accurate depiction of creditworthiness is important. So if you believe in the necessity for uniformity, then I think you have to agree that accuracy has to be a very, very high premium.

Requiring reporting is one approach. Another approach to deal with those who report the bad but don't report the good is to say you get to choose. You can report either nothing, or you report everything having to do with a particular -- you make your decision that you're going to be reporting everything.

And I think also, in addition to standards for investigation, if you're dealing with low-income people it is incredibly difficult for them to take the time to try to do this not once but three times, if, in fact, there is a problem with their credit report. And perhaps there is a way of incorporating some kind of sharing requirement for an investigation, so that you only have to do it once. You don't have to do it three times.

I think from the issue of liability for the accurate furnishing of information, we all talk about how important credit is. And, in fact, it is. It is a life-defining thing. It defines everything about you from where you're able to live, because of how much you may qualify for given the interest rates that you're going to be paying virtually your entire life. It is too important not to have liability for doing it wrong, and I think that if you're going to accept the one, you really do have to accept the other.

Another set of concerns have been alluded to -- the whole question of targeting particular groups with higher interest rates and no adverse action letter. I mean, this is fundamentally an element of predatory lending. I'm not saying that every affinity group who is targeted is a victim of predatory lending. I am simply saying that that's how you do it.

You figure out who you're going to go after, who is going to be more likely to perhaps be unaware or previously without credit, and so are not going -- is not going to know how to shop for credit, and is not going to recognize that that live check arriving on your doorstep with an interest rate of 18 percent is not a good thing.

And so as one potential solution to that, I would suggest that every time there is a marketing initiative directed at a particular affinity group that the lender be required to define what those prescreening criteria are for each group and make that available to the regulators.

I'm not even asking to make it available to the public, but let the regulators see it. We hear a whole lot of concern about credit drying up, and, frankly, that just seems awfully unlikely. It's too profitable. It's too fundamental a part of the way we live today.

And the underlying assumption in a lot of this is that the infinite provision of credit is a good thing. It's not. We all recognize that it's not. So I think that in framing the debate we always need to remember that endless credit is not necessarily a good thing.

MS. McCOY: Thank you. Ken?

MR. BORDELON: Thank you, Pat. I don't think I'll touch that last comment.

(Laughter.)

Credit unions generally support making permanent the federal preemption contained in the current Fair Credit Reporting Act. This is the message that we conveyed to the House Subcommittee on Financial Institutions and Consumer Credit about two weeks ago. And we would urge the board to also support our message and that of the chairman.

We do realize that there are inaccuracies, and the system is not perfect. And as Oscar mentioned, an inaccuracy is something that's not outside of the realm of the states to rectify. We feel that the benefits far outweigh the accuracies in helping us make sound credit decisions that are mandated by our regulatory agencies for safety and soundness purposes.

And from the consumer's perspective, we think that the credit bureau, especially the national standard, is -- has a very perceived value. I can tell you that for some reason loan applications are sometimes incomplete.

And, in fact, it happens more often than not that the loan applicant is relying on the loan officer transferring the information over to the application. They actually expect it to be a transparent transaction that the data is carried over.

In that regard, the credit bureau report for a lot of credit unions and other institutions is used in financial counseling. And has it had an effect? Well, I could give you a pretty I think statistically sound sample, if you would check probably with the 10,000 or so credit unions across the U.S. and ask them this one question, okay?

In the last 60 days, or in the last year, how many complaints have you had from a member sitting across from a car dealer's F&I guy who said this, "Oh, you don't want to go to the credit union, because they don't report to the credit bureau." And then, the member calls us and says, "What do you mean you don't report to the credit bureau?" It's a tactic that's commonly used. In fact, it's in their national training manual.

But the point is that the member -- we have educated the member of the value of that credit report. I mean, the value is that they can sign their name for a valuable asset. So to them I think the consumer education part of it has been well received, and they do value it.

So in that regard we would definitely support continuing the preemptions.

One other issue I think that was kind of interesting in this discussion -- again, we talked about the accuracies that were presented to us yesterday in committee. But about two meetings ago we were discussing privacy and the privacy notices and -- in fact, that's an agenda item, I think it's the next agenda item -- and dealing with the short form privacy notice. And, again, that's on the next agenda item.

But in the discussion it became evident that, you know, the short form template would be great, but it would probably only work if we had federal preemption. We have federal preemption on something that works now, and I would say, why would we stray away from it?

Thanks.

MS. McCOY: Thank you. Dan?

MR. DIXON: Thanks, Pat. Much of what I had thought of saying has already been said at this point, but let me just add a little emphasis on a couple of areas. I think it is a generally accurate statement lenders are just as interested as consumers in having accurate credit reports.

So if there are some ways that we can look at the current system and revise our -- amend it to improve the accuracy, I think that the lending community would be supportive of that. But they will never be 100 percent accurate, I don't think. That's certainly not our expectation.

So I think most responsible lenders take other factors into account. They do their own research to supplement what's in the credit bureau report. Our only source of revenue is income on the loans we make. And if we rely on credit reports that unfairly characterize consumers as being not creditworthy when, in fact, they are, then that's to our detriment.

So at least speaking from my company, we try very hard to make loans. And if that means doing additional work to overcome inaccuracies in credit reports that are unfavorable toward the consumer, then that's what we do.

Secondly, the issue of whether allowing the states to create separate rules -- I think there is some evidence that states don't always get it right. And I will just draw on one example that may come up in other conversations at this meeting or others.

In the case of predatory lending laws, the State of Georgia, bless their heart, has tried very hard I guess to add protections for the consumers. And I don't know hardly anybody who thinks they got it right the first time or the second time. It's a very difficult process.

Many of these issues -- predatory lending, fair credit reporting, and others -- are, in fact, hard to legislate, particularly when some state legislatures meet for a very short period of time. The tenure of the incumbents may be very short. They may have a variety of personal objectives in their approach to these very difficult issues.

And from our standpoint, we would much rather put all of that energy that would otherwise be devoted to trying to manage and control a process in 52 jurisdictions, nationally 50 states, District of Columbia, and so on, we would much rather put all of that energy into a serious effort to get it exactly right or as close to exactly right as we can at the federal level.

And having said that, there may very well be a variety of things that could be done to improve the current system. And we're willing to engage in that. We're not trying to persuade people that the current system is precisely right, and we ought to just extend it without further discussion. But let's have the discussion. But at the end of that process let's make that the system, and let's make it a better system for all consumers in all jurisdictions.

I think a number of speakers already have identified legitimate issues. So let's get to work on those at the federal/national level. I mean, I applaud the Federal Reserve for engaging in this. And if that's the best forum to have a process and advise Congress appropriately, then let's get to work. But let's do one national system.

MS. McCOY: Thank you. Ruhi?

MS. MAKER: Thank you, Pat. I welcome Dan's moving ahead from the earlier comments where nothing is broken. And sometimes -- every time I come here I feel like we live in two different worlds, and I've reached the conclusion that we do live in two different worlds.

And the consumer advocates who work with the lower income communities live in a very different world than some of the folks, with all due respect, around this table. And that's our job -- to mediate that world to you, which is very broken and very hurting, and for me very scary.

I like to always move away from the surveys. Oscar talked about the surveys, you know. And so to prepare for this meeting I spoke with someone who is a general manager -- until a month ago, actually, for seven years of a community development credit union, which I have been involved in right from the start.

She sees over 100 -- hundreds of consumer credit reports every year, and she is -- and, of course, I said, "How many have you seen?" And she said, you know, "A thousand." She says 40 to 50 percent of them have errors.

And what is more disturbing, she says, many of those errors are items we have paid off. We have paid off, and we have sent repeatedly to the consumer reporting companies, "Here it is. We've paid it off." We mailed the envelope. It isn't, "Here, client, go mail it." And after repeated attempts to get those paid off items removed, it hasn't happened.

And she expressed her frustration and she said, "I wish I could sue them," and she is extremely -- you know, they are very competent, aggressive, you know, advocates of their -- of folks' rights. And those are the people who get lower credit scores, end up with subprime credit, don't get, you know, property insurance.

And we're really using credit scores for so many things now. And what it does in those people's lives is -- it means that they don't get a job, don't get property insurance. I mean, the impacts are enormous of these inaccuracies.

And, you know, whether we go preemption or state rights, you know, I applaud Dan for moving us forward to acknowledging there are problems. So let's acknowledge what the problems are, and then we can figure out whether we want to fix them at the national level or let the states fix them, you know.

And that's where the lending industry has to move ahead, and if they acknowledge that, then we can have a dialogue and not be stuck on, "The system is not broken; let's not fix it," which I think it's, frankly, unproductive and bad for lending industry where if someone has got a subprime credit score you can't lend to them, even though it's, frankly, an incorrect credit score.

So I'm hoping we can get some agreement around this issue.

MS. McCOY: Oscar.

MR. MARQUIS: The one broken item that I've heard discussed is furnisher liability. Ruhi just talked about wanting to sue furnishers. Elizabeth mentioned suing -- or getting -- fixing the furnisher liability area. And Ron mentioned that a number of -- it has come to his attention that a number of furnishers are not doing an adequate job of reporting accurately.

Well, Ron, you can sue them. The statute has extensive -- the Fair Credit Reporting Act currently has extensive obligations for furnishers. They have to furnish accurately. They can't furnish information knowing it's inaccurate. They have to reinvestigate.

There's no consumer cause of action for that, but states can enforce that. Federal regulators can enforce that. What we're really talking about is individual consumer actions. And Elizabeth mentioned that the cap on statutory damages is fairly limited. Well, it really isn't.

If it's $1,000 per violation, and you have a class action, the financial institution settles, because they're being held up. Whether they made a mistake, whether -- and financial institutions have no interest in reporting inaccurate information. The way the system works is the same computer system that generates the invoice to the consumer is used to report to the financial -- to the consumer reporting agency.

If there's a mistake in the credit card bill you get, or if you missed your mortgage payment, if they don't have your mortgage payment, you'll hear from them. You get the information if there's a mistake in their system, and that's the mistake that's reported to the consumer reporting agency, and you get it, and you can fix it.

And so there are -- the issue really is, class actions, holding them up for some error that is inadvertent, because every incentive of the financial institution is to correct information, to report accurately, and consumers are aware when that kind of error occurs.

Now they may not know if the wrong employer is on the consumer report or the wrong -- or an old address or something like that. But we have to keep in mind what the purpose of the system is and what the purpose of the report is. It's to help evaluate someone's creditworthiness. It's not to be a reflection of where they work or what they make per hour, or whatever.

It's to be able to make a risk decision as to whether or not to extend money or let somebody drive home with a car, or whatever. And financial institutions think that the reports are accurate enough to make those decisions, that they let people walk away with money because they believe in the accuracy of that report.

Somebody said 40 percent are inaccurate. Ruhi said 40 percent are inaccurate. I think the financial system would collapse if they made -- if 40 percent of their credit decisions are erroneous. They wouldn't get paid back.

So I -- and the fact that Ron can enforce furnisher liability, which is the only broken area that I've heard discussed, I don't see any reason to make that decision.

MS. McCOY: If I may, I'd like to address this question of accuracy. The accuracy can play out in either of two ways. One is the submission of wrong information, but the other is the issue of incomplete or asymmetric reporting, that you report on an episode but don't then report subsequently on the resolution of that episode. Or you report derogatory experiences but not positive experiences. And there are other examples.

These errors can cut both ways. They can falsely raise FICO scores, and they can falsely lower them. And I will admit my concern at the consumer level is more with the lowering, but I -- in the interest of candor, they can cut both ways.

The accuracy can hurt consumers in a number of ways. First of all, it can affect access to very important things, not only access to credit -- credit can just be outright denied -- but I in my personal experience have seen individuals who cannot get an apartment to rent from any landlord because the landlords find their FICO scores too low. We're not talking about home ownership. We're talking about a rental.

They lose jobs because their -- they give consent to a prospective employer to pull their credit record. So these are the most basic necessities -- employment and rentals.

In addition, a too low FICO score not only raises the price on credit, it raises the price on insurance. Insurers are commonly using risk-based pricing to price insurance policies.

Finally, we have what the Boston Fed documented over 10 years ago that the thick file/thin file syndrome in which it -- at least back when the Boston Fed looked at the issue, white applicants for mortgage credit who had credit blemishes, the loan officers were more likely to work with them to document why those were immaterial. And blacks and Hispanics were less likely to receive that type of working together.

Now, the question for me is: should we have mandatory reporting of items that sometimes are omitted? And we see from the Fed study that credit limits often are omitted. Less frequently we have a problem with certain -- a certain small core of lenders who refuse to report positive payment experience but do report negative experience.

And this gets to the question that I believe either Oscar or Clint raised, which is: will that scare away reporters? We do have a voluntary system.

I would submit there are two reasons why mandatory requirement of reporting these items might not scare away reporters. First of all, there is an interest in the accuracy of FICO scores. But more importantly to me is that lenders want the threat of a negative report as market discipline against debtors. That's an important form of market discipline that they want to be able to say that they use.

And for me, that's the reason why I'm not too worried that we will scare away reporters with mandatory reporting requirements.

Susan?

MS. BREDEHOFT: Yes. First of all, I'd like to say that I support the preservation of federal preemption for many of the reasons that Agnes and Oscar have already reiterated. I think it's important to protect the efficiency of the system.

Even though it may not seem like it, when I was in the lending side of the business, over the years I have seen the quality of credit reports improve. The amount of information, the quality of information has improved.

And I am also guilty of not completing my applications, and I will put in the section about my debts, "Refer to my credit bureau report," so that I don't have to list my debts. So I am guilty of being lazy.

But I have seen more reliance on FICO scores and less reliance on character, simply because we have a national banking system now. So I do believe it is important for credit bureaus to be accurate and complete. And it certainly isn't fair to applicants if certain organizations are only reporting negative information.

And I agree with Connie's position, if you're going to report, you need to report accurately and completely to be fair to all customers.

Banks are in the business to make money. We want to make loans, so we want credit bureau reports to be accurate, because this is what we do. We don't want to turn customers away, especially deserving customers.

Somebody mentioned adverse action requirements, and that sometimes borrowers are offered higher rates. And I wouldn't be adverse to looking at adverse action requirements, but I do think that there is a mechanism already there.

If a customer applies for a product, a $5,000 loan at an 8 percent rate, and ends up getting a $5,000 loan with a 12 percent rate, to me that would be considered a counteroffer. And we should be giving the customers the reasons why their rate is higher.

Now, maybe not everyone interprets it that way. But maybe that's something that we should be looking at.

The other thing that I'm hearing here is that there seems to be a sense that if we go with federal preemption that states will have no influence over the law. Well, every state is represented in Washington, D.C. And each representative has the ability to influence federal law. So it's not like states will have no influence or no say over the Fair Credit Reporting Act should it be -- should these provisions be preempted.

MS. McCOY: Susan, thank you. Hubert?

MR. VAN TOL: Thank you, Pat. I was thinking, where are all of the states' rights conservatives when you need them?

(Laughter.)

I'd like to reiterate that I think the whole issue of credit scores is becoming more and more important in our society. Insurance -- it's becoming a bigger and bigger issue, and I think it is crucial that consumers have the protections that Ron, Elizabeth, Connie, all mentioned, and I won't reiterate those.

But I think one area where nobody has spoken -- and I think should be added if there is to be preemption -- is there should also be easier access for consumers to their credit records, getting a free one automatically every year, or something of that sort, and expedited procedures for being able to initiate a review of contested items on that.

MS. McCOY: Diane?

MS. THOMPSON: Yes. Thank you, Pat. I want to underscore a few things that have been said that perhaps don't seem so important to the normal working operations of the lenders. Oscar said that the Fair Credit Reporting Act and credit reports serve a purpose, and the purpose is access to credit.

In my office in the last month I've seen three people who have had adverse actions taken against them by landlords and prospective employers for false derogatory information on credit reports, both from standard mainline credit reports from one of the big three and also from the smaller specialized tenant trackers.

Pat said this has a devastating impact on these people's lives, and there is no remedy for them. They get an adverse action notice, they're told they've been denied housing because of their credit report. By the time they come to me somebody else has rented that apartment, somebody else has gotten that Section 8 voucher.

And there is nothing -- by the time that process is corrected and the credit report is remedied, there isn't an option for them to go back and get in line. Well, they can go back and get in line, but it's another couple years, if we're talking about subsidized housing. It can be just as long for decent private housing. Employment -- a good job is very hard to find for the people I represent.

And what concerns me in this conversation about preemption and what rights do we need and what protections do we need, is we're not thinking about the ways that these reports get used to affect people's lives.

I think that one thing you can say, "Banks have a great interest in making loans and making sure these reports are made accurately and completely." That may well be true. Not all finance companies share that interest, however, and I can tell you that most of the landlords I see who use tenant tracker are not at all interested in seeing complete and accurate information reported to tenant tracker.

They don't really use tenant tracker as a screener so much as a hammer to hold over people's heads. If you complain about me to anybody, I'll put your name into tenant tracker, and you'll never be able to rent from anybody else, because your name will show up as a bad tenant.

And when we talk about preemption and we talk about what protections we need for consumers, we need to remember that these reports get used in ways that we're not what the system was designed for, not what was intended, and so that the protections for duties of furnitures -- furnishers, excuse me -- and the protections for accuracy need to be in place, and they need to be in place at whatever level the statute is at. Whether it's a state level or a federal level, those protections need to be there across the board.

Thank you.

MS. McCOY: Diane, thank you. Clint, Tommy, and then Larry.

MR. WALKER: Okay. I wanted to talk about, actually, just one little point first. Connie, you mentioned one of the things you wanted was you were concerned about them targeting particular groups with higher interest rates, and that you'd like examiners to be able to look at prescreening criteria that you use.

MS. CHAMBERLIN: Yes, I'd really like the public, but the examiners were --

MR. WALKER: Right, the examiners -- yes, you want the examiners. They do that right now. I just went through a compliance exam. They look at every bit of criteria you use. I mean, that's one thing the examiners are doing -- prescreening all the criteria we do use. That's already in place.

A lot of people have said that they think it's a shame that people sometimes report just the negative, not the positive, and I agree with you. Accuracy is important. I have no -- you know, we would love it if people report it, because that makes the report more accurate.

So, I mean, you know, I don't see any difference with you on that one, Pat.

The big thing that I'm concerned about, honestly, is furnisher liability. I know this doesn't address your problem, Diane, and I -- you know, I apologize up front. But I truly believe that if you create furnisher liability, you will reduce the accuracy of credit reports.

Right now we find -- and I'm a credit card issuer, but we find as a credit card issuer that the information that is most accurate in the bureau comes from other credit card companies. They've got large systems in place to ensure their accuracy. So every billing cycle when we send information, we have another thing that we cross reference it with, so that, you know, if there's a fat finger problem when somebody puts the wrong digit, it comes -- you know, it hits, it comes out that it's fixed.

We've got a lot of, you know, programs in place to ensure that what we send in is accurate. When we get complaints -- and we get about one a month -- we only have 700,000 customers. We get about one a month. We put a person on it, they look at it. To date in our history we've had two issues only -- places where we've had to fix it, both involved people where, frankly, we put the payment on the wrong account.

But we find that the stuff that we put in is incredibility accurate. You're examined for that accuracy. Again, I'm going through examinations right now. They look and they see how we report, you know, our reg examiners do, and they, you know, test us on that.

In addition, you know, you do have that right for the state AGs to come after us. My concern is class actions. I mean, I think Oscar put it on the -- on a tee. If I am subject to class action litigation, you know, you really do not have, as a lender, small -- or even big -- a real defense against that, because a potential hammer is so significant that we'll be forced to settle.

And that would scare me to death, to be exposed to that liability. And I really would have to think about, do I, in this voluntary system, recommend to my client that we expose ourselves to that liability by continuing to report on our good -- you know, on our customers -- good or bad.

And I know there will be some people who will stop. Whether we make that decision or not, there will be some people who stop whose reports will be less accurate. And so that's -- you know, with furnisher liability, I really think that if you start creating liability you will end up with less accurate reports.

Again, Diane, I apologize. I know that doesn't resolve your particular problem of landlords, and, you know, this is a different concept. But I know from our perspective it would be a less accurate report.

MS. McCOY: Clint, thank you. Tommy?

MR. FITZGIBBON: I just had two things. One is I think that the data is centered around whether we allow permanent preemption or allow it to go away. And I think that the debate, the discussion, and everything else we've talked about is that this has been an area in the business which is -- has had significant changes in the last seven years, and both in terms of the utilization of the information as well as the accuracy tolerances, if you will, within the information.

And it would be my observation that the system is imperfect. Earl has said, you know, it isn't broke, and it isn't really -- it is imperfect. It may not be broke, but it is imperfect. There are areas where there could be improvement, and I think that from my perspective -- and I think from others, that -- I know from others -- that some type of a temporary, if you will, sunset provision that allows us the opportunity, allows the Fed the opportunity, frankly, to take a look at how this industry changes over the next five years, six years, seven years, to come back and revisit it I think is a point that we might want to consider, or that the Fed might want to consider.

The second is that part of the imperfection is this -- goes back to the reporting. I happen to do a lot of work with community development corporations around the country who service loans for low- and moderate-income first-time homebuyers, who service loans for home improvement loans for low- and moderate-income homeowners, who service loans and who collect tenant payments for tenants that they have in properties that they own.

Virtually none of them report. None of them. Or a great share of them do not. I know on the lending side -- Mark maybe has some other information from the CDFIs. They're getting better, because they're sort of getting into the standards of it.

But if the industry, if you will, that is serving low and moderate income is not reporting, what does that do for that customer as well? They're not reporting to the tenant tracker. They're not reporting to the credit bureau. So this includes state and municipal agencies that are set up to service these types of obligations, as well as nonprofit intermediaries who service these obligations.

So that's another area of concern that we need to make sure that if we have some time here for that industry to sort of catch up, maybe we can take a look at it in the period of time and begin to think about furnisher liability as well as furnisher accuracy as well as mandatory participation.

MS. McCOY: Tommy, thank you. We have five more minutes, and I have on my list Larry and Elizabeth. If the two of you could allocate time --

CHAIR REITER: Pat, I think we can allow a little more time.

MS. McCOY: All right. Thank you.

MR. HAWKINS: I'm going to need all five minutes.

(Laughter.)

MS. McCOY: Please, go ahead. You now have it.

MR. HAWKINS: Let me tell you, after hearing Diane's passionate input and some comments that Pat made about even with the scoring system, and what have you, that it seems like sometimes that system is ignored if it's a white applicant, as opposed to what happens to minorities, you know, I think we're dealing more with some of the symptoms as opposed to the real problem here. So I've got bigger concerns.

I've always had concerns, being a minority, about scoring systems. I can recall way back when I was a college student I had applied for an application at Montgomery Ward's, and was declined only to find out years later that in their scoring system I lost points just because of the zip code where I lived.

That, you know, this FICO scoring and the -- you know, everybody looks at that, and that's flawed because the credit information is flawed. But now, you know, I feel strongly about federal preemption, because, you know, if left to some of the states -- you know, California may be perfect, but Alabama and Mississippi may not be.

(Laughter.)

You see? So now I've got bigger concerns if we don't have the preemption, where essentially we look at more uniformity, because of some of the things that were discussed here, that there may be some other things that are hidden -- and I believe and suspect that they are, and that entities may be using scoring as kind of a smokescreen to cover up some of the other real problems, and to essentially get around doing some of the things that it wouldn't matter what the score is or anything else. They don't want to do it because of other reasons.

MS. McCOY: Ron?

CHAIR REITER: Yes. Well, speaking from the -- having coming from the perfect State of California --

(Laughter.)

-- $300 billion budget deficit.

(Laughter.)

I think Larry raises a very interesting and important point, but I believe that the whole context of our conversation here really relates to a very important issue of the process and procedure by which laws are made in this country.

And the question of preemption really ultimately is whether Congress should entirely displace the states from any role whatsoever in any regard of any facet of these seven issues. And to the extent that we can look to the FCRA, we can see that apart from these seven issues there is a preemption provision. But it basically allows states to come up with more protective legislation that's not inconsistent.

So that the concern that Larry raised, which is that if you don't have any federal minimum standards you can have some mischievous results occur in a variety of states, can be -- that problem can be addressed by having a minimum federal threshold which provides basic protections, provides whatever is necessary for the operation of a uniform national credit system that provides for what the content of credit reports might be, etcetera, etcetera, but at the same time allows states some flexibility, so that the states can address questions of abuse of practices by landlord-tenant credit reporting agencies, so that the states can address other issues that are important to them.

One major issue, of course, of great controversy relates to the sharing of information for marketing purposes, the use of credit reports, prescreening devices for the marketing of credit cards and other things, without getting into the merits of the issue of whether there should be enhanced privacy protections or whether the current system should go on as it is.

But just as a matter of process, if states determine that they have such a heightened privacy interest that they want to restrict the use of this information so that people's personal credit information can't be used without their express permission for purposes of marketing, that might be something that the states should be permitted to do.

Some states have -- and you can see it from their state laws -- have enhanced private interest. Vermont does. If Vermont decides to restrict the use of information, so that Agnes' bank finds it uncomfortable to market there. That's something that the people of Vermont should be able to decide for themselves.

They may very well shoot themselves in the foot, as the people in Georgia may have done in the first round where they may have acted too strongly, and then the pullback of people from the industry causes the state legislature to rethink what they do. But that's a part of the vibrant system we have. No one said that democracy wasn't chaotic at times, and we've seen that all over.

The question again is: should Congress act to utterly displace the ability of states to operate in these areas? And it seems that there are matters of concern that are of a sufficiently localized nature, whether it's the heightened privacy concerns that people in California or Vermont may have over the rest of the country, or whether it's the question of landlord-tenant credit reporting, or concerns about whether furnishers of credit should be called to task by individuals who have been harmed by misstatements that they've made.

Apart from the question of -- just going to the furnisher issue for a second, apart from the question of any kind of financial liability, we've seen situations where consumers are interested more in injunctive relief. You know, they've raised the question of an inaccurate report, they've raised the question with the furnisher on a repeated basis, and the information sometimes continues to get reported in error.

And sometimes what the consumer wants more than anything else is an injunction to prevent the furnisher from continuing to report the bad and the inaccurate information, rather than any kind of monetary relief, because the limited sort of monetary relief which is provided in the FCRA may not really be adequate compensation for them. They just want the matter rectified.

So the flexibility of that, having other actors -- the states involved in this -- is very, very significant. And minimum levels of protection can be sure to make sure that states don't allow mischief to occur.

MS. McCOY: Ron, I have two more speakers on the list, and Oscar would like to be added. How many more minutes will we have?

CHAIR REITER: Why don't you go to maybe 10:30.

MS. McCOY: Yes.

CHAIR REITER: Okay? At least, and then we can --

MS. McCOY: Thank you very much.

CHAIR REITER: Okay?

MS. McCOY: Yes. So Elizabeth, Buzz, and then Oscar.

MS. RENUART: Again, just responses to some of the things that were said that I'd like to point out. One is that Oscar was describing that most errors that are made are fixable and knowable by the consumer. In other words, if you get behind on your mortgage, you get a letter saying you're behind, so pay up. And so you know that there's going to be a derogatory dash against your credit on your credit report due to that.

I don't think that's entirely accurate. I think that's accurate for when you're making payments, but there are many examples -- and I'll give you two -- where the consumer wouldn't know what's being reported about them and wouldn't know that that could create a problem.

And one is a situation we've already talked about where if you have positive credit history, you're making your payments, and they aren't reporting that about you, you don't know that, because you don't get any notice saying, "Well, thank you for making your payment, but we're not going to report it to the credit bureau." So that's the absence of information that's harmful.

The second would be if you pay off your loan and that's not reported, or you have paid off your credit cards and you want to terminate that account, maybe you got solicited by Visa and instead you wanted a Visa card instead of a Mastercard, so you terminate your Mastercard and go with Visa or American Express, whatever, and that's -- if that's not reported as a payoff or a termination of that account, FICO does pick up the number of open accounts that you have, and that is weighed in your FICO score to your detriment. So those are two examples.

Another statement by Oscar I wanted to address, and that is that the system would collapse if the error rate was really as high as Ruhi talked about from her informal discussion with a community development credit lender.

One answer to that is that it's not that loans won't be made. They might not be made at the interest rate that that consumer would deserve if they had an accurate FICO score, but that consumer then gets shunted into markets where they're paying more.

So because of the democratization of credit, and what Connie alluded to, which is, you know, credit at all cost is not always good credit, and we don't think that's a good thing, but people do get into those markets. So they get the credit; they just are paying a payday lender or they're paying a subprime mortgage lender that much more.

In terms of higher accuracy that you mentioned, Clint, two points that you mentioned I wanted to address briefly. One is if there's higher accuracy requirements, or if there's statutory liability for furnishers, furnishers are going to drop out of the system. Well, the answer to that is make it mandatory. You know, all reputable lenders are already reporting. If the disreputable ones aren't reporting, they certainly should be. And if they aren't, there should be penalties for not being part of the system.

And then, lastly, Clint, you mentioned that many furnishers are examined by -- you know, by bank regulators for the accuracy of their reporting. Well, there are a lot of -- my response to that is there are a lot of players in this that aren't part of the bank system that aren't regulated in that way. And finance companies, even if they're licensed at the state level as a lender, the examiners there aren't examining for FCRA. They're examining their lending activities but not their reporting.

Similarly, landlords certainly aren't regulated or examined by anybody other than housing inspectors who come to see whether the apartments live up to code or not.

MS. McCOY: Thank you, Elizabeth. Buzz, if you could take the next four minutes or so, and then the last two people on the list are Oscar and Connie, if they could divide the remaining five minutes. So four minutes, thank you.

MR. ROBERTS: I hope I will be briefer. I had a couple of questions, not being an expert in this area. One is for Clint. If a lender is making only one or two mistakes over 700,000 cases, why would that lender have a lot to fear from the prospect of a class action?

And a question for Oscar is, I understand that the financial system would collapse if the result of errors were to grant credit to borrowers who are uncreditworthy. But I'm not clear why the financial system would collapse if there were a high rate of errors going the other way, if there were a high rate of errors that was really depicting creditworthy borrowers as uncreditworthy.

MS. McCOY: Buzz, thank you. Oscar?

MR. MARQUIS: Was I next?

MS. McCOY: Yes.

MR. MARQUIS: I don't have a prepared response, but --

(Laughter.)

But, well, I think -- just to answer your answer, I think there's a problem if credit decisions are not made based on actual risk. If consumers who are not creditworthy get 40 percent of the loans, or 40 percent of the consumers who get loans are not creditworthy, or 20 percent are not, you would have a severe consequence.

MR. ROBERTS: Assuming that there's a symmetrical rate of errors, right?

MR. MARQUIS: Right. And if consumers who are creditworthy are denied, they are told. They'll get an adverse action notice typically, some don't, some will accept a higher offer, but most will not -- will get an adverse action notice, will find out that there's an error, will dispute it and correct it.

And I can assure you that credit bureaus do not have 40 percent of their credit -- of the credit reports sold, 40 percent of the consumers do not dispute information, 20 percent don't dispute information, 10 percent don't, five percent don't dispute the information. And I don't know what the current number is, but it's less than that.

It's a very small number of consumers who get adverse action notices who dispute information. So those with bad credit who have good-looking reports and get the credit, they're not creditworthy and there will be a financial impact. Those with good credit records but the credit report has derogatory information that's not in it who are turned down will dispute it. And it's a much smaller number than any of the numbers we've heard about.

The point I wanted to make, though, before -- just -- and it's not a philosophical issue again, but Ron mentioned consumers interested with injunctions for repeated errors against financial institutions if they continue to report inaccurate information about the dispute. They have a cause of action for that.

The Fair Credit Reporting Act gives consumers a cause of action against financial institutions if they repeat errors. So that's already there. We don't need to fix that.

And you also said that they're not concerned about monetary damages in that case. They're concerned with the injunction. I think their lawyers are concerned with monetary damages. I think we've got to be realistic about that.

MS. McCOY: Oscar, thank you. And then, finally, Connie.

MS. CHAMBERLIN: Okay. Thank you, Pat. Oscar, I agree totally with part of what you just said, that the system should be accurate, and that consumers who are not creditworthy should not get credit or should get credit at higher rates, or whatever.

But I think we're forgetting a couple of things. One is that FICO is fundamentally a black box, and it takes into account many things that do not show up on your credit report. Larry mentioned not getting a job because it turned out that his zip code created --

MR. HAWKINS: Not the job. Credit.

MS. CHAMBERLIN: Credit. All right. Whatever.

MR. MARQUIS: Can I just correct that? That's not correct.

MS. CHAMBERLIN: What is not correct?

MR. MARQUIS: FICO looks at the credit report only.

MS. CHAMBERLIN: I'm not sure that I agree with you.

MR. MARQUIS: It's a fact question.

MS. CHAMBERLIN: There is evidence that various things are taken into consideration that are -- perhaps were initially deliberate, now may not be deliberate, but end up being proxies for other factors.

And I was very interested -- I think most of the people around the table do agree that there have been, as Tommy said, significant changes not only in the information that's reported but the way it's being used, and that the system at this point is skewed, and that maybe there's a little bit more balance that needs to be put so that consumers have a little bit more weight in the system.

And I was very interested, Oscar, to hear you argue for big government.

(Laughter.)

That we should all relax because government will do it, and the states will do it. And I think that we're all aware of the pendulum that we're seeing, which is limiting the revenues available to state governments.

If you insist that the states are going to be the entity that deals with problems here, we all know it's not going to happen, simply because of resource limitations. And creating a private right of action with the various kinds of relief that have been talked about I think is a real solution to that.

If you're not making the mistakes, then it shouldn't be a problem. But I do think that in spite of all the disagreements that everybody around the table is expressing, there is a fundamental underlying idea that what we're trying to do is create a system that's fair. And the system that is fair is going to take a little work. It's not the existing system.

MS. McCOY: Well, with that, we will close our discussion of the FCRA. I think it has been a very full and fair discussion. There have been many concerns expressed about accuracy with a fair amount of disagreement about whether market discipline is the answer or whether we need mandatory requirements of some type, either at the state or federal level.

So with that, I will end the discussion. Thank you.

CHAIR REITER: Thank you very much, Pat.

I'd like to turn the floor over to Oscar to lead the discussion on financial privacy.

MR. MARQUIS: Thank you very much. As a believer in big government --

(Laughter.)

CHAIR REITER: I knew we could count on you, Oscar.

(Laughter.)

MR. MARQUIS: The Gramm-Leach-Bliley privacy notices that were sent out last year, and the renewals this year, received a lot of criticism for being too confusing, too hard to understand by consumers and not -- and didn't really achieve their purpose.

Now, one could argue that they were very effective. I'm not aware of any lawsuit against any organization that the privacy notices did not comply with the law. And, of course, the purpose of sending the notices was to make sure that companies complied with the law.

But in response to the criticism of the confusing notices, the financial regulators have come up with a template of a short notice as well as a number of private industry groups who have started working on a short notice that could be used possibly as an alternative. And we discussed whether or not the form should be mandatory or optional, whether it should contain more information or not.

The Gramm-Leach-Bliley Act requires a certain number of elements to be included in the notice, and the template may or may not include those. Well, in fact, it doesn't include all of the elements, which has always been a problem with the short notice concept. In fact, that's one of the reasons notices were very complicated, because they followed the recommended language in the regulations.

So to kick off our discussion, Agnes I think would like to make some comments.

VICE CHAIR SCANLAN: Sure. Thank you. My comments really sort of follow some of the comments that Oscar has just made. Financial institutions did spend a lot of time writing their privacy policies over the last several years, and each year, I think we can all agree, the privacy policies did improve.

As a matter of fact, our institution knows a lot about our peers' privacy policies, because we read them every year. We look for how we might improve our own, make it a little bit more customer-friendly, look to readability studies, also have focus groups to provide information to us about our privacy policy.

So institutions have spent a lot of time over the last couple of years on their privacy policies. Notwithstanding that, consumers, as well as the federal regulators, have had concerns, have had complaints about the legalese of the privacy policies, whether or not they were confusing, and the complaints that came from our customers.

Consequently, we did talk about the short form notice that was provided at yesterday's meeting, and we all came to the agreement that the concept, the idea of the short form notice was a good one. And this is one meeting that I was in where we had a lot of agreement as opposed to constant difference of opinions.

We did talk about this being a good idea. We did say, however, there had to be a few caveats to that. The first one is that this type of a short form notice should provide a safe harbor. We talked about whether or not it should be optional or mandatory. I support either one. But it should focus on the consumer's right to opt out.

I also made sure I did mention the fact that there were some financial institutions that had a "opt-in" privacy policy, and a short form notice has to take that into consideration also. Obviously, the short form notice should also be in compliance with Gramm-Leach-Bliley.

When financial institutions wrote their privacy policy, they had to strike the balance between compliance with Gramm-Leach-Bliley, which is pretty difficult because there's a lot of legalese terminology.

And then, also making it more customer-friendly. The short form notice is more customer-friendly, but it has to be compliant with Gramm-Leach Bliley.

The format counts. The format has to be reviewed and possibly changed as opposed to the one that was provided.

Also, financial institutions are not interested in having two notices -- a short form and -- distributing a short form in addition to a long form, and that's something that we need to review further, because that can be very confusing to the customers as well as very costly to the financial institution.

And then, the last point I wanted to make was that when we get to the point to discuss further the short form notice, the interagency should either manage a focus group setting or a customer discussion -- customer discussion about the short form, or at least work with an entity to provide that sort of forum for consumers to look at the short form.

MR. MARQUIS: Earl?

MR. JAROLIMEK: Yes. I also would, you know, favor the short form concept. I think it does meet a lot of needs that have been expressed as problem areas with regard to long notices or complex language. Many banks -- you know, even us included -- in the first go-around followed the model language. I mean, there was risk in -- at least we felt in not doing so.

The second time around, though, I think has produced far better notices. I think the annual mailings that we've looked at as well have really exhibited a pretty good effort on behalf of a lot of banks to make their notices more simple and less complex.

With that in mind, what I would suggest is that the short form notice concept be adopted, but left to be optional, because I still believe -- and I think sometimes it's ignored -- that a far majority of institutions do not need to provide an opt-out because of their -- they're operating under conditions that Gramm-Leach-Bliley suggests. They aren't required to and are not sharing information in a manner in which the opt-out is required.

What that does at the end of the day is really simplifies the notice that they have been able to produce absent the short form idea. Our example -- you know, I brought our notice with. We've got a trifold. We have six affiliates.

We've been able to get our notice information, the required language, within this trifold, and even found room on the back to list some identity theft tips for our consumers, customers, talking about how you can get off certain mailing lists, etcetera. So there's -- I mean, there's ways it can be done, but I don't think we're alone. This isn't an exception. I've seen several very, very good examples.

So what I'd hate to see is that these very readable, easy-to-understand examples be somehow displaced with a short form notice where I think the customer may be better served by some of the efforts that the industry has made in that respect.

So optional I think is good. There are some very, very long notices that still exist, and I think the short form notice could help. For those examples, replace those.

Should there be a layered approach? I think was one of the questions we heard. I would propose that the short form notice be the annual mailing notice. If an institution still has a need to have a long form notice, that could perhaps be made available on the website, something the consumer could dig into deeper.

But I think having to sustain two notices or mail two notices, or somehow try to combine the two is going to be pretty complicated, and perhaps wouldn't serve the consumer very well. So I would be in favor of it being the one that gets mailed on an annual basis.

How to move forward? I think there should be more input on design -- consumer focus groups, maybe some of the industries, to come in and say, "Here are some things that we think the short form notice could have improved on." Someone brought up the yes/no boxes. I took a deeper look at that. I have to agree with that observation. They don't seem to fit very well with the context or the question being laid out on the notice.

I also noticed that there was an opt-out area for affiliate-sharing, and that's really only under certain conditions per FCRA. So I don't know that that would need to be part of the short form notice.

And I just want to underscore -- to encourage the use of the short form notice, to uncomplicate the privacy notices, I would really favor some type of a safe harbor to encourage its use.

MR. MARQUIS: Okay. Clint is next, and then Pat. And in the meantime maybe some of you can think about, how would you measure whether or not a privacy notice was successful? There was a lot of criticism of the old one, and it was not -- deemed not successful. But why not? And what would make one successful? Clint?

MR. WALKER: Great. And actually, I'll be short because Earl said a lot of what I was going to say. Again, we think the short form notice is great.

What I really liked about it is that I think it enables people to compare. You know, those boxes and everything gives the consumer an easy ability to compare notices, and I think that will be very, very helpful to consumers. Most consumers do not choose their financial institution on the basis of privacy.

You know, we -- Juniper tried that, didn't work. We tried to promote privacy as a marketing thing. But I still think the ability for the consumer to educate themselves, easily compare various privacy policies as opposed to having to compare legalese, is a really effective thing.

Again, one thing I would like to say, though, is that we would still -- we would still like any form to have sufficient flexibility, so that certain of the things that we do that we think are very much pro consumer on the privacy side we could emphasize, whether it being that we do not share with third parties, whether we provide them with opt-out on -- offers that we make directly to the consumers, not affiliates.

You know, what Juniper actually makes to -- is customers. We give them the right to say, "No, we don't want to receive any of that." You know, we want the ability to put that kind of thing in there.

And then most important -- and, Buzz, this kind of -- I didn't have a chance to answer your question, but this kind of does answer the question. We'll talk offline. I think it's really important that we have a safe harbor, that we cannot be sued for using this form.

So there's got to be compliance with Gramm-Leach-Bliley, but it's got to be sufficient so that if we use this form lawyers who just like to sue --

(Laughter.)

-- can't find a way to come at us for it. And I think it's really important, honestly. And I really do mean that.

And another thing I'd love is preemption. I would love this to -- you know, to use a short form and preempt -- that would really make me able to sleep at night. So --

(Laughter.)

MR. MARQUIS: Pat.

MS. McCOY: Oscar, thank you.

MR. MARQUIS: And then, Ken.

MS. McCOY: Four points. First of all, I strongly support the short form concept. I think I mentioned at a previous meeting that the way I read the current privacy notices is just go to the end and find out how to opt out and skip everything in front of it.

And I think for most consumers who have not studied the law, and sort of know what the structure of the law is, they have to read through a lot of verbiage to get to that point if they're interested in opt out.

I would favor making a short form mandatory to facilitate comparison shopping. And I agree with Agnes and Clint that focus groups are needed both with industry to find out the different privacy options that are being afforded voluntarily, to understand that universe, and also, obviously, with consumer groups.

On the opt-out form -- or, excuse me, on the short form we are provided, I was concerned that the opt-out right was not sufficiently conspicuous. It's in italics but not in bold face. The point size might need to be a little larger, but to me it didn't leap out.

I would prefer the layered approach, in which the long form is also sent with the short form. The short form might be used as a summary of what's to follow. And I'm concerned if consumers have to write or telephone to get the long form, it just places one more burden on them in a system where they're already burdened with having to take affirmative action to opt out.

Thank you.

MR. MARQUIS: Ken.

MR. BORDELON: Thanks, Oscar. And I'd like to echo what Earl has commented on. But I would like to add -- I'd like to commend the group, the interagency group that actually put this form in front of the committee yesterday. This is an example of asking for something from Washington, and we got it, and we got it in a relatively short turnaround. And I think it's a very good first effort, and there are some issues that it brings out.

For me personally, for my institution, a short form would be ideal. It would be fantastic. But in the discussion yesterday from the staff, it was evident that the short form did not meet the statutory requirements. And I would question if it's to be -- have some perceived value as a shopping mechanism, if my short form has to refer to the long form, I think we need to continue to work on the short form meeting the requirements of the statute and reg in order for it to work as a shopping mechanism.

So I would commend the interagency group for doing a lot of work on this and would support that they would continue to do so and work in getting a short form.

MR. MARQUIS: Ruhi.

MS. MAKER: Mine is actually more a point of information. It's in terms of languages. I am assuming someone has thought of Spanish already, but there are so many now immigrant communities all over, and there are so many different languages. Has any thought been given to how that's going to work, or how banks are even doing that?

I mean, how do you say in English -- you can request, you know, a short form in Urdu, or whatever, so -- and what thought has been given to that?

VICE CHAIR SCANLAN: Many financial institutions do provide their privacy policies already in different languages, and I would assume that we would do the same thing with the short form.

MS. MAKER: Okay.

VICE CHAIR SCANLAN: Working with attorneys specialized in those languages and others to help us with the correct language translation.

MS. MAKER: Thanks.

MR. MARQUIS: Susan, and then Larry.

MS. BREDEHOFT: Earlier Oscar had asked, well, how would we measure success with the short form, and I do support the concept of a short form, and I think the language in the one that was presented to us is very plain, very simple language, and I liked it.

I'm not really sure how we would measure success. But if you look at current results, very, very few people opt out. My bank personally, we do not share information, but we do offer the Fair Credit Reporting opt out.

We're not really sure that people are reading our privacy notices today. And I think that one measure of success might be is when -- if a simplified form is implemented, is to see if the level of opt out increases, because then we would know that people are reading it, they're understanding it, and it is serving a benefit.

And as I said, I'm not really sure that people read them. I'm a banker, so I'm familiar with it. I don't read mine. I just toss them.

MR. MARQUIS: Larry.

MR. HAWKINS: Yes. That's the first point I wanted to make was that we're, first of all, sitting around a table talking like somebody is going to read this. They're not.

(Laughter.)

But, you know, secondly, the form must meet mandatory statutes. I mean, whatever form, however short or however long. We've got one opportunity, and legally we've got to get it in people's hands. So make it short, but it's got to meet the statutes, because that's going to be probably the only piece of paper that they'll get in their hands. They're not going to read it, but it's got to be -- it's got to conform to the law.

And so you can put it in whatever languages you want to put it in, they still won't read it. But, you know, it's got to comply, so make it short and sweet. You know, for the consumer groups that believe that, you know, by changing it there will be some greater degree of success, you know, I would challenge you to -- you set the parameters for what you want success to be, and you still won't achieve it.

Thank you.

MR. MARQUIS: Thank you for that dose of reality, Larry.

MR. HAWKINS: Sure.

(Laughter.)

MR. MARQUIS: Elizabeth, then Connie.

MS. RENUART: Again, I echo everyone's sentiments that the short form is a wonderful idea. The most frustrating thing for me is when I get all these things in the mail, and I have to try to ferret through them all. And one thing I like most about this is the very last thing on it, which is part of the piece that you cut off and send in, and that says, "If you already have notified us about your privacy choices, then you need not contact us again."

(Laughter.)

Because when we get these repeated ones from the same company, only knowing that I don't have to send it in is the only reason why I don't opt out every single time and make copies of it and save it in my file, so I can prove that I've done it in case they don't, you know, treat me correctly or whatever.

But I don't have to do it, and that part of this notice is just really important to emphasize. And it's in big print, and I would definitely urge that it stay in whatever final notice.

Second, I think that if there's going to be any safe harbor, then for sure -- I mean, it makes it even more important that this notice meet the obligations for whoever has to furnish it under both Gramm-Leach-Bliley and the FCRA. So that all of your obligations are taken care of in one notice, and I support that, because it's a streamlined process.

And it makes it easier for you all to provide something to consumers that we have better chance of reading because it's in a form that's much more, you know, consumer-friendly and it's short and it's in big print, and I can digest it quickly. And I do like the yes boxes and the no boxes. I think that's very helpful.

In terms of getting a safe harbor, though, I think there's a few things about that that I find critical. One is the notice should be mandatory. I think that if we're going to have this, it should be uniform across the industry. I support including other things -- the separate wonderful brochure that Earl's bank has created, or any other piece of information, a long form if you want to, but this should be in that stuffer as well.

So that consumers can look at it like you do Truth in Lending disclosures, which is -- it's the same and everywhere you get the same type of notice. You know what to look for, if it's a yes or a no in the box. You know what you're looking for, and that makes it very easy for consumers to understand it.

But, secondly, it shouldn't just be a blanket safe harbor, because under Truth in Lending there's something called the good faith conformity defense, which is if you follow the forms that the staff and the board put out that the board and the staff say conform with the Truth in Lending Act, then you do get a defense to liability under that.

However, you don't get a defense if they're inaccurate. Or if you're required to give them and you don't give them, of course that's not a defense either. So the yes boxes have to be accurate or the no -- the no answers have to be accurate. So I would know as a consumer whether you really are going to share, because if you say you aren't, and you do, then I should be able to have a cause of action, whether it's under these statutes or it's a separate privacy cause of action for violating that, if it's inaccurate.

So I don't think it's a good -- it's across the board safe harbor. But if you use the form, then you've at least complied with the law as to the form, and that would not be a lawsuit against any particular furnisher of that information.

Thank you.

MR. MARQUIS: Thank you. Connie, and then Tommy.

MS. CHAMBERLIN: I think, obviously, on this issue there's a whole lot more agreement than on some issues. And I have to say that when I got a copy of the short form my response was that it was just too good to be true.

(Laughter.)

And in answer to Oscar's question about how to define success, I'm not sure that we know what kind of consumer behavior would occur that would define success.

So I'm not sure that we can say that an increasing number of people who opt out would, in fact, define success, although it might for some of us consumer advocates. But maybe that's not what consumers want. Maybe they do want, you know, lots of the sharing and all of that.

I think the only way that you're going to be able to get some sense of whether it's a success or not is, God forbid, do a survey, and, you know, to ask a few simple questions. Did you read it? Did you understand it? Were you able to make an informed decision? And what was it?

And it's only if you have, you know, a certain percentage of consumers who say, yes, I read it, yes, I got it, you know, and I made whatever decision -- that I think we're going to be able to identify whether this -- we all assume that a short form that's readily intelligible is, you know, obviously going to be better. But I think you can demonstrate that, if you do some kind of a survey.

MR. MARQUIS: Tommy.

MR. FITZGIBBON: Just two things. One is, as we move down the path towards getting more input into this process, I think it would be important to look at other industry -- not necessarily banks -- financial services, Wall Street firms, insurance companies, that are not bank regulated, because what we do, what the Fed, what the banking industry does certainly I think is going to be used as a model.

And it might actually be sort of a national standard at some point for short form, and I think it's important to get their input into that process.

The second I think that -- and the reason why I support the short form -- again, getting back to the work that I do with nonprofit organizations around the country that originate loans, service loans, gather private information, that's not -- gather non-public information, is that they are not sending these notices to their customers. And making something simple for them to be able to comply with the law is going to be important.

MR. MARQUIS: Elizabeth, and then Dan.

MS. RENUART: Just one thing. I forgot to mention the first -- my first opportunity was even though it would save paper, and I am definitely in favor of saving as many trees as possible, I would really urge that you get two separate pieces of paper as opposed to this being a front and back document, because when I cut this off and send it in I will have cut off some of my information about what I was told and what the privacy policy is and sent it back, unless I, like my fanatical self, go out and make a copy for my records.

(Laughter.)

But many people don't have access to -- you know, anyway, it's much easier if we're able to just cut it off and not lose information. And, frankly, a couple of the notices I've received -- the long form -- when I have cut it off, I have lost some of the information that was provided to me on what the policy is, and that wasn't helpful.

MR. MARQUIS: Dan.

MR. DIXON: My company is one of the ones that Earl described earlier. We do not share data, so our privacy notice, as it is, is very simple. But having said that, speaking in responsibilities as a member of the council, there is an unfortunate -- potentially unfortunate intersection between this discussion and the prior one with regard to preemption.

Gramm-Leach-Bliley gives states some authority to make different rules, and, indeed, California is going through such a process with that authority in mind. So there may be some unfortunate limits on just how effective this short form could be if a California or some other state writes its own separate set of rules and, as California has considered doing, requires a separate disclosure.

We could end up with a situation where even with the best of intentions the customer still ends up getting multiple notices, even from the same institution, which mask the clarity that we hope to achieve with the short form. And so I don't have an answer for that, given the state of the law.

But if there would be some way to address that, it would certainly I think be within the spirit of what we've all discussed here -- namely, the short form has a lot of potential for adding customer clarity of understanding of what the issues are.

MR. MARQUIS: Thank you. Well, let me just summarize. I think we have maybe less -- maybe more agreement. Well, we have a lot of agreement.

(Laughter.)

Everyone is in favor, it seems, of a short notice form. I guess we can't agree completely on whether or not it should be optional or required, whether or not it should be layered, whether or not it should be a safe harbor. I guess we've had some disagreement about that, but we're in general I think supportive of a notice that works that complies with the law.

Let me just add, though, that -- there's no one here from the Direct Marketing Association, so let me just take their position, and also, as a believer in direct marketing because I like to shop that way.

I don't think it's pro consumer to promote consumers opting out, because that means you don't get the choices and the offers. Consumers may think they don't want their information shared because they've had enough junk mail, but they have -- but they got the credit card they have in their wallet because of junk mail. They got their miles off, their miles or their dollars off, their whatever benefit, because of some direct marketing offer.

And I recall, as I described yesterday, when I was at TransUnion one of the major credit card issuers came to TransUnion and said, "We'd like to promote to our consumers a way of opting out of prescreening. We're going to send them with the invoice a form that they can send back to us that they opt out of all prescreen solicitations. We'll send it to the credit bureau. You put that on their file, so they don't get prescreened offers." Sounds great, pro privacy.

The credit card issuer didn't want to do that privacy reasons. They didn't want their customer to get competing credit card offers. They liked their customers paying 21 percent. They didn't want them to get an offer at 18 percent or miles, or whatever the other offers were. Consumers might opt out, not knowing what they're missing.

So I think there's a problem -- or I think we should consider, whatever the format the notice takes, that it shouldn't promote opting out or make opting out of choices of information sound pro consumer.

Let me just -- and one more thing. The alternative to direct marketing is mass marketing. Companies do need to market, and they either do more commercials and more interruptions on TV and radio, or direct marketing, or more stuff in the newspapers. It's not that bad a thing.

Anything else? I think --

CHAIR REITER: Turning over your soapbox now, Oscar?

(Laughter.)

Thank you very much, Oscar.

We're going to have a break now, and we'll reconvene at about 11:15.

(Whereupon, the proceedings in the foregoing matter went off the record at 10:56 a.m. and went back on the record at 11:13 a.m.)

CHAIR REITER: All right. I think we'll resume our meeting with the next item on the agenda regarding the issuance of debit cards and credit cards. And our star, Oscar, is going to lead the discussion on this as well.

MR. MARQUIS: I have no opinions about this one, but --

(Laughter.)

An issue has arisen recently with new technology that credit cards have been issued that fit on key chains or transponder-type cards that make it easier to use credit cards, and financial institutions have been wanting to send those to their customers, not just as replacement for existing cards.

The regulations were recently changed to permit that, that more than one card can be sent as a replacement for an existing card, provided certain conditions were met like -- what were they? Liability.

(Laughter.)

Liability on the account remains at $50. The terms stay the same on the multiple cards. The question has arisen now that since multiple cards can be sent as a replacement, why not permit financial institutions to send multiple cards at -- or send additional cards at different times, not necessarily as a replacement? And, in addition to that, why not permit the same thing with debit cards?

To kick off the discussion, Pat?

MS. McCOY: Oscar, thank you. I think we appreciate the importance of technological innovation, and I think two of the innovations that have sparked this issue are the advent of key chain cards, which we may be more familiar with from the grocery store context, and then something that I heard about yesterday -- transponders. I'm not exactly sure how they work, but that's another innovation.

And what I'd like to do is just raise some issues about how we accomplish accommodating these technological innovations in a way that is consumer-friendly and accommodates both the interest of consumers in using this with other consumer concerns.

I see three countervailing concerns. The biggest one is clearly security, and security has two dimensions. One is the liability on the credit card account, and that would continue to be capped at $50. So I think that that is important, but a good solution to that.

The other issue is a little thornier, which is identity theft, and the fear that if you put more of these cards in commerce that increases the probability of theft of the cards.

So the question is: well, what do we do about the security concerns? It seems to me that we require mandatory security provisions, and they could either be, as an example, card activation or something else that provides comparable security, perhaps advance notice to the consumer that a card is coming.

Now, the major credit card issuers all use card activation, and so that's terrific. The question is: how about smaller retail issuers that may not use card activation? They very well may want to issue key chain cards, just as our little local grocery store chains do. And so we really need to think about the fact that they may want to issue key chain cards. And if they don't have card activation, what other security measures should be in place?

The second issue is we just have to be mindful of the effect on consumer purchasing behavior. The purpose of this, from the issuer's perspective, is to encourage us to incur more charges as consumers.

Finally is the question of consumer choice. I have to say that I am an inordinately messy person. I have to hire people to do files for me, to maintain my files. And so keeping custody of just my single credit card, let alone multiple credit cards on one account, let alone multiple ones on multiple accounts, is daunting. And I would prefer, from a personal perspective, to be able to opt out of getting these additional cards. So we might want to consider an opt-out or opt-in procedure as well.

Thank you.

MR. MARQUIS: Didn't you hear me talking about direct marketing before?

(Laughter.)

Benjamin?

MR. ROBINSON: Yes. I'd just like to comment that the mini-card, as we call it, is really a response to consumer demand for more convenience. And it is more convenient to actually use your grocery store mini-card as well as your credit card all at once, because it may actually reduce the opportunity to lose your card because you're not taking out -- taking the card out of your wallet.

The other thing is I think on this issue consistency is very key. And to look at the consistency between debit cards and credit cards are crucial. We get into the same patchwork conversation we've had with other things if we try to have one set of rules apply to a debit card and another apply to a credit card.

As we talk about this issue, I would hope that we do remember that a lot of the technology is in response to consumer convenience and response to reducing fraud and identity theft.

MR. MARQUIS: Thank you. Clint?

MR. WALKER: Thank you. Obviously, we're in favor of this, and I'd like to address Pat's three concerns.

First of all, on security, all issuers do send -- we call them "dead," you might call them unactivated cards. And the issuers do that because they have that self-interest and because they're the ones who are left holding the bag if someone uses an active card that's not the right card member. You know, they're going to be legally responsible, you know, for writing off that debt, so they all send an unactivated card.

I do agree actually with one point. You said, you know, it's important to make it flexible, so people can keep improving the technology that they use to -- you know, issuers use to protect themselves, because it gets better all the time.

So, I mean, I don't want to be so prescriptive that if you say you have to send an unactivated card that we can actually improve the technology. But I do think that everyone is doing it, even the small issuers. Basically, they don't do this themselves. They don't issue the cards themselves. They hire, you know, a third party who does that for them. All these third parties really do have that ability to send a card that is unactivated and have the person call to activate it.

Your second point is, yes, we do do it to encourage -- I mean, I'm not -- we don't do it, but the reason an issuer would do it is to encourage usage. But it also -- it's convenient. The transponder is a very, very convenient thing. You go to the Exxon station with this little thing that's attached to your key chain. You just wave it right on the gas tank; the transaction is completed. It works.

With your concern about choice, the point is you do have a choice, because if it is sent to you on an unactivated basis you choose whether or not to activate it. If you don't want it, you throw it away. It can't be used, you know, by somebody else. But if you choose to activate it, it's because you want it, and so I do think you have the choice there and it takes care of the situation.

And the fact is, you know, it's already been determined that people should be allowed to send two cards on an account. Why should you have to, you know, do a reissue or basically replace the original card you have with two cards to do it? Why can't the person just do it, and, you know, send that transponder, send that key card in the middle?

I don't see any reason. It won't increase fraud. It does give consumers choice. And it will give them convenience.

MS. McCOY: If I may, briefly. I have received department store cards that had already been activated in the recent past. And so whether or not there's the technical ability, it's not necessarily being used by all retailers.

And with respect to the question of choice, I do agree that one can cut up cards. I don't know how you cut up a transponder. I haven't tried that yet.

(Laughter.)

But my concern is the identity theft before it arrives. And so if I would like to just prevent that possibility, I'd like to opt out in advance.

MR. WALKER: Fine. But I don't think it creates any identity theft. That's the point -- any possibility -- because it's sent to you -- if it's a transponder thing, it is not going to increase the possibility for identity theft. There's no information with it that would do it.

The only thing it is is you've got a piece of plastic or something that can be used when you activate it, you know, to do stuff. But it doesn't have the identification information that really would increase the opportunity for identity theft.

MS. McCOY: Yes. To the extent that activation is being used.

MR. WALKER: Right.

MS. McCOY: Yes.

MR. MARQUIS: Elizabeth, and then Ken.

MS. RENUART: I'd like to treat the credit cards, and then discuss the debit cards. On the credit card side, my question is: why are we discussing this again? We discussed it already regarding commentary changes. The board made commentary changes very recently.

In my history of following the Truth in Lending Act, usually the board doesn't revisit an issue that was just so recently dealt with. For example, we don't intend -- or I'm sure you don't intend to revisit HOEPA regulations anytime soon. You dealt with that very helpfully about a year ago. What is driving this? I'm not sure what the reason is for driving --

MS. SMITH: On the Truth in Lending side, it has to do with whether it can be sent out independently of sending it out as a replacement.

MS. RENUART: Right. I understand that.

MS. SMITH: So, then, the question is: and should something comparable happen with respect to debit cards, comparable to what is being allowed under the credit card?

MS. RENUART: I realize that that's the next step. But that step could have been addressed already, and so we're just sort of -- I feel like this is sort of pushing the envelope in terms of more cards being sent out in the mail unnecessarily than was just addressed in the commentary.

In other words, it was just taken care of. Why are we revisiting it? Is one of my points.

The second point is, it seems to me that the statute doesn't allow for cards to be sent out that aren't a renewal or a substitute for the same card. And so legally the board would have to make an exception or use its exemption authority to take this action.

And under the current -- the new rule, I should say, the new commentary language, credit card issuers can send out, at any time, a renewal or substitute card. They don't have to wait for it to have expired. So they can do exactly now what they are asking the board to use its extraordinary exemption authority to do.

And so I don't see any reason to actually change anything. If they can send out more than one, they could send out 10 cards to me at any time during the year, as long as it's a substitute or a renewal of a current card. They don't have to wait for the expiration period, and so they can market their new devices at any time now under the rules.

So I don't see the need for -- but a regulation change, an exemption authority, which is quite extraordinary, the board has rarely used that -- to do what the industry is suggesting simply for technological change reasons.

And, lastly, on debit cards, I think debit cards should be treated differently -- which I differ with Benjamin on this -- from credit cards. Debit cards are immediate access to my bank account and to all of our bank accounts. A credit card creates debt for me, but it's not an immediate withdrawal from my assets.

And so Congress did, in its wisdom, treat them differently from credit cards and have a different standard that's in the statute. Once again, if the board is trying to take action to make credit cards and debit cards similar in this regard, in the sense of a replacement card or sending out additional debit cards, the statute is very clear as to what those conditions are.

And to change that, again, the board would have to use, if it's -- and I'm not sure even under -- if under EFTA you have exemption authority. But if the board does have exemption authority under the Electronic Funds Transfer Act, which is the Act that governs debit covers, not Truth in Lending, again, that would be extraordinary -- to take this action just to allow the credit card industry to be sending out multiple cards over the year.

They can do it now, even unsolicited. It doesn't have to be replacement. But the standards are stricter in the sense that they cannot -- they have to -- they cannot be validated. They have to be validated by the consumer directly. There has to be some accompanying disclosures, and it's validated only in response to the consumer oral or written request. So I think those standards should stay in place.

But in any event, the board would have to take extraordinary action to use its exemption authority, if it exists under the EFTA, to allow multiple cards to be sent out under any other circumstances than those that I've mentioned.

MR. MARQUIS: Ken, and then Ron.

MR. BORDELON: Well, I was just going to address the question about a small issuer and on the security side. And you're right, Oscar, that most small issuers, such as credit unions, do use third party vendors to issue the cards. The cost runs about $1.50 or $1.75 to activate a card.

And the fact is, if you're going to be in that business, your bonding company is pretty much going to require that you have some kind of activation process. So the question as to whether or not it's affordable or not I think has been answered.

I think I would support, too, that we'd use the Reg E model for debits, that they -- debits are only sent out unactivated, that the customer or the member has to activate the card. And that seems to be reasonable -- to follow that model and make both debits and credits equal in that regard for security.

MR. MARQUIS: Ron?

CHAIR REITER: Thank you, Oscar. I have a concern about customer liability. Customers, of course, have potential liability of up to $50 for credit cards and up to $500 for debit cards. Customers can be held responsible certainly for managing the custody of one card that they may have in a wallet or purse, or wherever they keep the card.

But as there are more of these cards that are sent out that might be activated because they might be thought to be of value, whether it's a transponder or a key chain card or cards issued for every color of the rainbow for -- through some marketing plan, or whatever, there are going to be more cards out there and more opportunity for people to be losing cards and not really being aware of the fact that they don't have the cards in custody.

So I think there is going to be a greater chance that there are going to be live cards that are going to be lost or stolen. And if the board is going to be exercising its exemption authority to enable the proliferation of these cards, I think serious consideration should be given to limiting the liability that the customers may have if -- so that's, in effect, a tradeoff.

If a card issuer wants to issue a number of these cards, then the card issuer then has to waive the liability of the customer for either the $50 or $500.

Currently, Mastercard and Visa have waived the liability on credit cards, but that, of course, is only voluntary for business purposes. But it seems to me to be kind of a logical way of trying to handle both the customer liability part and the fact that we're going to have so many of these cards out there.

MR. MARQUIS: Okay. Well, it sounds to me like everyone tends to support activation, but an activation requirement. Although there is some vague objection that having too many cards out there may result in ID theft, although I'm not sure of the mechanism, how that would happen, or that consumers are likely to lose their cards, because they forget how many they had. So the regulation should somehow, I suppose, prevent that from happening.

But other than that -- are there any more comments? I think that concludes this --

MR. DIXON: One quick one --

MR. MARQUIS: Dan.

MR. DIXON: -- in response to Ron's comment. I think the example that you just cited by which Visa and Mastercard voluntarily waive the liability is a good example of how business is likely to act in its best interest, and that's not always inconsistent with the consumer interest. And it's not always necessary to legislate the behavior.

MR. MARQUIS: I think that ends our discussion of this topic. Thank you very much, and I turn it back.

CHAIR REITER: Thank you. Thank you, Oscar.

Let's move on to our discussion of predatory lending, and we have a bit more time, so I think we can expand the discussion as needed. And I turn the matter over to Earl. Thank you, Earl.

MR. JAROLIMEK: Okay. Thanks, Ron.

The Community Affairs and Housing Subcommittee took up the issue of predatory lending once again. And, again, in an attempt to narrow the focus of the discussion because it is such a broad topic, we talked about successful alternatives to predatory lending.

What we wanted to hear was some examples of how programs, lending programs, or other means, have been used to help steer consumers to a reputable lender or some other type of program to their benefit and away from predatory lenders.

We invited a speaker in. Mr. Rahn Barnes from Provident Bank in Baltimore was our first speaker. He was our guest, and we heard -- we invited him, first of all, because he has a track record of having implemented some alternatives that we wanted to hear about.

And then, several of our members of the subcommittee also spoke and shared their input and their ideas and their experience in implementing alternatives as well.

Some of the conclusions we reached -- and then I'll try to recap Rahn's presentation, and then invite the members to also speak. But some of the conclusions that we drew from our meeting was financial literacy, again, seems to be a very important ingredient to helping to find and foster successful alternatives.

Some of the ideas presented were: use existing customer relationships as a format or as an outlet to implement financial literacy education. And I think Tommy is going to talk a little bit more about that.

It's important that good information goes to the borrower or applicant at the right time. Timing is critical in the financial literacy effort. And we also wanted to observe and compliment the Fed's efforts to date in the financial literacy effort and encourage them to continue to find and identify new avenues to keep financial literacy at the forefront.

With respect to alternative programs, some of the comments that we gleaned from the conversation is that good programs exist but are somewhat limited. If the Federal Reserve Board can help foster initiatives, if they can maybe do some more on a national basis to help get these programs more available, that would also -- that would be very good.

One idea was we talked about other incentives through CRA credit that might incent institutions to look at alternative programs and help put them into their product line. We also talked about how the service test might be an avenue to do that.

We identified a safety and soundness standard issue that might be an impediment to a certain extent. Often times safety and soundness reviews and examinations do, in certain instances, impede progress that might otherwise be considered good CRA activity or good alternatives to predatory lending.

And I guess what we're talking about is underwriting exceptions to credit policy that might be good from an alternative to predatory lending standpoint, but might not make the safety and soundness examiner very happy.

Are there inconsistencies? I don't know if we can answer that, but it's possible that there are. And what can we do to help educate that group about certain efforts that should be continued?

Assistance organizations -- they can supply good data about economic vitality of the market to help educate financial institutions about programs or alternatives they can pursue.

So that kind of recaps our conclusions, if you will. I just want to take Rahn's comments and summarize them a little bit. Rahn's institution is about $5 billion. They have done some things -- Rahn, in particular -- that we thought were pretty good efforts.

The first issue he brought up was financial literacy. One of the things that they found successful is they've tried financial literacy efforts, have failed on a couple of occasions just with attendance. I think he cited their first two efforts drew crowds of two and six --

(Laughter.)

-- for their financial literacy presentations.

But one of the things that they did was to try to find a ready-made audience, and they were successful in doing that through a workforce development partnership.

The other areas Rahn talked about were -- have to do with reaching the unbanked. They've been successful with individual development account programs where there is some type of a match, encourages savings, and also voluntary income tax assistance is another effort that they put forward as good alternatives.

So with that, I'm going to invite the CAC members to contribute their ideas. And I'll start out in the order I have them listed here, and I have Mark Pinsky as the first one up. Mark?

MR. PINSKY: Thank you, Earl. Community development financial institutions, which lend and invest in markets that are either subprime or perceived to be subprime, obviously have an immediate interest in -- not only in preventing predatory lending and stopping predatory lending, but in trying to find some alternatives to predatory lending.

And, you know, the easiest example of that is that the folks from Self Help who presented at our last meeting back in March said that before the North Carolina law took effect -- and Self Help is one of the highest volume CDFIs, and they said that any one of the predatory lenders operating in the State of North Carolina would basically take as much wealth away from minority homeowners, primarily elderly minority homeowners in the State of North Carolina, in one month as they have created in their 20-year history.

So the effect in the markets where we're trying to work, where we're trying to build wealth through access to capital, is enormous, and obviously seems to be sort of an urgent need for CDFIs to try and intervene.

With that in mind, my organization, which is a network of CDFIs, tried to sort of survey what was going on in the CDFI industry to try and deal with predatory lending, and also to provide some options and some loss mitigation strategies.

And what we found, which is in a document that was shared with the committee -- what we found is that there's not a whole lot going on for reasons I'll talk about. There are some very interesting efforts that teach us some things, but I want to talk a little bit about what's going on, the challenges that we think we face, and some of the directions that points us in in terms of what needs to happen going forward.

Generally, the solutions -- and you'll hear some specifics about them from -- I think from Robin and Tommy in terms of CDFIs and what they're doing -- is sort of one-off solutions. They're customized solutions that are trying to piece together some pieces to intervene, you know, where predatory lending is active.

Generally, they involve complex partnerships that begin, in some ways, not even with credit but often with legal issues and with legal partners, whether it's legal services or otherwise, and that that's critical. I think someone made the point yesterday -- I forget who it was. Hubert, it might have been you -- you know, that, you know, the threat of a lawsuit is often the -- you know, the way that you get started in dealing with some of the problems that predatory lending has created.

Credit is necessarily a part of that, and credit expertise is necessarily a part of intervening -- whether it's unwinding or a predatory loan that's already in place, or trying to get in ahead of the predatory lenders.

There's a certain amount of public advocacy that's necessary, whether that's media advocacy and trying to embarrass predatory lenders, or whether that's policy advocacy. And that counseling or financial literacy activities are sort of essential to what we do.

The problem with this, as you can imagine, is that it's inefficient and it's expensive, and it's not nearly nimble enough to really compete with some fairly agile lenders who are unscrupulous and doing bad things.

And so one of the results of that is that CDFIs have found, and these -- generally, these interventions have found they're not really able to compete at the front end. They're not able to, you know, get in and originate before the predatory lenders, and that, in fact, even where there are those loans in place, some of us have heard stories or have seen examples of, for example, loans that were done -- zero percent loans that were done for Habitat houses that get refinanced by predatory lenders, for example. That even when you get in, that sometimes that -- you know, often, that you're not successful.

So, instead, what happens is sort of a loss mitigation strategy to try and unwind some of these deals to try and prevent the damage before it's too bad, try and preserve the homeowner's equity. But it's not clear, as I said, that even in these loss mitigation strategies that we're able to sort of -- that we've been successful in having really lasting effects. That's not to say we're going to stop trying.

I think a few things that came out of this were that we need to think not in terms of one-off strategies or customized strategies but in terms of scaleable strategies that can work. And so one idea that sort of is being played around -- and Tommy has been working on something like this, and so have I -- is there some way to create sort of a brokerage system, that using the existing infrastructure of CDFIs and CDCs and NHSs, and others, to begin to sort of get out there and penetrate the market where we already have some presence with, if you will, responsible subprime lending products in a way we haven't been able to do before.

I think that there is -- from a CDFI perspective, we've sort of been involved and pursued what I think was sort of systemic or fixes. One of those we'll hear about from Jim Garner, and this is, you know, what Citigroup has been able to do after taking over The Associates, and the fixes that they've been able to do in that way.

The other are efforts to -- as I said earlier, to intervene in sort of the mortgage brokerage system, which is, in many places, an effectively unregulated and, you know, sometimes dangerous system. Has its good sides, but has dangerous things.

And the other side, from a CDFI perspective, is the need for, in our mind, statutory and regulatory interventions that help curtail certainly the worst of the bad practices, and put some -- put sort of, if you will, a collar around the activity that needs to happen and what happens in subprime markets.

You know, we also -- one of the things that came up in the discussion yesterday was the whole discussion about assigning liability and how one of the points of intervention has to be around the securitization of these loans, and then we talked about -- Dan I think talked about the Georgia challenge and, you know, the efforts to try and resolve that -- that that becomes a really key issue in any kind of a fix in the long run that we try and get at in terms of this.

So I'll stop there with just sort of a brief introduction, Earl, and --

MR. JAROLIMEK: Okay. Thanks, Mark. Tommy, you're up.

MR. FITZGIBBON: My role is to try to build on what Mark has talked about, which is on the front end, and essentially try to see where the industry could go to in terms of the banking industry's role.

Over the last three or four months, our institution took on the idea of trying to develop a method of reaching those prospects for consumer relationships with financial institutions, otherwise known as customers.

(Laughter.)

To try to get them into the traditional financial institution before they became sort of ingrained in the process of dealing with payday stores and -- my apologies to Texas -- cowboy mortgage brokers.

(Laughter.)

And to try and get them familiar with some of the conventional services that are available from the private regulated depository institutions. And so we launched about 11 weeks ago a program called MB Bank at Work.

And I don't know if this business proposition works in all banks. We discussed a little bit about that yesterday, and that it does require -- really, the platform does require open participation and incentives for commercial loan officers. And you know who they are. I said the other day they're the ones with the golf club memberships and the Mercedes.

And they aren't necessarily as incented on a normal basis to make calls to talk to employees of pizza parlors and transportation delivery systems and vegetable brokers. And so we built in some incentives in our institution that really provided us with a real strong leadership from the commercial side of the bank to help us build this.

And the business proposition basically is that the -- by wedding, if you will, the employees of our commercial customers to our financial institution is that it strengthens the relationship of that commercial customer to us as well.

And that really the partnership with the commercial loan officers and the retail delivery system was enhanced because there now was a recognition of the need to build relationships with the employees of their commercial customers as well and at the same time expanding, if you will, the role of the banking center manager and other staff in the banking center to do more than to open the doors and wait for people to fall in, which is sort of the traditional expectation of the retail delivery system.

In effect, what we did was to build a method of working with the Human Resources Department of the larger companies, and with the ownership of the smaller companies, to establish a product if you will that offered incented rates and services for employees of our commercial customers to, in effect, bank with us, while at the same time we offered onsite activities that built along the principal core parts of the Money Smart Program developed by the FDIC to deliver onsite rather than waiting for them to migrate either through a community-based organization or to, heaven forbid, come to the bank for the bankers to make the presentation.

In addition to that, it was a way for us to export the values of our company and the products that we offer in terms of credit services and access to capital. And the preliminary results after 11 months -- or 11 weeks, through June 9th, we have nearly 2,000 new DVA customers, the majority of which -- and I say that because I don't have the final numbers, if you will, but most of them did not have banking relationships prior to this exercise.

And at the same time, we're also in the position and now expanding it to allow for us to offer employer-assisted homeownership opportunities through the partnership with that human resources director or personnel director or owner of the bank or of the company, to have access to downpayment assistance and closing cost assistance for their employees, and to be able to buy homes in their market for the first time.

Of those roughly 2,000 new DVA customers, approximately 140 opened up their accounts using the Matricula card, which is in our market a very important identification tool. We help those customers get ITINs, the individual tax ID numbers, and to move that -- move in that direction.

The businesses range from the six employee Tina's Pizza Parlor, if you will, on the west side of the city, to large car dealerships, where the mechanics and service personnel also for the first time became customers of a bank. New thresholds for approving customers to come in there, no credit checks, but we do check with Check Systems to make sure they haven't stiffed somebody else before.

But it does help customers who may have had blemished credit in the past have access to normal bank products that perhaps they have been exempted from before.

We do provide incentives within this for direct payroll. In other words we pay them if they go on direct payroll. We give them an incentive, $25 if they go on direct payroll. And for every ACH transaction for paying bills like utility bills and the rest of them, we provide them a $10 incentive, totally free checking and free checks and everything else.

And what it does, I think in a lot of ways, is on the site of the business itself gives us an opportunity to get those customers who have been unbanked in the past comfortable with the banking environment if you will, and have a personal relationship, if you will, with a banker now that they can call on when they have questions about other financial services.

Thank you.

MR. JAROLIMEK: Thank you, Tommy. Robin Coffey, you're up next.

MS. COFFEY: Yes, I had talked about a program in Chicago that Neighborhood Housing Services began called the NORMAL Program. And the NORMAL Program was a loan alternative to refi people who had potentially a predatory lending or a predatory loan.

It began about three to four years ago, and it really was done in reaction to increasing foreclosure prevention counseling that was being done where the mortgage foreclose was not being done by FHA, which had been the biggest foreclosure on the southwest side of Chicago up until about 1998, or any of the local lenders who are primary lenders in this market.

But they were being done by subprime lenders, and this kind of hit the neighborhood activists, Gail Sencada looking at this, kind of blind-sided us, because we were so used to focusing on FHA foreclosures, the subprime foreclosures just kind of came out of nowhere.

So we established a pool -- a group of lenders established a pool to help refinance a lot of these people that the counselors were seeing in the offices, and essentially the loan requirements were that the borrower's credit was looked at prior to the last refinance or the -- whatever their credit looked like before they got the subprime loan.

We also looked at the borrower's income and their ability to repay the new loan. The other thing that was important was that the new loan -- it couldn't include the prepayment penalties that are common with a lot of the subprime loans, and so it really required that legal assistance or the staff be able to get that principal balance down to whatever the original principal finance was. And there may have been some other costs in it. The costs have been taken out or cash out.

But it really relied upon getting the original -- getting that subprime lender to accept less than what they said was the payment needed, and that was done as Hubert was attributed to -- through threat of legal action.

So there were -- there was a lot of good feeling about the fact that we were doing this. Since the pool started, though, there have been less than 50 loans that were done, and that saved -- that did save 50 families. So to that extent it was good. And so we did help people reestablish credit.

The down side, though -- and I just work in one small neighborhood. I am a banker, but on this particular CDFI we were only working in one small neighborhood. And the down side was that just from the staff and the board morale was so down because you'd hear, okay, we got two loans done this month that helped people get out of a subprime loan.

On the other hand, we also heard the foreclosure number, and, you know, 300 foreclosures started this month. And so you're looking at overwhelming odds of even trying to help people.

And we also knew that we hadn't even hit the peak as to what the foreclosures were going to be, because when you do a search of records to find out who the mortgage holders are, in just a couple blocks of this neighborhood almost every single one of them is a subprime lender. And we just know with the current employment situation it's going to get worse.

And so that was kind of my down side to, you know, as good as the program is, and was, and has worked, it still was not even making a dent into what we were seeing.

The other thing I had pointed out is that NHS, through strategic planning that they were doing to try and make them operate -- improve operational efficiency and kind of get back to the core mission, they eliminated all of the particular programs that they had developed to help combat different issues that they were seeing in the neighborhood.

That didn't mean that they stopped lending. That just meant that they stopped calling every -- like the NORMAL program, it exists but now it's a part of lending that they do overall. They don't have, you know, loan program names anymore. They established a $100 million line of credit from about 30 banks in the city of Chicago who now buy their originations on a demand basis as opposed to having to accumulate for a while.

So it's been good, but I think the down side we left -- that I left with the group yesterday is that, you know, this is a huge problem. And everything we're doing is like a drop in the bucket, and everything we do is, you know, good, but it's just very time-consuming, overwhelming.

MR. JAROLIMEK: Thank you, Robin. Jim Garner, you're up next.

MR. GARNER: Thanks. Thank you, Earl. Before I get into my remarks, I'd like to just clarify one thing that Tommy said, because I think in the presentation he made yesterday -- I mean, it sounds like you're subsidizing them by giving them ACH transfers and paying them to do this.

But I think the points you made yesterday is, this is actually good business.

MR. FITZGIBBON: Oh, it's good business is right. You bet.

MR. GARNER: It's not just something your company is subsidizing to get there.

MR. FITZGIBBON: Right.

MR. GARNER: Okay. Well, the remarks I made yesterday I'll just summarize this morning, and that's at my company, at Citi Financial, we've done several things to address predatory lending.

First of all, around the time of The Associates acquisition, we announced our real estate lending initiatives, which we've continued to refine and that's something we started then, and we have made changes to since then, and we will continue to make changes to it as we try to refine our business model and look at issues that are brought to our attention.

Some of the highlights from that are that we stopped selling single premium insurance on real estate mortgages all across the board. And I think you've seen that a lot of other lenders have followed in our steps there.

We reduced the points that we charge, the front end points. We used to cap them at five. Now we've reduced that to three.

Also, to address the issue of the voluntariness of insurance -- credit insurance sales, we have significantly enhanced our insurance sales practices. One of the things that we do to -- now is that the -- before the -- any discussion occurs at all concerning credit insurance, the customer is told that their loan is approved and what their monthly payment is going to be without insurance, and only after that takes place does any discussion of insurance occur.

There also is a separate optional protection choices form that the customer signs, or if they elect any insurance they go with -- over the product, what the cost and the benefits are, and they make their own decisions on that form. If they selected any insurance, we also do a pre-close loan summary. That gives them not only the Truth in Lending disclosures, but also separately shows them any insurance products that they have elected.

And only then, only after both the optional protection choices form has been gone over, and also the pre-loan closing summary has been printed out and reviewed, only then are loan documents printed out.

And, finally, on the insurance sales practices, after the customer has left the office, we send out a confirming letter that confirms not only the terms of their loan but also advises -- confirms any insurance elections or any products that they chose, and gives them a right to cancel by phone, a toll-free number. That doesn't go back to the branch that sold them. That goes back to the headquarters in Baltimore.

We've also limited our prepayment penalties to a term of three years, and we also give the customer a choice of having a loan with or without the prepayment penalty. And there's a separate form they sign for that as well.

We've instituted a foreclosure review process that we have undertaken to look at loans by a special committee before they go to foreclosure. If there are certain criteria that they meet, they go to a special committee, and they look at other alternatives to foreclosure before proceeding.

We also have a net tangible benefit on any refinances with -- of mortgage transactions with us. And we have also instituted programs to provide access to lower cost of credit, including a referral up program for customers that come into one of our branches that would qualify for a loan at our prime affiliate, we will take that application and refer them to Citi Mortgage to get a prime loan there.

We also have a graduation loan program where we look at customers' performance, and as they improve in their creditworthiness over time we will send them a notice by mail letting them know that they could qualify for a refinance with our prime mortgage channel at a lower rate.

And, finally, we have a rate reduction program, that if a customer performs, depending on where they start out in creditworthiness, they can get either 100 basis points or a 50 basis point reduction in their rate for making timely payments.

But as I said, this is an ongoing process that we continue to evaluate and try to refine.

And since the last meeting that we had in March we've announced two partnerships with consumer advocacy type groups that I think helps demonstrate the seriousness in our commitment to that. And one is one that we announced with the Neighborhood Assistance Corporation of America, where we've made a $3 billion, 10-year commitment to fund mortgages for that group.

But also, I think of equal importance is that we've set up a channel for NACA to bring customer complaints to us that they become aware of, either on accounts that we acquired from Associates or accounts that have been originated.

And we take a look at those. They have an intake form that they use where they do the initial assessment, if you will, and then they forward them to us, and we have a special process to look at those complaints and to make adjustments where appropriate.

Similarly, more recently we have announced a partnership with the National Training and Information Center, NTIC. And that's focusing on some of the similar processes. Number one, we've asked them to partner with us to take a look at our lending initiatives.

They were certainly -- input on and made issues known to us in the past, and now we're working in tandem with them. We want them to be partners with us in reviewing them ongoing to see what -- other issues that we need to address and what refinements we can make to those programs.

They have very much a desire for us to continue to focus on a multi-stage foreclosure process, which we already have in place and we'll certainly look at other ways to enhance that in tandem with them. And there's a commitment to develop more affordable mortgage lending products. And in that regard we have reduced our pricing a couple of times in the past seven months.

Similarly to the NACA agreement, we have what they call a review and repair process, where NTIC has an ability to bring problem accounts to our attention, and so we can evaluate them and make repairs where necessary.

So it does a couple of things. It gives them, NTIC, a formal mechanism for giving us feedback on our initiatives, and it also gives them an avenue to create a process for the so-called review and repair attempts.

And as the president of our branch network said, we have agreed to -- that if we find loans that are inappropriate, we'll repair them. And that's the commitment that we've made to them. And the goal of both the partnerships we have with NACA and NTIC, as well as our lending initiatives, is to try to set a best practices and industry standard, if you will, in hopes that others will follow and that we can set a new business model that works and combats predatory lending.

Earl?

MR. JAROLIMEK: Very good. Thanks, Jim. And thanks to all of you.

Let's open it up for discussion. Hubert, you had your hand up, and then we'll go to Ruhi.

MR. VAN TOL: I think there was a good deal of discussion yesterday about the need for the big stick to come and play in some fashion or another. That could be, you know, the lawsuit. That could be effective CRA enforcement.

It seems to me that the -- that's one area which we have to revisit again and again, if there are neighborhoods in which 40, 50, 60 percent of the refinance loans are being done by subprime lenders.

It seems to me that's an issue that ought to be dealt with in the performance context. And any institutions which have that neighborhood as an assessment area ought to have that issue addressed as part of their CRA evaluation. Obviously, some credit needs -- legitimate credit needs are not being met.

I don't think we can create alternative products on the tail end which will lure enough people away. The National Community Reinvestment Coalition, of which I am a part, for instance, has a community consumer rescue fund. And it's been operating for about a little over a year now, and of the 500 people who have been referred roughly half of those have been issues of consumer education, but the other half have been, you know, legitimate or illegitimate, abusive lending terms.

Because NCRC has the ability to sue and the willingness to do so, roughly 50 percent of those bad loans were renegotiated with the institutions that had originated them. So that's a much -- you know, having some mechanism to do that I think is a much faster way to deal with the problem than offering an alternative product. But an even faster way I think is to deal with it on the front end with regulation and legislation, and we, you know, can't lose sight of that.

MR. JAROLIMEK: Ruhi?

MS. MAKER: I want to give a short story of the trenches and then talk about how we move forward on this. We have a program. We have a Don't Borrow Trouble Program in upstate New York, in Rochester, and there are similar ones in Buffalo and Syracuse now. And we are, frankly, within months of opening those programs.

We do work and we are renegotiating and restructuring loans. Our clients have been ripped off anywhere from $50 to $100,000 in equity, which we are -- you know, as we restructure the loans. We've closed intake. Legal Aid does bankruptcies. They are only doing emergencies, and the Housing Counseling Service is booking people out three months at a time when you are in default, etcetera.

Our clients are not even in default. Our worst clients are 30-day lates, so they are not going to even get to the foreclosure review process, and that's where -- how do we move forward on this? It isn't enough. I mean, as Robin points out, there is absolutely no way, unless all of the folks around here suddenly invest a billion dollars in not-for-profit lawyers, which I don't see anyone writing any checks --

(Laughter.)

-- the reality is what we've got to do is the Fed regulates many of these larger institutions that have done some of these acquisitions. You know, Chase, Citi, HSBC being three of the ones that, you know, come to mind immediately, all of which we commented on.

We said some specific things should occur when those acquisitions occurred as to how victims who had been victimized were going to be protected. Needless to say, those mergers were not conditioned on those things that the community groups throughout the country said should occur as to how victims should be assisted.

But those institutions continued to be examined. And as these issues continue to come up, the Fed has a very strong role to play, not this year, not next year, 10 years down the line, because the problems that have been created are not going to go away.

You know, it's fine to have foreclosure review now, but somebody who got a balloon a few years ago is going to be in trouble 10 years down the line. Is that program still going to be in place? And that's where the Fed can have a role, where one of our clients is someone with a '96 loan which was a refi -- sixth time at her husband's deathbed. Her balloon is going to come up this October.

She has me, and I can send my, you know, e-mail to Mr. Garner and hopefully get something done for her. But what about all -- otherwise, I mean, people like her, if they don't have a lawyer, what's going to happen to these balloons? She may not -- never go into foreclosure. She's been paying. She hasn't made a single late payment since '96. She has always been on time. And her balloon comes up, as does those of loans of others, she's not in foreclosure, but she was still equity stripped.

And how do we affirmatively go back? And what role can the Fed examiners play as they examine these issues and say, "All right, folks. How are we going to fix this mess?" Because our communities are dying. And, you know, I hate to be this kind of -- you know, as I say, you know, consumer advocates are from Mars, and bankers are from Venus.

(Laughter.)

I sometimes feel that way. But, you know, we are -- you know, there are parts of the country where we are going to -- I really feel it's going to be a nightmare. I think the horse is out the barn door. And, you know, I hope I am wrong. I really hope I am wrong. But I think it's in the interest of the financial institutions to figure out how to fix this problem, which some unregulated institutions created, but which then the financial institutions went and purchased.

So, you know, let's move ahead on not just the foreclosures, but people who are stripped. And maybe it's pie in the sky, but I'm trying to encourage you guys to think it's in your interest to fix this problem. So that's my thoughts.

MR. JAROLIMEK: Elsie, Larry, and Connie.

MS. MEEKS: I don't want to repeat what everyone has said, but, you know, CDFIs got into business because there were credit gaps in certain communities, and in some communities there are still credit gaps.

But, you know, I think we've seen our role change more and more as more of the predatory lenders, if you will, have figured how to do this lending, too. And as Mark said, they are much more efficient. And so then we also attack it from the consumer financial literacy standpoint.

And I know last time at this meeting I think Governor Gramlich had a question, you know, about educating to financial literacy. We've put a lot of effort -- we're part of the Native American Financial Literacy Coalition that the Fed has been really involved in. We thank them for that.

But when he said that I had a sinking feeling, because, I mean, there is no way we can outmarket these lenders. And, you know, I mean, most of them -- a lot of them are not regulated. So, you know, I think it just demonstrates that, you know, we do need policy on this issue, and, you know, enforcement with the regulated, more policy somehow with the unregulated.

But this is also in an environment where our funding -- I mean, every good funding that addresses these kinds of issues is being cut. I mean, CDFIs are finding themselves in an environment that funding is going way down. You know, even financial literacy outside of Native Americans -- I mean, I know what I'm involved in, but there's other efforts like Jump Start that -- there was just an article in Newsweek that talked about how AmeriCorps has been cut. And those are, you know, big programs.

And so I think all of the efforts on financial literacy we've -- I think we're all frustrated that these sort of efforts really have to be in the schools. I mean, if you're going to get to the right group -- I mean, you can get to the ones that are in trouble -- that's -- it works. Financial literacy works when somebody is already in trouble, but that's not when you want it.

So how you get it integrated into the math courses, in social science courses, and I know this isn't something the Fed can do. But I just think that we all need to be thinking in that area, because it's not going to be -- take one agency to address this issue. It's going to take a lot of effort in a lot of agencies.

Thank you.

MR. JAROLIMEK: I have Larry, Connie, and then Pat. Larry?

MR. HAWKINS: You know, consumer advocacy groups may be from Mars, but I can assure you the bankers aren't from Venus.

(Laughter.)

You know, a lot of the banking groups are really, really down to earth, and I represent a very small bank. I'm not trying to defend some of the big banks or some of their practices.

(Laughter.)

But, you know, banking as an industry, we've got to realize mirrors society. We talk a lot as if the financial industry, and banks more particularly, are maybe the reason for a lot of the problems that we're experiencing in society. Realize that banks mirror society.

There are things that have got to be fixed in society before some of the other stuff can be fixed. We talk about some of the stuff we're trying to fix now. CRA was put on the books in, what, 1977? You know, probably today if you were to ask some of the regulators who are charged with enforcing CRA, they could probably tell you a little bit about what -- tell me what your goal is, and how you define the animal. They can't define it. You know, how you can fix something that you can't define? Okay?

The deterioration that has -- we've experienced in America in a lot of our inner city communities across this nation has not just been the result of, say, banks not doing what they're supposed to do. That's only part of it. But there are ills in society that, you know, it seems like the more we progress and the more I guess intelligent and intellectual we become, there are things we don't want to talk about. Okay?

We're going to have to talk about some of the tough things in America if we're going to fix some of the other problems. Okay? And so until some of that real nitty-gritty dialogue takes place, you aren't going to have teeth in some of these programs.

This is why some almost 30 years later you still have all of this deterioration in a lot of these cities. Have you seen any revolutionary change in a lot of these cities? No. It's only after maybe the affluent come in and says, "Hey, now we want this chunk of the city," that you see the things change.

There are bigger societal problems that we've got to deal with, you know, and I'm not trying to take up for the banking industry as a whole. But we get beat up a little bit too much, because we aren't dealing with some of the bigger societal problems that need to be dealt with a lot differently. If they are, the industry and everything else kind of falls into place, and you'll see things happening and you'll see things happen at an expedited rate.

I think some of the banks, especially some of the bigger banks with more capital -- and I hate to talk good about them --

(Laughter.)

-- but they've done some pretty innovative things in terms of throwing some dollars into some programs, some of the times I think almost to the detriment of the community because essentially they don't really dig down to a lot of the little guys who really need it. It's programmatic, because they don't have the time and experience to really, really dig down and get into some of those individual problems like the little banks are able to do.

So let's think about it collectively as a societal thing. And as we correct some of those problems, then we'll see some of the other things falling into place.

MR. JAROLIMEK: Connie?

MS. CHAMBERLIN: Thanks, Earl. I really think that we need to go back to some fundamentals. I think the programs that we've heard described are really good programs, they've got a lot of potential. You know, I think especially the marketing ones where banks are trying to provide decent products that would fill the hole into which predatory lending otherwise flows.

And my agency runs a lot of these programs. We do education prevention, remediation, financial assistance on both ends, and these are all very successful programs. They are also incredibly time- and resource-intensive.

And I think that if you will permit me as sort of an outrageous analogy, but I think it's still illustrative, it's a little bit like chemical warfare. We can all agree it's a bad thing. So we have two choices.

We can ban chemical warfare, or we can say, well, we can't really decide which chemicals ought to be included in the ban, and so we're going to focus on educating the public about what to do when you see the yellow cloud coming. Or after the yellow cloud has rolled through, then we're going to go into the neighborhoods and we're going to say, okay, who needs medical treatment? Let me show you to the hospital.

That's a really resource-intensive way to do it, and it's also like trying to hold back the wind with a piece of paper.

And I think the amount of resources required to deal with this problem through education and prevent and mediation, all of that is stupendous. And as we've heard from everybody around the table, those resources aren't available. So if you rely on them, by definition, what you are saying is, we are going to accept the results of predatory lending in our communities, regardless of the human and social costs. And there's no way around it.

MR. JAROLIMEK: Pat?

MS. McCOY: Earl, thank you. Rather than repeat what Connie has said, I very much agree with that comment. I would like to say, lost in the shuffle there is my appreciation for the efforts that industry is doing, and I have always thought the NORMAL program has been very, very important. I'm glad to hear that it continues in a new fashion.

But as you've pointed out, it's like a finger in the dike. It's very important. The funding is needed, but it's -- the challenge is too overwhelming.

Again, I also find it very, very interesting hearing about or reading about CDFI's efforts, and there are new efforts that I was not aware of that I very much appreciate.

I think it's important to keep in mind, that, that occurred in part due to the regulatory process. And as Ruhi brought up, it's important to have that regulatory engagement, be it through CRA review or through examinations.

The industry is consolidating much subprime lending now. I think I heard yesterday a figure of 70 percent is done in financial or bank holding companies. And so there's a tremendous opportunity to use regulation to try to help prevent the yellow cloud at the outset.

And then, just a final point on literacy. For our target population, which is people who are not shopping for credit, but who are approached about refinances, it's almost impossible to reach those people beforehand and educate them, because they're not out there -- they don't reveal themselves by shopping. So this is one place where literacy doesn't work well.

Thank you.

MR. JAROLIMEK: I have Elizabeth, Mark, and Buzz.

MS. RENUART: Thank you. I think looking at the predatory lending problem and its fallout, we sort of have to look at past and then future, and the solutions for past and future may be very different. But the past, meaning people who have already been subject to predatory loans and what to do to help them.

And then, in the future other things might kick in to help people not get into the situation or for the market to correct itself so that it's not doing this anymore, or for alternative loan programs to be available so that people can get good loans in the future.

On the past, though, a huge gap is what we've been talking about to some extent, and that is the lack of loans being made or the lack of the availability of loans for people who are facing foreclosure, who need to refinance out of this bad situation.

It's a very multiple step process. One is you have to have lawyers available around the country who will represent people in foreclosure cases, and take them one by one and defend with whatever legal claims and defense there are, and try to save their home.

That, of course, is a very intensive process, and legal services around the country, although funded through the Federal Government and provide free legal services for low income people, they don't reach people just above their guidelines. And there are so few of them, many offices don't handle these kind of cases, so it's very hard for people to actually link up with a lawyer when they are in need and they are facing foreclosure.

Even if they get there, the best of the federal laws on this topic is Truth in Lending. And even if there are violations of that law, or if it's a HOEPA loan and there are violations of that law, and if the rescission remedy is triggered, and if the consumer comes within the time of the statute of limitations -- all a lot of big ifs -- the rescission remedy can be very helpful, but it's not a free lunch for anybody.

People just don't get out of their loans and not have to pay it back. They still have to tender back a reasonable share of the original principal minus payments made minus closing costs and all of the junk stuff that was tacked on to the loan, and prepayment penalties.

So they still have to come up with a significant amount of money in order to effectuate their rights under this law, and that's where these loan programs -- the NORMAL program being, in my opinion, the best of the ones that have been -- that have actually been implemented has occurred, because it has this component where we're not just refinancing people out of predatory loans by paying off the predatory lender in full, because that's just the same as giving the predatory lenders another secondary market source of income to continue on their merry way.

(Laughter.)

But it involves referral to the Legal Assistance Foundation, a legal services program, to assess for legal claims and defenses. And if there are any, then try to negotiate with whoever is holding the loan at that time to cram down the amount due so that they aren't getting -- the predatory lender is not being paid back in full, and the homeowner, of course, gets a more reasonable monthly payment out of it and can then have the ability to repay over the long haul and get a normal loan.

So that's been, in my mind, a model, and it's sad to see that it's -- that there's things about it that have made it so intensive for the people on the front lines working that program that has made it difficult for them to continue it in its current -- in its past form.

But that's really what we need. This is kind of like the Marshall Plan after World War II. You've really got to go into communities and figure out a way to save these homes, because otherwise you're going to have the devastated communities, you're going to have the boarded up places you see in Baltimore City, you're going to have the declining tax bases, declining incomes to the city as a result. And this isn't the only reason why cities are declining. I'm not blaming everything on predatory lending. But the foreclosure rates certainly are directly related to predatory loans.

So on the back end, there's a lot of ifs. And when those things come together, it can be a very positive thing. But these -- the availability of a refinancing product is really crucial to this whole thing, as well as the legal component to make it work.

Other kinds of predatory lending, which we haven't focused on as much, are being dealt with with some innovative programs. I think one that Tommy described in terms of reaching employers who then reach their employees who then become banked, and could avoid refund anticipation loans, and some of the costs of that around tax time, as well a payday lenders, if there's alternative products that are being offered, except for balance protection, but that's a different issue.

(Laughter.)

We won't go into that. We discussed it last time.

But another one I wanted to mention that actually the United States Department of Treasury has helped to fund is our programs around the country where banks are tapping into the VITA centers, the Volunteer Income Tax -- I don't know what the "A" stands for -- centers where -- Assistance. Thank you. Where free tax preparation is done for people, and that really does catch.

There's not a lot of those centers. They're not ubiquitous. They don't catch everybody, but they do catch a least a few hundred thousand folks each year who are entitled to the Earned Income Tax Credit, which is a very complicated thing to do on your tax form. It's much worse than the 1040. And the schedules you have to do, even for capital gains and whatever, it's much harder than that, believe it or not.

And so they are linking -- banks have gotten grants, and nonprofits who are doing these VITA sites have gotten grants, and one example is Shore Bank in Chicago where when people come in for their tax preparation they get a little course about becoming banked. And also, when they -- throughout that course they're told about the problems with refund anticipation loans.

So it's a way to keep people out of the hands of the private tax preparation companies who are the conduits for refund anticipation loans, and save them that chunk of money out of their earned income tax credits. So it's not another way to siphon off the wealth that these folks are getting from the earned income tax credit, which is designed to lift them out of poverty.

So there are some interesting things happening on the non-mortgage side, which, again, is very little -- I mean, but wonderful efforts, but models to go forward.

And just, lastly, on the future side, yes, we need alternative products, so people don't end up going to predatory lenders. But we also, in terms of the financial literacy -- I just wanted to point out that while that's very helpful for the future, and for educating children going forward if it's in the schools, educating adults going forward, it doesn't solve what has happened in the past.

So all of those folks already harmed, you know, the financial literacy doesn't help them out of that problem. It's these other more drastic initiatives that need to take place.

But people don't respond. Educators will tell you they don't learn as well or don't think of the need to learn unless there's a crisis happening or some intersection between their need and the information you can give them.

So when that intersection occurs -- for example, applying for a loan, a new home owner. That's a good intersection. Or they already have a loan, it's not a problematic loan, but they're coming in for post-purchase counseling. That's a good intersection.

Or they're moving from welfare to work, so they're going through job training programs. That's a good intersection because they're back in the marketplace and they will have more income.

And if they have creditors, those creditors may attach to their bank accounts, or whatever, so there's lots of intersections that had occurred, but just flooding the market with brochures or whatever doesn't necessarily meet the need and is successful and getting people really educated in a way to help them learn how to avoid these problems in the future.

MR. JAROLIMEK: Okay. I've got Mark, Buzz, and Tommy keyed up.

MR. PINSKY: Thanks, Earl. I'll be quick. I mean, we'd all like to think that in some way you don't need statutory or regulatory things that sort of weed people out up front, but we know that we do because we know some of the abusive practices that have gone on.

And we'd like to think that you don't need legal remedies on the other side, but we know that we do because we know that they work and it's often the only way to protect these people and minimize the damage that's done to them. But I'd actually like to think that -- and I do think that there is a healthy and viable market of subprime lending out there.

And I'd like to think that that market is a driver that actually we can sort of move towards and begin to understand better. And, you know, one of the things that we did at our last discussion was hear some preliminary sort of perspectives on what the effect of the North Carolina law was, the first law was. And what we sort of concluded was we didn't know yet. There wasn't any analysis yet of -- you know, it was too soon to know.

And I just picked up today the new study out of the University of North Carolina, that I don't know if this got distributed or if this was just on the table. But that shows that predatory loans or some predatory loans were down 72 percent in North Carolina since the law's passage, while in neighboring -- in South Carolina, it was up as much as 260 percent, predatory loans, but that subprime lending in North Carolina was up 31 percent, comparable to the other states.

And, you know, I don't know. I haven't seen the whole study. I'm looking at this sort of press release. But it seems like if we could get copies of this and look at this, this might be the first data we have to tell us whether, in fact, there's a market opportunity. And that information is what's going to drive, you know, folks towards that market rather than trying to be overly greedy and reach too far. So --

MR. JAROLIMEK: Buzz, Tommy, and then Dan.

MR. ROBERTS: I wanted to bring together a couple of different comments already made today, starting I guess, Larry, with yours. I would agree with you that there are an awful lot of other things going on in neighborhoods besides banking practices.

But I guess I'm a little bit more optimistic in my review than maybe you are. I think some of those other things have mitigated significantly over the last 10 or 15 years. If you think back 10 or 15 years to where drugs and crime were in many inner city neighborhoods, not great today, but it's much less acute. Housing conditions are improved in many low income neighborhoods.

There are a lot of positive things going on in neighborhoods, and I'd say that banks have played a very important role in contributing to that improvement.

Where we are with predatory lending, I think, is to see if we can find the opportunity to bring the interests of the consumer and the community and the conventional banks together, choking off predatory lending. I think banks have a big stake in predatory lending, insofar as most regulated financial institutions aren't involved directly in anything like predatory lending, but they do have substantial investments now in these communities that are much more vulnerable going forward because of predatory lending today.

And so I think this is a real potential safety and soundness issue for banks as well as for communities, and there's an opportunity to come together, to really choke off the predators. And it's going to take a multi-faceted effort. I think what Tommy is talking about is a great thing, to compete for the business, take the business away from predators is I think a very important thing to do.

I agree, Mark, with your comment that we do need laws, and maybe we're beginning to learn a few things about how to do this right, if the North Carolina study is any indication.

And we had great, I thought, testimony in the committee the last time about, you know, some principles that are emerging, like let's not -- let's really focus on putting costs in the rate rather than in fees, because you can refinance to a lower rate, but once the fees are paid they're gone.

So we can learn some things there. And I think we really have to focus on choking off capital supply to the predators. And I think there really is an interest, I would hope, a policy interest of the Fed in the name of the safety and soundness of all of the good banks that are trying to reinvest in these communities. So I hope we can see if we can create some opportunities here.

MR. JAROLIMEK: Okay. In the time we have remaining, I've got three to perhaps split the time. So if you can respect each other's time. I've got Tommy, Dan, and Jim.

MR. FITZGIBBON: I just want to respond to Connie. Connie was talking about the yellow cloud, and I'm old enough to have been around -- I took my first loan application March of 1969. How many years ago was that? 34. A long time ago. And never knew what a mortgage banker was or a mortgage broker. They didn't exist then.

And, really, the proliferation I think has -- of mortgage banking and mortgage broker activities at the state level, where there is no enforcement essentially, has been the largest single contributor to the abuses.

And if you wanted to say maybe there's something where we go for federal preemption is that we begin to think about whether or not those activities, those individuals, who in some cases are criminals, or at least they're doing criminal behavior, is that, you know, there's a way to license the individuals and the organizations and to provide them with some supervision, because, frankly, the states don't -- I don't know if they don't have them -- the ability to do it nor the willingness in most cases to do anything about the abusive practices on the origination side.

MR. JAROLIMEK: Dan?

MR. DIXON: I was going to comment, express appreciation to the Fed for getting the interest rate environment to where it is today.

(Laughter.)

And on a serious note, I mean, we do have kind of a nice opportunity with mortgage rates being as low as they are that even if it's a B credit the rate is still almost guaranteed to be well below what the predator has got on the existing loan.

So I know that there are a number of efforts, whether the normal model is going to find a way to leverage that, combined with the very historically spectacular rate environment we have right now to address some of these "old" problems.

MR. JAROLIMEK: Right.

MR. DIXON: It's still -- there's no evidence to suggest that even the most heroic resuscitation is going to be successful without the preventive side. And so Buzz and the other comments about, "Let's find a way to address that," we need all of it.

But at least in terms of have a slight optimistic note in the discussion today, the rate environment gives us a lot more options I think than we might have had a couple of years ago to address these.

MR. JAROLIMEK: Jim?

MR. GARNER: Well, first of all, I'd just like to respond to Ruhi's comment just a little bit and to let you know that we're not just looking at foreclosures. Our partnership with NTIC and NACA are looking at any account they bring to our attention, whatever stage it's in. And I would invite you to identify any other accounts that are ours that fit into that category.

And also that we're not only in the -- going to look for partnerships with NACA and NTIC, we're looking for other consumer advocacy and community partners as well. And I think the goal there is to establish and determine what is the business model for a responsible community-based lender.

I mean, I think Mark's point was excellent, that there is a difference between predatory lending and responsible subprime or community-based lending. And I think we've done a lot to change that business model, and a lot of people have followed that -- those steps, but there's more to be done there.

And so the only way you're going to get there is to work together with your consumer advocate and community partners, along with regulators, and determining what that model is, what it looks like, and to refine it to make sure that it works.

MR. JAROLIMEK: Okay. Well, very good discussion. Thanks to all the participants. Ron, I think we'll turn it back to you.

CHAIR REITER: Thank you very much, Earl.

Well, I think now we should move on to committee reports and a discussion of planned future topics. If I could turn to Manny.

MR. CASANOVA: Sure. Thank you very much. Good afternoon, everyone. Our committee was the Compliance and Community Reinvestment Committee, and I want to thank all of the committee members for their participation.

Our committee covered four topics. We looked at measuring effects of the CRA on local communities. We also looked at maybe options for simplifying the language in specific provisions of the Consumer Financial Services Regulations, to ease compliance burden without reducing consumer protection.

We also looked at -- we had some discussion on CRA examination, specifically whether examination criteria can be revised to be more responsive to concerns about receiving credit for existing investments made by banks. And we also touched on bounced check protection services from the standpoint of which consumers are offered or are eligible for bounced protection versus overdraft lines of credit, and whether institutions' eligibility criteria or marketing programs raise fair lending concerns.

To break it down further with regards to the topics, Glen Canner from the Fed staff provided an overview of a recent study that he and others conducted to address questions about the effects of the Community Reinvestment Act on local communities.

The conclusion was that results are mixed and difficult to interpret. The time period that they used was between 1990 and 2000. And, of course, during that time there were numerous bank mergers. CRA regulations -- new CRA regulations, as you know, were issued in 1995. Fannie Mae and Freddie Mac -- new goals were required of them by the government.

So it was very hard in that particular study to really come out with any conclusive or any good results that indicated that CRA had a positive impact on communities.

Consequently, the staff is going to -- they're engaging in a new study that -- they're going to be using a different set of control factors, and that will be ready by the next committee meeting. So we'll look forward to that.

With regards to our discussion about simplifying language or definition as it pertains to consumer regulations, obviously, you know, that's just an overwhelming task. What we decided to do as a committee was take a very slow and maybe methodical approach to this, and take, for example, the definition of a business day.

That particular phrase, of course, is in various regulations, and we've asked the staff and they've agreed to do this -- to take this up and see, you know, how many times does the definition of "business day" show up in the regulations, and is this consistent throughout the regulations? So that will be reported at our next meeting.

With regards to discussion on modifying examination criteria to be more responsive to concerns about receiving credit for existing investments, as some of you all know this had been discussed at length in past meetings, and we were informed by the staff that based on our discussions that the examination procedures have been changed, where credit is given for existing investments that are at banks.

The last topic we discussed was bounced check protection services as it relates to fair lending. The concern was that bounced check protection programs may have a negative impact, i.e. a discriminatory impact if these programs are targeted for certain groups of people.

Since these programs are relatively new, there is really no hard-and-fast data to draw any conclusions at this time. But this is an area that the committee would like to continue to monitor as data becomes available. We understand from staff that this information will probably be obtained during the fair lending examinations that are being conducted, and may, at some point, be shared with the committee.

As far as future topics, at our next committee meeting our topics will be further discussion of the effects of CRA on local communities, this time using a new study that the Fed staff will have available. We will also discuss staff findings with regards to the business day definition.

We will also discuss the bounced check protection again and review any information that staff may have that may shed light on fair lending concerns. And, finally, we will also want to review -- this came up, and I think it's an excellent idea -- to discuss the impact that the new market's tax credit program may have on CRA efforts and local communities.

Do any of the other members have any -- want to add anything to that?

Okay. Thank you very much.

CHAIR REITER: Thank you, Manny. Oscar?

MR. MARQUIS: Okay. I was involved in the Deposit and Delivery System -- Depository Delivery Systems Subcommittee yesterday, and we discussed -- or we had an update on the Patriot Act and the final regulations. Then, we discussed the short form notices, which we reviewed today, as well as the unsolicited credit and debit card issue, which we also discussed today.

And, finally, we discussed bounced check protection programs. And, in general, I think I could say that we had -- the members of the subcommittee expressed unease about the programs, at least to the extent that they're promoted and encourage consumers to bounce checks.

In terms of future issues, we didn't really -- we'll leave that for a future time. We didn't really get into discussing it or coming up with any new topics.

CHAIR REITER: Okay. Thank you, Oscar. Earl?

MR. JAROLIMEK: Topics for our next meeting. We are going to pick up a topic that was scheduled for this meeting but we just didn't get a chance to get to because of our -- the topic we discussed earlier, and that is funding and long-term sustainability of nonprofit organizations. So we hope to put that on October's agenda.

And I think it's fitting, after hearing some of the comments today, yesterday we thought a topic for next meeting might be regulatory civil and criminal enforcement for predatory lending laws. And so I think that might be a timely topic as the next chapter in our ongoing discussion.

There is an FTC review of loan origination process that someone reported on. We thought we would perhaps take that up as a possible subject, and then, finally, securitization of subprime loans was a submission for a possible topic. So we've got quite a list, and we'll be working on fine-tuning that before October.

CHAIR REITER: Thank you, Earl. Pat?

MS. McCOY: Thank you. Our committee is the Consumer Credit Committee. We discussed yesterday three topics, two of which were open for discussion today. We discussed preemption under the Fair Credit Reporting Act. We discussed the unsolicited issuance of credit cards and debit cards.

And then, the third topic that was not discussed today was the issue of telephone cramming. And if I may just explain briefly what telephone cramming is.

It has various manifestations, but the one that I'll focus on right here is the unauthorized billing of charges on your telephone bill for supposed purchases that either the consumer did not know about at all or at least was on terms that were not agreed to by the consumer, purchases that do not relate to telephone services, so they can be for all sorts of things like dating services, retail purchases, etcetera.

The question that was raised in committee is: is the telephone becoming, or has it become, a device used to secure the extension of credit, and, thus, something that should be subject to TILA dispute resolution procedures and possibly other parts of TILA?

Ron Reiter expressed the concern that, in essence, we have a very well-developed dispute resolution procedure for credit cards. But in the analogous arena of telephone billing, we have no such federal dispute resolution procedure at all.

I hazard to say that all of the committee members felt some concern over this disparity, and so we asked the staff to study the possible applicability of the Truth in Lending Act to this practice.

As for topics for the October committee meeting, the staff has asked us to look at Truth in Lending Act disclosures for variable rate home equity loans, both open end and closed end.

So we'll look at that.

The second topic is we will look at convenience check disclosures under the Truth in Lending Act. It turns out that the law that applies to convenience checks is somewhat different than the law that applies to credit cards. And so there is some concern that the differences in those two legal regimes are actually not being fully and fairly disclosed.

The final topic that we'll be taking a look at are rights of rescission under the Truth in Lending Act, with specific focus on two Ninth Circuit cases that have come out in the past nine months or so -- the Miguel case and the Yamamoto case.

So with that, I think that wraps up our committee's work.

CHAIR REITER: Very good. Thank you, Pat.

Well, it appears that we are a bit early today. We were very efficient.

We have lunch for council members at 1:00. And I think we can adjourn now, and everyone should regroup at 1:00.

Thank you all very much, and look forward to seeing you in October.

(Whereupon, at 12:47 p.m., the proceedings in the foregoing matter were adjourned.)