BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

CONSUMER ADVISORY COUNCIL

THURSDAY, OCTOBER 21, 2010

The Consumer Advisory Council met in Dining Room E in the Martin Building at 20th and C Streets, N.W., Washington, D.C., at 9:00 a.m., Michael Calhoun, Chair, presiding.

Members present:
Michael Calhoun, Chair
Jim Park, Vice Chair
Paula Bryant-Ellis
Maeve Elise Brown
John P. Carey
Tino Diaz
Kerry Doi
Kathleen Engel
Betsy Flynn
Patricia Garcia Duarte
Ira J. Goldstein
Mike Griffin
Greta Harris
Brian Hudson
Kirsten Keefe
Lorenzo Littles
Saurabh Narain
Andy Navarrete
Ronald Phillips
Dory Rand
Kevin Rhein
Phyllis Salowe-Kaye
Corey Stone
Jennifer Tescher
Mary Tingerthal
Mark Wiseman

Others present:
Elizabeth Duke, Member, Board of Governors
Sarah Bloom Raskin, Member, Board of Governors
Daniel K. Tarullo, Member, Board of Governors
Sandra Braunstein, Director, Division of Consumer and Community Affairs

TABLE OF CONTENTS

9:06 a.m.

MR. CALHOUN: Thank you, everyone, for joining us for the Consumer Advisory Council meeting. I would like to start by recognizing our Federal Reserve Governors here in attendance. They have shown leadership throughout our work on the CAC. First we have Governor Betsy Duke, who I'll ask to make some comments. We also have Governor Daniel Tarullo and our new Governor, Sarah Bloom Raskin, who we are very pleased to have here.

Governor Duke?

GOVERNOR DUKE: We are also very pleased to have a full Board and to have Sarah here and to have all of you here. I would just note that the Chairman is very sorry to have missed this meeting. He is in Korea right now with the G-20, resolving all of the issues of the global economy.

And so I wanted to welcome you and thank you for all the work that you did yesterday and all the work that I know you'll do today. I would also like to particularly thank members of this Council.

For the first time, members of this Council actually joined us when we did the HMDA hearings. They joined us for all four HMDA hearings, and I think it was a terrific addition. It actually was born of an idea that Mike had of actually having hearings by this Council. So we finally boiled that down into having Council members on the panels for the HMDA hearings. So particularly, in Atlanta we had Ira Goldstein and Shanna Smith. In San Francisco, we had Jim Park and Patricia Garcia Duarte. In Chicago, we had Kathleen Engel and Saurabh Narain, and in Washington, D.C., we had Mike Calhoun and Paula Bryant-Ellis. For those of you who did that for us, thank you very much.

Now I'm looking forward to hearing all that you have to say for us today. Mike?

MR. CALHOUN: Since this is the last meeting of the year, we have a third of us cycling off the CAC. At this time, I want to acknowledge those members who will be finishing their terms and how much they have contributed to the work of the CAC. You're welcome at this time to make some brief comments.

First, a fellow credit union member from Idaho, Alan Cameron. Please, if you have any comments.

MR. CAMERON: Thanks, Mike. Yes, I do. First, I want to thank the Board for the great honor and privilege of the appointment to this committee. It's been a wonderful experience.

I have been so impressed with the Board. The Chairman has been at nearly every single meeting that we've attended over the past three years despite an extremely demanding schedule in a very difficult economic environment, as have Governor Duke and Governor Tarullo. I appreciate that because it shows the importance that the Governors place on consumer protection in today's society and in the responsibility of the Federal Reserve Board. I think that's extremely important.

We could not have done, I could not have done what we've done here on this Council without the help of the staff. I want to thank everybody on the staff for their indulgence, their helpfulness, their accommodation. It's been extremely important to me.

And finally, I want to thank my colleagues. I have been extraordinarily impressed with the quality of the folks on this Council and with the lively exchange of views. Even though I might not agree with each and every one of you, I have appreciated the comments that each of you have made. They have changed my outlook on a number of things over the past three years, and that has made an important difference in my life. So thank you all.

MR. CALHOUN: The next member who will be finishing her service on the Council is Professor Kathleen Engel from Suffolk [University] who I think makes us all admire and have a little fear for being a student in her classroom --

(Laughter.)

MR. CALHOUN: -- and the rigor of her questioning.

MS. ENGEL: I never intimidate students.

Well, I want to start by just saying that I feel so grateful to the Board staff -- the way that Jennifer prepares us for these meetings, the inclusive way that they involve all of us in deciding what's going to be on the agenda. They've got their own task lists that they are supposed to accomplish with us, and then we're all pushing other things that we want on here.

And then all the work that has happened in the last three years in terms of rulewriting. You know, if the Fed had a productivity measure, they probably have broken the curve in the last few years. It is quite impressive and wonderful.

And I also, like Alan, really appreciate the participation of the Board members. It's really a highlight of my experience at CAC to be able to sit down and just talk informally about what's on the Governors' minds and things like that. So that's been great.

Most of all, I appreciate the good friends that I've made here and the learning that's happened around this table and around the square table on Wednesdays. There's a lot to learn from each other, and even those of you who I disagree with have been fabulous teachers, and I'm grateful.

And the last thing is -- sort of a final little plug -- that I think the biggest issue facing this country right now, and I hope that it will be at the top of the list of the CAC and the Board, is access to credit. All the good work that's been happening around rulewriting is about the history. We don't have abusive lending right now. We just don't have enough lending. We don't want to go back to the 1950s or earlier. So I think the number one issue that we all need to be thinking about is how to get money back into neighborhoods, back to individuals, whether it is consumer credit, mortgage credit, auto lending. We just need good, fair, reasonably priced, accessible credit.

Thank you.

MR. CALHOUN: Thank you, Kathleen.

Next I'd like to recognize Greta Harris from LISC, the Local Initiatives Support Corporation, and the valuable perspective she's provided.

MS. HARRIS: Thank you, Mike.

I too would like to thank the Board and staff for their support of this Council. It's been a quick three years. Many times attending these meetings, I feel as though I have been a fish out of water in that our work on a day-to-day basis across the country is more on the wholesale level, where we're working with community-based organizations that ultimately impact consumers.

So I have certainly learned more than I think that I have contributed to this Council. But I so appreciate the colleagues that I've had the opportunity to meet from around the country, to hear the different perspectives on different issues that impact the quality of life of consumers, and certainly the learnings that I've been able to garner go back to our national organization and help influence how we carry out our work with partners on the wholesale level of doing a variety of different community and economic development work.

The preparation that the staff have provided to members of the Council has been outstanding. I just appreciate the thoughtfulness and thoroughness of every issue that's come before this Council. There's always more than one way to skin a cat, and certainly over the course of the last three years, we've seen lots of different perspectives. We have a better appreciation for the role of the Fed in trying to strike a reasonable balance in trying to advance work and rulings that would benefit this country in the most beneficial way.

So thank you for the opportunity, and I wish the remaining Council members well as they continue to do the work going forward.

MR. CALHOUN: Thank you, Greta.

We have a number of members from the community development world who really bridge, I think, some of the consumer and industry perspectives. Another one whom we've had the pleasure of serving with is Saurabh Narain, one of the national experts in this area.

MR. NARAIN: Thank you, Mike.

I want to start by thanking Chairman Bernanke, who is not here, Governor Duke, and Governor Tarullo for your leadership in the Council and being available when significant issues were being discussed. I want to welcome Governor Raskin, who we will not have the pleasure of spending time with in the future.

I want to profusely thank the Board staff -- Joseph Firschein, Jennifer, and Shalyce -- who have been behind the scenes helping us all out in preparation and in making these Councils happen. Joseph has been particularly innovative in experimenting with format and content and taking risks in the Council with open sessions and so on and so forth. And we really appreciate that.

The last three years have been extremely sobering and difficult. The excesses of the past have, in my mind, as we work in the communities, have demonstrated that these communities have gone back and regressed by decades. The playing field is not level by any standard, and we need to continue to slog our way out of this difficult environment. As we debate policy, stuff like the CARD Act and esoteric stuff on overdraft fees, foreclosure documentation, et cetera, we really need to think hard about invisible communities in the country and the long-term implications of these rules on these guys on the ground who are, you know, out there being regular human beings.

The work in our world needs to continue much, much unabated to create a much more fair society and more fair financial systems. The work of the CAC and the Board continues to be extremely critical, and I'm really thankful for the honor of being here and look forward to working together with the Board in the future.

I really want to thank the colleagues here with me and friends that we've made. We've laughed, we've disagreed, we've agreed, we've almost been at fisticuffs a few times.

(Laughter.)

MR. NARAIN: But at the end of the day, we are bonded by a common goal of creating a much more robust and sustainable financial system. I really hope that that culture continues in the future. Thank you all.

MR. CALHOUN: The next member that I'd like to recognize is a member from industry, Kevin Rhein from Wells Fargo, who has brought a passion but also open-minded views and a wealth of expertise.

Kevin?

MR. RHEIN: Great. Thank you, Mike.

I just want to echo everyone's comments for the Governors to know what an awesome staff you have and what a great job they do. Not just the people organizing the meeting, but the pre-work materials we get have just been terrific. And to Kathleen's point, I think we learn a lot along the way.

To me this has been a great example of how sometimes it's nice to see how the sausage is made. It has been a real eye opener for me to see the process of what happens in the legislation and how that starts to translate into the regulation and the comment letter process and things like that. It just has really given me a lot more confidence about the fact that people are listening.

And then again to our colleagues, I think it has been a great example of societal problems require societal solutions. I think whether it be this forum or others, we've got to find ways to get around the table and talk at and with each other and try to bring an additional level of understanding. And I think this has been an outstanding example. So, all the best. Thank you very much.

MR. CALHOUN: Thank you, Kevin.

The next member who is ending their term, Shanna Smith, was unable at the last minute to be here. Shanna, I think, has carried both the warning and the banner of fair housing work. As Saurabh said, this economic crisis has hit a lot of American households. The communities of color have really lost a generation of wealth building. She sent me a message and asked me to share it with people. I'll turn off my Blackberry after I read it.

(Laughter.)

MR. CALHOUN: She also joined in appreciation for all of the very talented colleagues here on the Consumer Advisory Council and sent her thanks to both the Governors and the remarkably talented and dedicated Federal Reserve staff.

She asks that as we go forward, she hopes that we will include more fair housing and fair lending work so that there is better understanding among housing counselors, consumer advocates, community banks, and credit and lending industry representatives about the importance of and the rights and obligations under the Fair Housing Act as well as the Equal Credit Opportunity Act, RESPA, and TILA. I think those recommendations would be well heeded.

The next member who will be ending her term is Jennifer Tescher from the Center for Financial Services Innovation.

MS. TESCHER: Great. Thank you.

I assumed, based on the alphabet, that I might be last or close to last on the list other than you, Mike, perhaps, so I won't repeat what everyone has said. I do want to thank the Board very much. I'm honored to have served. The has been a tremendous learning opportunity. I can remember the very first time I received the book.

(Laughter.)

MS. TESCHER: And I thought, oh my, what have I agreed to do? What have I gotten myself into? But I now am pleased to say I know exactly what to do when I get the book. I feel just incredibly well prepared and that, in large part, is due to the staff. You have a tremendous staff here. I think you know that, but it bears repeating many times. Really tremendous.

What I think is so special about this group is the cross-sector dialogue. There are very few places where this kind of dialogue happens, particularly in the kind of polarized world in which we live. I think that there is no substitute for this kind of dialogue and discussion. And so, whether one of us is from industry or from academia or from an advocacy group -- I mean I'm one of those people who doesn't really fit neatly into any of the buckets. But in some ways, that's why it is important to say that for all of us -- I think I speak for all of us when I say this -- the consumer is ultimately what comes first. The consumer is at the center of these discussions for all of us.

And I just think that it is important to remember that when we're almost in fisticuffs. That, at the end of the day, we all really want the best thing for consumers.

Regardless of what kind of authorities or responsibilities the Fed is going to have in the future, I think consumer issues will continue to be incredibly critical. I would strongly encourage the Fed to stay involved. I think there is an important and continuing role for a Council like this even if the nature of the issues shifts somewhat. I think that it is very important for the Fed to have its finger on the pulse of what's going on with consumers. I think the last few years demonstrate quite well the linkages between consumer issues and systemic risk, so I hope that you all stick around in some way on these issues. Thank you very much.

MR. CALHOUN: Thank you, Jennifer.

And I'll add just a brief comment to echo the thanks to the Governors and my personal thanks for giving me the opportunity to serve with the Council. The remarkable staff that you have, both for the Consumer Advisory Council and the professional staff at the Fed, I think at every meeting everyone is extraordinarily impressed with the high quality of work that they perform in their work on the regulations and other topics.

I want to particularly thank Chairman Bernanke and Governor Duke because I think that they have raised consumer protection to a new level at the Fed. As people have noted, it is particularly remarkable that they have done so at a time when they were charged with righting not only the American economy and also the world economy as well.

Before I finish up, I want to recognize two more members who are leaving and who I have had the privilege of working both closely with, not just on the Council but also overall the last year, and those are, first of all, my good friend, Lorenzo Littles.

MR. LITTLES: Thank you, Mike.

MR. CALHOUN: I wanted to keep you on for another year.

(Laughter.)

MR. LITTLES: I figured since I talk so little in many of our deliberations, you guys were going to give me another opportunity.

In 1966, former U.S. Senator Robert F. Kennedy gave a speech in Capetown, South Africa, in which he was quoted as saying, "There is a Chinese curse which says, may he live in interesting times. Like it or not, these are interesting times." I think, as in 1966, we can all agree that we are living in very interesting times. I'm relatively confident that I speak for my colleagues in the CAC class of 2010 in saying that we all relish the curse of having served and lived in these interesting times.

Like my colleagues, I'd like to thank Chairman Bernanke and the Governors for giving me this extraordinary opportunity to serve as a CAC member. I would also like to thank Sandy, Joseph, Jennifer, and the entire Board staff for consistently providing us excellent support, research, and work associated with our preparation and deliberations for our meetings. Finally, I want to thank my fellow CAC members. I think your time, your energy, your intellectual commitment to this process has been without peer.

As I reflect back on my three years, which, as a couple of you have said, passed very quickly, as I just mentioned, I think there were times when I should have spoken up more. But as you guys know, there is no shortage of strongly held opinions around this table. As I think about it a little more, I know that I reserved my comments for those times that I believed that a colleague had taken a position that was beyond reasonableness or went out of the bounds of basic fairness.

What I appreciate about the CAC is our collective capacity to disagree vehemently but to do so with civility. I don't think we ever came to near fisticuffs, although there were times when several of the industry members really got on my nerves.

(Laughter.)

MR. LITTLES: As we as a nation enter what I consider a historically silly season in American politics, I absolutely consider it a privilege to have served and worked with a group of adults whose goal it is to actually solve the many problems facing our financial institutions and our systems. My hope is that I have been able to represent the low- and moderate-income families of America, whose interests I have dedicated my life to serving. It has been my pleasure to be here, and it has been an honor. Thank you.

MR. CALHOUN: Thank you, Lorenzo.

And another member who perhaps was less shy in his comments, like myself, on the

CAC, Ron Phillips from Coastal Enterprises in Maine.

MR. PHILLIPS: Great. Well, thank you very much.

You know I was thinking that if democracy has to do with the kind of structure that has been set up here, then I personally have experienced, as many of us have over the past three years, this is really an exceptional model that we need to keep up, as Jennifer is saying, and allow for these kinds of structures to take hold in our society. The degree of civility among this group is something I wish our current politicians in this particular period would take note of. Aside from disagreements on substantive issues, we've really done a tremendous job here in working together to deal with some very important issues of our times.

I ask myself whether or not I personally would have been able to advocate in the state of Maine where I'm from -- mainly a rural kind of environment where we're doing a lot of small business financing in childcare and fisheries and just all the things that go on in local areas. I wonder whether I would have stepped in to advocate effectively for, I think, one of the nation's most progressive foreclosure process laws in the country, in Maine, if not for being part of this Council where you get emboldened into your views one way or the other and you feel you are doing something relevant. So without the connection here, I wonder whether, to the extent that CEI and myself were involved in the foreclosure process there, whether that would have happened.

I also wonder whether I would have been able to effectively advocate with our Senators Snowe and Collins on the financial reform bill, let alone the health reform bill, if not for the relationships here, whatever our agreements or disagreements, to embolden a way of committing to some kind of advocacy.

So this is an extremely important group. Warren Buffet said something like, if you don't understand it, don't invest in it or don't do it because it's so complex. Many of us should probably just have not come to join this group when we got the first book because it's so damn complex that you can't understand it. But thanks to the tremendous professionalism and depth of knowledge of the staff, I mean, it is incredible. Even the discussion yesterday on appraisals, my gosh, a thick document. We know what goes on in the appraisal world at the local level, but the way in which the people here have been able to organize such incredible details. I don't really understand how you can do it. But you bring it home and have made it a lot easier.

So this has been an extremely enriching experience, and I want to thank personally the Governors, Chairman Bernanke, who couldn't be here, and the staff for such a great experience.

I want to conclude with just a couple ideas. I agree with Jennifer that keeping something like this going is a tremendous asset and value, and I hope that happens. But I can't leave without suggesting that we really need to pay attention more in the whole regulatory process and so forth to what the dimensions or issues are that confront rural America. Rural America has something like 20 percent of the population, and all the indicators suggest there are worse problems or relatively great challenges compared to urban or suburban areas. I mean, everybody has their issues. But there is that question of rural America. And we know that HMDA data and even CRA don't really address fully a kind of a rural question of what's that all about in our lives in this country and, of course, in the world.

So, related to that, I know the Fed has done a great job convening sessions around great and important ideas. I would suggest that maybe a good convening role could be to bring people together around rural issues and what a rural CRA might look like and where the Fed might play into that.

So, thank you very much again. It has been a great experience.

MR. CALHOUN: Just a couple more remarks before we take up our first substantive items. I also want to thank Jim Park, who has played such a key role. It has been much more of a team, although I think I get responsibilities for the errors. But he has added a lot to the work of the CAC during this year.

And I think that, as I said, that the Fed has really turned the direction of the perspective of regulation of consumer financial transactions in a couple places. One that we talked about yesterday, for example, the CRA, where the Fed is recognized as an impartial and independent arbiter who plays with the numbers fairly. It has been very instrumental in clarifying what role the CRA had and did not have in terms of the mortgage crisis and the financial crisis.

I think, at even a larger level, the Fed has reestablished that both better disclosures but also substantive standards for consumer financial transactions benefit both consumers and responsible businesses and that that will have a profound impact on both individual households and the overall economy. We see that in the issues that we're going to take up, and I think it is probably appropriate that our first agenda item is mortgage transactions, sort of where we all started three and one-half years ago on this ride.

But it was noteworthy -- many of us were in the thick of the financial reform bill -- that that bill included a couple hundred pages of mortgage regulation. The striking part about it was that you didn't hear a lot about those provisions because there was a lot of consensus. And a lot of it, I think, derived from work in this room with the Fed and with the Consumer Advisory Council, and its provisions in many places build and virtually copy the work of the Fed on consumer mortgage transactions. Going forward, we'll face many threats, but I don't think we will face the same kind of threat of unsustainable and unfair mortgage lending that we have in the past.

So with those thanks, let me move on to our first substantive issue, which is the rewriting of those complicated rules on mortgage transactions. In August, the Board issued a proposed regulation to enhance the protections and disclosures on home mortgage transactions that includes significant changes to Reg Z, one of those implementing detailed regulations. And it is part of the overall comprehensive review that the Federal Reserve has been carrying out of Regulation Z and the mortgage lending rules.

The interim rules require lenders to disclose how mortgage payments can change over time, a problem that we all have increased appreciation for, and also address other important aspects of the mortgage transaction.

So at this point, I would like to recognize Kathleen Engel, the Chair of the Consumer Credit Committee, to lead our discussion of those rules.

MS. ENGEL: Great. Thanks, Mike. We always start by saying it was a lively discussion. It sounds pat, but it always is a lively discussion, so it's actually also apt.

Andy Navarrete and I are going to divide up chairing this part of the meeting. We're going to start with the TILA reform or the TILA rescission provisions, and I wanted to turn first to Mark Wiseman.

MR. WISEMAN: Thank you, Kathleen.

For the Governors, this is review, I'm sure, but for a lot of people in the room who don't understand rescission, rescission is a very intricate rule. The intent of rescission is to quote-unquote put the parties into the position they were before the loan actually closed. Unfortunately, that's an impossibility. You can't give the money back. Once the funds are loaned, you can’t pay the other creditor off. So it creates a statutory scheme where the borrower can have leverage as if they were in the position before the loan actually closed.

The first thing that happens when the borrower notices that they have a problem with their loan -- first the right is three days. Then you have three years to actually send a letter. The reg says specifically the security interest that the lender has on the property becomes void.

Then steps two and three, which are the subject of the proposed rule, can be altered by the court. But they say, essentially, the next thing that happens is that the lender must file a release of lien and then the borrower must tender the amount.

And the courts have said that rule one, the first part is in there, the interest is void. And then everybody argues about how much money is owed. The practical aspect of this is that it just gives the borrower leverage where they might not have had leverage before.

Now the interesting thing is this is the only thing that a borrower has to create leverage in a foreclosure scenario. We see that if you are actively going to a HUD counseling agency, even under HAMP, lenders will not take their foot off the gas. The attorney keeps going forward to the foreclosure. Lenders refuse to ask them not to. We've seen this week that even if the lender fabricates the assignment of mortgage and the affidavit that says somebody really hasn't paid, that doesn't matter either. That won't slow down the foreclosure process.

So now this one thing that borrowers have to act as leverage is being changed by this rule. I think the Board needs to take a long, hard look at this. Especially now, I'm not sure why anything would be under consideration that curtails any rights that a borrower has, much less the right to rescission. I mean, I can't emphasize that enough.

The form also has been changed to include a tear-off option that the borrower then sends in. But practically speaking, I've never had a lender say, oh, I got your rescission notice. The fight is always to prove that they have a rescission notice. If borrowers don't have the return receipt for the rescission notice itself, they are screwed. They're not able to exercise this right, and the court looks down their nose at them, that maybe the borrower is making it up. Maybe they didn't really rescind.

And consumer testing was undertaken to determine this, to determine that now instead of having two forms, there should be one form. There should be a tear-off. I'm interested to know what testing there has been done with consumer attorneys because these are the people who really understand the right of rescission and have tried to effectuate the right of rescission over time.

Again, my vote -- not that I have one -- but my recommendation is to hold off because in six months, this will be with the CFPB. And it, in my mind, is the single last arrow that the borrower has in their quiver to defend themselves against foreclosure.

MS. ENGEL: Do you want to chime in Kirsten?

MS. KEEFE: Sure. I absolutely agree with Mark. As Mark has, I've sent many notices on behalf of consumers to rescind their mortgages, and I think the proposed rules gut rescission. The Truth in Lending Act gives us disclosures. It doesn't give any prohibitions in mortgage lending, and it doesn't give much in terms of statutory damages. So if there is a real Truth in Lending Act violation, rescission, of course -- either an affirmative right to rescind or raising it as a defense to a foreclosure -- is the only way that the homeowner has a real chance to right the wrong.

By requiring that the security interest only be voided if the homeowner can tender the benefit that they received, you are, in a very real practical way, again gutting rescission because a homeowner is never going to have access to credit at that point in time to pay back the benefit that they received. There are cases that have held that they will not void the security interest unless the homeowner tenders. They are the apex of a huge pyramid of what practically happens in real life in these cases.

Homeowners are able to defend themselves against a foreclosure because they are able to assert rescission and then they are in a position to negotiate with that party that now does not have a security interest but to whom the money is owed. Nine out of 10 times, probably even a higher percentage than that, you get a loan modification. Without that ability, the homeowner is not going to get anything, and the Truth in Lending Act, I think, will be greatly meaningless in terms of providing a real defense, unless you want to raise statutory damages to a point where they are meaningful to help somebody save their home.

I also agree with Mark that I think the proposed rule arguably contravenes the real intent of Congress. When you read rescission, the security interest is first voided, and then the homeowner is required to tender. To make tender a condition precedent of rescinding, I think, is very wrong.

I don't know if you want to go into other pieces of TILA or I'll hold back. I have other comments on TILA, but if you want to stick on rescission.

MS. ENGEL: Yes, let's talk about rescission first and then go to some of the other issues you've raised.

Just to follow up on what Mark and Kirsten said, I had yesterday at the meetings raised a concern that the new rule actually completely contravenes the statute. It doesn't just contravene Congressional intent. The statute in 1635 -- well, it's 1635(i), but then it refers back to (b) -- says very clearly that within 20 days after receipt of a notice of rescission, the creditor shall return to the obligor any money or property given as earnest money, down payment, or otherwise, and shall take any action to terminate the security interest.

And then it says, "upon the performance of the creditor's obligation." So, in other words, once the creditor has returned the money to the borrower, the obligor shall tender the property to the creditor. And there's a provision in here for an exception if ordered otherwise by the court. So it says explicitly in the statute that the creditor has to return the money first. Then the debtor tenders. It says that in the statute.

I raised this yesterday at the meeting, and a staff member has since told me that in fact the Fed is making exception to the statute. If this is an exception, then the Fed has to satisfy, I believe, whatever the basis is for the exception, that it furthers the purpose of the statute. I can't remember what the other exception was, but it didn't seem to apply. But there needs to some type of justification given before the Fed issues a rule that is in direct contradiction to the statute.

Mike, you had some thoughts on this too.

MR. CALHOUN: This issue, I think, is a great example what the Fed and Consumer Advisory Council deal with. It's a really important rule, it's really complex, and it really helps to have sort of this on-the-street, how-it-works perspective.

As mentioned, the concern is that the Fed rule, the way it's written, would say you don't even get to this rescission process unless the borrower can first tender. You don't even have a discussion about rescission unless the borrower is there saying here's the cash to pay off the mortgage. And there's fear, and I share that fear, that that obliterates the rescission right.

It is complex, and judges have intervened because there is a legitimate industry concern that they don't want to take off the security lien before they are repaid because, for example, if the borrower had a judgment, suddenly that judgment jumps in front of any claim that the lender would have against the security. And often, folks, other than the security of the house itself, don't have the means to repay the original mortgage. So courts have joined in the process and tried to come up with equitable ways, but that's been in the context of getting the rescission process started, not that the tender had to come first before the court will even take a look at it.

So I think the real fear, again which I share, is if the rule as proposed is adopted, it would say unless the borrower comes forward at the very beginning with the rescission notice in effect and says here's a check for how I'm going to pay off the mortgage, then the discussion, the process never starts. It gets short-circuited. So I think that is the big concern. But there are, you know as always, complicated practical aspects.

So I would urge again a go-slow on this for a couple reasons. Rescission is absolutely critical. It has been one of the key aspects of truth in lending. For example, all of the HOEPA protections are tied to the rescission remedy. That's how they typically are most often enforced. There are a lot of other changes, as we'll talk about today, going on in the mortgage world, and I think it would be helpful for those to settle out.

I did have a comment just quickly on one other aspect of the rescission rule. It changes what is considered material or which disclosures are material. It adds some, takes away some. I think, again, look at those closely. There have been specific comments. One in particular I was concerned about -- it increases the tolerance of disclosures on the monthly mortgage payment to $100. So the monthly payment could be off by up to $100, and that would not be considered a material non-disclosure. Well, average mortgage payments are about $1,100, $1,200. For most households, 100 bucks a month is a big deal. So I have concerns about that level of increased tolerance that would not be deemed an important disclosure.

Thanks, Kathleen.

GOVERNOR TARULLO: So how would you change the rescission as a part of the proposed rule?

MR. CALHOUN: I would leave it closer to the way the statutory language is. First of all, rescission, and industry folks and consumers, virtually never happens outside the context of a consumer represented by a lawyer. It is just too complex. Maybe industry folks have had other experiences, but I'm not aware of them in several decades. So how it works now, I think pretty much works okay. The lawyers usually do resolve it, and if the lawyers can't do it, the court intervenes and says here is how we're going to balance these interests where you have a rescission right, which is an important right, but it affects the core interest of the lender, the security lien. Essentially the courts come in and say we're going to let the rescission element be declared and have consequences. Stop the foreclosure. But we're not going to leave the lender out there hanging with no security interest whatsoever until this is all resolved together.

So it's a very complicated issue, but I think that's been the right kind of balancing approach and procedures.

MS. KEEFE: And can I just add something? I had a discussion yesterday with somebody from the Federal Reserve, and they were saying that the proposed rule puts the parties back as if the transaction never happened. Right? The theory being that rescission should put the parties back to where they were before -- no security interest and the lender is paid in full.

Well, there's nothing you can do to make it seem like the transaction never happened. The practical result of the way rescission works now, in my view, does in fact put the parties back to where they should have been at the beginning of the transaction.

In my view, they get the homeowner a loan that they should have gotten in the first place. You know, it was a very effective way all these years to get those folks who applied for a loan and were steered into a higher interest rate loan and were charged 10 points in up-front fees and costs and given a 10 percent interest rate -- it got them the loan. It never got them a free loan. But it got them the loan that they should have been sold in the first place as a result of a loan modification from being able to assert a rescission claim. So I do believe, again, the way it works now does effectuate that goal of putting the parties back to where they should have been. You could look at sort of in contract terms -- if there was a breach of contract, what should have happened at the beginning of that contract.

MR. CALHOUN: And just to clarify, the context we're usually talking about here is the extended right of rescission, not the three-day right. So you are a couple of years down the road. The money has all been dispersed. There's complicated accounting to figure out how you tease out the finance charges, the fees and everything else. Another reason why almost always lawyers and/or the court are involved in this process.

MS. ENGEL: Kevin?

MR. RHEIN: I missed the discussion yesterday. I had to step out. But just a couple of things. There's no question these are extremely difficult transactions. It just seems to me a lender can't release the security because they lose their leverage, and a borrower has difficulty providing the funds because they need to get a new loan.

It strikes me that there's got to be some sort of escrow process that gets involved -- to your point that there typically are attorneys involved in these things. So I think you've got to look to have some sort of neutral area where neither party is giving up its leverage against the other party overall. I don't know exactly how you would go about doing that, but clearly the lender cannot release the security because they've lost any ability to recover overall.

Relative to some of the other elements in the rescission period, we actually thought consumer testing was good. If what you’ve developed was a better form from the consumers' perspective, I think so many things get passed without any consumer testing that we would encourage you to go along with what the consumer testing results showed was better.

We thought the rules added good clarity by having an actual date that the rescission date expired, providing the address where the form should be mailed. We disagree on multiple copies. We think a single copy with a tear-off makes a lot of sense because you're not adding more paperwork to the entire process overall.

So, that's just a couple comments.

MS. ENGEL: And Kirsten, you had some comments I asked you to hold off on. Do you want to --

MS. KEEFE: Sure. Well, Mike mentioned on the material disclosures -- I can certainly see adding items at this moment in time to what is considered a material disclosure, like the total amount of the loan, the contract interest rate. I think those are all important terms. The proposed regs proposed to eliminate some items from the material disclosures.

Again, the Truth in Lending Act, consumers have no prohibitions in mortgage lending. There are disclosures. Things have to be disclosed. It seems to me like this incredible moment in time to be removing items from that list of material disclosures. I understand that the finance charge is not always a clear term to homeowners at this point in time, nor has it really ever been, but I don't understand the reasoning from removing it from the list of material disclosures.

As far as the forms as well, I think two copies are necessary. I don't think most homeowners have a photocopier in their home -- I certainly don't -- or any other means of providing it. If you want to be returning one copy, I think you should be able to have one full copy left with you. I think that was the original theory behind giving the two forms.

I think the consumer testing was great, and I commend the Federal Reserve for all the consumer testing they did. I think the forms are significantly better in some respects. I would encourage the Federal Reserve to come up with standardized forms. From what I understand, they need to be -- whatever form a particular lender uses has to be substantially similar. And I would really just encourage you to come up with one standard form and then everybody use it. Then it's clear. We're not litigating which form is unclear in court. You know just come up with one form and use it.

I think that's all the comments that I had. Thanks.

GOVERNOR TARULLO: So, Kathleen, I'm sorry. Can I go back to the other issue? So would you guys who expressed some concern about the proposed rule, is there something, some variant on what Kevin said that could work from your point of view? Something that puts it into a neutral –

MR. WISEMAN: So what happens when a borrower rescinds is that the statute says the lender's security interest is void, and then you argue about whether tender has to happen and whether -- and Kathleen read it -- the lender has to take steps to remove the security interest. Practically speaking, it just gives the whole process a timeout. I'm familiar with no court anywhere that made a lender remove their security interest from a piece of property while they were working out the tender process on the loan.

Like I said, it just creates this leverage that attempts to put the borrower in the position they were before the loan closed. So in a case where a security interest was removed, then you would have this nightmare of escrow and who owns the property. But that just doesn't happen in this situation.

This is one of the only things in TILA that actually achieves what it was set out to do. I don't think we even get to the discussion about escrow or it being a problem because that just doesn't happen. And this is where, if you just read the statute, it gives you the incorrect impression of what goes on if you don't really know how this is effected when lawyers are actually sending the rescission notices.

GOVERNOR TARULLO: Kevin, do you disagree with that?

MR. RHEIN: I couldn't speak to it, Governor. I'm just not familiar enough with the process to be able to say. But we can certainly get some folks that deal with this.

MS. KEEFE: And I want to add the security interest is theoretically voided, but the note still exists. So the homeowner is in this difficult position because the note still exists. The security interest actually does still exist -- I mean to enforce that right, unless the lender stands up and says okay, you're right. We'll file a notice of satisfaction of the mortgage, which never happens.

To enforce your right to rescind, you ultimately have to file a lawsuit. And it is true, you will be hard pressed to find a court that will just void a security interest without having some arrangement of tender. That is the big hammer of rescission, that you get the parties talking and negotiating a loan mod.

The problem is, as Kathleen, I think, noted or Mike, that you are not even going to get to court if the condition of being able to exercise that is my homeowner who is in foreclosure, who got a bad loan, has bad debt, has to go out and find financing. You know, five years ago, that was impossible. Today, it's absolutely impossible. To be able to go out and find financing and say okay, Your Honor, here's money. That's not going to happen. We just don't have those other sources of credit.

Again, I don't think it needs to be tinkered with at this point in time. I mean, it is working. Things have sort of shifted now to HAMP, but HAMP isn't going to last forever. I don't see any reason to sort of change the rule at this point in time.

MS. ENGEL: Maeve Elise, did you want to add something?

MS. BROWN: Yes, just very briefly, Governor.

The courts actually function as a bit of that neutral ground. I think a neutral ground to be able to negotiate is important, as Kevin is saying, because the court has no interest and is not going to say that the debt disappears, of course. There is still going to be an equitable right to collect on the debt. And even absent the court, I don't know any advocate who would attempt to argue that the debt actually disappears.

In point of fact and reality, we've had negotiations with lenders where it is such a given that of course they're going to get owed -- the debt exists even with the security interest voided -- that the discussion is just about okay, well how much should the homeowner owe in light of the fact that they rescinded on the loan. Clearly there were problems. The lender agrees that there were problems. Let's talk about what the actual dollar amount is.

And we've been able to negotiate for what the actual dollar amount ought to be even without the use of the court because it is such a given that, okay, the voiding of the security interest basically starts the conversation. If the security interest is not voided, there is no beginning of a conversation.

And if you are not able to agree on what the right dollar amount is that is to be owed, then you do have the possibility of being in court and then having the judge supervise the process and essentially work it out. And that is really what happens 99 percent of the time.

MR. RHEIN: So how did this get brought up? What is the genesis that this is going through? I mean I don't know that I understand why this is being redone if advocates are saying it works. I'm not aware that industry -- Andy or John? -- I mean I just have not heard that this is a burning platform.

MS. BRAUNSTEIN: This was part of our regular review of Reg Z. Certainly rescission is an important part of that regulation, and that's something that we looked at. I think the rules were an attempt to clarify where there has been some ambiguity in the past. And so we were trying to clarify that further.

MR. RHEIN: Were the lenders pushing for clarity in the ambiguity?

MS. BRAUNSTEIN: I don't know. We've gotten comments from time to time from various parties about this, and it was part of the review process that we do on our regulations.

MR. WISEMAN: I have to say I agree with Kevin.

(Laughter.)

MR. CALHOUN: Can we adjourn for the day?

MR. RHEIN: That's right. I mean, this might just be one where nobody's got a dog in the fight here. So let's move on, you know?

MS. ENGEL: All right. In that spirit --

(Laughter.)

MS. BRAUNSTEIN: I would just that but this is why we put our regulations out for public comment.

MS. KEEFE: Can we expect comment from Wells Fargo to that extent, Kevin?

MR. RHEIN: I have no idea.

MS. KEEFE: Are you committing right now?

MR. RHEIN: You know there are a lot of other things more broken than this. So --

MS. KEEFE: I'll draft them for you guys.

MR. RHEIN: So that would be my take.

MR. NAVARRETE: Although I fear going back to the office and finding out from my team, are you kidding?

(Laughter.)

MR. RHEIN: I'm sure all the emails will be flying in a second.

MR. NAVARRETE: Exactly.

MS. ENGEL: Well, if you got to speak for Kevin yesterday, I think Kevin just spoke for you today. So --

(Laughter.)

MS. ENGEL: -- I think we have two major banks saying it ain't broke, don't do a thing.

Okay. So Andy is now going to lead the discussion on reverse mortgages.

MR. NAVARRETE: Sure. Since we're a bit behind on time, we did have a lively discussion on this issue, though not a contentious one. I do think that there was a very strong focus on how to communicate terms and conditions with these kinds of products to these consumers.

I think there was a general consensus that the new total annual loan costs, or TALC form, was a very, very positive step in that direction. Most of the commentary that followed was actually about ways to further improve communication. Some very creative ideas that I think were offered by a number of folks and I'll let them make those directly.

Kirsten, if you wanted to kick off the discussion?

MS. KEEFE: Well, actually I think the regulations on the reverse mortgages are really good. Two things I'll say. One, I'll reiterate my comment about the forms. I think the forms are good and they're clear. I would just really encourage the Federal Reserve to come up with some standard form and not allow lenders or brokers to come up with their own forms.

But secondly, regarding the counseling, there was a question that was posed to us yesterday. I think counseling is really important. I will always reiterate, as a legal services lawyer, I consider myself one of the biggest fans of housing counseling agencies, certainly in New York state but also across the country. I think counseling is absolutely imperative for this sort of mortgages, and we certainly do not have enough counselors in the world. And that was discussed in part of our discussion yesterday.

Thank you.

MR. NAVARRETE: That intersection of counseling and the disclosure process was a theme that ran through a number of the comments. Patricia, I know you had thoughts on this topic.

MS. GARCIA DUARTE: I just want to add that the reverse mortgage counseling component is a very specialized type of training that counselors have to go through. It is a very complex curriculum and a very complex product. So it's really crucial. I really want to emphasize that everyone -- currently it is not a requirement -- but everyone who gets a reverse mortgage, that at least they have a face-to-face conversation with a housing counselor who has been trained to help the consumer better understand the product.

At NHS Phoenix, we have 13 housing counselors, but only one is HECM certified. I know in the industry, in housing counseling, that's going to be very common. I'm afraid that the private sector will jump in to provide this counseling service. So I want to also emphasize that only the HUD-approved counseling agencies that are third parties, neutral to this process, be the ones to deliver this type of counseling.

MR. NAVARRETE: Phyllis, you had further thoughts on some of the challenges?

MS. SALOWE-KAYE: Right. We are the largest HUD-certified counseling agency in New Jersey. We probably did more HECMs than anybody else. We've gotten out of the business. We don't do them any longer because we can't afford to do them. We only do face-to-face counseling. We don't do phone counseling. We believe we have to look folks in the eye, especially these seniors, to see if they've glazed over.

I'm 64 years old. My husband is retired. I've thought about reverse mortgages, and, frankly, I read the stuff and I don't understand it. So we need to make sure that everybody who is being counseled is being counseled in person, I believe, or in another way that we can see them and understand that they know what is going on.

It requires at least a three-hour initial counseling session. We encourage folks who want these to come back and bring a family member because -- so we've done several sessions -- we want family to understand it because unfortunately we've been sued several times, unsuccessfully, but had to spend a lot of money on lawyers to defend against family members who later thought this shouldn't be happening.

So we're looking to get back into the business. We hope that there is more funding available. There is a new certification process that costs money and time, and, frankly, we would only be able to send one counselor. Right now I'm not even able to send them to go to take the time to get trained because of other foreclosure responsibilities that are on us. But we need to be paid. We need to have more counseling. And it needs to be one on one.

Some of the ideas that,were brought up, and I don't know if anybody else is going to speak about that, was possibly doing a computer, Skype-ing kind of thing if people are in rural areas. New Jersey is not that rural. People are always able to get into a counselor. And we need to look them in the eye and know they understood what they were signing and what they were doing.

MR. NAVARRETE: Well, that actually helped in the efficiency in the comments because I was about to turn to Mary to talk about her --

MS. SALOWE-KAYE: I'm sorry.

MR. NAVARRETE: -- no, no, no. But Mary, in addition to the great suggestion about possibly using Skype or other sort of technology for improving communications, particularly in rural areas, you also, I thought, brought up a great point about improving statements in reverse mortgages to have them be more informative and more useful tools for customers, in much the same way that we've done that with the CARD Act and the various reforms of the statements there.

MS. TINGERTHAL: Yesterday when we talked to the staff, I asked if there were any sort of cross-over provisions on what would be required in statements that the borrowers receive once they have a reverse equity mortgage, and the answer was that there are no such provisions. But I do think this is an unusual kind of loan where it really is pretty critical, especially on an open-ended loan, to know where you stand with regard to the amount that you've drawn vis-à-vis the value of the home.

So I would just encourage that, if there is some ability to comment on what those statements should look like, perhaps just guidance to the industry, I think it is a critical companion to the very good disclosures that we saw yesterday.

MR. NAVARRETE: Kevin, you had a comment?

MR. RHEIN: Yes, on the counseling side, we 100 percent agree that there needs to be counseling. Ideally it is face to face. It absolutely has to be independent from the lender. The concern we have is supply. Obviously you have aging demographics going on. There probably will be an uptake in the product. So, whether it be HUD-certified or something, that may be a barrier if that's the only type of agency that can do it.

I certainly think that a counselor has to be certified to be able to teach this product. I would just encourage, as we look at this, that we not too narrowly define who the type of counselor is. It doesn't have to be HUD. What they have to be is certified in how to perform this type of counseling on a reverse mortgage. We'd look at increasing capacity to keep up with demand over time.

MR. NAVARRETE: Kerry, you raised the issue yesterday of reaching foreign language populations.

MR. DOI: Yes, absolutely. Especially as I get older and more senile, it is really difficult for me to understand. For fluent English speakers, it's hard enough to understand reverse mortgages. The TALC table really helps. But especially with so many limited English-speaking populations in the United States that do own their own homes and are potentially exposed to deals that they don't understand, I think it is really important that there be some kind of provision for in-language counseling.

MR. NAVARRETE: And I think we have time for perhaps two more comments. So we'll turn to Ron and then to Kathleen.

MR. PHILLIPS: Okay. Thank you. I just want to reinforce the importance of the counseling capacity. The pressure is actually on counselors to even engage properly in this area, let alone the foreclosure area, which most of our work is focused on right now. We started in May, and I think with one person that was dealing with the foreclosure issue. Now there are 21 counselors in the state plus a bank of attorneys that's trying to meet still a pressured market of dealing with foreclosures.

With reverse mortgages, we are certified for that counseling as well and haven't done as much. But each time it has happened, the person or family has come at the end of the process to get the signature, get the signing done so they could go forward with this and show that they've had some counseling.

It hasn't been, I think, a qualitative sort of thing. So we're not out in the market proactively saying, well, let's see what reverse mortgage is all about. We do first-time homebuyer education. I'm just thinking that that might be a great model to do first-time reverse mortgage education -- what does that mean before you go into this sort of thing and how that kind of education can take place.

So I think the focus on counselors and preemptive education and outreach to people who are thinking about this is important. Maine has an aging population. The country's demographics are aging. It's going to only get more demanding in the future.

I think, Governor Duke, when I first joined here three years ago, I was mentioning how important counselors were to get into this whole network. And so here we are again with another future of the importance of counselors.

MR. NAVARRETE: Kathleen?

MS. ENGEL: Oh, Mike, you have a comment?

MR. CALHOUN: Yes. There was a second half to this in the reverse mortgage. There is the complexity of the transaction itself, but one of the major abuses has been the pairing and tying of reverse mortgages with annuities, particularly lump-sum annuities where the person pays a fee to take out the equity in their home and then they also pay fees and commission with the annuities.

The rule follows what some states have done and creates, I believe, it's a 10-day safe harbor period. In other words, if the annuity contract is more than 10 days after the reverse mortgage transaction, then it would not be covered. It would be in the safe harbor of the anti-tying provision. There's general agreement there should not be tying.

We have really big concerns about that. We first urge no safe harbor, but certainly 10 days is way too short. It just doesn't seem workable. I'd remind that there's not, for example, a counseling requirement, and I don't know if you could impose one on the annuity. If the person takes out a lump sum, they are almost inevitably going to get sold an annuity unless they've got other plans for this lump sum. I mean, that's why you take out the lump sum at the start. This tying has really been perhaps the biggest abuse in the reverse mortgage area. So we would urge that you take a very close look at that problem as well.

MS. ENGEL: I just have one quick comment, which is that I agree that forms are great. I just went through a three-hour reverse mortgage counseling session with a family member and just see how difficult it is to get that information across, particularly to people who are even older than all of us.

I think that the disclosures do an excellent job of communicating that very complex information. But I really want to encourage the Fed to test the form to also see if it is valuable for shopping because there really are two purposes for disclosures. One is to ensure that people understand what they're getting into, and the other is to help them do comparison shopping. So if there's further testing, I would encourage testing on that question or that issue.

And I think Andy will now take it away with the appraisal discussion.

MR. NAVARRETE: I don't know whether it is a reflection of the topics or maybe that we're just getting old, soft, or tired, but a lot of consensus on this one, too. I think a lot of agreement that the Board has done some very good work here with its interim final rule and also with respect to achieving some continuity with codification of the Home Valuation Code of Conduct (HVCC). So, general agreement on a number of the principles that were articulated.

We had a very good presentation from staff. It elicited a number of clarifying questions, which I think took up the bulk of the discussion. But there were some interesting points raised with respect to the scope and coverage and other ideas with respect to ensuring not only appraiser independence but appraiser quality.

And Kathleen, you had asked about bonding and insurance requirements.

MS. ENGEL: Yes, I thought it was worth considering imposing bonding insurance or capitalization requirements on the appraisers. Clearly, under Dodd-Frank and the new regs, the appraisers are subject to much higher standards than we've ever seen before, and that's all good given their role in the subprime crisis.

But I think that these standards are only really valuable if it is possible for people to really obtain real remedies against them. So to put in some measures that would ensure that the appraisers aren't judgment-proof could be a wise move.

MR. NAVARRETE: And, Dory, you had raised a question around coverage of second homes. There seemed to be an agreement among many that that was a good idea.

MS. RAND: Right. I guess the statute refers to a principal residence. There was a question and discussion as to whether the requirements about the appraiser rule should also apply to second homes or vacation homes. I think that it should, and there was agreement among the CAC members that it should apply to other residences as well. Especially among our aging population, a lot of people do have a second home, and there's no reason to exclude that.

MR. NAVARRETE: Not surprisingly with the crisis, the focus has really been on inflated appraisals. But I thought Patricia brought a very, very interesting, sort of anecdotal perspective to perhaps the reverse problem.

MS. GARCIA DUARTE: I shared with the group yesterday that NHS Phoenix purchased a couple of failed subdivisions. The first one that we bought -- it was a roller coaster ride that we were riding because appraisals are so subjective. You never know what you're going to get.

It is clear that the appraisers that are not familiar with some of the lower-income communities really bring the feelings with them and give lousy appraisals. You know that they didn't do the job, they don't understand the neighborhood and didn't use the right comps. So we questioned the first appraisal, but we were very cautious because we knew there were new guidelines and we didn't want to upset anybody or do anything wrong.

So I cautioned the group that we should look into some of the unintended consequences that could result because we should, as developers, should be able to make sure that we have the right to communicate. And staff clarified that that is the case -- that if the value is assigned to it and it is really way off, that we should be able to have a decent communication to make sure that it's reevaluated. But in our case, we just had to get another appraisal, and it was much better in an alignment to the purpose of revitalizing this particular neighborhood.

MR. NAVARRETE: Corey, you raised an interesting point about the value of quality appraisals and then potentially managing systemic risk and deflating bubbles?

MR. STONE: Right. Part of the problem that led to the crisis was the lack of independence of appraisers. We care a lot that appraisers represent some kind of stable force in depressed markets.

MR. NAVARRETE: The last area in there was a specific comment or question in the materials that staff provided around whether or not the sales contract itself should be part of the appraisal process. That was probably one of the more interesting points of discussion.

Ira, you had raised concerns there.

MR. GOLDSTEIN: My concern is that the appraisal really is supposed to be the independent assessment of the value of the property. The notion is that it needs to be both independent and in some ways blind to the process. And our experience in Pennsylvania and our experience in other places where we've worked is that at the moment in time where realtors and lenders were able to provide to the appraisers the sale price of the home or the sales contract, that was the moment in time that the two items essentially became conflated. And that the appraised values were coming in exactly at where those prices were coming in.

I've heard from appraisers that that really became the moment when they were really unable to, given the forces of the market, to produce an independent value. So my recommendation here is that there is no information that is conveyed about the price of the home. Because while the price does represent some notion of what the market says that property is worth, it is very important that you get that independent value.

And lastly, because the loan-to-value ratio, which has been essentially one of the better predictors of loss in the long term on these transactions, is supposed to be the lower of the sale price or the appraised value as a function of the size of the mortgage, the incredible importance of keeping those two things separate is magnified.

MR. NAVARRETE: John, you have some thoughts?

MR. CAREY: Yes, I mean I think Ira makes a lot of good points. I think it is an area where you need to go slow because if you don't know what the -- to Patricia's comments about the unintended consequences -- it's a recurring theme with me, I don't seem to get near the microphone and then I always feel I'm too loud when I'm near the microphone – but my sense on this is go slow on this.

I think there are risks, and I can't figure out which way to go on it. But the one side of it is, on an arm's length transaction with buyers and sellers, buyers don't pay a nickel more than they should pay. And that's how it should work. If we bolster the independence certification, the quality of the appraisal process, that's an additional safeguard.

But, again, I think Ira raises some very interesting points. If you could be completely in a sterile environment and not be influenced by the transaction, you at least take that notion out of it that the appraisal is somehow driven by the transaction rather than a real look at the property. I'm just not convinced that we truly understand what the effect would be if you just took that out of the puzzle. That's all.

MR. NAVARRETE: John, I would echo that because I absolutely share Ira's concern about the conflation of the sales contract and the appraisal process and how that can drive abuses or perhaps just laziness in the process. That said, I would urge the Board to perhaps think of more surgical solutions. It would seem a bit odd to not have a pretty critical piece of data, i.e., what the buyer is willing to pay for the home be part of the valuation process. Folks talked about comparables and other data points or whatever that could help influence the ultimate outcome, but comparables are ultimately just sales contracts on other homes.

So it seems to me that having the sales contract as part of the process probably makes sense. But if there are ways to constrain around that so that it is not misused, that there may be, as I said, a less draconian solution.

And Betsy, I know you had views on this as well. I don't want to necessarily catch you off guard here but --

MS. FLYNN: I did. As a community banker, in our loan committee meetings, we're always amazed that 99.9 percent of the time, actually higher than that, the appraisal comes back exactly what the sales contract is, which is always very interesting. And so we decided to test this out. Last year I sold my home to my daughter and told her that I would give her $100,000 equity in it. I asked the loan officer, I said when you send this to the appraiser -- actually our appraisal department -- I said do not tell them about that agreement. Tell them what the sales price is.

And amazingly enough, the appraisal came back exactly what the sale price was. So at that time, the appraisal department called the appraiser and said, actually this was a transaction between a mother and daughter and there was $100,000 gift in it. And they redid the appraisal and used the same comps, and the appraisal was higher.

So we had often felt that they were backing into the appraisal. We feel like that it just makes it easier for the appraisers to do the job and not truly look hard for those comps that they should be looking for.

MR. NAVARRETE: Jim?

MR. PARK: I think this is a very important topic obviously, and we had a fairly lengthy discussion around it. Valuation is impacting a lot of things. Obviously it impacts communities as we try to recover from this crisis. It's currently impacting access to credit in a tremendous way. Many people are not getting their financing because of appraisal issues today, more so than, I think, ever before. So getting this right, I think, is really critical in this time.

I think one of the things that was mentioned but we didn't really talk much about yesterday was the compensation to the appraisers. I think the Board is suggesting that it should be comparable to what other appraisers are getting paid. I think with the emergence of HVCC, which Fannie and Freddie implemented, there has been this sort of cottage industry that has cropped up, AMCs (appraisal management companies), that have taken a fairly large chunk out of the appraisal process, or at least the profit out of the process.

And it has created these sort of, I call it appraisal chop shops, or these people that could only make ends meet by churning out a lot of appraisals. So the quality of the appraisals has dropped, I think, in the marketplace over the last year because of that issue.

It also has brought in people from various different markets to cover territories in areas that they just never have done. So the quality of appraisals, I think, across the board has dropped because of that. I think some of the things that the Board's proposed regulations are suggesting will improve on that, will bring some of the quality back into the appraisal process, which is really desperately needed today.

MR. NAVARRETE: Greta?

MS. HARRIS: I just want to follow up on Jim's comment. We are seeing, especially in areas where we're doing wholesale community rebuilding over the last couple of years of distress in these neighborhoods, that we're sometimes getting appraisers from two states away coming in without any context of what is going in not only in that state or in that city or in that neighborhood. And there's no opportunity to really have conversation with them about the larger rebuild vision, working in partnership with community partners, with local government, to try to stabilize and then grow that neighborhood value again.

So I think this is a very important issue that is tricky. I go back to Patricia's strategy of having to go back and have conversations with an appraiser, to be able to help inform and educate them about what's going on. The larger picture and strategy of what's going on in a neighborhood is really critical. We're finding ourselves having to do that more and more now and even having to pay for multiple appraisals of the same property to try to be able to get the value where it is feasible to finance and try to bring what is now a liability back to an asset for the community.

MR. NAVARRETE: Kevin?

MR. RHEIN: Yes. I'm not sure how I feel on this. But I guess to John's point on being careful here, just a couple of things to think about is in many cases, there are seller concessions that have occurred in a sales contract. And whether it be getting the contract for the property that is being sold or for other sales that they might be using comps on, that's an important add or deduct that an appraiser has to take a look at. So if somebody provided $5,000 for new carpeting or something like that, that appraiser needs to know that information when they're looking at the comps to try to determine where the adjustment should be. So I'm a little worried about where this could go if they start to lose that aspect of the information. I don't know how you test this or whatever, but I am concerned about that.

Then the second thing is, technically a sales contract is what a willing buyer and willing seller come to agreement on. I worry a little bit about trends, in that if things are starting to improve, if you are always looking back, you start to miss the apex of an improvement. The most recent information is usually the best information you have around what's going on. So a little bit to Patricia's point, that appraiser, if they were constantly looking back and not understanding what that neighborhood development might be, you are just going to potentially continue to cause issues in those areas. You are never going to see a rebound, neighborhood revitalization and things like that.

So there is value in knowing what the buyer and seller have agreed to. I just think we have to be very careful if we start to say they can't have access to that information.

MR. NAVARRETE: Ira?

MR. GOLDSTEIN: I want to go back to that for one second. That notion of the transaction and what the buyer and seller are willing to pay for it become such a good measure of the value of the property. While that's important, it rests on the assumption that the buyer and the seller really do have perfect information about what is going on in that marketplace and what the transaction is about.

And we know that particularly buyers don't always have uniquely good information about the market. We talked a little bit about a slew of transactions that went bad up in the Pocono vicinity of Pennsylvania, where New York buyers and New Jersey buyers were coming with New York and New Jersey contexts and thinking that $250,000 or $350,000 was a remarkably good price for a beautiful home in the woods when in fact the real price should have been about $150,000.

It was only because appraisals were being created for that $250,000 that folks around this table lost lots of money. So I want to reaffirm the importance of that appraisal being a totally independent assessment of value. And as long as there is a process, both on the low side and the high side to be able to appeal that value, to provide additional comparables, et cetera, that's great. But again relying on the notion that the transaction really is so guiding because it is what they're willing to do, it does rely on perfect knowledge. And people just don't have that.

MR. NAVARRETE: Okay. I think we need to probably move on.

MR. CALHOUN: So our next topic is the HMDA rules. Over the summer and early fall, the Board held four hearings around the country as part of its Regulation C review of implementation of HMDA. And as Governor Duke mentioned, the Board graciously allowed members of the Consumer Advisory Council to participate on the panels presiding at those hearings.

We had both a presentation by Federal Reserve economist Glenn Canner and a lively discussion on HMDA. I think just the presentation itself was a great Exhibit A of the value of HMDA. There were a number of important revelations that came out of that data, to the point where we were bouncing back and forth between the PowerPoint slides and saying, can this really be the case? And then you look at the numbers and there were quite a number of trends, I think, that surprised all of us who are all pretty deeply steeped in the mortgage world.

So I'm going to turn again to Kathleen Engel to lead our discussion on this.

MS. ENGEL: I want to second the thanks to Glenn Canner for just a fabulous presentation on HMDA. I think he's here. The material that he and his coauthors put together was incredibly informative. I think everybody was very grateful for that information.

We started off the session yesterday by having the -- I think it is six people who were presiding at the HMDA hearings along with Governor Duke and members of the Board staff, just highlighting a couple of takeaways from the HMDA discussion.

Before I turn to that, I just want to again thank the Fed for involving us in the hearings. It was really exciting. There were CAC people presiding. There were current CAC members in the audience. There were former CAC members testifying. There were former CAC members in the audience. It made me think that you should have CAC reunions once in a while so that we would all get to see each other again.

(Laughter.)

So I'm going to turn to Jim. Why don't you start with a couple of highlights from your experience?

MR. PARK: Sure. Thank you. Patricia and I had the privilege of co-chairing the hearing in San Francisco along with Sandy, and that was a terrific event.

I think similar to the rescission issue early on, I think we had an unbelievable amount of consensus and alignment between the industry and the advocacy community at these hearings, particularly around data, which traditionally has not always been the case. I think the view was that this information and data that's being collected are important. And even the added set of data that is being collected would be an important addition to the HMDA data that would be released.

In fact, I think one of Kevin's colleagues did a terrific job there. He even said the additional data is going to help them differentiate themselves from other lenders who may not be doing as good a job in demonstrating good, fair, and good lending practices in the market.

So I think it is a great and healthy perspective. I think folks brought to the mix the other -- I think the other topic that was discussed quite a bit was around the timing of the data release.

And, Patricia, do you want to talk about that?

MS. GARCIA DUARTE: Sure. Thank you. I want to thank the Board for the opportunity to be a presider at the San Francisco hearing. Great privilege.

Two takeaways that I brought was, as Jim mentioned, the timeliness of the report, how critical it is. So many advocates really emphasized that it really shouldn't take 18 months or two years to get the data. Whatever we can do to help this data come out much sooner will be a great benefit to all.

And then the other thing that I took away -- and I think the Federal Reserve can be a leader in helping this -- is industry admitted that there was no consistency in determining income. I think that could be a very easy solution if -- I know for HUD programs, when people are going to qualify for a down payment and closing cost assistance, HUD stipulates to the counseling agencies how it will calculate income to find out if people qualify.

In the Dodd-Frank proposed rules, that's one of the additional data items to be collected. So if we can help industry bring that consistency in calculating income for people, that would be really helpful.

MS. ENGEL: Ira, do you want to talk about your experience?

MR. GOLDSTEIN: Sure. My experience was in Atlanta with Shanna. Unfortunately she's not here to speak for her observations. But in addition to the discussions around the additional information that would be useful, particularly that which is related to the products themselves, is the ability to sort of continuously understand how products are working in the marketplace.

I was struck by two things. One was a testimony from somebody from a state attorney general's office who relayed an experience that they had had with an investigation against a large national lender and the problems that they had uncovered in their HMDA submissions, which he asserted were systemic. As a result of their engagement with this lender, that lender ended up restating five years' worth of HMDA data and paying significant financial fines.

So what that brought back to me was the importance of, as we think about the kinds of data and the amount of data that get collected, we shouldn't lose sight of the fact of the quality of the data and the need to be diligent about that.

The other piece is the discussion that is always raised when you talk about additional reporting, and that is the burden of that reporting. Although it was raised by a few of the folks who provided testimony, there really wasn't great specificity as to really the extent of that burden. Frankly, having spent several years of my life at HUD and doing mortgage lending investigations and the like, I know that most of the data that we're talking about that is already in the HMDA submission and that is talked about for the HMDA submission all pretty much resides in one place.

So the administrative burden of adding some of these things would seem to be trivial. But I guess the important point is if there is going to be an assertion that it is an administrative burden, let's quantify it so that we can then do a real analysis as to whether or not there is going to be some public benefit to having this additional information that we could weigh against the burden.

Those were, I think, the two things that came out of the Atlanta hearing for me.

MS. ENGEL: Saurabh?

MR. NARAIN: Thank you, Kathleen. Kathleen and I were presiding on the hearing in Chicago. One of the briefs of the HMDA hearings was what kind of data is being used and what kind of data should be added -- and the underlying question also of should some data be subtracted from the HMDA collection process. There seemed to be significant consensus in the fact that among the industry as well as from the consumer advocacy groups that there could be some data points that can actually be reduced, which is kind of music to the ears for several people in the room.

But clearly there was consensus about the fact that HMDA is actually serving a significant purpose, and we need to continue collecting high-integrity data and also get into a situation where we can look at reducing some data points if it is not necessary.

The second thing that really came out was the fact that there should be a carrot-and-stick approach, inasmuch as a lot of the HMDA data has been used to look at trends which are of a negative nature. There was a discussion about how can we use it to incentivize the right kind of behavior.

MS. ENGEL: Great. Mike Calhoun?

MR. CALHOUN: A couple of quick points, given our time crunch this morning. Likewise, there was consensus -- I was at the hearing here in Washington -- consensus that we need more data. That we go through this annual ritual of the data comes out, shows gross disparities, and the response is well, there's not enough credit-related and household-related income. For example, data to tell if they are real disparities or just if they're correlations or coincidences. So I think everybody wants to move beyond that.

A couple specific issues that came up and were addressed in Washington. One is should HELOC loans and other open-end residential credit be included. A number of state regulators in Washington spoke out in favor of that. There are some concerns about costs, but HELOCs and other open-end credit have played a very important role in the mortgage market, and there is reason to believe that that data would very useful.

On the timing, particularly the larger institutions compile their HMDA data on a quarterly basis, and there were proposals to have, at least for those larger institutions, to have it reported at least on a preliminary basis on that quarterly basis rather than the lag time. We're just now getting 2009 public reports.

Another was that Dodd-Frank mandates collection of performance data on mortgages for delinquency and foreclosure. There should be efforts to make sure that that is carefully coordinated, and some of those are underway already. But that is important both for the usefulness of the data and for the efficiency of the collection reporting.

And finally, there are significant privacy concerns with the increased data. While marketers may know your credit score, I'm not sure if you want all your next-door neighbors to know your credit score. There were discussions about how to resolve that. Already the Board receives a more comprehensive data set than is released to the public. There were suggestions. One suggestion was to use something that has been used by the Census, a trusted researcher credentialing and monitoring process where some additional data could be released for research purposes but not to the general public.

MS. ENGEL: Great. I think I've called on everybody who was a presider at the HMDA hearings. Did I forget anybody?

Okay. Good. Just a quick couple points that came up at the hearings that Saurabh and I were at. One is just the need for standardization of data collection, which could really reduce the burden on lenders and also mean that regulators could have one data set that they could draw on for many different purposes.

A second was to -- and this parallels what Patricia said about coming up with a definition of income -- is to come up with a definition of debt, to collect-debt-to-income information and to have debt defined as the maximum potential liability or credit line that a borrower could have or monthly payment.

Then the last was to have a way in the HMDA reporting to identify entities' connections to larger lending families so that it will be easier to look at a particular corporate family and analyze their lending patterns.

So with that, I'm going to open it up to a more general discussion of HMDA. I think, Kevin, you had some thoughts about HMDA collection?

MR. RHEIN: Well, David Moskowitz attended the San Francisco hearing.

Wells Fargo generally supports the collection of HMDA data, and we actually think if we embellish it more and truly get at the risk factors that go into the pricing and the credit decisions -- I think one of the issues today is there isn't sufficient information. There are a lot of false conclusions that come out of it. So we would specifically advocate including things like credit score, debt-to-income ratios, prior bankruptcy, foreclosures or other prior credit issues, the employment status of the borrower, particularly if they are self-employed -- that has a factor in terms of the pricing and the credit quality of the loan -- and the loan-to-value overall, particularly if the loan starts to get to be in excess of 80 percent.

We really believe that if you start to bring these factors in, it will clarify a lot around whether the pricing was justified and whether there is any sort of disparate treatment overall.

What should not be brought in is clearly some of the issues around privacy. Parcel number -- as you start to get out there and there's so much phishing activity that is done by fraudsters and they pick up your account number here, they get your Social over here, they get your address over there, that there really is a major risk for information security and data privacy. So, factors that aren't relevant just shouldn't be collected.

The last comment I'd like to make is, just in listening to the dialogue, you are asking for added information. You're asking for more products to be covered. You are asking for servicing information, not just origination but now delinquency performance. You're asking for more frequent reporting, and you want us to do it faster. Just understand, adding all those things and then asking for it faster is just really problematic. If this information is important, the lenders need to know they're submitting the right information.

And I would just say you can't have your cake and eat it too. There's got to be some tradeoffs here along with obviously the operational costs that go along with this.

MS. ENGEL: I think this just shows everybody's confidence in the ability of the banking industry to rebound and adapt to changes.

Okay, Kirsten, I wanted to call on you to follow up because you had some thoughts on product information.

MS. BRAUNSTEIN: Kathleen, can I just ask a question?

MS. ENGEL: Yes.

MS. BRAUNSTEIN: I just wanted to ask a follow-up to --

MS. ENGEL: Oh, yes, of course.

MS. BRAUNSTEIN: When you collect the HMDA data, especially at a large institution like yours, don't you do that on a flow basis, as opposed to waiting until the end of the year?

MR. RHEIN: I don't know, Sandy. I don't have the details.

MS. BRAUNSTEIN: Okay. I just wondered because when you said faster, I guess my impression was that a lot of institutions do it on a flow anyway. It's just a matter of they don't cut it off and submit right now until the whole year is up.

MR. RHEIN: I don't know the answer. But I would say, relative to quarterly reporting, I think the thing you have to realize is that with fewer units in a shorter time frame, you have much more variability. So there is -- you get a lot of misinformation.

Generally speaking, if you start to take a look at things over a year's period of time, it is a far more relevant period of time. It's the old law of small samples. Sometimes you can just see some wildly variant performance that really isn't reflective of the entire year.

But I don't know. Mike, maybe you know from --

MR. GRIFFIN: Yes, I mean I would just say yes. Certainly we collect it as it comes through. But, you know, when you first get it, it is not always the cleanest, I guess would be my answer. So certainly --

MS. BRAUNSTEIN: No. And I agree that when we get it after a year, it is often not clean.

(Laughter.)

MR. GRIFFIN: Right. So we do a lot of data integrity, a lot of work after we collect it to make sure it's accurate.

MR. KEEFE: So, Kevin, I've often considered myself a very greedy consumer advocate and would add to the list of data points that I would like to see added. And these are actually, I would say from a consumer advocacy perspective, our risk factors.

But I think also additional data points regarding the characteristics of the loan products, the interest rate, whether it is a payment-option ARM, whether there is a yield spread premium, whether there is credit life or credit disability insurance or prepayment penalties, or all the unknowns that I'm sure the industry will come up with to start adding to loans or adding in as mortgage features I think should also be collected as well as the additional risk factors that I agree with that you'd like to see collected.

MR. RHEIN: So let it be known that we agreed as well.

MS. KEEFE: Yes.

(Laughter.)

MS. ENGEL: I don't think you need the CAC anymore. Andy, you had some thoughts.

MR. NAVARRETE: I will continue the Kumbaya and echo both of those sentiments. But we want to be very precise in terms of what it is we think we have consensus on because I've heard the term more data, better data, relevant data. But what we are really talking about is better, more relevant data, not just more.

So I would echo Saurabh's point. To the extent that we are adding these additional data fields and ones that are a lot more logical with respect to tying back to how credit decisions are actually made or what the characteristics of the loan might be, we really should think about retiring or removing those that either are not particularly useful or relevant or that raise some of these privacy concerns. I think that quid pro quo is essential.

To make a completely different point, which was, as Kathleen noted, Glenn's presentation was excellent. It did spark a thought in a number of our heads, and we had a follow-up conversation around this – that, taken in isolation, any one of these data fields could be interpreted in a myriad of different ways. One of the things that we talked about was that the HMDA data always should be limited to being a starting point for a conversation around what's actually taking place and that, ultimately, loan-file reviews and more granular analysis of data and what's actually going on in terms of practices is where the real information is.

So the danger is in using HMDA data for sound-bite purposes, which can be quite misleading. Another thing that I think we can carry out of this process and, certainly with the Board's help, can do is to ensure that the dialogue externally is as rich as the dialogue internally here.

MS. ENGEL: Great. I see you, Ron, but I want to call on Mark and Corey because they had raised some similar arguments or similar points yesterday that I wanted to make sure we get to cover today.

MR. WISEMAN: Whenever we discuss HMDA -- and I wasn't at any of the hearings, so I don't know if this point came up -- but whenever HMDA is discussed, it always surrounds the data. Who needs which data? How much data is too much? Whether the data is expensive, whether it is going to conflict with someone's privacy rights.

But we haven't discussed at all the reason or the perceived reason for collecting the data in the first place. Kevin brought up false conclusions. And it is very interesting because I think the first thing that needs to be done is to look back at the previous HMDA data that was collected and figure out why it was not able to tip us off as to the things that were happening in the lending market to begin with. Previous HMDA data led to the false conclusions that minorities were not being targeted and certain neighborhoods were not being targeted. Now we're seeing the effects of that, and we know that that has happened.

So something is wrong with the kind of data that is being sought or the way that it is collected or all of the above. But unless we can look back on the previous HMDA data and compare it to what we actually know -- if the purpose of HMDA is to be some kind of predictor or to raise a red flag or to let even the government types know that maybe there is some problem, we know that it didn't work before. And before we go around looking at what kind of data we're going to start collecting, I think the question needs to be asked, why didn't it collect that particular data or why it led to false conclusions on our part.

To the point where industry starts talking about how hard it is to collect the data, I would submit that if you could quantify how much it is to collect the most expensive of HMDA data industry-wide and multiply it by any factor of a thousand that you'd like, it still will only be a fraction of what it has already cost this country in terms of the damage that the lending industry has caused. I would think that that would be -- the cost would be minimized when you compare it to what benefits we could get. Because the fact that we can use the data on a go-forward basis to be an indicator that there are going to be problems, I think, is a fantastic opportunity.

MS. ENGEL: Corey?

MR. STONE: I was similarly struck by the kind of 20-20 hindsight that the data suggests we're all having now. What was particularly compelling was how concentrated drops in underwriting, drops in home purchases were, particularly in distressed areas. If you looked back over time, the sheer volume of loans in many of those places and on average was actually highest. So you could argue that what defines today's distressed area isn't just the low prices, low access to credit, high denial rates. It's the volatility that actually happened and the weakness of those markets.

So looking back when there were these spikes and just the sheer volumes of loans and today when you see drops in underwriting and high levels of denials and see correlations between those two, it suggests that there is an opportunity going forward to use those spikes as alarms to dig deeper in particular Census tracts, to try and understand what's happening because today's spike, particularly if it is happening in a low-income area that was a thin market, probably is tomorrow's problem.

It does get, to some extent, at the appraisal issue. If you have appraisals in a high volatile market, how do you trust them? When the market is going up and the appraisals are always tracking to the contract price, they are merely self-fulfilling. They don't reflect anything. In a market that's declining, you'll never, ever, ever have a return back up if they are always tracking to price. So using the HMDA data to identify hot spots in future areas of distress, I think, is a great opportunity that we have.

MS. ENGEL: Thank you. Ron, why don't you -- you get the last word here.

MR. PHILLIPS: Okay. That's great. So if there is a spike in the reverse mortgage market, then that might be something to be looking for.

Not to complicate this question, I didn't have a chance to attend the hearings but just to honor the issues around how any of the HMDA data affect or tell a picture of rural America, I do want to raise that point.

I'm looking at some testimony that was submitted by the Housing Assistance Council in Atlanta, which states that something like a thousand of the banks or credit institutions are exempt, fall below the threshold for any reporting at some level, and more if they are based in the county which is non-metro and fall under the threshold of 250 million.

So there are a lot of banks that are outside of what we're talking about, whatever the relevancy of the data. I would just say going forward that -- and these have all been good questions and comments -- that, again, what's the screen for a picture of rural America in HMDA?

Thank you.

MR. CALHOUN: All right. Thank you, Kathleen.

We are about 15 minutes behind on our schedule. So if we can have our break now, but if I could ask people to be back at 10 after 11 so we can start promptly there and still finish on time today. Thank you.

(Whereupon, the above-entitled matter went off the record at 10:59 a.m. and resumed at 11:12 a.m.)

MR. CALHOUN: Our next topic is the Community Reinvestment Act. I think again two areas that came out were one, appreciation to the Governors and to the entire Fed for the leadership it has shown on this issue and to keep it from becoming a political football and an unnecessarily divisive issue. And second, in our discussion, the amount of consensus that came out that there are both legislative reforms proposed that are important and critical, and there are also regulatory reforms that are immediately available.

This summer the banking and thrift agencies, including the Federal Reserve, held hearings across the country. We had participation by a lot of CAC members. I would like to recognize Saurabh and ask him to lead our discussion on that.

MR. NARAIN: Thank you, Mike. You know as we sort of think about the current financial crisis and the significant amount of energy and effort put into resolving the housing situation, several of us and in industry are very interested in longer-term sustainable community development kind of issues so that we can go back to prosperity in the medium term. So, thank you to the Board for inviting several of the CAC members to participate in the panels.

What we're going to do, just like in the HMDA discussion, is I'm going to invite two of the members who actually testified. And then others, institutions who are represented to make comments on the key insights.

So, Mike from KeyBank?

MR. GRIFFIN: Sure. I testified at the Atlanta hearing, and my focus was primarily on banks providing services to the unbanked, something that Key has been very focused on over the last six years.

And really it came down to sort of what kind of credit does CRA give for that type of service. So, not to preach to the choir who regulate this, but in the CRA exam, the service test is only 25 percent of the exam. The vast majority of that -- the number 80 percent is usually thrown out -- the vast majority of that service test is focused on branch placement compared to the population. So that leaves 20 percent of that service test, which, if you do the math, is about 5 percent of the overall grade, to be focused on services, other services beyond branch placement.

And in that 5 percent bucket goes things like financial education, service on boards, services to reach the unbanked, other innovative services to reach consumers. And the other things that are getting dumped in there are things like loan modifications. If you do loan modifications, you'll get service tests for that.

My discussion in the panel was mostly about how do you beef up that service test to give it more impact in the CRA exam? I mean, if these are all activities that are important, and we would agree that they are important to emphasize, then it is important they get some credit and credibility in the CRA exam process.

One potential piece is to expand the 25 percent that is for services to a larger percentage. Another possibility is to take all those sort of community development-focused things like community development lending to give it more focus, the commercial lending that develops affordable housing, revitalizes neighborhoods. Pull community development services out of the service test and have this overarching community development test that again is able to give that the weight and the incentive that people would want it to have.

A couple of other topics I brought up in there, just because I can't pass up a microphone without bringing them up -- one is we would agree that CRA did not cause the mortgage debacle. And, again, I think most of my colleagues here from either side of this discussion would agree with that. And that folks who point to CRA as the driver of the meltdown really are not mainstream, would be my description, my kind description.

The other piece is just around CRA -- Key has a track record of getting seven consecutive outstanding ratings. And particularly in these times when investment in anything in the bank is very difficult to get attention for and everything gets reexamined, what's the benefit of an outstanding rating is sort of the question. A satisfactory rating gets you everything you need to continue to do business. You don't need to get more than the satisfactory rating in CRA. So, the question is for the additional cost and additional focus of staff time and energy, is there some way to incentivize banks to strive for that outstanding rating?

Again, some of the things that are very simple are longer distance between the CRA exams so you're not digging through this all the time. There are a lot of other, I'm sure, more intelligent people out there than I am that can come up with things. But just something to say, if you're outstanding, that you get some credit for that beyond the sort of “attaboy” that we currently get in public opinion.

MR. NARAIN: Thank you, Mike. I invite Dory to comment.

MS. RAND: I want to thank the Board for doing the CRA hearings as a great opportunity for community input, and I was happy to testify at the Chicago hearing. Our topic was assessment areas and geography. This is something that I found there was large agreement among the people testifying, including the bankers, that it needs to be updated because we now have Internet-only banks and banks that are doing business well beyond where they have their headquarters or bricks-and-mortar branches.

We have suggested something more like a market-share basis for determining where assessment areas should be, and I think there is a lot of agreement on that. There was only one banker who testified on my panel at the Chicago hearing who said that the status quo was fine and nothing needed to be changed. Beyond that, most people agreed that there was a great need for updating.

I agree with Mike's comments on the service test needing to be updated and improved. This is something that the Woodstock Institute has written about and talked about for some time.

I also agree with Mike that there needs to be more ways to include broader things, either under the service test or a modified community development test. And a way to perhaps do a better interagency analysis of community needs and find a way to incorporate that needs analysis in the performance context and the evaluations under CRA.

Then finally, I just have to say that there's only so much that can be done under the rules, under the existing statute. A lot of the people that testified at the hearings, including me, said that we need to go to the congressional level and pass something like H.R. 6334 to level the playing field, cover the other financial institutions on a fair basis along with banks, including credit unions, and to add some other improvements like a new rating level.

I agree with Mike again that having an outstanding rating should mean something and that we need to get away from some of the grade inflation that has made some of the satisfactory and outstanding ratings currently used somewhat meaningless.

MR. NARAIN: Thank you, Dory.

In the context of the Go Zone, work being done in the Go Zone was given specific CRA credit. In the current context, loan modifications come under the same services test, I believe. And it's not clear that that is sufficient incentive for the institutions to actually go out and do a lot more than what they are doing in a business perspective.

Jennifer?

MS. TESCHER: Okay. Thank you. Our policy director testified at the Atlanta hearings with Mike. So ditto, ditto, ditto to what Mike said. In fact, I sort of leave the Council feeling very good that many of the issues I care about every day are well represented with Mike over there. I'll just add a couple of additional points to what he said.

When we're thinking about the services test, I think it is really important that we give credit to financial institutions not just for the direct services they provide but the lending and other services they are providing indirectly through partners because at the end of the day, we really want financial institutions to reach consumers where they are. We also want them to be able to do so certainly responsibly but also sustainably and profitably. Sometimes the best way to do that is through other delivery partners. So I think we just need to be sort of clear about that in the credit that institutions are receiving.

I also think that the strategic plan exists today, but it's not the option that most institutions choose. It's not that simple to use. But while I agree that we should beef up the service test and maybe give it more credit, I think we run the risk of ending up in a debate about, well, what's more important? Investment? Or lending? Or services?

And the fact is they are all important, and different institutions are better positioned to focus on one or two or three of those, depending on where they are located, what their business model is, what kind of institution they are. If we really want to get the best of institutions, we should be giving them the kind of flexibility to create a plan for themselves that is going to allow them to – that's going to fit most closely with their existing corporate strategy. So I think that a greater use of the strategic plan option and thinking about ways to make that a more common choice would be good. I think that theme came up at several of the hearings, not just in Atlanta and not just from us.

The other thing we talked about was the need to think about not just the existence but quantity and quality. So, not just do we have this product, but does anyone use it and is the product any good? That's taking it a little but further, and there are opportunities to work with the CFPB as we think about quality.

Then finally, that we build in some important flexibility and adaptability so that we don't have to come back at this again a few years from now when the next whiz-bang technology has emerged or changes in the marketplace. We should make this sort of a living, breathing thing that keeps pace with the pace of change in the financial services industry.

I think the last thing I would add is that CRA is one of the few examples of a carrot, as opposed to a stick, that regulators have. And at a time where, for the right reasons, we're focused a lot on sticks, I think carrots are really important if we want to make sure that we continue to be innovative in thinking about reaching hard-to-serve consumers. I think about what Kathleen said earlier about the need for access to credit. It's not just credit. It's services, too.

But CRA plays a really important role there. I think it is another good example of a role that the Fed will continue to have and another reason why being in touch with these consumer issues puts you in a very important place going forward.

MR. NARAIN: John, did you want to comment about the testimony or comments from Citi's perspective?

MR. CAREY: Yes, the one thing we focused on was -- Bob Annibale, who runs our community development group and has core responsibility for CRA for Citigroup -- I'd better use this microphone or I'm going to get hit.

(Laughter.)

MR. CAREY: They are going to start throwing rocks at me in a minute -- was focusing on wealth creation and asset building. Perhaps a greater emphasis ought to be put on that and finding products that incentivize above just IDAs but basically creating other types of products that get families and people, particularly living in LMI areas, to develop a culture of savings and asset growth and wealth building, rather than focusing solely on or largely on lending in the banking space. That was something that we felt was worth doing.

MR. NARAIN: Thank you, John.

Mary?

MS. TINGERTHAL: Yes, the CEO of the Housing Partnership Network, Tom Bledsoe, testified at the Atlanta hearing on behalf of two large organizations, Housing Partnership Network, which is about 100 of the largest national non-profits that are involved in housing, as well as a group called Stewards of Affordable Housing for the Future. Among them, those members own and operate over 750,000 units of affordable housing, to give you a sense for scale.

We commented on three particular things. The first that you've heard from several others is the idea of creating a community development test, which means that there will be a common ground for counting and measuring lending and investment and things like rental housing development, single-family development, community facilities, small business, and community-related commercial development. And to frankly put that kind of investment in lending on a more even footing with single-family lending, which tends to maybe get a little bit overemphasis because it is a little easier to count because we have HMDA data. So that was our first comment.

We feel strongly that there needs to be a revision of the applicability of assessment areas. That there be some adopting within the regs of a mechanism to encourage banks to invest in projects that either support a set of national priorities that could be evaluated and revised as conditions in the market change or to address underserved areas, which is a point that Ron has raised with us on many occasions in rural areas particularly.

It's particularly acute in affordable housing where, even before the crisis, there were what we call Low Income Housing Tax Credit deserts, where if you are trying to develop an affordable housing project in a very rural area or an area where there are no bank headquarters, it is very difficult often to attract investment capital, particularly at competitive prices. That has gotten even worse with the economic crisis.

An example of the sort of national priority that we're referring to is one on which the Fed took a very dramatic lead, and that is the current regs that are about to be published on support for neighborhood stabilization activities outside of assessment areas. We really would encourage a platform in the regs that would allow for sort of that declaration of national priorities.

Finally, and this one may be a little bit of wishful thinking but we have to indulge in a little bit of that, and that is that going forward there be the flexibility within CRA to align with national housing and community development policies that might be articulated through programs that are run by HUD, by Treasury, through the CDFI Fund, et cetera. So that there isn't ambiguity as those programs change and CRA doesn't, that banks can have the comfort of knowing that if they are supporting one of those national priority programs, that they will, in fact, get CRA credit.

So those three -- I want to close just by really congratulating the Governors for taking what at least I perceive as a leadership position among the joint regulators to go forward with these hearings and to go forward with the revision of CRA on a regulatory basis. It would have been very, very easy to hide and wait for legislation. I really applaud moving forward with this and having the dialogue that so badly needs to be had.

I can't overstate the importance of CRA in building the kind of partnerships that exist today in communities that didn't exist 20 years ago. There simply weren't dialogues between community groups and banks 20 years ago. We need to refresh that dialogue. We need to build on that dialogue. It's very powerful, and it is an opportunity to do that. Thank you.

MR. NARAIN: Thank you, Mary. Ron, I'm going to ask you to comment on the rule.

MR. PHILLIPS: Okay. Thank you. Mary has just eloquently stated the importance of CRA and has become perilously close, Mary, to being anointed to carry on with the rural advocacy.

(Laughter.)

MR. PHILLIPS: So we want to reinforce that.

And just a comment on John Carey's just very subtle reference to wealth-building strategies -- it is a huge area to take seriously. And there is a lot of body of work around what that means and how that might be looked at under a CRA area. So just to put that out.

But I would be delinquent if I didn't bring up the rural question again and invite everybody to think very hard in CRA about what does the CRA applied in rural communities look like. There are a lot of great potential projects and financing and investment at many levels going on. And most of rural America is shut out of where the concentrations of capital are.

Some of you might recall that Senator Baucus some years ago challenged private foundations to do more in rural America. I don't know if you remember that. There was a big thing out in Montana and all of these foundations came together. But the advocates who were pushing this issue were stating that of the $40 billion or so annually that are given out by foundations annually, less than 1.5 percent of that capital goes into actual non-metro, rural communities.

That's been argued, of course, but that shows you the discrepancy between the 20 percent of the population and yet 1.5 percent of those kinds of funds. And that's a $600-$700 billion endowment that these foundations represent. So there are some challenges there.

There are a lot of definitions of rural. And the rural development research service at USDA has much of that. I'm sure the staff here can understand and get to the bottom of that. My favorite definition is it is the place where you lock your car so your neighbor doesn't stuff it with zucchini. So that becomes a very easy way to think about it.

(Laughter.)

MR. PHILLIPS: I just want to conclude. We agree with getting the community development as a prime part of the test of CRA, not just splitting it up between investment and community lending and so forth. So much has to go on there.

But the key thing for rural areas, I think, is going to be the assessment area issue and how that gets resolved. I'm sitting here today and I can tell you there is one bank that's right next to me, in fact, that would have dearly loved to shower and bless CEI and others, I think, in parts of rural America with capital to meet the goals and strategies that we're doing in our rural development work but couldn't because we weren't in their assessment area.

I know Kevin would have advocated very highly for that. But that's a fact. And it's not just Wachovia or Wells. There is a string of money center banks as we look at them in rural areas where these concentrations of capital exist and we can't access them. So giving credit outside the assessment area or expanding assessment areas or doing something that recognizes the fact that these banks and institutions are doing work all over the country, in fact, and not just in their geographic assessment area, I think is very important.

And the final thing, I mentioned this earlier this morning, if the Fed can convene a kind of an assembly or symposium on rural America like you've done with CRA generally or the HMDA, there's a whole world of interesting ideas and perspectives that would come to view. You've got that brand and that convening power to do that. You also have the power to do that around climate issues and how financial markets are dealing with the whole issue of environmental care of this planet. So those are my comments. Thank you.

MR. NARAIN: Thank you, Ron.

Just to add on from Ron's comments on assessment areas, in the Chicago hearings, which I attended, one of the discussions, and I'm a proponent of this idea, one of the comments that came out was community development financial institutions, CDFIs, have a mission of community development. A significant part of the business is in low- to moderate-income communities. Minority-owned institutions have got a special exemption under FIRREA 308 wherein if large institutions invest in or lend to these institutions, they get credit even if those institutions are outside the assessment area.

So the CDFI community has been advocating for recognition of the work being done by the CDFIs. Hopefully at some point in time, investments and/or loans to CDFIs, whether it is in rural America -- if that was the case, then CEI would have gotten the money from the institution. They would be recognized, and credit would be given to those investments and/or loans to those institutions even if they are outside of the assessment area. So that's a significant thing.

Kevin?

MR. RHEIN: Just a couple of points. One, I want to echo what Mike said. And first off, CRA is not broken. There clearly are some refinements, but any sense of blaming CRA for the housing crisis is just totally off base and totally unwarranted.

We would definitely prefer more of a regulatory approach versus a legislative approach, if at all possible. A lot of it is really the hearings that you've conducted, and it's the dialogue that we're having in this room. And it's the rulemaking process to really try to bring different parties together to develop the right kind of solutions.

While we would agree places like Internet banks and stuff like that need to have some responsibility, you've got to make sure you keep the tie to deposits. I think as you start to expand the definition, you want to be careful not to break the association of the area, in many cases, to where the physical distribution is and the link to deposits overall. That's a tough line to walk that I think you'll have to think about.

And then it seems like a lot of this is all about how do you get credit for things that are beyond the exam. There's only 100 points in an exam. Maybe some way to think about this is there's ways to get extra credit. You have a base exam, but if organizations do things like Jennifer mentioned tied to your strategic plan or like Ron has mentioned, investing in areas outside of your service area, there has to be something that the institution can point to and say the reason we want to do this is it is going to -- first off, it's the right thing to do, but then secondarily, how does it fundamentally help us make decisions around allocation of capital and investments.

So maybe there is an extra credit dimension that you start to build into this. You have to have a certain baseline performance that you've got to achieve across multiple areas. But then you can boost your grade or you can get some additional credit for other things that go beyond, like in the service test arena.

MR. NARAIN: Thank you, Kevin.

Betsy, did you want to comment on a controversial part of this?

MS. FLYNN: Well, yes, but I would also like to comment on CRA. I so agree with what Mary said. It has been wonderful to encourage banks to establish that dialogue with their communities and to meet the credit needs of their communities.

One thing that I would like to bring up, though, and Kathleen is so right. We have to create credit for these communities that are in a financial crunch right now, and we do this in our community. To show you how strongly we feel about it, that is one of our strategic goals each year is to obtain an outstanding rating in CRA with all that that entails.

But at the same time, while we're trying to help the folks in our communities that have credit needs, there are five areas that when our safety and soundness regulators come in if we have made a loan that the borrower has over 50 percent debt to income, it's automatically classified as a subprime loan. If they've had two 30-day delinquencies, one 60-day delinquency, been involved in a bankruptcy or a foreclosure in the last five years, it is a subprime loan. Even though we know our borrower and we are trying to meet the credit needs, they are still subprime loans.

But the one that I have the most issue with is if they have a credit score below 660, it is a subprime loan. There are a lot of reasons why a borrower may have a credit score below 660. It may be medical bills that were in dispute. One we've seen recently is cell phone charges. When the borrower feels like they don't owe it and the phone company feels like they do, that can affect their credit score. So I do think that our safety and soundness regulators need to take CRA into account when they are in the bank.

And then the other issue was what Dory said is that all the financial entities should be included with CRA to encourage our economic recovery. A 2009 study by the National Community Reinvestment Coalition determined that large credit unions do not serve the people of modest means in their areas as well as banks do. The study highlighted how banks consistently exceed credit unions' performance in lending to women, minorities, and low- and moderate-income borrowers in communities.

MR. NARAIN: Thank you, Betsy.

Alan, I'm sure you have a response.

MR. CAMERON: Thank you, Saurabh.

I can't comment on that study, but I am sensitive to all the comments on changes that need to be made to CRA. It seems to me that CRA is evolving from a law that was intended to cure an evil in the marketplace in our communities to one which is focused more on community development. And to simply suggest today that we can advance that cause by adding credit unions as covered entities seems to me to get the cart before the horse.

We need first to determine what revisions need to be made to CRA in terms of bank requirements. All of the things that I have heard regarding the assessment areas, to benefit rural areas, the service test and other details of bank compliance seem to me to be well founded and should be carefully considered by the Board in any regulation that they put out in this area.

Additionally, the focus on community development seems to me to be well founded and something that could be part of a CRA, perhaps through legislation, perhaps through regulation. But only until you decide how CRA is going to be focused can you determine what institutions should be brought within its coverage and how those institutions can, given their difference in structure and orientation and legal limitations, best support and promote the purposes of a new CRA. So I'd say let's focus on how do we change this rule or law before we get to the point of talking about who is going to be part of it.

MR. NARAIN: Thank you, Alan. Are there any other comments relating to CRA?

The only thing I would add there is there was a discussion on just like HMDA data is collected and made publicly available, a lot of CRA information on small businesses and other forms of loans is collected under the call report mechanism. Is there some way in which that information can be made available for analysis on a regular basis? I know I'm a data geek and Kevin is going to say that, but that's going to be very useful in engaging with the community and with all the stakeholders for the future.

MR. CALHOUN: Thank you, Saurabh.

The last topic on the agenda is foreclosure issues. And, again, it seems like we're full circle here. During September, the number of homes repossessed hit an all-time record in the United States. Most projections are that we are not even close to the halfway point in terms of foreclosures, with some projections that we are at risk of 11 million additional foreclosures even at this point. Now just because we needed something else to work on, we've had the foreclosure process crisis, robo-gate or a number of other names people have come up with.

Yesterday, the Housing and Community Development Committee, again led by Saurabh, discussed the foreclosure documentation problems -- also, I think more importantly, a lot of the broader issues, the loss mitigation, and the neighborhood stabilization issues that are connected to that.

Saurabh, if you can lead that for us and if you can try and wrap this up somewhere between five or ten after the hour, that would be good because we've got a few other items that are actually additional topics that are not even on the agenda this morning that we discussed yesterday that some people want to make comments on.

MR. NARAIN: Thank you, Mike. I'm going to speak fast, too.

(Laughter.)

MR. NARAIN: I want to recognize Patricia as Vice Chair who helped in leading the discussion. The discussion was in four parts. As you said, more on the foreclosure documentation, robo-signers, the process issues. Second was on HAMP, non-HAMP, principal reduction, loss mitigation efforts. Three on services, and fourth on REO, NSP and post-foreclosure kind of issues.

So I want to request Mark to open the discussion on foreclosure process issues.

MR. WISEMAN: Thank you, Saurabh.

We looked at a study yesterday by someone at the Fed who had talked to a counseling agency or a number of counseling agencies all around the country to share their feelings about what were the barriers, what the results were. One of the most alarming things I found from yesterday is that the overwhelming majority of the counselors say that things are either the same or worse than they were six months ago. With all the government money that has gone in towards HAMP, with all the money that has gone towards counseling, you would think that, on some level, that would be getting better.

I think you can't discuss HAMP and how borrowers are and what kind of response they're getting unless you understand that the interests of the parties are very divergent when someone gets into foreclosure. One of the parties wants to stay in their home and pay on a loan and not move all of the things that they own and have their credit ruined and go somewhere else. The other party, every day that that loan doesn't get worked out, bleeds money. Servicers have to pay the principal and interest payment on every loan that is in default every day it is in default until the foreclosure is final.

So the borrower is not paying the money, but the servicers still have to pay the money back to the trust. And that creates a financial disincentive for everyone in the servicing industry to provide any assistance at all to the borrowers.

The quintessential example of the disconnect that exists, we found out yesterday -- one of the servicers had a fax line that they were giving to borrowers to send the documents to that had been out of commission for a year. I don't know which servicer it was. I don't know how many people they threw into foreclosure during that period that is over a year. But unfortunately I believe it because every advocate who has ever worked with a borrower, consumer attorney, you've had the experience where you faxed stuff in and a week later they say we didn't get your fax.

Now let's be clear. If a fax number doesn't work for over a year and you are still giving it out to borrowers, it becomes a joke within the industry because at some point some borrower called up and said here's the number I faxed to and what's going on. So they have to know that that number is not working. The problem is they just don't care, I think, that the number isn't working. So before we go forward and discuss a problem like this and why things aren't good, the question remains why is this happening and how do we correct it.

At some point, the information that is viewed as just anecdotal should become evidence of a systemic problem within the industry itself. You can't say well, that's just anecdotal. That's one fax number. No. There were thousands of people who have faxed documents to that number.

And Michael told us that there's another 11 million foreclosures that's going to be filed. All the banks, some of the servicers are reviewing their internal processes, and one found that 1 percent of the information was incorrect or 3 percent. So I don't know what 1 percent of 11 million is. I'm guessing. Is it 11,000? Is that right? I went to law school because I can't do equations like that.

(Laughter.)

MR. WISEMAN: But the point is at some point it becomes unacceptable that this 11,000 or this 22,000 people are going to lose their homes where they really shouldn't. And the fax number that didn't exist -- over a year they were still giving the fax number out. There is no better example of the disconnect between what the servicing industry tells the government and the newspapers and what they are actually doing when they go back and close the door and start answering the phone.

Thank you.

MR. NARAIN: Thank you.

Kirsten, do you want to keep commenting on process?

MS. KEEFE: Sure. I just want to highlight that the issues that have come out through robo-gate, which I love, aren't new issues. I mean, we have known these issues. I think it was Kathleen who talked about a decision by Judge Boyko in federal district court in Ohio from 2007, is it? He was the first one to really start dismissing cases that were filed by Deutsche for lack of standing and that led to other judges in New York state -- Judge Schack is the most proactive judge in Kings County, Brooklyn, New York, and I believe the estimate is he dismisses about 50 percent of the foreclosures that are filed because there's not proper standing.

Now it is difficult in other parts of New York to actually easily find out whether or not the plaintiff has proper standing to bring the foreclosure. In New York City, it is a little bit easier because there is an automated system that you can access that should have the assignments on record from your desk. Again, it's not so easy in other counties.

But these aren't new issues. The fact that folks have been foreclosed on who aren't in default on their loans is not a new issue. Consumer advocates, consumer lawyers have been raising these issues. The fact that servicers are quoting extraordinarily large amounts of money that homeowners are behind and delinquent and the borrowers contest it. All these affirmations in these affidavits that folks just routinely signed or actually didn't even sign their own name, signed somebody else's name and all the allegations that have come out, it's not new.

I'm glad that it has come to light. We have talked a little bit about the idea of a moratorium. A moratorium in and of itself isn't certainly going to solve any problems. You need to get to the root of it.

So yesterday I was happy to announce after perhaps a real low for New York, which was our gubernatorial debate last week, that our Chief Justice Lippman announced a new rule in New York. I think it will make many people happy because it puts the burden on lawyers. Any lawyer filing a foreclosure action in New York as well as filing motions for pending actions, or if a judgment has already been issued and filing a final judgment, those foreclosing lawyers have to sign an affirmation that they have actually, really verified that the plaintiff is the owner of the loan.

I have one of these cases where we have a plaintiff who is not the owner, and the real owner has told us that the plaintiff is not the owner. So they have to affirm that. They have to affirm that they really verified that this loan is delinquent, that the amounts are correct. So that's a burden that the Blackberry messages that I've been getting back, the foreclosing attorneys are freaking out about, which I don't blame them. But it's great because it is going to then in turn put the burden on the servicers because these lawyers are not going to want to put their licenses on the line. They are going to be turning to the servicers to say, before we move forward, you have to show this to us.

So I think it is a wonderful way to proceed. I don't think it is the only answer. I would encourage servicers to now be more proactive in the trust behind them and when they are filing the cases, show that you own the loan. You know, it shouldn't be that difficult. File with your foreclosure complaint or otherwise show to the court in the non-judicial states that you own the loan and provide a payment history or provide some verification and a detailed breakdown of what's owed so it's clear for the court and we can all move on with the foreclosures and helping people in foreclosure.

MR. NARAIN: Patricia?

MS. GARCIA DUARTE: Regarding the documentation issues, I haven't run across any of the robo issues in Arizona. But there are other issues around glitches in the systems. The one thing that housing counseling agencies bring to the table is that if that fax machine is not working, they are going to find out in less time because they are going to insist, they are going to follow up, and they are going to escalate the case if there is no response.

We have uncovered different glitches. One example that I can share is that one of our clients that was going through a modification was abiding by the agreement but yet still received a notice of trustee sale, not once but several times. Clearly, a glitch in the system. We had to escalate it to a high level. We worked with the attorney general's office and did uncover that this was a glitch in the system that the servicer wasn't aware of. But it was impacting over 600 families.

So we are happy that we were able to uncover that. But glitches like that are probably more. And it is a shame that many families have unfortunately lost their homes because of these inaccuracies in the systems. The sooner we can resolve these issues, the better off we will all be.

MR. NARAIN: Thank you, Patricia.

Kathleen, did you want to comment both on robo-signing as well as a moratorium and related issues?

MS. ENGEL: Yes, in terms of the moratorium, I think this is one of those places where there is, I think, close to consensus around the table that a national moratorium for a number of different reasons wouldn't be a good idea. With that said, I think that the institutions that are responsible for this robo-signing should be stopping all their foreclosures and getting all of their records in order and going over all the properties they previously foreclosed on and make sure that the people who purchased homes at foreclosure have good title because we're not going to have an economic recovery if people are running scared because of these title issues with the foreclosures.

Foreclosures are a major vehicle for getting houses on the market and for recovery. I don't practice law anymore, but if I did, the one piece of advice I would be giving everybody I saw was don't buy a house at a foreclosure sale and don't buy a house that was foreclosed upon previously because the risk of cloudy titles is just so large. People aren't going to be able to get title insurance. This issue has to be addressed both prospectively and retrospectively.

I usually try not to talk very long, but I do have kind of extensive comments so I'm going to talk fast.

The first thing is that I understand that the banking regulators have helicoptered into the banks to find out who has problems with their servicing issues. I want to encourage the regulators to dig deep, find out what type of payments were being made for volume production of these affidavits, for volume production of loan review, and documentation review generally, who was ordering the robo-signing, looking at the bank practices that were designed to insulate themselves from liability regarding these practices.

We saw that there was a lot of outsourcing to mortgage brokers, which provided cover for lenders. I think we're seeing the same thing here, that there is an effort to atomize the industry through outsourcing. But I don't think outsourcing means that the institutions are not responsible. It means they may be able to deny what was going on and deny knowledge, but it doesn't relieve them of responsibility.

The second thing is that, just kind of piggybacking on what Kirsten said, it has now been three years that these practices have been public, in judicial opinions and reports by consumer advocates. This is not a new problem. As delighted as I am that the regulators sprung into action to examine the foreclosure practices of the banks they regulate, we also need to understand why it didn't happen sooner. And in this opinion that Kirsten mentioned by Judge Boyko, which I think is really a great opinion because, as a law school professor, we always want students to read the footnotes and really analyze them and see what it means about where the court will be going. Judge Boyko's opinion has one of the most colorful footnotes I've ever read in an opinion, including him saying that when he challenged Deutsche Bank, who was the defendant in the case, about the practices, their response was you just don't understand how things work. This is to a federal district judge -- hubris.

The last point I want to make is that I understand that the different financial institutions need to rally at a time like this. I'm exempting any that weren't involved. I know some of the lenders here at the table had nothing to do with this, and that's great. So I don't want to be casting a wide net with these comments. But one of the arguments that industry has been generating is that these borrowers have defaulted on their loans and they were going to lose their homes anyway. Even if the documentation had been lawful, these people were going to lose their homes. It's a technical problem. We'll get it straightened out. No big deal. Let's go on.

The problem is that this whole argument suggests that the law only sanctions consequences and not behavior. The analogy that I like to use is to drunk driving. We punish people for driving drunk because we don't want people to get injured in car accidents. That's why we do it. It turns out most drunk drivers don't cause car accidents. Lots of people drive drunk. They don't have accidents. But we still sanction the behavior.

And the reason we require that banks prove they own the loans on which they are foreclosing is to ensure that no one loses their home unlawfully, just like we have drunk driving laws to try to protect people from being injured. We would never say to somebody injured by a drunk driver that drivers don't have to comply with the drunk driving laws because most times drunk driving doesn't cause accidents.

MR. NARAIN: Thank you, Kathleen.

John or Kevin, any?

MR. CAREY: Yes. A couple comments. One on just the foreclosure issues in general. We've got an interesting survey that the Fed has been doing, and I know that through the examination process there's a lot of focus on HAMP and some of the other programs that are going on in place. My institution and other institutions here and I think many of the larger institutions have decked significant resources against basically an onslaught of work that, frankly, was sort of unmatched and unparalleled at any other previous time.

Our view is we're trying to -- our primary goal is to keep people in their homes. If we can engage with the homeowner and drive solutions, we will try and do that. The programs in HAMP have clear qualifications, documentation requirements, and other things that create hurdles and barriers. I'd like to think that we get it right all the time. I know we don't. I don't think we have any fax machines that aren't working, but I couldn't tell you that that's not the case. In a large operational environment, when you bring in 6,000 incremental people to deal with a big issue, there are issues that go with it.

There have been a number of congressional hearings about this. The leaders of these businesses have been dragged up on the Hill at least, by my count, three times in the last six to seven months, a lot around the challenges. And, again, I think what the institutions are trying to do really is to find solutions that work, that meet oftentimes very competing demands -- issues around safety and soundness, investor interests, homeowner interest -- and in coming up with something that meets all of those things.

But I would encourage that if there are, as you continue through the examination process, if there are other opportunities for the institutions, we ought to know it. And we look forward to working that way.

The second point I really wanted to make is -- I read these things around the robo-signing, and we see these feeding frenzies that go on when a big issue takes place. Usually the way these things are described, and they have been described here today and they are described in newspaper articles, are through anecdotal examples. And what happens is that through those anecdotes, we make sweeping and broad generalizations that essentially the entire system is broken, and that it is broken at all the large institutions.

I think that that doesn't help anyone. It's harmful for everyone, every party in this place. The approach that must be taken on this is that we've got to investigate. We've got to get our hands around the true facts. Institutions have to take corrective action where corrective action is needed. Those that have done wrong must be sanctioned.

But I don't think that we ought to place an indictment on basically the entire system or categorically describing large banks in ways that aren't helpful – and, frankly, aren't helpful to the people who are working in those institutions to try to do the right thing. So I'm glad that the examination authority of the federal government is taking a coordinated approach. Come in and look at the issues that are there, find systemic problems, make strong recommendations, and do the things that I've described so that we can move forward and get these issues solved.

MR. NARAIN: Thank you. Kevin?

MR. RHEIN: Sure. I guess a couple of points. And, John, you were very eloquent and I appreciate you making your statements. So much of the reporting that goes on, it's all about HAMP. I really would encourage many of the members of this committee to read some of the testimony because that's where some of the other information comes out in terms of the difficulties with the different programs.

So let me just give you some specific statistics. And Wells Fargo obviously is a very large mortgage lender. From January 2009 through August 2010, we've done a total of 532,600 modifications -- 12 percent of those were HAMP, and 88 percent were proprietary programs. If you looked at the Treasury data from April of 2010 of customers that were 60 days delinquent and eligible for HAMP, it was only 30 percent.

It is just important to understand that only looking at a scorecard that looks at success of servicers around the HAMP program, it's missing the whole picture by a long shot. Institutions are very engaged in trying to resolve this. At Wells Fargo, we have a total of 17,000 team members exclusively focused on trying to do loss prevention and keep people in their homes. And to John's point, the last thing we want is to put somebody out of their house. There are extensive efforts to try to work with those individuals. In fact, when we do have contact, 70 percent of the time we are able to be successful with those individuals, when we can actually get into a conversation and many of the housing agencies improve the odds of that.

So I do think it is important to understand the extensive work that is trying to be done in this area, to look at the scorecard in totality. I do think it is great, the examiners coming in, taking a look at the processes. And if they're not right, folks will fix them overall.

And that's all I have to say right now.

MR. NARAIN: Thank you, Kevin.

Dory, you want to keep going on the principal reduction loss mitigation effort?

MS. RAND: I don't think it is demonizing anyone to say that the existing HAMP and voluntary proprietary modifications are not getting the job done. Some of the materials that were provided here include an economist's report clearly showing how principal reduction is the only way to get through this crisis. I just think we need to get to a point where that will happen more frequently.

I thought another wonderful material that was included in our binders relates to the agricultural crisis of the '80s, where a lot of the same arguments were made against allowing modification through bankruptcy. The fears were expressed, as they have been today, that if you allow that then all hell would break loose.

But what happened was that it forced people into those negotiations that resulted in principal write-downs, and that's what needs to happen here. I would really appreciate it if the Board could take some action to move us towards allowing the principal writedowns on modifications through bankruptcy.

MR. NARAIN: Mike?

MR. CALHOUN: I just want to follow up and echo Dory's comments and look forward to things that work.

I think first of all it is not surprising that the current system doesn't work. Servicing is a very low-margin, high-volume business. There's a reason it’s as concentrated as it is. You may get $500 a year to service the typical $200,000 mortgage. That requires monitoring and handling the escrow accounts, handling the payments, which are actually a lot more complicated than they seem. Foreclosure attorneys are usually getting paid $500, maybe up to $1,000, to do a foreclosure. They are done by foreclosure mills with attorneys generally waving their hands at the cases as they go through, because that's the only way you can do them on those systems. And that's overlaid on a recording and paperwork system that usually is 50 or more years old in terms of state laws and is not designed for electronic transactions.

So that this doesn't work shouldn't be a surprise. It should be a shock that it works as well as it does.

Two things that have worked well in terms of where we move forward that we've heard from here are loss mitigation programs -- Ira's from Philadelphia, which is sort of the founding program there. It has been adopted in some states. When parties actually sit down with an authorized representative of the lender and the borrower -- and usually it needs an assistant with the borrower, a housing counselor or other advocate -- they have remarkable success rates.

And we are a lender who has to deal with this significant portfolio with foreclosures, we share the challenges of how do you contact the borrowers. The system is sort of stacked against it. The notice, I've mentioned before, that the bank sends out has the Debt Collection Act disclaimer.

This is an attempt to collect a debt. Any information you give will be used for that purposes. In bold print. It doesn't exactly encourage the homeowner to pick up the phone and call back. A lot of homeowners rightfully think that if they call back that just means they get kicked out faster.

A place that has worked well is where counselors or other trusted nonprofit third parties have made outreach to borrowers. They get a much higher response rate. So we would advocate strongly for not just encouraging those but require those as a precedent before you can go forward with foreclosure. In other words, you have to attempt to contact the borrower, including using some outside ways. You have to provide the opportunity for a loss mitigation.

It doesn't mandate a particular outcome of it, but you have to go through that process. It has shown remarkable positive results in places like Philadelphia. Connecticut has had a program, and a number of other states have looked at it. So we would encourage that.

MR. NARAIN: Mike, there are a few more comments. Can I borrow a few more minutes from you?

MR. CALHOUN: Yes.

MR. NARAIN: Thanks. People have got to speak fast. So Brian, Patricia, Corey, and Maeve.

MR. HUDSON: Okay. Thank you, Saurabh, I'll speak fast.

With regards to the resources coming to the table, the Hardest Hit Fund is about $7.6 billion that has been allocated to 18 states and the District of Columbia. All of these states have had their plans approved by the Treasury and are in various stages of rolling out their plans. And it includes up to $50,000 of modification for those homeowners. In some cases, the financial institutions will match those modifications.

Also, an unemployment component is included. The unemployment that could be provided ranges from state to state, from $8,000 to $36,000. So we'll keep you posted to the progress of that. Those are just being rolled out now.

In addition, HUD will be providing an additional billion dollars to the 32 states that are not part of the Hardest Hit Fund. That will be targeted to unemployment, matched similar to Pennsylvania's HEMAP program, up to $50,000 for an unemployed or underemployed homeowner if they have had a 15 percent or more drop in income. It has to be their principal place of residence. It will be a declining-balance loan that will be forgiven over a five-year period if the homeowner stays in their home for that period of time.

So those are some additional resources that are coming to the table by year end and into 2011.

MR. NARAIN: Thank you, Brian.

Patricia?

MS. GARCIA DUARTE: I just want to say very quickly that there has been a lot of work done in the loss mitigation world. And from the trenches, I can tell you that our pipeline has improved in the number of families that we've saved. But the pipeline has increased. The funding has not followed that increase. We've gone from 28 percent of our pipeline of people waiting for a decision to this year now 44 percent.

There is this feeling of defeat. The counselors are exhausted. They're tired. They're working so hard, but yet they have more people waiting for a decision. So whatever we can do to help reach a decision faster will be better for all of us because people are just thinking of walking away. It shouldn't take 15 months of a trial payment period to still wonder what's going to happen. People need to bring closure.

I really want to emphasize that what we have is not working. Some families are getting modifications, and that's great. But there's way too many more that are waiting to find out. If they're not going to be able to get one, the sooner they find out, the better it will be so that they can bring closure.

MR. NARAIN: Maeve?

MS. BROWN: Yes, thank you.

When I first started doing homeowner workshops in 2007, not so many homeowners actually had made contact with servicers. By the end of 2008, that was just not true. Most homeowners do make contact with their servicer, and the problems that they experience are ones that you probably have already heard about multiple times. They fax documents to numbers that don't work, apparently. They are asked repeatedly for the same document, month after month. They fax and re-fax documents repeatedly and are strung along. So if we wonder why people are thinking about perhaps stepping away from their home, that's part of the reason.

The servicing system is systemically broken. That is a problem that actually has been identified by the bankruptcy courts, when they are attempting to go ahead and get straight information from servicers about the payment history. We had the privilege of listening to one of the bankruptcy judges in Louisiana talk about the difficulty in getting just a simple basic Excel spreadsheet from a servicer laying out what was owed and what was not owed.

Over-automation, I might suggest, perhaps is one of those problems. We see it when we're working on modifications for homeowners. When we talk to somebody at the other end of the line who is doing the best that they can and who says we can't do anything about it. It's automated. I can't change it. I can't put any other numbers in. I'm sorry your client is getting these other notices. I'm sorry if these numbers are wrong. I can't fix it. I feel bad for many of the people that we deal with who don't have the power to actually change what is actually a system apparently that is failing.

The HAMP program has a remarkably low redefault rate. When HAMPs are actually processed by servicers, it seems to actually be a very good thing. But the HAMP statistics -- the data is out there, and it speaks for itself. You have a pile of people who are in trial modifications, and the trial modifications are not being turned into final modifications. People are left hanging for many, many, many months, not knowing what's going on. People who even qualify for modifications apparently are not getting modifications finalized, and we can speak to that from the work that we do.

And it's not just in one state. I train housing counselors across our state and nationally. This is a national problem. It is a systemic problem. And servicing is a safety and soundness issue, and it needs to be treated as such.

The redefault rate, however, on in-house modifications, to the extent that that has been documented, has been horrendously high. The coalition of state attorneys general and state regulators that track this issued three different quarterly reports pre-HAMP that showed massive redefault rates on in-house modifications. I hope that the more current version of in-house modifications performed better. But it is a significant concern.

Part of the reason for the redefault was because interest rates were not being lowered on those modifications. Interest rates were maybe holding the line -- so, rather than jumping, interest rates were being kept at the same level. Or, repayment agreements were being entered into but not any sort of decrease in interest rate, certainly not a decrease in loan principal. Not what you might call a true modification.

So the HAMP program does work when it is actually followed apparently for homeowners. But what we still have yet to hear, I think, is why it is not actually being implemented. I think it is a serious problem, and I think it is prolonging the negative impact of the foreclosure.

MR. NARAIN: Thank you.

Corey, you have the last word very quickly.

MR. STONE: Yes, my follow-up was going to be Kevin and to applaud Wells and others for trying to make as many modifications happen. But in light of what Maeve said, I think in order to understand really what's going on, one needs to know the terms and ultimately what the outcomes are in terms of redefaults.

MR. RHEIN: We'd be more than happy to provide that, and frankly we'll hold our record up against anybody's. We've given $3 billion in principal reductions already. We have agreed to the HAMP principal forbearance program.

So, look at the real information. A lot of it is in the testimony. Don't necessarily believe what you read in the press.

MR. NARAIN: Thank you.

MR. CALHOUN: Thank you, Saurabh.

At this section of the agenda, we have an open comment session for issues that weren't on the agenda. There are a number of people who want to speak briefly. Given the time, if I can ask people to keep their comments to two minutes or less. I'd like to start with Andy, who had some questions about income documentation and comments there.

MR. NAVARRETE: Sure. Thank you, Mike.

The Fed just recently released its clarifying rules on the Credit Card Act. I have, in the past, been very complimentary of staff efforts with regard to a number of provisions. And we'll start with a compliment here as well, particularly around the inclusion of pre-application processing fees in the total sort of fee harvester provisions. I think it is an extremely welcome move, and I applaud that effort.

I'm going to pivot here though and be somewhat critical of a proposal that I believe could be somewhat of a sleeper issue. The proposal was to exclude household income with respect to applicants, not only for those applicants under 21, where an independent means to repay is codified in the statute, but also for adults over the age of 21, where they will not be able to provide household income but rather have to provide individual income.

The concern here is that this, I think, greatly goes beyond the intent of the statute. When you think about the provisions relating to the under 21 and the independent means to repay, it was a very narrowly tailored provision -- and, in fact, even more narrowly tailored than under 21. It was really focused on college students. When you look at the marketing restrictions contained within the Card Act, they are entirely focused on campus marketing. So I think the Congress intended there to tackle an issue around a very small population.

Here, the implications for requiring individual income for everybody are non-working spouses who will now not be able to apply for credit independently unless they (a) get the spouse to be a cosigner, or (b) do some legal analysis, determine that they are in a community property state, and therefore conclude from that that they can put household income rightfully. All of that is in the proposal.

The reason I bring this up and all its context is important is because, according to the last Census data -- let's be candid about this -- 97-plus percent of non-working spouses are women. And that remains the case today. So I think this is potentially a very significant fair lending issue. When you think that women will have to essentially ask for their husband's permission before applying for credit or seek them as a co-applicant, it feels like that's an unintended consequence or, if it’s an intended consequence, one that is misplaced in terms of intent.

So I would urge the Board to look at this closely, to study our comments that we and others will be providing on this issue very closely and consider perhaps reversing this policy.

MR. CALHOUN: Thank you, Andy.

Dory, you wanted to comment on small loans?

MS. RAND: Yes. There is a large demand and a very limited supply of affordable small-dollar loans from mainstream financial institutions to compete with the payday loan market. I wanted to mention that the FDIC conducted a pilot with about 30 banks around the country that established some successful models. There are also a number of credit unions who have demonstrated some successful models. But they don't nearly cover the need.

In the Dodd-Frank Act, Title XII, there's a provision for creation of a loan-loss reserve that would be available to CDFIs and banks who partners with CDFIs to expand the supply of these affordable small-dollar loans. I wanted to ask the Board to support that and to encourage Treasury to launch that program as soon as possible. And also to consider a couple of things the Fed might do to support the increased supply of small-dollar loans, such as adding to the CRA Q&As to make it more clear that banks who offer these products could get CRA credit, to address some of Betsy's issues about the safety and soundness folks maybe coming down too hard in calling the customers subprime and dinging them for offering a needed product.

Another thing would be to consider a Fed pilot with Fed-regulated banks to get more banks to offer an affordable product or some convening to make banks more aware of the need and the opportunity to serve this community need.

MR. CALHOUN: Thank you. Mary, you had some comments about access to mortgage credit?

MS. TINGERTHAL: Indeed. Our discussion yesterday and really a lot of the news this week, which was centered around investor lawsuits against servicers and servicers suing homeowners and homeowners suing servicers. It really struck me that we're in an escalated position that nobody is going to win. With that in mind, I'd really like to encourage the Board to think about, from your systemic risk analysis purview, the really crying need to rebuild the system of housing finance.

While I'm sure that the last thing that you'd want to consider at this point is yet another interagency or intermodal sort of dialogue, I do think there is a crying need to initiate a dialogue, much as we have here on the CAC, among consumers, lenders, servicers, and investors, with the charge of identifying those parts of the mortgage origination, securitization, and servicing systems that either are broken or have not served us well over the last cycle and to establish some really clear ideas about how to fix those pieces. Mike named some of them. Others have named other pieces.

I think we know. If we can get a four-way dialogue going here and include the regulators to figure out a blueprint for what pieces need to be fixed, and that blueprint then as we go through one of the most massive reengineerings of our housing finance system that any of us will go through in our lifetime, including the implementation of the CFPB, the reform of GSEs next year, and the myriad of regulation writing that you and the other regulators will be faced with, not to even mention the ideas we haven't heard yet. But if we can create this blueprint so that every one of those parties will have something to refer to and say oh, yes, with regard to mortgage servicing, we need to remember to accommodate X. I really think it is time in this country to take advantage of the fact that you can have a civil dialogue among parties that in the press and in public venues have to appear to be at odds with each other, to really take advantage of that dialogue to come to common ground. Thank you.

MR. CALHOUN: Thank you, Mary.

Saurabh, did your CDFI -- you've got it covered?

Alan, you had some comments about credit insurance disclosures?

MR. CAMERON: Thank you. Among the recent proposed amendments to Reg Z relating to home mortgages and HELOCs are additional disclosures for payment protection products such as credit life and disability insurance. Our view is that the proposed disclosures go well beyond insuring that the consumer is well informed to make a reasoned decision. In fact, the proposed disclosures' language casts these products in a very negative light and strongly discourages the purchase of these products by consumers.

In particular, in Forms G-16(B) and H-17(B), relating to credit disability and credit life insurance, the sections "do I need this product?" require the consumer to make the difficult determination of whether they have enough insurance or savings to pay off the loan if they die. This is insurance that is focused to a particular need, and that's a complex decision for a consumer to make. And it can only dissuade the consumer from taking what is a very valuable product within the marketplace. So I would urge the staff and Board to take another look at those disclosures. We clearly support disclosures that identify the costs of this kind of coverage, but those disclosures go way too far.

I also want to take advantage of my two minutes and mention that, first, I appreciate the careful look the Board is taking at HMDA. I hope as a part of that the Board is considering balancing the benefit of the data with the burden on institutions. In that regard, I think the Board should consider changing the threshold for reporting. As you know, there is a different threshold for depository institutions than there is for non-depository institutions.

In the very excellent study that Glenn Canner mentioned yesterday, taking the 2009 data with some 8,100 lenders, 42 percent of those lenders had fewer than 100 mortgage loan applications, and 20 percent of those reported less than 25 applications. These are numbers which are easily reviewed during a fair lending or a normal examination cycle. The low numbers arising out of these lenders simply do not affect the statistical validity of the data.

Consequently, it makes sense for us to suggest that you change the threshold to one based on loan originations, rather than assets as it is for depository institutions, to something on the order of 100 originations per year. That would balance the burden on smaller institutions while not affecting adversely at all the benefit of the data collected. Thank you.

MR. CALHOUN: Thank you, Alan. Finally, we discussed a few additional items, since this wasn't enough to keep us busy all day, that I'll briefly touch upon.

One issue that came up with somewhat discouraging reports was the debt settlement and repair industry and just how it is overwhelming both the airwaves with deceptive ads and also enforcement efforts, in that many of these companies operate from out of state. Often the scenario is that there will be an order that puts them out of business, and they simply reincorporate or use another name. The money is very hard to track down. But they are just pulling already distressed households into distressful and damaging situations. There needs to be some coordinated effort, perhaps even criminal penalties, at a more prominent level to rein them in because it is not happening yet.

We had further discussion about small-dollar loans, both the importance of them, the need for protections there, and the need for further discussion and review of that.

An item that got a lot of discussion and which is delegated to the Federal Reserve is the required rules on interchange fees. I think it is fair to summarize the industry response as go slowly and carefully on this, that it is connected to the whole system. There were concerns expressed from some that the current system has cross-subsidies that may be going from lower-income households to higher-income reward program beneficiaries.

We also had discussion of another issue that is before the Board, and that is regulation under Dodd-Frank of remittance programs. There were some industry concerns about the statutory definition, which is very, very broad. It could pick up when you buy a gift or you transfer things by phone card. It could be quite expansive as Congress wrote it. But, again, to look at that carefully. There were concerns about both the need and the compliance challenges of providing disclosures in the language of the users -- that that is challenging whether you are looking at a third-party vendor who may have a very small operation versus a larger entity.

We also talked briefly, and I wanted to raise as a comment, the continuing review of overdraft programs, particularly as it relates to debit cards. The opt-in program is now in full effect, but we continue to see high frequency, quote-unquote, users dominating this. By high frequency, the average fee level under the FDIC study for those households was in excess of $1,500 a year in overdraft fees. The bulk of that is growing and is debit card fees where the average transaction is less than $20 and the average fee is in excess of $30 for the overdraft protection.

There are concerns that this is a financial drain, particularly on these vulnerable households. It also drives many of these households out of the banking system because it ultimately craters their bank account. There is also concern that it creates an unlevel playing field. Two of the major banks, Bank of America and Citi, do not charge overdraft fees on their debit card programs. It puts them at a competitive disadvantage for what we would believe is doing the right thing.

Ultimately, there was a consensus that we need to get to point-of-sale disclosures. Our recommendation is that until you get to point-of-sale disclosures where people are told, if you go ahead, you are going to get a fee, this is what it is going to cost, that overdraft fees on debit cards should not be permitted. In this advertising program, many solicitations for opt-in made it appear that they would incur fees or their credit card or debit card wouldn't work without this protection when in fact if the transaction is turned down, they don't generally incur any fees.

I will note for the record that Kevin had different views on the overdraft program. I don't know if you want to say them in 30 seconds. You thought it is a valuable service if there’s opt-in.

MR. RHEIN: We just basically believe consumers should be educated and given the choice. That's what we're trying to do in a non-aggressive manner.

MR. CALHOUN: Okay.

MR. LITTLES: Mike, if there's only 30 seconds left I'd like to say something very briefly. And you know I will be brief.

MR. CALHOUN: Yes.

MR. LITTLES: And this is in the vein of what I would consider “small d” democracy. I first met Governor Duke when she was visiting the Federal Reserve Bank of Dallas. She came out, took her time to come out and see a number of projects that were funded through our local institutions and to ask questions and to get a sense from both the folks like me -- at the time I was with Enterprise -- and the service providers as to what was going on and what were the concerns.

I would encourage, to the extent possible, that the Governors do that type of thing because as talented as this group is, we can't give you all the perspective that you may need to understand exactly what's going on at the local level. I think that it makes a difference when folks from Washington get out and talk to people. It gives them a sense of reassurance, and it gives you firsthand information on how others are viewing their situations. So to the extent that that can happen, I would encourage it.

MR. CALHOUN: Thank you, everyone, that concludes -- wait, I'm sorry.

GOVERNOR DUKE: Could I just say, if I could, one final word of thanks to all of you for coming here to Washington, for giving us this information, and also for those of you who have hosted me in your communities and given me a chance to see firsthand the work that you do and have educated me so much.

Finally, I would just like to thank Mike for his leadership of the Council this year. He has done a great job.

(Applause.)

GOVERNOR DUKE: He has been incredibly active not only in the meetings of the Council but also with staff in getting prepared for the meetings and making suggestions about the way the Council should work and questions that should come up and format and everything else.

And I would say that it is absolutely an example of his evenhandedness that I now hear he is worried about Citi and Bank of America being at a competitive disadvantage.

(Laughter.)

GOVERNOR DUKE: Thank you.

MR. CALHOUN: With that, we probably should adjourn. Thank you, everyone.

(Whereupon, the above-entitled matter went off the record at 12:40 p.m.)