Home Mortgage Disclosure Act Public Hearings, September 24, 2010

ELIZABETH DUKE:
Let's get started. First of all, on behalf of the Board of Governors of the Federal Reserve System, I would like to welcome everyone to the last of our series of public hearings held to discuss changes to the Home Mortgage Disclosure Act. The knowledge and the feedback we have gained from these hearings will help us assess the adequacy of current mortgage data, examine the need for additional data and explore possible changes to Regulation C, which implements HMDA.

I would like to thank our colleagues at the Federal Reserve Banks of Atlanta, San Francisco and Chicago for hosting the first three hearings. Our series of hearings kicked off just as Congress passed regulatory reform legislation earlier this summer. The Dodd-Frank Act provides for some changes to HMDA data collection and submission, and we look forward to hearing from our panelists and members of the public about the implementation of these changes.

The new law also transfers authority for HMDA rule making from the Board of Governors to the new Consumer Financial Protection Bureau. All information gleaned from these hearings will inform our own work for the time that we continue to have rule writing authority and when that authority transfers to the CFPB, be assured that we will hand over the most current thinking about changes to Regulation C.

Over the course of these hearings, we have heard from key players in the home mortgage market, lenders and other market participants, academics and researchers, consumer advocacy and community development organizations, data experts, regulators and other public officials. Although they play different roles, we believe that all share a common goal: to ensure that the mortgage market is responsible, transparent, efficient and serves the needs of consumers and market participants alike.

The recent mortgage crisis has highlighted the potential ramifications of a mortgage market that is not functioning well. HMDA data do not create the market or solve all market problems, but they do help us to understand what's happening in the market. The time is certainly right for reviewing and revising the data elements, standards and reporting formats.

HMDA has three purposes. One is to provide the public and government officials with data to show whether lenders are serving the housing needs of the neighborhoods and communities in which they are located. A second is to help government officials target public investment to promote private investment where it's needed. A third purpose is to provide data to assist in identifying possible discriminatory lending patterns and facilitate the enforcement of antidiscrimination laws, such as the Equal Credit Opportunity Act.

Today's hearing is intended to serve as a venue to discuss whether or not the 2002 revisions to Regulation C provided useful and accurate information about the mortgage market, to gather information that will help assess the need for additional data elements and improvements and to identify emerging issues in the mortgage market that may require additional research. As I said earlier, we are also interested in any comments on the implementation of the HMDA elements of regulatory reform legislation. We have gathered this morning an impressive array of panelists representing a broad spectrum of vantage points, and we look forward to their comments. This input, together with the input of the preceding hearings and written comments submitted from the public will be carefully weighed as we consider changes to Regulation C.

And now I would like to turn to some housekeeping details. First of all, this hearing will be part of the public record and our assessment of possible changes to HMDA, and transcripts will be made available. Panelists and members of the public are actively encouraged to submit written comments, and you can find instructions for submitting a written comment on the Federal Reserve Board website.

Each panelist will be given a maximum of five minutes for opening remarks. Let me apologize in advance. We want to ensure that everybody has a chance to speak and so we have a mean girl up here and she's --

[Laughter]

-- she's going to be working the light system. The green is, of course, when you start. When you have two minutes left, it will turn yellow and she will hold up a two minute sign, thusly. And then when your time is up, it will turn red. A buzzer will beep and she will hold up a stop sign. Please feel free to finish your sentence.

Then following the panels, we will have one hour of open mic for audience members who wish to speak on the record. If you wish to speak in the open mic period and you have not already signed up, please do so now. We will take speakers in the order in which they signed in, and the speakers will be limited to five minutes each. We will take as many as we can accommodate in the hour that's allotted.

And now --

FEMALE VOICE :
You might want to tell them how to sign up.

ELIZABETH DUKE:
The sign up is right outside that door.

Now let me introduce the presiding panel. We are fortunate that we have a Consumer Advisory Council that we meet with several times a year, and they bring us very important information about what's going on in the consumer market place and from the field, and so for the first time in these hearings, we have been able to utilize members of the CAC as parts of our panel. We are pleased to have Paula Bryant Ellis, who is senior vice president of BOK Financial Corporation who is with us today. She will be with us for the first panel and then for the second and the third panel, we will have Michael Calhoun, who is president of the Center for Responsible Lending and also chairman this year of the CAC. In addition, we have the leadership of the consumer and the community affairs division of the Federal Reserve Board. Sandy Braunstein is director, and Leonard Chanin, deputy director.

And so with that, thank you for all of you for being here on this panel and let me turn to panel one, where we have Jay Brinkmann, chief economist and senior vice president of research and economics for the Mortgage Bankers Association; Thomas Noto, associate general counsel at Bank of America; Lisa Rice, vice president National Fair Housing Alliance; Cy Richardson, vice president housing and community development, National Urban League; Faith Schwartz, senior advisor to the Hope Now Alliance; and Josh Silver, vice president of research and policy, National Community Reinvestment Coalition.

Thank you all for being here, and Mr. Brinkmann, you may begin.

JAY BRINKMANN:
Thank you very much. I'm Jay Brinkmann chief economist with the MBA. And I apologize in advance for how I sound. I picked up a cold in the last day or so after two weeks on the road, so please bear with me. I have some written remarks, but I will simply sort of paraphrase them to make sure I get in under the five minute limit.

I wanted to talk about first of all, about what should be required in terms of the data reported. How should the data be reported? What should be used as the universal mortgage identifier? What data should be made public, and finally just some comments on multifamily.

In terms of what should be reported, I think it's important to bear in mind the burdens that are placed on mortgage lenders in terms of complying with HMDA. So that any changes that are made create tremendous burdens in terms of trying to reconcile the data, make sure it's accurate within risk allowable tolerances for errors so that one change in the information that we can live with for some period of time would be very helpful.

Also bear in mind, though, that in terms of looking at potential data it's impossible to replicate lending models based on what gets reported in HMDA. And one of the fears is that as we expand it, it turns into a safe harbor that in a sense freezes what's allowable in a credit model with these data elements. For example, over the years, I know companies that instead of a credit score preferred to look at how many times a potential borrower has been late on a housing related payment as opposed to their overall credit score. In addition, there's some lenders these days quite frankly that won't make a loan to someone who has walked away from another mortgage or looks like they are getting ready to walk away from another mortgage, and that certainly would not be picked up.

How to report? One of the things we strongly recommend is that you look at the MISMO standards, the Mortgage Industry Standards Maintenance Organization, for definitions, for format, and I think this might address issues, for example, with HUD reported credit score. That if you like at the MISMO, we don't simply look at one field for credit score. There's a field for a number. There's also then a field of whether it's a vantage score, whether it comes from FICO, what vendor reported the score. So that there are a number of variables then that are really behind it, and if you simply then pick up all of these variables associated with the credit score the way we do, you can then use the information internal to then generate whatever percentile or whatever calculation you would like to do, but that that would not be put back on the lender to reenter data, to rekey it, but instead use what's already out there in the industry. Also it would provide for easier changes later on, if any additions are needed.

What about a universal mortgage identifier? That has been brought up. We would strongly recommend that you look at the mortgage identification number that's been put out by the Mortgage Electronic Registration System, MERS. It allows us to track mortgages throughout the system from application all the way to sale of servicing, sales of the secondary market and I think for these purposes it would allow us to really sort of track some of the under coverage that we do see in the HMDA data. We did some analysis and found that by throwing out all the correspondent loans, we are eliminating a number of loans that had no counterpart in the retail broker data.

What to make public? Well, we really think that's your decision. In a sense that there are a number of data elements here that we would very much not want to make public as companies because of the limitations we face, but that certainly that's an issue that the bureau and the Fed will have to face going forward is the tradeoff between risks of identity theft associated with some of these elements and that, but that's really your decision to make rather than the industry, and to some degree, we would benefit, I think, in terms of what would explain what's going on in the industry with a greater data release.

Finally on multifamily, we did an analysis and we think that HMDA already covers about 95 percent of the multifamily loans that are made. In contrast, though, it covers only about 60 percent or so of the dollar amount of the loans. So that if you look then at the average loan amount that's in HMDA, it's about $1.7 million for a multifamily loan. If you look at the average loan size of what's missing, it's about $19 million. So we don't know how much effort really should be put into trying to capture this remaining 5 percent of really high dollar loans that are done for just an entirely different set of investors out there. So I think you really ought to look at what do you really want to do with the multifamily data? Do you really want to expand it or is there a questionable usefulness of what's already there? Thank you.

ELIZABETH DUKE:
Thank you. Mr. Noto.

THOMAS NOTO:
Governor Duke, thank you. My name is Tom Noto. I'm an attorney at Bank of America and support the bank's home loan originations platforms, as well as the fair lending enterprise operations.

I'm going to try to do something which is wildly uncharacteristic for a lawyer, which is to not only finish in five minutes, but to finish in two minutes. We will see how I do. I have submitted a written statement, and we also had the opportunity to work with your very, very talented staff on some of the issues. So I think the technical stuff is there.

This is obviously an extremely important exercise. We appreciate the opportunity to be in it, and I think that to second a comment that you made, a lot of things have been evolving in parallel to this, principally Dodd-Frank. I know that we have a proposal here on the table that we are working through, but, you know, when all is said and done, I will second Jay's comment of the burden that new regulations impose on the industry, and I guess one thing that we would -- we would very much urge you is to put this all together in one place and really work through the issues which are presented by Dodd-Frank.

I think just as a technical implementation exercise, it will be very, very complex. It will be very difficult as the data becomes more particularized on the transactions to get the kind of cross comparability among institutions which I think we all agree is very, very important here.
So I guess what we would say is -- and hope -- is that as we work through this, we work through it and at one point and one time. And deal with, again, this comparability issue, as well as I think the privacy issues which I know are very much on your mind as you implement that.

So, again, I appreciate the opportunity to be here and look forward to the dialogue that I think we will have.

ELIZABETH DUKE:
Thank you. Ms. Rice.

LISA RICE:
Thank you for this opportunity to comment on the regulations that implement the Home Mortgage Disclosure Act. I'm Lisa Rice with the National Fair Housing Alliance. We have been able to glean very helpful information from HMDA. The HMDA data, for example, reveals that African Americans and Latinos disproportionately receive higher cost loans, even after controlling for elements like income and loan amount.

The data made available by HMDA is very compelling and demonstrates that much more needs to be done to address lending disparities. The data has been used by fair housing organizations to target limited resources to areas that demonstrate the greatest disparities. It has also been used by fire housing groups to help identify reinvestment opportunities. However, there's no doubt that additional data elements will improve the efficacy of the data and the usefulness of the data. Dodd-Frank will add important additional fields like age and points and fees. In our more detailed comments, we describe the need to collect more data fields beyond those covered in Dodd-Frank, such as the loan to value ratios, cumulative loan to value ratio, the debt to income ratio and the type of loan.

NFHA also strongly encourages the collection of the three items identified in Dodd-Frank that are left up to the discretion of the CFPB: the loan originator number, the universal loan identifier number and the parcel number.

I must note that while NFHA is pleased to see the credit score included as a collectible item under Dodd-frank, we continue to raise our concerns that the use of credit scoring mechanisms, at least in their current form, undoubtedly perpetuate discriminatory outcomes. The use of credit scores continues to raise fair lending concerns.

NFHA also encourages expanding HMDA to include servicing data. Currently under HAMP, many services are collecting and reporting critically important data on HAMP modification applicants. However, most modifications are exercised outside of HAMP. This severely limits the public and government's ability to monitor fair lending issues as it relates to homeownership preservation.

HMDA should be expanded to cover all loans. All institutions providing mortgage loans, loans used for any housing related purpose or loans secured by residential properties need to report HMDA data. We need a complete picture of what is happening. The housing finance sector is too important to the entire economy, and it is critically important, particularly at the micro-economy level for us not to understand what is happening in that space.

There are some who are calling for the elimination of information on preapprovals. This would be a grave mistake. It is often at this stage that discrimination occurs, and we need to know what is happening to consumers at the preapproval stage.

While expanding HMDA is critically important to help us understand and track what is happening in the lending sector, the data will not be helpful if it is not accurate. Fair housing professionals and attorneys representing fair lending plaintiffs have reported wide spread inaccuracies in the HMDA data, including the exclusion of alleged victims of lending discrimination from the HMDA data. Therefore, measures must be taken to ensure that the data is correct. Lenders who do not report data accurately must be reprimanded and must face stiff penalties, particularly when they misreport data related to a fair lending complaint. Thank you.

ELIZABETH DUKE:
Thank you. Mr. Richardson.

CY RICHARDSON:
Thank you. The National Urban League thanks the Federal Reserve for the opportunity to comment on potential revisions to Regulation C and the data provided under HMDA. In our view, these hearings are timely, particularly within the context of the racial wealth divide in America, which has been exacerbated by the growing loss of home equity in communities of color. The current crisis has taught us that reckless, expensive and unstable mortgage products and practices foster instability and imperil consumers and underscores the differences between lending approaches that work and those that do not.

From the National Urban League's vantage point, the lending practices that work are those that seek to prudently lower the risk to both borrowers and lenders, such as careful underwriting, assessing the borrower's ability to repay the obligation, full documentation of income and assets and prepurchase counseling that adheres to national standards. We have ample empirical evidence that these factors increase responsible and sustainable home ownership and the low default rates associated with these features demonstrates the value of good mortgage products. Our affiliates have historically employed HMDA data to analyze and map home mortgage lending by banks and other financial servicing institutions. For us, data under reported HMDA have been critical in monitoring compliance with fair lending laws and enforcing CRA.

Like most good laws, however, HMDA could be improved upon. Specifically, we feel that the data collection could be enhanced by the addition of information that affects the borrower's credit risk, based on underwriting variables, such as the borrower's credit score as mentioned, the borrower's debt to income ratio and the loan to value ratio of the mortgage. This information would better help explain mortgage lending disparities among what otherwise appear to be similarly situated loan applicants and borrowers of different ethnicity, race and gender.

Additional underwriting data from lenders, such as detailed product information, mortgage rate lock dates, overages, additional fees paid and counteroffer information would also be useful data enhancements. This information would help assess the basis for mortgage rate disparities identified through initial analysis of HMDA.

We also believe without adequate data from the preapplication phase, such as through the use of testers, surveys and alternate means, fair lending oversight and enforcement is incomplete because it includes owning information on the borrowers that apply for credit and not the large universe of potential borrowers who sought it. Considering that some observers are pushing for the collection of back-end ratio data that take overall household debt into account and are a better reflection of a borrower's overall debt burden, we concur and would argue that requiring lenders to report how they documented a household's income, when underwriting a mortgage, and how they measured a borrower's debt load is an important data point to capture and could help to identify and isolate those lenders who routinely put borrowers into loans they cannot afford.

Moreover, we believe lenders who purchase loans for CRA credit should be required to report the same level of data as if they originated the loan.

We are also aware the board is interested in understanding the potential costs and burdens associated with enhanced data reporting. To be sure, tangible costs are associated with geocoding loans, hiring compliance officers and doing paperwork, however we believe the burden of reporting is easily relieved by data products already available in the market place. We also believe all HMDA filers should routinely report the expanded information as part of their regulatory, nonpublic reporting obligations.

Even if HMDA data shows nothing more than concentrations of higher cost loans in minority neighborhoods, the responsibility rests with lenders to explain why disparities exist and what they mean.

Finally, some financial institutions have argued that the distribution of HMDA and CRA data forces them to compromise the privacy of their clients. There is some truth to this. The data do contain explicit information that reveals quite a lot when appended with other data sets. To us, though, these cries ring false in the greater context of business as usual. If banks were sincere in their desire to safeguard the financial information of their customers, they would not sell data to third parties, which has become commonplace in the financial services sector.

While inherent limitations would remain under any expanded HMDA framework, it will unquestionably contribute to a greater overall understanding of the mortgage industry.

The information requested will provide regulators, lenders and the civil rights and advocacy communities with more complete context for evaluating the prime and the subprime markets. Additionally, the data will form the backdrop for additional compliance risk management activities on the part of banks, particularly with respect to fair lending and predatory lending.

In closing, as we would all agree, HMDA is an invaluable tool for many civil rights and consumer rights organizations, as well as federal, state and local regulators. The League supports all recommendations that improve transparency and efficiency of data collection, reporting and analysis, and we're appreciative for the opportunity to share our views and listen to those of other on proposed improvements of Reg C and the data provided under HMDA. Thank you.

ELIZABETH DUKE:
Thank you very much. Ms. Schwartz.

FAITH SCHWARTZ:
Thank you. Good morning. I'm pleased to be invited to participate this morning and I applaud the Federal Reserve for undertaking these important hearings.

I have worked in the mortgage industry for a number of years, in the capital markets, risk management and policy arena. I have been on the Consumer Advisory Council at the Board of Governors and most recently I was the executive director of Hope Now, the nationwide foreclosure prevention alliance, and I'm a founding member of the Hope Loan Port, a nonprofit web-based tool that allows borrowers, consumers, nonprofit counselors to submit files to servicers that are secure for loan modifications. I am an advisor to both companies so these comments are all of my own.

In the positions I have held, I wrestled with the difficulties of collecting good data and deciding what would be most relevant and indicative of the trends in the market. For example, Hope Now's data covers 75 percent of the servicing market, and we have a good feel of both the opportunities and the problems in the current data collection arena.

My main message to the Board of Governors would be to make sure you are collecting relevant data that's needed to adequately monitor fair lending compliance. Good data provides guidance to policy makers and often presents information that might not be intuitive. The board should not be reluctant to collect the data it feels it needs. At the same time, it's expensive to collect data, time consuming and if collected in a piecemeal fashion, it may lead to inaccurate analysis from considering without the entire book of knowledge that the underwriters have when they make those decisions.

A path to good execution for industry is important, and there needs to be enough good verifiable information to assist in fair lending analysis for industry, as well as regulators. My broad experience has led me to believe that good risk management incorporates relevant, transparent and fair underwriting, it usually results in data that demonstrates fair decision making by lenders.

For regulators to determine whether the laws in place, and under the particular law recently announced by the Dodd-Frank Act, if they have been violated, the data should be robust enough to ensure adequate protections.

The Dodd-Frank bill will add many new new data points in the HMDA law. In addition to those new data points, some consideration should be given to directing the disclosure of additional data that would be useful for lenders and consumers alike in the joint effort to make transparent basis for lending decisions.

For example, front-end debt to income ratios are very important to lenders in their underwriting decisions, as are loan to value ratios. This would be useful to collect. Back-end debt ratios and income ratios are also useful, but different lenders apply different weights to the importance of those ratios because of the secure position the mortgage will hold. I believe there's some merit in collecting the information on the back-end debt to income ratios, but only to the extent that it's used by the lender in arriving at its credit decisions.

Credit scores are useful to many lenders. They serve as benchmarks for guidance and my recommendation is in favor of providing those scores. Collection and publication of these data from the prospective and the understanding of the basis on which the loan was made is relevant. Fear that publishing such information, however, will reveal who the borrower is on a particular loan is a real fear and must be addressed, balancing the need for collection and publication against the risk of breach of confidentiality remains an important concern.

There's another category of data the board might wish to consider. During the past few years and into the near term future, there will be a wide variety of loss mitigation practices in which lenders and borrowers will engage. Some of these will be under the government programs, and some will not.

I believe there's wisdom to carefully collecting data about loss mitigation. For example, it would be useful to both lenders and borrowers to have transparency about product type provided from origination through default and loan modification. This may include some of the variables to reach affordability, such as rate, term and principal deferral. Longer term analysis may be helpful in ascertaining the most effective use of restructuring. In contrast, collecting and reporting preapproval programs would not be productive. Most of these programs are very tentative in nature, and they are usually not sufficiently detailed to provide the kind of guidance that should be expected.

I would publicly support -- I would support additional geographic data collection, perhaps at the zip code level. Such collection might reveal anomalies that might even be obscure to the lender itself, such as one officer or sales person consistently charging peculiar amounts in a particular area. The collection of this data should be subjected to notice and comments since its a complicated subject and seeking comments will provide the best way to make the best decisions on how to collect. In addition, to the fair lending issues that are part of HMDA, I believe it's time to capture information that links the front end decision making to the back end servicing practices to monitor systemic risk. Linking the two should be studied and subject to notice and comment prior to any new requirements. Any additional collections should be completely relevant to the analysis desired. For example, the following terms may be helpful and they are not necessarily requiring capturing significant data elements: Product type, fixed or adjustable; fully amortizing or interest only; 15 or 30 year; duration of the modification; lower P & I payment.

In closing, I wanted to reiterate that it's a good idea to provide enough information that is objective -- that objective analysis can come closer to fair and reliable conclusions for any bias that might still be found in the home mortgage lending. I support the efforts of the board to do so.

ELIZABETH DUKE:
Thank you. Mr. Silver.

JOSH SILVER:
The National Community Reinvestment Coalition appreciates that the Federal Reserve Board is conducting hearings on possible revisions to the Home Mortgage Disclosure Act data. The board's 2002 revision to include price information for high cost loans and other data enhancements has increased transparency in the mortgage market. Thank you.

NCRC urges the Federal Reserve Board to make further enhancements to HMDA data. As an association of more than 600 community-based organizations, NCRC and our member organizations use HMDA data to regularly assess whether institutions are meeting credit needs consistent with safe and sound lending practices.

By increasing the public accountability of lending institutions, HMDA has made the lending marketplace more efficient and equitable. Further enhancements to the HMDA data, however, are needed to enable HMDA to fully meet its statutory objectives of assessing whether financial institutions are meeting community needs in identifying possible discriminatory lending practices. This week's release of the 2009 HMDA data indicates that significant racial disparities remain that must be further investigated with enhanced HMDA data.

Attached to my written testimony is NCRC's recent report, “Foreclosure in the nation's capital,” which revealed a concentration of foreclosures and high cost lending experienced by minorities in Washington, D.C., even after controller for critical underwriting criteria. This study, which combined HMDA data with a proprietary database, provides a glimpse at how much more effective HMDA data could be at identifying the possibility of potential discrimination if it is significantly enhanced.

Price information for all loans is imperative for the purpose of identifying possible discrimination. As recent Department of Justice settlements suggest, price discrimination is often in the range of 50 to 70 basis points. Meaning that such discrimination may occur entirely within the realm of prime lending. The current data that has price information for high cost loans only misses discrimination in the prime market. Reporting loan terms, such as prepayment penalties and whether the loan is fixed or adjustable is also necessary to assess which borrower groups receive a disproportionate amount of onerous loans.

The loan channel, retail or broker, sheds light on which institutions are offering responsible loans and which offer problematic loans. If more information had been available on loan terms and conditions several years ago, stakeholders could have identified troubling trends earlier, such as a dramatic rise in option adjustable rate lending and could have taken steps to curb this lending earlier before it contributed to the current crisis.

Additional information regarding underwriting criteria can help reveal if discrimination is occurring or community needs are being met responsibly. Loan to value ratios, debt to income rations and credit scores are variables that researchers need to account for when determining whether racial disparities and pricing or access are likely to be the result of discrimination.

In its merger approvals, the Federal Reserve Board states the HMDA data is insufficient by itself to determine if lending institutions engage in discriminatory practices. Well, then, isn't it time to make the data more effective for enforcement and meet its statutory purposes?

Even if after enhancements to the data, the data still cannot conclusive identify discrimination, enhanced HMDA data will nevertheless reveal much more clearly those institutions that treat similarly situated borrowers differently and offering the variant terms and conditions.

The enhance data would therefore improve regulatory enforcement and could lead to more merger denials, conditional merger approvals or downgrades in CRA ratings when warranted. Enhanced HMDA data improves regulatory enforcement because it will be more readily identify problematic practices in a more cost efficient manner than the more intensive tasks of file review.

Loan performance data of the type mandated in Dodd-Frank is also critical for CRA and fair lending enforcement. Banks and mortgage companies with high default rates and low levels of sustainable loan modifications must be penalized through lower CRA ratings, merger denials and fair lending settlements. NCRC also calls for mandatory reporting of home equity lending and reverse mortgages since problematic lending practices in these loan types would be curbed with more disclosure. In my written testimony, I talk about a number of other issues, such as the need to require more lenders to report HMDA data.

I want to last say that increasing access to user-friendly data enhances the ability of the public to hold lenders accountable for serving credit needs in a responsible fashion. NCRC calls on the Fed through the FFIEC web site to make the data easier to use. The data should be in Excel rather than bulky PDF files. And the web page should have an interactive feature, allowing the user to ask some basic queries such as the number of prime loans to African Americans in a census tract or a county. I can't emphasize enough if the data is made more user friendly how it would be much more possible for community groups to do some straightforward data analysis and to go to lenders with some very powerful and straightforward information and to have informed dialogue and to work together and to increase access to responsible lending.

NCRC urges the Federal Reserve Board to engage in a rule making to improve HMDA data and in so doing to improve the equity and the efficiency of the market place. Thank you so much.

ELIZABETH DUKE:
Thank you. It's interesting in Washington, D.C., everybody can stay under five minutes.

[Laughter]

MALE VOICE:
We practiced.

ELIZABETH DUKE:
Let me start with in just about every hearing we've had, there's been this distinction between the data that's collected and the data that's disclosed. And some discussion of the concern about individual privacy.

And so for users of data, in particular, I'm interested in your thoughts on ways that privacy can be protected without impacting -- the data can be most usable while still protecting the privacy of the individuals involved.

JOSH SILVER:
Well, the privacy – anybody? Can I just chime in? -- argument is argument that NCRC has heard for several years but it's an argument that I find a bit of a red herring and the reason I say that is because the financial industry knows a lot more about my credit history and my credit score than I do.

I was told my credit score for the first time about two months ago when my wife and I bought a new car, and it was a very good credit score, but, you know, my goodness. I think the financial industry knows everything that's even in Dodd-Frank and sells everything about yourself to third parties, as Cy mentioned. So I don't think that Dodd-Frank additional data elements would really introduce a lot more privacy concerns.

Nevertheless, there are intelligent ways to report the data publicly to address these concerns. For example, credit scores can be expressed as quintiles or percentiles as Mr. Brinkmann mentions and, you know, didn't -- and NCRC does ask for loan level disclosure data. We think that's very important. But if there's a particular concern about a very sensitive data element, you can report it on a census tract level. Again, we prefer loan level disclosure, but there are -- I think there are thoughtful options to deal with this important question.

ELIZABETH DUKE:
Thank you. Others uses of data?

CY RICHARDSON:
I would only add, as an addendum to Josh's comments I think the Census Bureau has this right. I think for researchers and academics and in the advocacy space, I think there might be a way to somehow identify or certify the ability of certain researchers to have access to this kind of

granular information, perhaps, it might provide somewhat of a stop gap against some of the privacy concerns particularly for those doing that microlevel analysis.

But I -- I also would underscore the point that I think it's a little bit of Kennard and I think there are some -- some validity to the argument. I think more transparency to err on that side is better.

ELIZABETH DUKE:
Ms. Rice?

JAY BRINKMANN:
I think one issue is more data is not a cure of modeling and failure to acknowledge some of the problems in trying to copy credit models just with what's available and what's proposed but that fundamentally we have to look at liability. And so what does the liability on the lending institutions in providing the information versus what is ultimately then disclosed? And as long as we are protected on the liability front, then it really is up to the bureau and the Fed as to trying to solve this issue.

I'm personally not a privacy expert, but that's the way we see it.

ELIZABETH DUKE:
Okay. Thank you. Ms. Braunstein.

SANDRA BRAUNSTEIN:
Okay. Thank you. And thank you to all the panelists for your testimony. It's very helpful.

I want to ask a few questions all around the same theme. Is that, you know, HMDA data has been around for quite a long time, and I hear the concerns about the burden, and we know that we're going to have to add, for sure a certain number of new elements according to the legislation, possibly some others.

So, you know, are there some things that are not as useful that could be taken off the table that we currently collect and one -- and specifically, I want to hear if there's others besides this, but I know Lisa, in your testimony, you address that it would be a mistake to remove the preapproval information and we -- that has come up at other hearings, as you know. People have suggested that. So to you specifically, I would ask in terms of that information, the way it's collected now, I mean, is that something -- is it -- I know that there is a good possibility that discrimination or not a good possibility, but there is a chance that discrimination can take part during that part of the process, but the information that's currently collected under HMDA, is that actually helpful to ferreting out discrimination in the preapproval process?

You know the value of that particularly, and then more generally to the panel, are there other things that are collected currently in the HMDA data that maybe aren't so useful where if we are going to add a lot of things there's something we can take off the table?

LISA RICE:

The urban institute conducted a study of a lending testing project that the National Fair Housing Alliance undertook in which we engaged in conducting almost 600 tests in eight states across the United States. We found that in those 600 tests, in two thirds of them, African American and Latino borrowers were discriminated against or experienced disparate treatment, and the tests were all conducted sort of at the preapproval stage. So I think removing that very important data set from the HMDA process would be very critical. We do think that there should be more robust reporting in that area, and also that there should be more attention paid to the accuracy of the reporting of the preapproval data.

In our testimony, we give you three examples. They are all hail from the Toledo fair housing center, of course, because that's where I previously came from and I'm very familiar with those cases and was involved in either trying to resolve those complaints or litigating them, the ones that were filed in court. And it's very, very clear that there's this recurring theme of inaccuracy in reporting the data, particularly data at the preapproval stage, and there is this sort of recurring theme also of lenders saying that a person has not applied for a preapproval, or not applied for a loan when they clearly have.

So again, paying more attention to the accuracy of the data, paying more attention to lenders' compliance with the reporting requirements will help us tremendously in just knowing what we already know. You know, what is already being reported.

FAITH SCHWARTZ:
That's interesting, because it's terrible if people aren't even getting in a door to get considered for a full application for approval, but I would just say there's a lack of uniformity across the market on preapprovals. So it's kind of garbage in and garbage out. I think preapproval data is fuzzy, and it means nothing in this environment.

To get a final approval, as we all know takes far too long right now in this credit environment, but if anything changes, it's material. And so you don't even get the final -- the real approval or the denial of credit which it becomes a complex issue. So I'm a believer, it's not relevant because the way it's collected today, it's not a uniform process. Maybe you think you have an option for a great loan and then you absolutely get denied later on. So that's why I have an objection to that not being relevant.

JOSH SILVER:
I just want to respond to Faith's questions and I will support the National Fair Housing Alliance on the preapproval because we know during this crisis that a lot of the problem was the aggressive marketing of high cost loans to minority communities and financially vulnerable borrowers. So the interaction between the real estate agency or the broker or the loan officer, at the preapproval stage I think is a very important thing to capture to make sure that there is not any unscrupulous behavior, and if there's a lack of uniformity, let's get our heads to go and make the data more standardized in the order form. I think the preapproval data is important.

If we are to streamline the HMDA data, you know, NCRC is a believer in data and transparency that makes markets more efficient and marketable, so I wouldn't recommend deleting any data elements. If you have loan to value ratio, debt to income ratio, credit score, and additional elements recorded by Dodd-Frank, you may not need the reasons for denial that's reported in the HMDA data, and that's an optional reporting item. I think if you are regulated by the OTS and the OCC, you have to report it but if you are regulated by the other agencies, you don't have to report it. So it's not a complete universe anyway. So you know, maybe look at reasons for denial.

I want to respond to what Mr. Brinkmann was saying with econometric modeling, and they can misinterpret the data. I think even without doing the econometric, if you look at the enhanced data, if you have loan to value ratio and debt to income ratio and you control those variables and you are a community group and you are studying a merger, a possible merger between two institutions, you find one institution controls those variables but still treats modest income or minorities differently than Caucasian borrowers, then that's a problem and that's something that the public absolutely has a right to bring to the regulators' attention. I think that the enhanced data will make -- will make -- will make it much easier for the public to know which lenders are being responsible and which lenders are being unscrupulous and also save regulatory resources.

Because you can really -- with the enhanced data, do a much better job of knowing which institutions need more investigation for discrimination and when you have to do the more resource intensive file review. So I think that the more data is better and, you know, even at the risk of running some inaccurate econometric modeling, I think it's a very important thing to do.

Multifamily data, I think should become much better. We should know whether it's a loan to purchase a multifamily property or refinance a multifamily property or do home improvement. I was interested that Mr. Brinkmann was talking about multifamily data.

The last thing I will say is report the parent institution, please, in the HMDA data. You have Wells Fargo and other large lenders with several affiliates, and it's very hard for researchers or members of general public to use the data as it is now.

SANDRA BRAUNSTEIN:
So you took off denials and added six more things.

JOSH SILVER:
Sure.

THOMAS NOTO:
On the preapproval data, I sort of agree with Faith. The numbers are a little soft. And I fully agree with the other panelists that the other phenomenon that we are discussing is very important, but that's not preapprovals. That's basically prescreening at the application stage of the process, and that's not a phenomenon that would be picked up under the preapproval definition as it exists right now. So extremely, extremely important issue but not one that relates to the definition of preapprovals under HMDA.

SANDRA BRAUNSTEIN:
Yeah, Lisa?

LISA RICE:
I would just further comment that the preapproval is so important in today's real estate environment, meaning the first thing -- one of the first things your real estate agent tells you is to get a preapproval from a lender so that you are more marketable when you are out there trying to purchase a home. So it is something that the industry is pushing, the housing industry is pushing. It's something that consumers find to be very valuable, and we do need to know what's happening to people around that space. If -- and I understand Tom's point and Faith's point. I think it's a very legitimate one, but I think that we are smart enough, if we put our heads together, that we can develop better systems, better standardization, in order to make that preapproval process work, make it more streamlined and make it easier to report the data and to get the data accurate, than to just say, well, everybody is using a different system and there's not a lot of standardization in the market place and so therefore the data is rather fuzzy, so let's just eliminate it all together.

I think the process is just too important to our current market place. I mean, it's what's happening and we need to know about it.

JOSH SILVER:
If I can just add to that. I very much agree. I think the preapproval process is one to gain and understand, and I talked about backing it up to the preapplication process, and to happen into communities that might be operating from information deficits.

I think, though, we look at this from a kind of systems change perspective, and if -- if HMDA is going to provide that framework, I think we need to advance from looking at individual stages, as snapshots of time to elongate them, to see more of a motion picture, what is happening at the community level and I think the preapproval process is one we need to monitor.

JAY BRINKMANN:
I would like to mention, I was in New York, meeting with the leadership of the National Association of Realtors and their complaints that preapprovals are meaningless these days to some extent I can't agree with them. One of them is the borrowers don't always tell you truth in the preapplication.

So when you finally go through it, you find the income is a little less than what they said they made when they applied tore the preapproval. The property values are far different, you can't go to the expense of verifying information like that on a preapproval because you are not going to make any money until they actually start going through the application process.

So unless there's a real desire to sort of change this to a real applications process approach, to really a prescreening and more of an advisory role to folks saying, you know, giving you ratios, you might really want to rethink this. I think that was one of the real benefits of Fannie Mae and Freddie Mac programs over the years in working with borrowers that we found the people who came out of those programs were much better in terms of having a meaningful preapproval, but I think in the current environment, I think the Realtors have a point about the usefulness.

SANDRA BRAUNSTEIN:

Thank you. Ms. Chanin.

LEONARD CHANIN:
I want to follow up a little bit on the data collection and touch on some specific points in terms of the data and then a bit broader topic.

So first on the specific, I would like to know if anyone currently uses the category, if you will of unsecured home improvement loans and if so how. If not, should that category be deleted from HMDA?

JOSH SILVER:
We actually call for the mandatory reporting of the home equity loans, so I would go the reverse direction. We know that there was a lot of problematic home equity lending during this crisis. And likewise, home improvement lending has been under reported element in HMDA data. So I actually hope you tighten it up.

LEONARD CHANIN:
Let me interrupt you. This is for unsecured. So home equity lines presumably are secured. This is unsecured where someone gets a loan that's not secured by their dwelling. It's principally used for home improvement process. Is that used by anyone?

LISA RICE:
I think it's data that would be very useful and one of the reasons you may not be seeing it used by more players is, you know, some of the comments that have been said earlier, it's not really, really easy to access a lot of the data and you have to be able to partner with other institutions that have more resources than you do.

So there definitely is a grave interest to know what's happening in that space, particularly when you look at older communities. So being from the center of the universe, Toledo, Ohio, I just want to put a -- just caution that I don't think you should eliminate the data. I think you should do a little bit more research to find out why more folks aren't using the data if you think they are not.

LEONARD CHANIN:
If you think of the Midwest cities like Cleveland and Toledo
and Akron, that's a credit need. Unsecured home improvement lending.

CY RICHARDSON:
And I think given the interest of folks particularly during this latest period of economic unpleasantness there, they are interested in remaining in their homes and I think that's important lengths to look at.

LEONARD CHANIN:
Any other?

THOMAS NOTO:

I would look at the technical. Those are pretty much reports or not reported more or less at the institution's discretion because you have to characterize them as such. The data is probably the softest data that there is in the reg right now from my perspective.

I think the second technical issue it's not technical, it's the Home Mortgage Disclosure Act at the point at which you start moving outside of dwelling secured transactions I don't know where you draw that line. You know, I bought plumbing stuff at home depot last weekend with my credit cart. You know? Hopefully it will improve my home.

Yeah, I don't know where you draw that line and I think, you know, harkening back to the title of the statute, one clean way of doing it is to stick with loan security.

LEONARD CHANIN:
Other thoughts?

FAITH SCHWARTZ:
I agree with those comments. To me, it's the same as a credit card and all the unsecured debt we are having problems with but you are talking about something outside of a secured mortgage instrument against the home.

LEONARD CHANIN:
Okay. Thank you. So on a little bit broader basis, Faith, I think you had mentioned if I understand you correctly, possibly reporting or gathering information on loss mitigation information, and so my question is for all of the panelists, as you know, under the Dodd-Frank bill, HUD is required to set up a default and foreclosure database. Whether it makes sense to separate from that, obviously, to collect loss mitigation data, and then if so, given the lag time that is inherent in reporting this data, of several months at least, how would that data be useful to folks or how might you envision it useful to folks in the future?

JOSH SILVER:
Well, NCRC's testimony calls strongly for loan performance data and modification data and loss modification data. If you think of the times that we are in, we are in a foreclosure crisis, and whether credit needs are being met and in a responsible manner, first of all, you need to though whether lenders are making loans that perform, whether a particular lender has high delinquency and default rates.

Secondly, if a loan is not performing, is the lending institution or the servicer making good faith efforts to modify the loan. I think you can construct in a thoughtful manner data fields that capture whether it's a principal reduction or whether it's a forbearance or whether you are adding an amount at the end of the mortgage. So I believe that this data is essential and I hope that the data the database that HUD is creating can be linked to the HMDA data at least on the Census track level.

LEONARD CHANIN:
Faith?

FAITH SCHWARTZ:
My thinking around that, and one thing that is really obvious to me is that we haven't been able to do a great job, really in our industry to connect the front end to the back end and the sustainability and so it's really a systemic risk issue, as well as a fair lending issue and we all know that, we know that's a front end and a back end that we should be mindful of.

Better coordination among -- I don't think we know what HUD's going to collect and, again, my experience on data collection on this issue is you can target seven good data points, but it may not be at all relevant to what you are trying to get at. And so I mean that as equally protection for industry and the regulatory environment.

LEONARD CHANIN:
Thank you.

THOMAS NOTO:
I was going to say, HMDA was adopted in '77?

SANDRA BRAUNSTEIN:
'75.

LEONARD CHANIN:
CRA was ’77. It was ‘75.

SANDRA BRAUNSTEIN:
Yes, ’75.

THOMAS NOTO:
Let's put it this way, a long time ago. Here today we are attempting to tune up the data so that it captures one process which is the origination of mortgage loans, okay, and we have been at it for I can't do it that math. Now essentially if we morph it over and try to model another process, you know, identifying outcomes is one thing, but explaining outcomes is another thing. And I think that, you know, HMDA as it has evolved is designed not to just to say that a phenomenon exists, improper as it is, that's been the exercise.

I think when you move it over into an entirely different world and entirely different set of criteria and considerations and what not, the secondary market investors and what not, that you are servicing loans for you have a completely different process.

And I think that this is a much, much larger undertaking than it seems at first blush to not just get the outcomes but to get some reasonable explanation and fair explanation of those outcomes.

JOSH SILVER:
Yet HMDA talks about meeting credit needs in a responsible fashion. I think just as the nation has evolved since 1975 and the financial industry has evolved since 1975, so must our thinking about a statute that says whether credit needs are being met in a responsible fashion. And I think if nothing else, the foreclosure crisis has taught us it's not good enough just to make a loan and

hope it works. You have to make a loan and make sure it's sauce stainable and really gives families an opportunity to build wealth.

And so integral to the loan origination process is whether the loan is going to perform and if there's an issue with performing whether there's a good faith effort to modify the loan and not just throw people on the street when you have a “robo-signer” at a financial institution, not even looking at whether the bank owns the mortgage or the house that the bank is going to foreclose upon. So I think it's very important to shed sun light on all of these processes because they are not distinct. They are actually the same thing. Originating a loan that will give the family an opportunity to build a home, to build wealth to provide security for their children, and to make sure that the loan performance over time, making credit needs in a responsible fashion.

And lastly, I will say, I think there should be some thought to improving the race and ethnic disclosures under HMDA. For example, Asians. We have some West Coast members that make a good point that the difference of more recent Asians like the Hmong community is probably different than the Chinese, for example. And the HMDA data doesn't make those distinctions. Same thing with the Hispanics. And if you -- and if you -- I think it's very important to look at race and ethnicity in the context of loan modifications, and loss mitigation and loan performance. It would vastly improve our fair lending performance.

CY RICHARDSON:
These are excellent, but to go at it further, I think this looks at HMDA and CRA. CRA for meaningful modifications would be an enhancement in this space in our judgment.

LEONARD CHANIN:
Any other thoughts on loan mitigation data and the like?

LISA RICE:
I would add we have seen -- this is anecdotally -- but in a number of lawsuits in the servicing space, how integral servicing is to loan performance, and that good servicing can actually promote good loan performance, and bad servicing can have the opposite effect.

So I do think that it is -- I mean, we have to report the loan performance data. That's a requirement. So we should do it in the best way possible to glean as much information, useful information, as we can about what is going to help promote homeownership preservation.

LEONARD CHANIN:
Thank you. Paula?

PAULA BRYANT-ELLIS:
Well, I'm a little late here but I wanted to try to get back in on the preapproval discussion.

I was just curious Lisa, in some of the examples you gave, what do you think it would take, what do you think we would have to have in data to have a really -- to be able to do a really good robust analysis of the preapproval process. I think we’d all agree it is definitely murky. What would we have to do have to do that?

LISA RICE:
I don't know if the data elements or the data points are what is at question so much as the process, the varied processes that lenders use in order to give someone a preapproval and the quality of that process.

PAULA BRYANT-ELLIS:
How would we capture that? What would you --

LISA RICE:
Well, again, I think -- and I'm not trying to suggest, you know, that everybody has to be an apple and we can't have any oranges or strawberries – but, but there should be -- if the industry can work together to develop some standardization, and some streamlining to improve the actual process so that we know the information that we are getting from borrowers, consumers is accurate, at the preapproval stage, so that the preapproval really does mean something, and you don't have a situation where a person is preapproved and at the end of the day, they are not going to be qualified for that preapproved amount, but also the reverse of that. Because we see the opposite of that, right?

We see many examples of times when the mortgage originator is filling out and completing the data and the data is not completely accurate. And that can have a negative impact as well, because they are just trying to get a person in the door. If the regulators could come together to get a more streamlined approach, one that generates more accurate information, then I think we would see that data becoming more robust.

PAULA BRYANT-ELLIS:
Okay. Go ahead.

CY RICHARDSON:
I would add, once they get together then they can come meet with us, the housing counseling industry because we don't disagree. We think an important role for the ombudsman in the process, the unbiased ombudsman is a very important role and I think the housing counseling area would have comments to share.

PAULA BRYANT-ELLIS:
Any other comments?

Thomas, this is directed for you, but please, anyone, give your comments you said piecemealing, it will not engage in more robust data analysis. In your opinion, what will? How do we provide the public with --

THOMAS NOTO:
I think my principal theme as I mentioned at the outset and that was an elliptical reference to it as well, let's do this all at once. There's a lot of hard work to be done here. It is an enormously complicated undertaking, Dodd-Frank. We are talking about credit scores. You would spend

days on any one of these issues. I think my concern and I think I speak for others in the industry, if you go through one tranche in this process and another tranche in Dodd-Frank, you know,A, the burden is very, very high and number two, just from a reporting perspective, you end up with one year of data that kind of looks like this and another year of data that kind of looks like that. I guess what I would urge you in thinking about this to do, you know, let's get it all done at once and let's settle in and see what it looks like, rather than incremental changes over time. You think about the treasuries versus the APRs -- an excellent, excellent change. You look at the analyses of the data that you have to chop it down the data and you look at it one way under one arrangement and another way under another arrangement. We are urging the board as it thinks about this to kind of do it all at once. Jay?

JAY BRINKMANN:
And just to build on Tom's excellent points is that it's not just a case of simply adding a data field that you turn on a switch and suddenly it's there. You've got to go out and say, okay, which part of our system has it? How accurate is it? Is it being read in the right way and how do we test? Because there are penalties for being outside allowable variances on accuracies. So building it and testing it and making sure you get the right, and just understanding the right items. And that's one of the key things. When we put it out, if there's a definition that differs from what the industry sort of is used to thinking of as that definition, that then brings in this whole issue of interpretation, and it may take several years to work that out.

So as you are trying to get there, to go out with one set of, okay, here's the expanded data needs and then stick to it.

JOSH SILVER:
And it's also important as you go forward to make sure that the efforts are working together because in Dodd-Frank, you have HUD that's doing the foreclosure database, you know, and whether the loans are delinquent, foreclosure and also under water -- I think that's a very important part of that provision -- but to make sure that HUD is working with the Federal Reserve Board and the Consumer Financial Protection Bureau to make sure that the foreclosure database and HMDA talk to each other and hopefully are linked to each other, because I do think that, again, that loan origination should be linked with loan servicing and loan performance because it -- in my mind, it is all one and the same and I'm thankful that Dodd-Frank recognized that disclosing loan performance is a very important data element.

So make sure that -- so make sure that they are talking to each other.

FAITH SCHWARTZ:
Maybe I would just add, maybe one way to skin that cat is that universal loan number and then coordinating with HUD because what I worry about is all the different databases required out there, Fannie Mae, Treasury, HOPE Now, and the Federal Reserve, the HMDA collection, it would be great to have a coordinated effort.

JOSH SILVER:
And also the HAMP disclosures required by Dodd-Frank, make sure that's talking to HMDA data. It's interesting that the Dodd-Frank just required disclosures of HAMP, maybe they

thought it would be easier just to say, require the disclosures under a government program, HAMP, but as we know non-HAMP modifications are maybe half or more of the modifications right now. So we do encourage you -- I think that's very important, disclosing the non HAMP modifications as well.

ELIZABETH DUKE:
I would like to continue down this -- this line for just a minute. We have talked a lot this morning about different uses of data, and uses that go beyond the original HMDA purposes and over the last two years there's been a lot of frustration over the lack of data on a lot of different fronts but data collected nor different purposes is likely to be requested in different ways whether you are looking at financial stability or you are looking at servicer issues you are looking at foreclosure information, you are looking at delinquency information, and I believe there was mention made about whether the lender actually uses this information in order tore the initial approval. I think if you were going to build a great big database of information, and you had all of the factors, which a lender might be able to use, I mean, could you end up with some studies that would actually determine what were the best predictors of ultimate success, be they product type or -- or borrower characteristics.

So -- and I'm not quite sure what the question here is, but I would like your response to this, to what extent would you be willing, for your purposes to trade off data that can be used for a number of different purposes versus specific data points that are important to you for your purpose?

And then the second piece is it occurs to me that in terms of availability of credit, there's some credit that if it doesn't fit into, you know, however lengthy the reporting process is, if it -- if it can't be fit into that reporting process, then it -- then those are loan products that just may whither and go away.

So I'm just curious, any reactions on this process of expanding out the purposes of the data and -- and the data that we collect?

LISA RICE:
Well, let me just comment on that from a practitioner's standpoint. A lot of times the data that we push for is reflective of our being pushed someplace else, right?

So, for example, in the 1990s, through the 2000s, there were a number of fair housing and civil rights organizations who were pushing Congress and who were pushing their elected officials to enact anti predatory lending statutes and so the push back from the public officials was what's the data? Well, how many foreclosures are occurring? How many of these predatory loans are being made? How many hybrid option ARMs are there? And so we could give anecdotal information and for some of us who had more resources, we could give information about what was happening at our local level in the city of Toledo or in the city of Raleigh.

But being able to paint a broader picture and to let legislators know what was going on more broadly was a little bit more difficult because we didn't have these data elements. So some of the requests for the data elements that you see are a direct result of that. Because in order to affect public policy, in order to get those kinds of changes that are important, public officials, elected officials want to know more data to justify the legislative actions that they are taking.

In 2007, a number of civil rights organizations called for a foreclosure moratorium while the federal government, the consumer protection and civil rights industry and the lending industry could formulate a very broad scale homeownership preservation program.

So we had sort of our data and the lending community had its data, and we said there's going to be a foreclosure crisis, there's going to be a credit crisis. The markets are going to freeze up, and we are going to see foreclosures like we have never seen before, and the lending community came with their data and said, no, that's -- you know, pie in the sky. You are -- what is it called? The chicken, sky --

ELIZABETH DUKE:
Chicken Little.

LISA RICE:
Thank you. And said, No. If you take out Ohio, Indiana, Michigan, Pennsylvania, and one other state, it's a normal housing market.

So what happened? We got the pie in the sky, the sky fell.

And so some of the push that you see coming from us is because it's what we get pushed for when we ask for changes to be made and the elected officials are saying, no, they don't need to be made, or the industry is saying, no, it doesn't need to be made.

ELIZABETH DUKE:
Yes, Faith?

FAITH SCHWARTZ:
It's pretty complicated. There’s a lot of data out there. I would say the OCC metrics and their reporting has become very robust and they have a better knowledge of what's going on at the banks. The state regulatory group that collects their data, they have great knowledge too, and we had an aggregate level at Hope Now we trends in data, but that's not what we are talking about there. I think you need to put it out for notice and comment, because the burden of not knowing what the front-end data is, versus the back-end is real. And I would challenge the regulators to work together, HUD and the Fed to really solve for this, and be very thoughtful that everything collected is relevant and nothing more.

Because this gets back to, why is all of this data going out there if it doesn't have anything to do with the key questions being asked, whatever those are. I can't predict what those are, but I think it's up to the regulators to also come together and figure that out.

ELIZABETH DUKE:
Well, in a lot of cases there's some real cases of data envy going on. I know the researchers here would like to have access to some of the data.

JOSH SILVER:
You have Cy and me. You motivated us.

CY RICHARDSON:
Just briefly, I couldn't improve on anything that Lisa said. I would say, though, I understand the maxim that not all things are meant to be measured, but given the gravity of what we have been through, I don't think that's one of these issues.

JOSH SILVER:
And I would like to echo and elaborate on what Cy just said, should we pick and choose what data elements. Think about the crisis that we have just been through: the worst recession since the great depression. And if we could have had data disclosure -- I'm not going to be so simplistic to say that better disclosure data would have prevented this great recession, but I think it could have curbed severity of this great recession because when I was listening to the congressional testimony in 2007, and when you had the comptroller of the currency and the director of the office of thrift supervision and the chairman of the Federal Reserve Board testifying before Congress and saying, we think that the crisis is going to be contained within subprime lending, you know, we did not know, because we did not have access to publicly available data on option ARM lending, on exotic prime mortgage products that the crisis was, indeed, as we quickly became -- as we quickly realized, it was beyond subprime lending. This irresponsible lending was pervasive throughout the lending market place.

So that more transparency and disclosure, I think, could have significantly curbed these reckless lending practices and perhaps we may not be seeing the economic mess that we are sitting in today.

And I remember talking to an editorial writer for The New York Times and mentioning that to him and he said, “You have a press release, and you have a press conference,” because when you think of the costs and the benefits and, yes, collecting data does involve costs, but I think -- think of the benefits to this country and think of the trillions of dollars of wealth that we have lost and if we had more robust data collection, we may -- we may not have lost trillions of dollars and I worry about the new generation going out and finding jobs. When you think of robust data collection, you never know what's going to be important. I remember a few years ago, talking to Glen Canter and Glen was saying. We should be talking what should be on the FFIEC web page. I said to Glen, you probably do want some high cost lending trends on FHA lending. He and I knew that there's traditionally hasn't been a whole lot of high cost lending in FHA lending, but recently, you look at the HMDA data and there is some high cost lending in FHA lending. We need to know more what's going on there.

I think it's important to have a robust database because you don't know what trends are going to emerge. I think the benefits will greatly outweigh the costs.

ELIZABETH DUKE:
Thank you.

SANDRA BRAUNSTEIN:
Yeah, I would like to get some -- hear your thoughts on the collection, specifically of credit score information. This is something that's been raised for years that people have asked for, to be added to the HMDA data, at least I will say the community and consumer side have asked for it to be added to the HMDA data. And it's always mentioned as a key factor, but, in fact, there are some issues around it, because there are different kinds of credit scores, different numbers, different systems. You know, some the FICO is the one that's most widely known, but a lot of industry use their own proprietary systems.

And so if this data is going to be meaningful and we collected, how would we do that so that you can actually make some comparisons so that it's actually useful? Do you have any suggestions for us on that?

JOSH SILVER:
Yes now

SANDRA BRAUNSTEIN:
I actually thought you would.

JOSH SILVER:
I was wondering if my industry panel partners --

SANDRA BRAUNSTEIN:
You didn't give them a chance.

JOSH SILVER:
I sensed some hesitation, but actually I was going to agree with Mr. Brinkmann. He mentioned that on the credit disclosure, you have one data field that indicates the type of credit score. Is it proprietary, is it FICO, or is it some other, is it some other credit score model? You know, you could have three to five categories, whatever seems to make sense, and then you could also have a category called alternative credit score because there are -- there are private companies using utility payments and rental payments. So you could even have that as a category.

And then you have another data field that indicates the percentile of risk or the quintile of risk rather than the specific numerical score because the specific numerical score will differ across the different types of credit scores.

And I think those -- those two data fields will be very, very useful.

You know, when NCRC has been able to get this data on a one time basis, we have found controlling for credit scores and other key underwriting variables that racial disparities in lending remains, and the Federal Reserve Board finds that as well. So I think it is very important information. And I think also another important thing to think about is you can compare and you can look at fair lending within the credit score companies. Is there a credit score company that looking at all the other variables in the data set, that are giving, say, protected classes much lower scores? And the other credit score companies are giving them higher scores. That would be something worth more investigation and something else where I think you could use a very important use of this new data.

JAY BRINKMANN:
One of the issues is that by providing and asking for the various elements around the score, that would allow the bureau or the Fed to come up with their own interpretation of how then do you compare this across companies? How do you then compare this within the company? What are some of the differences, just in terms of what bureau is reporting it? But also there's a time variant feature. Credit scores are not constant over time. They are not constant in their predictability from necessarily perhaps one year from the next but not over a five year period.

One of the not so funny jokes in the industry right now is that, for example, 700 FICO is the new 600, because when you look at performance based on models and scores that are just far off from what would have been predicted at the time the loan was made. So with all of that, that's why we think -- it's one thing for the regulator, for the examiner to pick it up, so they better understand. The issue then is how do you interpret it and put it back out for public use.

FAITH SCHWARTZ:
And if I could jump in on that. One thought around credit scores, certainly historically they have been heavily weighted towards the credit decision with other risk features like loan to value, debt to income and they are highly correlated with outcomes historically.

To Jay's point, maybe that changed with risk layering, with no docs, et cetera. My recommendation would be to think through -- I know there are people like vantage score and others that have different methods of looking at credit scoring without using any one system, although traditionally FICO has been the dominant one. You have small to mid-sized companies that may just use that one and don't have access to several different options and investors would require things differently. It's a complicated issue.

My other concern around the credit score going forward is, they are really going to be taxed on this last round of what's happening in the borrower credit world due to the foreclosure issues and the stress of modifications and repayment plans and the catch-ups.

So the integrity of the scores has got to start being more robust over what everyone is uniformly doing to report on those scores or they will become less meaningful over time.

CY RICHARDSON:
I agree with all the points made, Jay's as well. I would say though, Josh makes a good point. I'm less concerned about the system employed by Bank of America, for example, but I'm interested in what -- in the uniform exercise of what they have learned in their credit making decisions, and I think judging them against themselves is what we're interested in, in many cases. I think that's very important give than we seem to be in that national campaign on heightening awareness around the importance of credit and different mechanisms to gauge it.

I think I would like to understand generally, you know, judging a bank against itself and how it uses credit in that process, whether it's FICO or another system.

THOMAS NOTO:
Well, I was going to make a comment. It was one thing to judge a bank against itself, but I think really the statute is heavily weighted towards giving some cross industry comparability and if I could just sort of get back to you in a second, Cy. You know, I think everyone knows the different scores. You have some internal scores and whatnot and I think in that world, putting digits down on a piece of paper, which is really in a lot of ways meaningless, because unless you know what those digits mean and unless you can sort of figure out some way of normalizing them across, you know, wildly disparate models they don't do anything.

So in absolute disclosure, I think there are a lot of challenges with that.

We have talked all here, I think, about maybe a relative disclosure, trying to spread things out, some type of tiering approach to show sort of where people fall within different strata. That seems to be something that would get you a lot closer to what we're trying to do here, which is to just show some, you know, differential there, but absolute numbers I don't see how they are going to, you know, do anything.

In terms of individual banks, you know, scores can be used differently for different products. There's a lot more to it. This is yet another example where, you know, the data says so much, but there's a lot more oftentimes going on underneath the surface and, you know, my fear and I think that of others in the industry is that, you know, people will disclose data that's useful, but they are very concerned if it can be misinterpreted and it's incomplete. So that's the challenge that I think we all have here.

LISA RICE:
And I just want to echo what I said earlier and that is that at least the National Fair Housing Alliance does feel very strongly that a number of these scoring mechanisms have a disparate impact in the market place and in our comments we discussed that in much more detail, excuse me. Part of it is, you know, right, the product versus the borrower argument, right?

Is it the borrower's characteristics that that generate a certain outcomes or is it the product characteristic that generates certain outcomes and I think we have seen a lot of very, very good study that has indicated that the product features can very well impact it and do impact loan performances.

We have also seen a lot of study that reveals Latinos and African Americans are disproportionately receiving those unsustainable and sort of product harmful loans. And how does that impact then ultimately one's credit score? We believe it impacts it in a negative fashion.

And so we discussed the FICO score in a little bit more detail, and the five sort of categories that FICO is broken down into, and how we feel that each one of those categories may pose disparate impact in the market place. I want to underscore that.

And secondly, highlight the fact that there are some lenders who don't use a score, and we certainly don't want to see this reporting requirement be interpreted in the market place as, you know, becoming some kind of a compelling component to -- to make an originator use a score. We -- there are lenders who have very large portfolios who are doing very, very well without using a scoring mechanism, and we don't think that they should feel that they are compelled to use a score.

JAY BRINKMANN:
One of the other issues on the score is to keep in mind a sense of phenomenon called mean reversion on the scores, and this would tie more into a performance database rather than the origination, that there are some borrowers who can be counseled as to how to get their scores up. They can undertake various other activities to get the score up for purposes of originating the loan and then over time it reverts back down to where it was beforehand. So it's sort of a longer term trend sometimes that needs to be understood in terms of credit scores.

JOSH SILVER:
I was very interested when I was reading the testimony of the wells Fargo representative in the San Francisco hearing, because he was making the point that the data right now, in its limited nature may lead to misinterpretation. He was saying you need to disclose key underwriting variables like credit scores, debt to income ratios and loan to value ratios so the general public and regulatory agencies and other stakeholders can better understand what's going on in the lending market place. So I thought that was a very interesting and enlightened argument from a lending institution, arguing for more disclosure, and in general, NCRC's view is more disclosure and transparency will make market places work more efficient and more equitable rather than freezing lenders to using or not using particular products or approaches that if you have more disclosure, I think you are going to get more fair -- for fair pricing and more equitable and efficient market place.

And that, you know, with credit scores, why is it, you know, that the best studies to date have consistently found that after controlling for credit scores, you still have in other key underwriting variables you have racial disparities in lending and I hope with enhanced data disclosure, in ten years that finding, I hope goes away. And I hope that with the better disclosure plays a key role in making it go away.

LEONARD CHANIN:
So I've had a number of discussions of late, with community banks including in Chicago yesterday, and after listing the litany of regulations that the board has issued recently dealing with mortgages, as well as many things to come that will be issued by the board or the new bureau, there's concern whether they will exit in terms of market lending. And so my question deals with coverage of small institutions and whether or not you believe they will exit the market place, we still will engage in a balancing of benefits and burdens and you have to look at the cumulative burdens not only HMDA, but also truth in lending, ECOA, et cetera.

So my question is whether we should recalibrate both for depository institutions but also non-depository institutions who have to report. Currently for depository institutions, I think they have to report if they are in or have a branch in a metropolitan area and they originate one mortgage loan, one home purchase loan, et cetera.

So my question is, should that threshold be increased so that they don't have to report? Is there usefulness in terms of data for small lenders in terms of small number of loans reporting?

JAY BRINKMANN:
Well, we're staying in, so don't worry about Bank of America.

LEONARD CHANIN:
You are probably beyond the threshold.

JAY BRINKMANN:
That’s $300 million this year. We’re staying in.

[Laughter]

THOMAS NOTO:
You are not a small bank. We are in. So -- Josh?

JOSH SILVER:
I'm going to read you a quote: “Obtaining from testimony at these hearings, obtaining HMDA data from only a subset of mortgage lenders that provide mortgage services to a specific segment of the market does not give regulators an accurate picture of mortgage lending patterns. I believe that the only way to determine an accurate portrayal of mortgage practices in a particular area or market is to require HMDA reporting of mortgage brokers, non lender loan purchasers and originators that meet the threshold criteria.”

That was not an advocate. That was William loving, Jr., president and CEO of Pennington community bank at a Federal Reserve hearing in Atlanta and this was a bank, I think that had about $250 million in assets.

So here is a community bank arguing for more disclosure, and the reason I think he's arguing for disclosure is not just to get it for his competitor, though I think that's a good thing too, but to make -- but he gains more valuable information about how competitive he is in the market place and whether he's missing market opportunities.

I think in the enlightened self interest of bankers, there are some savvy bankers like this gentleman, who does believe that there should be more reporting of HMDA data rather than less, and in terms of your threshold, it is very confusing because you have depository institutions that have different thresholds and non depository institutions. I was talking with Fed staff a while back and suggested just make it the same for everybody. If you make more than 50 reportable more than 50 loans, reportable under HMDA, you disclose because 50 is generally a statistically significant number for meaningful quantitative analysis. So that's a threshold I would propose across the board for non depositories and depositories.

FAITH SCHWARTZ:
If I could add to that, the community bankers, you know, they do a good job out there. That said, I don't disagree with Josh. I think everyone should have the burden of reporting that has any meaningful originations out there, and I doubt it's HMDA that would take the community bankers out of the market. There are a lot of other regulatory burdens going on for the community bankers and it is a real issue and a concern, but I think they need to report.

LISA RICE:
Let me echo what both Faith and Josh said to some degree. With the caveat if an institution is linked in any way to a larger depository institution, every institution within that chain -- they should be required to report HMDA data no matter how many loans they do.

And then the second question I would pose is -- or maybe the thing I would ask is that you do maybe a little bit more analysis to see -- to ferret out all the reasons why the smaller lending institutions that you have been talking to are saying that they are going to go out of business.

This is an argument that we have heard from lenders over and over and over again, and some and insurance companies quite frankly, but every lender and insurance company who has given us that argument that has gone out of business, they went out of business for another reason. It had nothing to do with the HMDA or CRA provisions or with the fair housing provisions.

LEONARD CHANIN:
If I said go out of business, I misspoke. What they have said, and we have seen this, is that they will exit particular products.

LISA RICE:
I see.

LEONARD CHANIN:
There are a number of community banks who stopped lending adjustable rate mortgages coming out of the Truth in Lending and there are some other funding costs and other things that go into calculus, but there are clearly some institutions that simply cannot afford the additional compliance person or persons if they are $200 million bank in terms of those products.

LISA RICE:
So then I would want to know more about those products that they are no longer offering and how they performed in the market place.

LEONARD CHANIN:
Mm hmm.

JOSH SILVER:
I think Lisa is right. There's other reasons. It's not a HMDA reporting reason. I do believe that the great majority of banks, they want to know how they are competing in the marketplace and they are collecting data whether they are sharing it public or internally. I think in this day and age, we are not in the 1970s where we use calculators. We are, you know, several decades later

and I think technology has improved. You have private sector vendors that assist lenders with HMDA data compliance. And if you look at the big picture, again, I think the benefits greatly outweigh the cost and I think that you had you had a community banker around the $200 million asset range in Atlanta saying this is a valuable thing, the data reporting requirements should be expanded.

LEONARD CHANIN:
So I will tell you I still use a calculator when I don't use pen and paper, and encourage my kids to do the same.

You had mentioned Josh, a threshold of 50. Is that something because that is higher than we currently have, at least for some institutions. Is that something -- my question is, how useful is the data if, for example, someone is reporting 20 loans? Clearly it's not useful for fair lending because it's too small of a number depending on where they are in the market place.

JOSH SILVER:
You know, I think 20 years is a useful number. If I had to pick one threshold, and let's make it simpler because you have the threshold -- even for non depositories, it's sometimes the percent of loans in their portfolio that determines whether they are a HMDA reporter. It's sometimes the dollar amount of loans that they are making. You know, looking at Regulation C and you have to puzzle it through.

So, you know, in the interest of making things more straightforward and simple, let's just have one straight threshold, 50, and if there's a lender that's, you know, making 20 or making 30, and it's a bank, you know, we'll at least have a CRA exam that looks at a few years of their lending activity.

LEONARD CHANIN:
Okay.

JAY BRINKMANN:
If I could just mention a little bit of industrial organization. A bank that small probably doesn't have a full staff to do all of the different issues associated with making these loans and a typical structure would be they will make some loans to their existing customer base, maybe pick up a few on the side, and they will essentially then rely on an upstream correspondent to run the credit, to handle everything for them. They will close it, but it's immediately sold up.

So then the question is, what is of value to find out? It would be a value to find out how many loans are being made by these small institutions, but the expectation of then having any type of meaningful analysis of all of these different variables. Now it could be the upstream correspondent says, here's what we are collecting; we are giving it back in the way, so you can send it in. So it's the same information on the same loan. 50 loans, they are really originating through someone else's platform.

LEONARD CHANIN:
Okay. Thank you.

PAULA BRYANT-ELLIS:
I wanted to get the panel's perspective on home equity line of reporting. Today it's optional. I wanted to know the panel's thought on should it be required and how would collecting that HMDA data advance HMDA reporting?

CY RICHARDSON:
I think it should certainly be required, as I mentioned earlier. Within the broader context of the economic malaise we are in, I think folks who are both aging in place and remaining in their homes in certain geographies, who are trying to invest in their homes, to build back equity, I think it's important lens to understand and to gauge and I think it should be a compulsory component of expanded HMDA reporting.

LISA RICE:
We also see that HELOCs are gravely impacting loan mitigation efforts, loan modification efforts, and so it would be very helpful to have information about what's happening in that space so that we can track and gauge, you know, just exactly how it is impacting homeowners.

JOSH SILVER:
And I just want to echo the comments of Cy and Lisa. It should be a mandatory reporting item and we state that in our testimony. And in addition, I think it's important to know for future regulatory rule making purposes the presence of HELOCs and whether there's problematic practices because the Federal Reserve Board just revised the homeownership and equity protection act, Regulation Z that implements HOPEA and not to extend some of the extra protection to HELOCs. The theory is that banks make HELOCs and hold HELOCs on the books and banks are more regulated than other institutions, therefore we don't think we need to expand the extra, you know, Regulation Z to HELOCs, but is that true? I kind of hope it's true but let's have that as a mandatory reporting item in HMDA and see if that's true and if it's not true then we need to go back and clang Regulation Z. We know that there's abuses -- you know, significant abuses in the home equity line of credit market, so we actually did -- we actually did think that the extra Regulation Z should have been applied to HELOCs. HELOCs and HMDA data is important for a lot of purposes, including regulatory.

THOMAS NOTO:
I think we would go a different way on that. You know, they are not for purchases generally they are not for home improvement. They are a field, I think from the original purposes of HMDA. There's a lot on the table that needs to get worked through and I guess our suggestion would be, let's work that true and not layer on additional reporting requirements or additional categories of transactions.

PAULA BRYANT-ELLIS:
Would that be a significant increase or burden on your organization to start reporting on HELOCs?

THOMAS NOTO:

My organization, right now, it probably would not be, just given volume flows, but I'm sure it would be for others.

JAY BRINKMANN:
One of the things to keep in mind is that HELOCs are made through the consumer divisions of banks as opposed to the mortgages. What you are requiring them to do is reach over to a portion of the institution that they may not even talk to, and say, by the way, now we've got to incorporate that reporting in or else in the sense by the way you've got this separate reporting over there of which the mortgage division has no direct responsibility. There are some institutional challenges in attempting to expand that too much.

LISA RICE:
Can I just make one very anecdotal comment, but when I purchased my home I wasn't even thinking about getting a HELOC and my mortgage originator -- I purchased a home with a loan from a depository institution, retail, and the loan officer said to me, you need to get a HELOC and gave me all of these reasons why. And so I was sold my mortgage and my HELOC at the same time by the same originator. Every institution doesn't do it the same way. I didn't ask for it. It was something that the lending institution sold to me, and she did a very, very good job of selling it to me. I think there are different experiences out there.

JOSH SILVER:
I just want to respond quickly. There are different departments in the bank that do different things and we have heard that many times over the years. I remember back in the late 1990s, the whole issue of banks acquiring subprime mortgage specialists and community organizations were saying if you walk into a city financial office and you qualify for prime, can you get the prime product? And the response was, well, it's different departments.

So I think it's about time, whether it's a data disclosure requirement or other incentives for the departments to start talking to each other because I think that's going to make a more efficient and equitable lending market place.

MALE VOICE:
Bravo.

ELIZABETH DUKE:
Does anybody here have a question that you haven't had a chance to ask.

LEONARD CHANIN:
So if you report home equity lines, what would you report? The line is established, let's say, for $100,000 potential draws. You may or may not have an initial advance. Let's leave aside reverse mortgages in terms of coverage or possible coverage of those. Would you report the $100,000? Would you report if there's advance of $10,000? $10,000? It's only that snapshot. It's not a future snapshot. And what value is there in those data fields?

JOSH SILVER:

I think certainly reporting the initial line because the lender thought the borrower was qualified for up to that amount. Now, you know, have a public comment period. You know, whether there needs to be an additional disclosure when lines are drawn. And I think that's -- I think it's a very important when you think of combined loan to value ratios and other underwriting variables to know how much -- how much potential debt the borrower is taking on. So you know, at least the initial line and let's explore whether we are going to be creating -- I hope over time a longitudinal database when he have -- you know, with linking hopefully the loan performance information that HUD is collecting with HMDA data. So if we are over time collecting a longitudinal database, you know, I think you can think about also when there's a draw on the home equity line of credit.

LISA RICE:
And so let me also say, I don't think that reporting the initial line, the credit line is unuseful. I think it could be very useful. So, for example, over time if we see that through the HUD database that a home is under water, that helps us to paint a better picture of how that loan was that property was evaluated and that lender's underwriting processes and maybe perhaps how well that lender is monitoring the appraisal vendors that they are using because if the home is under water on the first mortgage but then they have a HELOC, that raises all kinds of other questions, right?

LEONARD CHANIN:
Thank you.

ELIZABETH DUKE:
Well, with that, let me thank panel one. You have done a terrific job and the information has been very helpful. We will take a break now and we will reconvene with panel two at 11:00.

[Break]

ELIZABETH DUKE: Okay. If everyone will take your seats, we will start up again with panel two, where we have Tom Deutsch, executive director of American Securitization Forum.

Lance George, research associate, Housing Assistance Council.

Paul Hancock, partner at K & L Gates LLP.

Patricia McCoy, director, Insurance Law Center and Connecticut Mutual professor of law at the University of Connecticut School of Law.

Mark Pearce, Deputy Commissioner of Banks, North Carolina Banking Commission.

And Janneke Ratcliffe, associate director Center for Community Capital at the University of North Carolina. And as a graduate of that university, I would just like to go say go Heels.

[Laughter]

Let's start.

TOM DEUTSCH:
Thank you very much for inviting me to testify this morning on behalf of the American Securitization Forum regarding potential revisions to Reg C, which implements the Home Mortgage Disclosure Act.

By way of background, the ASF is a broad based professional forum, in which participants in the U.S. securitization market advocate their common interest on important legal, regulatory and market practice issues. ASF members include over 330 firms from all across the securitization spectrum, including mortgage, credit card, auto, student loan, originators as well as in particular the investors and rating agencies that review, evaluate and ultimately purchase those securities.

Many of those production of the data, as well as the recipients of that data, are quite important in the securitization markets, and obviously there's a significant amount of initiatives going on right now about increasing the availability of information of both rating agencies and investors to be able to review the credit quality of the underlying assets.

Because of the bulk of housing, finance takes place in the capital markets via securitization, either through the GSEs or through private label market. ASF offers our observations today with respect to potential HMDA reforms given their significant impact on our members.

My testimony today will address four major topics. One, the need for standardization across regulators on loan level disclosure requirements.

Two, the implementation costs associated with increasing loan level disclosure.

Three, the privacy considerations surrounding enhanced loan level disclosure.

And four, the role of the ASF link in protecting borrower privacy but enhancing the tracking of performance of loans over time.

ASF has been and continues to be very supportive of transparency in the mortgage lending. We agree with HMDA's original purposes of enabling officials to target public and private investment where needed, evaluate the role of institutions in meeting community housing needs and enforcing fair lending standards. However, we are concerned over the potential impact of multiple layers of mortgage loan level disclosure regulation without effective coordination in the regulatory community. Obviously HMDA data collection does not occur in isolation.

Given the recent market dislocation, mortgage lending disclosures in the securitization process more generally have been subject to numerous reform efforts, both market driven, as well as policy initiatives. A piecemeal approach to developing additional disclosure requirements implemented without sufficient coordination among regulators will likely result in multiple and possibly competing disclosure requirements. We believe that any such reforms need to be considered and implemented on an interagency basis to ensure that there's a level playing field for all market participants.

The ASF is also active in identifying, designing and activating numerous industry standards, including Project Restart to rebuild the securitization market. Late this spring, the Securities and Exchange Commission also released new proposals to change regulations to require loan-level disclosure. These proposals draw extensively from ASF's Project Restart and are in line with the requirements of the Dodd-Frank Act. ASF has submitted in detail 208 pages of responses to the commission regarding its loan-level RMDS disclosures last month, and the commission is expected to make a review of the more than 150 comment letters they received before they issue proposed rules in the coming months. Also, the recent data collection programs vary across several key aspects, namely who is to report the information, which loans are covered, who can access the information, what data points are required, how the information is technically presented and how the data points are defined. We caution and urge strongly that any proposed additional revisions should only occur in coordination with the other agencies. We'll also note that given the ongoing debate about the GSE reform efforts, there is significant consideration about what should the future of the GSE market look like. GSEs currently don't report a significant amount of loan-level information in their information process as opposed to the other processes. As we move forward in that credit debate, the credit underwriting and the due diligence would vary quite significantly on whether or not there's the existence of any kind of government guarantee behind the securities issued with the mortgage loans backing it.

We endorsed the provisions of loan level data to investors and the regulatory agencies. We recognize the process of capturing the necessary data will create new information to system challenges from market participants and of course, the extensive corresponding costs with those system upgrades to capture more information. This burden will fall equally on small participants, who are less likely to have the internal resources to quickly build the needed systems, and on large participants who, despite having greater internal resources, have to cope with handling data on a much greater scale than the smaller counterparts. In absence to the RMBS markets since the publication of our RMBS packages last year, industry participants have understandably been reluctant to undertake the considerable expense to increase their data reporting.

Privacy considerations for RMBS disclosure, both within HMDA as well as in the broader financial markets, are quite extensive and quite concerning. We would certainly encourage participation and direct connection with the Federal Trade Commission.

Finally and very briefly, I would also encourage the adoption of the ASF link, which is a numbering system we developed last year to enable connection of the origination of mortgage loans with the servicing performance loans over time. So you can actually see, have a bar code to connect, the origination data with the servicing performance later. Thank you very much for your time.

ELIZABETH DUKE:
Thank you. Mr. George?

LANCE GEORGE:

Thank you, Mrs. Duke and Board of Governors. The Housing Assistance Council is pleased to testify before the Federal Reserve Board hearings on Home Mortgage Disclosure Act. We view these public hearings as an excellent opportunity to improve HMDA data collection efforts and increase our understanding of rural mortgage lending activity.

The Housing Assistance Council, commonly referred to by our acronym HAC, is a national nonprofit that supports affordable housing organizations in rural areas of the United States.

A wide array of issues and positions concerning HMDA have been presented here today, many of which HAC agrees with and supports. However, the Housing Assistance Council wishes to focus on several issues that directly impact HMDA's ability to provide useful information on rural America's home lending markets. Primarily, we wish to address the issue of undetermined HMDA coverage for rural America.

HMDA data are critical resources to understanding lending trends, however, there are significant limitations to these data in respect to rural areas. HMDA falls short of achieving its ultimate goal due to incomplete coverage and information. There are two major filing exemptions that limit rural coverage. First, lenders with assets less than $39 million in 2010; and secondly, lenders that operate exclusively outside of metropolitan areas are generally not required to report. These exemptions disproportionately impact small lenders that operate in rural communities. For example, of the 989 lending institutions with assets totaling less the HMDA filing exemption threshold in 2009, 70 percent were headquarters in rural counties. The filing exemption for lenders with offices exclusively outside of metropolitan areas is even larger. These institutions likely represent one of the few sources of credits in many communities.

The extent to which HMDA accurately captures rural lending is currently undetermined and many experts believe it to be lacking. Even the Federal Reserve Board's own senior economist, Robert Avery, Kenneth Breverate and Glen Canter, state in a 2007 report, “While HMDA coverage for MSAs is quite complete, reporting exemptions lead to significant distortion in coverage of rural area.” They go on to say, “For these reasons, rural areas are often dropped from any analysis of HMDA.”

In light of these glaring omissions in HMDA reporting and their impact on rural coverage, the Housing Assistance Council recommends that all institutions, regardless of location or asset size be required to submit standard mortgage finance reporting and lending data under HMDA.

Secondly, and briefly, we would like to quickly address the issue of manufactured home reporting in HMDA. Manufactured housing is an important source of affordable housing across this nation and especially in rural communities, and more than half of all manufactured homes are located in rural areas.

The manufactured housing -- I mean, I’m sorry, the Housing Assistance Council applauds the Federal Reserve for enhancing HMDA to include reporting that identifies manufactured home loans in 2002, however, the level of information on personal property lending for manufactured homes in HMDA is largely unknown. Personal property lending, or chattel loan as they are commonly referred to, are more likely to be utilized when financing manufactured homes. Reporting of these specific loans should be required and publicly available through HMDA.

Additionally, manufactured home loans and applications should indicate whether the loan or the application was a personal property or real mortgage loan. The inclusion of these updated enhanced manufactured home data will provide for a much more complete assessment of lending activity nationwide and particularly in rural areas.

In closing, we would like to reiterate that the Housing Assistance Council is not only a stakeholder, but a staunch advocate for the Home Mortgage Disclosure Act. HMDA is vital to understanding and improving the affordable housing lending activity, however, we also believe it can be enhanced to better capture home lending activity, especially in rural communities. These improvements would greatly advance our understanding of rural home credit markets and help ensure that all residents have access to fair and affordable credit.

HAC is pleased to have this opportunity to testify on improving the Home Mortgage Disclosure Act. We are submitting a written copy of our testimony, which includes additional comments on HMDA and rural mortgage markets. Thank you.

ELIZABETH DUKE:
Thank you. Mr. Hancock.

PAUL HANCOCK:
Thank you. I'm honored to be here. While I now practice law with K&L Gates and represent lenders, my background on HMDA is long. I have worked with many people in this room for a long, long time. Going back, I first became involved in HMDA in 1988, when the Color of Money series was published in the Atlanta Journal and Constitution. For those of your with grayer hair than mine, you might remember that. It was based on very limited HMDA data. It was -- we only knew at the time the geographic location of the property that was securing the loan, and yet the series of articles that was published in the Atlanta Journal and Constitution that documented the disparity and originations between white and black neighborhoods won a Pulitzer Prize.

I had just become chief of the housing section in the civil rights division at the time and was charged with the responsibility of trying to get to the bottom of whether banks discriminated in lending. It turned out to be a very complex investigation. We relied heavily on HMDA data, and it led to the first lawsuit the department had filed challenging discrimination in underwriting.

We have come a long way since that time, and HMDA has evolved since that time. We began to get information about disposition of applications that proved very valuable to enforcement officials. And yet in the almost 20 years that that data has been reported, we've had lingering disparities in denial rates between minorities and non-minorities, and it never has been thought in and of itself to provide a basis for filing a legal claim.

HMDA, to me, has always been a starting point, which you could use to target lenders that might need further scrutiny and then you dived into it, looking at loan files and looking at other data to make a decision as to whether there's a problem or not. I must say, I approached this not as a researcher or as an academic, but as someone who has decided whether to bring claims against lenders and someone who has defended claims against lenders when they are brought. HMDA has always been a starting point. It's been very useful over the years. I do think it's subject to misuse as well, and I state the new pricing information as an example.

Again, while we've had disparities in underwriting that have lingered for years and no one has ever thought to bring a legal claim based just on the HMDA data itself, beginning in 2005, we began to get a very limited subset of data about pricing that reported only a portion of the loans and only those that met a threshold, and yet after that, we began to face legal claims that were based solely on the HMDA data.

The rate reported loans, the threshold loans were designed to capture the bulk of subprime loans and exempt the bulk of prime loans, and yet the threshold triggers were imperfect. In the industry, subprime loans were viewed as a product, not a price. Yes, they were higher priced, but many times prime loans, because of their attributes, exceeded the threshold. So they were reported.

And yet, legal claims had been filed not only -- not only challenging the lenders overall pricing policies, these loans have been labeled now as subprime loans. They have been labeled as high cost loans. I think that takes it to a misuse of HMDA.

We're -- the question is, what's the purpose of HMDA? Is it really to give enough information that enforcement officials can use it to target and then dive in to see whether discrimination exists, or is it to provide enough information so researchers and others just with the data reported can make decisions as to whether loans are fair or unfair.

In my experience, we'll never -- and we're clearly headed toward the latter of those two issues. However, in my experience, on both sides of the issue, you will never be able to make a decision without -- without doing a complete investigation. This can be a starting point, and the more information you have, perhaps the better you can target, but it will always be a starting point, and you will need to get into awfully detailed, very complex, very time consuming very costly investigation to make a decision as to whether someone has discriminated unlawfully.

I know you are looking at broader issues, but as you do this review, I suggest that you give some consideration to some more basic issues about HMDA, including the reporting codes themselves. If we are going to use this information to evaluate the practices and to make decisions on the practices of lenders, it's important that the information you have accurately reflect the practices of the lender, who is doing the report, and I -- the reporting codes are somewhat archaic. They were designed for a system -- a business system that doesn't exist anymore.

For example, in automated underwriting today, a loan might come back as approved but subject to three or four pages of conditions. And the question then becomes if one or more of those conditions aren't satisfied, how do you report the loan under HMDA? The lender might have considered it approved, but if conditions aren't satisfied, is that a denial? Is that approved but not accepted? Or is that an approved loan? And I don't think the guidance from the Fed has been clear on that, sufficiently clear, that lenders are reporting it consistently.

Much is up to the decision of the lender as to when a credit decision has been made, can it be treated as a withdrawn application, for example, at some point and when can it be withdrawn and when can it not any longer be completed as withdrawn.

It's important because if the lender -- if the decision -- if it's approved, and then conditions aren't satisfied, if the lender under the guidance that's required to report that as a denied loan, then when the regulators come in and when the researchers analyze this new data, they might see that a -- a person with a seemingly good credit quality was denied a loan without -- without knowing that to the lender that loan had been approved. It's only because the loan had a condition -- a condition hadn't been satisfied.

And the board's guidance on this, if you look back to the 2002 guidance, it's very vague. It's very vague as to what -- what is a customary closing condition that could be considered approved but not accepted, and what is an underwriting condition that must be treated as a denial. And the comments that were received indicated that some lenders viewed failure to appraisal problem might be a customary closing condition or failure to verify income might be a customary closing condition. I could certainly argue the other side of that, saying that's an underwriting condition, but it would guide whether the loan is considered as -- as denied or approved.

And if I could just say one other point to it. That gets to the issue too off on pricing, to the extent that you want to reflect the pricing policy of the lender. So the extent that that price is driven by third parties, such as loan brokers, it isn't reflecting the pricing practices of the lenders. So I ask that you consider that as we go forward.

ELIZABETH DUKE:
Thank you. When I said you could finish your sentence, I underestimated a lawyer's ability to

PAUL HANCOCK:
Yeah, right.

ELIZABETH DUKE:
Ms. McCoy.

PATRICIA McCOY:
We'll test it with me. My name is Patricia McCoy. I'm a law professor at the University of Connecticut. Thank you so much for having me today.

In my remarks, I would like to discuss two things, the need for a comprehensive federal mortgage database; and two, privacy safety guards that could balance public access with borrower privacy.

In the wake of the financial crisis, it became apparent that the need for public mortgage data has grown beyond the three purposes contemplated by HMDA. The federal government also needs mortgage data to analyze safety and soundness, investor protection, consumer protection and systemic risk.

As we know, HMDA's data fields currently are too narrow to serve these added purposes very well. Just as an example, HMDA right now cannot address the effect of various loan terms on default risk, something that, of course, had systemic implications.

Partly in response to HMDA's limitations since 2008, the federal government has established other scattered databases on mortgages. We know of the loan modification databases at the Treasury Department, OCC and OTS. The SEC plans to expand mortgage reporting for asset-backed securities. Dodd-Frank instructs HUD and the new CFPB to set up a default and foreclosure database. The Federal Reserve Board will likely need expanded mortgage data to assess systemic risk. Meanwhile, state banking regulators have their own system and now I'm breathless.

So having multiple mortgage reporting systems simply does not make sense. It is difficult to study many important research questions without merging these disparate data sets, but merging is difficult because the data fields are not standardized and the coverage varies. It also puts duplicative reporting burdens on lenders.

Consequently, I urge the board to the extent possible within its powers to consider aiming for a comprehensive mortgage database, and -- and at a minimum trying to standardize terms across regimes.

Now I would like to turn to privacy safeguards. HMDA has a long and very important tradition of public access to HMDA data. When Congress mandated expanded HMDA reporting in the Dodd-Frank Act, it sent a clear signal that public access should continue.

At the same time, as HMDA data expand to include things like credit scores and debt to income ratios, concerns about borrower privacy become heightened. So we have a challenge. It's to design safeguards to give borrowers privacy, while allowing the fullest possible public access to HMDA data.

One way to do this is to adopt a two tier disclosure system that adjusts the level of public access according to the sensitivity of the data. In the first tier, members of the public would have full access to a scrubbed set of loan level data that would blur or censor a few data fields to protect the identity of the property and the borrower. And I refer you to my written testimony for four techniques for doing this.

However, the privacy protections in this scrubbed public data set would make it impossible to analyze certain research questions that are important, to permit that type of important research under tighter safeguards, I would also have a second tier, which would give access to virtually the complete data set, but restrict that access to three groups: to federal researchers, to state government analysts, and then to what I call trusted independent researchers under strict safeguards such as the Census Bureau's research protocols.

My written testimony also contains a fuller description of the census system. This two tier approach is one model, but it's not the only one. And here we don't need to reinvent the wheel. In addition to the Census Bureau, other federal agencies have grappled with this issue. They have well established privacy protocols that allow outside researchers to do sophisticated research on highly sensitive data. These include the social security administration. Thank you very much.

ELIZABETH DUKE: Thank you.

[Laughter]

Mr. Pearce, I promise we will have to get back to that.

MARK PEARCE:
Good job. Tom Noto said I could use the time he didn't use this morning.

[Laughter]

But I will stick to five minutes if I can.

Good morning, Governor Duke, members of the Consumer Advisory Council and staff of the Board of Governors. My name is Mark Pearce and I serve as chief deputy commissioner of banks for the state of North Carolina. Our office is the primary regulator for 85 state chartered banks, over 600 mortgage companies, and 6,800 loan originators. Thank you for the opportunity to testify today.

At its core, I believe HMDA operates on the principle that having good data can cast sunshine on potential market failures, and so that these failures can be corrected. While HMDA data reporting has expanded and evolved over its 35 years, I believe HMDA should leverage the existing technology we have today to provide more timely, reliable and comprehensive information without adding undue burdens on reporting lenders.

In my allotted time, I will focus on four recommendations. First, I believe HMDA should be reported and published on a quarterly basis. Until this past Monday, the latest public HMDA data online covered originations from 2008. That's more than 20 months since the last reportable loan was originated. The long time period between origination and public availability reduces the relevance of the HMDA data set, especially for regulatory and enforcement purposes.

Now, I don't believe this will be difficult to achieve. HMDA loan activity registers are already required to be maintained quarterly. All that we need to do is require the quarterly submission of that data to the regulators and to work with the FFIEC to develop a reasonable and predictable schedule of public reporting.

State regulators are now routinely, as Pat mentioned, requesting loan level data from large non-bank mortgage companies in the course of our multi state examinations. In North Carolina, we have taken that one step further by implementing a rule to require quarterly loan level reporting.

We've worked closely with lenders and with software vendors to integrate the collection and the reporting of this data with the lender's own origination system. While we are in the early stages of implementation of this rule, it's clear that the technology exists today to report loan level data on a more frequent basis than is occurring today.

Second, HMDA should include both the NMLS unique identifier, and a universal loan identifier to enable regulators to leverage other data sets, similar to the points Tom was making earlier. State regulators working through CSBS and Armor have implemented the nationwide mortgage licensing system, which tracks the licensure of individual loan originators. Adding this NMLS unique identifier to HMDA, as permitted by the Dodd-Frank Act, would allow regulators to conduct better more granular analysis of originator activity.

In addition to knowing who originated the loan, HMDA should include the universal loan number to enable to connect databases in the future. For instance, if the new loan performance database required by Dodd-frank that was talked about a lot this morning is developed with loan level data, then it might be possible to create a life cycle of mortgage loans. Life cycle data would enhance our understanding of the factors, characteristics and patterns related to mortgage default and promote more effective risk-based regulation.

Third, the board should look for opportunities to reduce compliance complexity. Earlier this year, 35 states, including North Carolina, reached a settlement with CitiFinancial Mortgage related to its failure to report 91,000 loans on its HMDA log due to an unintended and undetected programming error. While honest mistakes happen, current HMDA definitions of coverage and classification increase both the likelihood of errors and the likelihood that those errors will go undetected. Having a uniform minimum reporting threshold and broader loan coverage should actually reduce compliance burdens while increasing the portion of loans reported.

Fourth, HMDA should piggyback on new uniform data reporting standards to collect information on pricing, underwriting and loan features. As a result of recent market failures, investors and regulator alike are revamping data reporting requirements. For instance, FHFA will begin capturing standardized load level information early next year. HMDA can piggyback on this data or other data, as Tom mentioned, to gather underwriting and pricing information with little burden on mortgage lenders. Pricing and underwriting data is essential to improving the regulation of the mortgage market.

In conclusion, as the board engages in its review of HMDA, I hope it does so with an eye to the current and future challenges of the mortgage market. The days of easy access of credit are over for the foreseeable future. Major lenders have tightened credit. The average credit score for GSE loans is now 750. And nine out of ten of these loans have a loan to value ratio in excess of 80 percent. Today's tight credit conditions makes HMDA data as important as ever, as there's a real potential that minority neighborhoods will suffer a disproportionate contraction of credit just as they suffered disproportionately from the expansion of unaffordable loans in recent years. That was a long sentence, but thank you.

ELIZABETH DUKE:
Ms. Ratcliffe.

JANNEKE RATCLIFFE:
Thank you, Governor Duke, members of the Consumer Advisory Council and Federal Reserve staff and any other UNC fans that are here.

It's an honor to have the opportunity to share thoughts about HMDA, particularly at this particular time in the US housing finance system. In the 13 years that our center has studied how mortgage markets impact lower income and minority households, HMDA has been vital. For example, we've used it to identify disparities in incidents of high priced lending across borrowers, neighborhoods and regulatory environments. The ability to distinguish lender and neighborhood have been key to our working comparing reinvestment act lending to that of the overall market.

Still, HMDA left many critical questions unanswered, and we see much promise in financial regulatory reform provisions for HMDA. As these new provisions recognize, we are in a new day in which the value of quality, publicly available data has been confirmed. Few would argue that we wouldn't have been better off if we had access to this data sooner. When researchers and advocates calling for intervention were told that their cases were built on evidence that was insufficient or too anecdotal, while private data was often off limits for public purposes.

And today it's certainly hard to argue that data is not available, given advances in technology, the array of data currently collected and reported through private sources and the information soon to be collected by such entities as the SEC and the state bank examiners.

In this new day for HMDA, my comments will present several principles that should be observed. First, HMDA's unique attributes must be preserved to the extent they are critical to its core purposes. These are that it's public, disaggregated; that it covers applications, as well as loans made; that it covered all loans, not just a sample; and that it is specific with regard to geography and lender.

Second, as a good researcher, I should say that more data is better. The additional fields to be added are well overdue, especially credit score and value. Loan to value and credit score are the two factors most heavily relied upon to assess risk and make loan decisions, yet they have never been in the data set and their inclusion will surely add authority to evidence derived from HMDA. Other possible fields to consider, we heard many of these already, LTV, CLTV, cash out refi, home equity lines of credit, particularly linked to first if made at point of purchase, reverse mortgage information, adjustable rate mortgage features, et cetera.

Third, better data is better. There's an opportunity to implement standardization as we have already heard of data definitions and reporting requirements across institutions and regulators wherever possible. For example, Mr. Brinkmann's reference to MISMO and MERS, the SEC and AFS data sets and the SAFE act requirements. This would reduce the cost of compliance, improve the ease of data use, as we have already heard.

Analysis of systemic conditions could also be much improved by two other items: better information on the lender organizational structure, parent companies and subsidiaries, and better transparency of secondary market activities. It's no longer possible to look at the primary market without looking through to the secondary side, as we have learned from the recent crisis.

Next, it should be easy to use. We call for the development of an interactive user interface for those without advanced data management capacity, which will increase true public access.

Fifth, privacy concerns need to be addressed, although much private information is readily available to those who can afford to buy it, more data in the public domain does raise legitimate privacy risks, which all of us who value HMDA should be cognizant of. Privacy concerns arising from an expanded data set could be addressed in a number of ways, as Pat has alluded to, while preserving the fundamental public utility.

These suggestions include providing easier public access to aggregated tables with as much detail as possible, using statistical conventions to present loan level data in a form that protects individual borrower information and making fuller data available under controlled conditions.

Further, loans need to be traceable, and we applaud, as do others here, the plans to add unique universal identifiers. This will facilitate the ability to trace performance through the primary and secondary markets, as well as more accurately relate first and second liens, modifications and perhaps even tied to refinances.

Finally, we also need to recognize HMDA's limations. It could not keep step with the industry, though these pending changes will go far in helping it catch up.

As the next problem emerges, however, are we going to have the right information when we need it? To address this concern, we also suggest institutionalizing the process for updating HMDA, for example, with a timetable and perhaps an advisory committee.

Thank you for your attention and I look forward to your questions.

ELIZABETH DUKE:
Thank you very much. With this panel, I want to go back to the point we explored a little bit with panel one, and that is this idea of a broader database on mortgages and mortgage finance and the linking of various databases and the linking used for a number of different purposes and and number of you have brought up the standardization of the data and the definition of the fields. So let let me start, if I could with the American Securitization Forum's protect restart and ask you just just from having worked on that project, where are the the overlaps and the places where it would be very easy to have the same definition for data and where are the potential problems in trying to match up all of this?

TOM DEUTSCH:
Just a brief bit of background. What project restart produced within the RMBS sphere was approximately 150 origination fields, which could be anywhere from 20 to 150 depending on the type of loan. It could only be 20 data fields if it's a prime loan with, you know, effectively be TBLA eligible.

If you have an option ARM with lots of bells and whistles, that gets into hundreds of fields where the borrower -- I'm sorry, the investor in those mortgages and mortgage backed securities want to see all of those different characteristics. So one very good example of what investors want to see that they historically have not seen is the level of verification on income. Historically there were a lot of variation among lenders as to the definition of what was a full documentation loan, what was a sort of documentation loan and what was a no document loan. I think throughout the financial crisis, some of the large financial institutions had very good definitions of a full doc loan, some of the lenders that are no longer with us had, let's say very weak definitions of what a full documentation loan is.

So there are areas like that, where there could be, I think, some good standardization between what the secondary market would like to see, and potentially what the HMDA users would like to see as well. But I think that there's a broad spectrum in there, where it sort of has to be defined what is going to be useful for HMDA purposes and then what could be pulled from that.

I have to emphasize again that Project Restart and the SEC only applied to private labeled mortgage backed securities. 90 percent are not going into private label or will not go into private label securities. They are being either portfolio or going through a GSE process that does not require loan level information.

ELIZABETH DUKE:
And that brings up a couple of questions. One, and we talked in different contexts, the need to if you don't have information about all loans then you don't have a complete data set and it's very hard to use. So regardless of what the expected channel would be, it would seem that there's a good argument to be made for collecting the same data so that you can get a universe definition. So that brings me to the question of optional data. And in some of the other hearings we've had discussions of the usefulness of optional data. And so for those of you who use this information, can I ask you, you know, how extense sieve your use of optional fields and how useful are they?

PATRICIA McCOY:
Well, you know, the problem with optional reporting is -- is that you are not going to have full coverage, and it seems to me in a way it -- it punts. If it's important enough to report, we should probably require reporting and not make it optional.

In the data analysis that I have done, we have not looked to optional fields because the -- the number of observations is lower. The standardization of the reporting is more casual, and it's much more helpful to look at mandatory fields.

MARK PEARCE:
I guess I would go back to the notion that -- or I think implicit in your question is that optional data might allow some additional reporting but not creating burdens on people who don't have loans with those characteristics. I would agree with Pat and in some ways encourage the board to take a more is less approach in that by requiring more data fields, I think there's the technology that can be built into the origination system to collect that data and populate those fields. And so if a loan didn't have a particular feature, then, you know, there would be a blank

in that or a zero in that but we would ask the question, does your loan have an interest only feature or something along those lines.

And by asking that question, we can get a full database, and I don't think it actually adds additional reporting burdens if you build it into the loan origination system, which I think is pretty straight forward at this point.

JANNEKE RATCLIFFE:
And I would add, I think it's obvious from the conversation with the last panel as well, so these optional fields, this is a self fulfilling prophecy. You don't use them because they are not robust and you can't draw the conclusion they are not good fields to collect.

ELIZABETH DUKE:
Let me move to the ultimate optional field which is the reporting of race and ethnicity at the very at the time of origination, which for the borrower is an optional answer. For the lender, it's, you know, it can be done by observation but certainly for an Internet application, that gets very difficult to do.

So can you -- can you talk a little bit about that field, in particular?

PATRICIA McCOY:
Well, first of all, HMDA mandates the reporting of the fields. It doesn't mandate borrowers to disclose it, but it does mandate the reporting and it -- it shows a real public value in the reporting of this. So our task is to strengthen the reporting.

My concern and I have seen this actually in my own loan applications, are loan officers or brokers saying when they get to that box on the mortgage application, well, you know, you don't have to tell us. My concern is -- is loan officers counseling essentially applicants not to reveal and we should take that as a serious concern and try to obviate the counseling that would suppress reporting of those data fields.

MARK PEARCE:
Yeah, I would chime in that, you know, the purposes of HMDA are identifying discrimination or at least that's one of the purposes and in the last few years in the mortgage market, no matter the additional data that we've gotten into HMDA, there's still disparities among different racial and ethnic groups and what kinds of mortgage loans they get. And so I think it's really vital to the core of HMDA to collect that data and to -- as Pat said, go back and make sure the people are encouraged to report that are not trying to evade it.

In some ways, some of these additional fields we are talking about on pricing and underwriting may really be helpful by having more data. We could actually maybe get a better handle on what the actual disparity rates are between different ethnic or racial groups and from talking to some lenders, I think there's a sense that, you know, if we actually told you a little bit more, we could reduce that unidentified disparity down to a much smaller number, which I think a lot of folks would be interested to see and might soothe some concerns around discrimination in the market place.

PAUL HANCOCK:
If I could add to, that it's crucial in fair lending, in knowing the ethnicity or the race. Agencies have been able to do, it even in some cases there are a high number of borrowers who don't report. I guess one issue to consider is what a lender should do if -- if it's by Internet or by phone and when they meet with them in person they see what their race is, should they put it down or shouldn't they put it down? As I understand the guidance to date, they can do it. They are not required to do it. They can do it, but, I mean, the fact -- if that can be tightened up, it certainly would be helpful. But it's a very sensitive issue. If someone doesn't want to say what their race is, you record it or don't force it? And it's -- you know, it's in an area where this is the only area in business where we ask somebody their race. In consumer lending, it's not only not required, it's unlawful to do it. So it's -- it's difficult issue.

JANNEKE RATCLIFFE:
You know no matter how much financial resources or access you have to data, HMDA is really the only place you can get the race data. It's very important that it gets tightened up. I think in the spirit that HMDA is designed to shed light on areas so that therefore the practices -- it's more of a deterrent, just than an exposure. It prevents bad behaviors and sends them to the places where the shadows are that insisting on better and continually improving the race collection -- the race data collection is key.

ELIZABETH DUKE:
And given your comments, what were your thoughts about requiring the borrower to answer the question, to select?

PAUL HANCOCK:
I would say that's very difficult. I mean, race is so sensitive in asking someone telling someone they have to reveal their race. I don't know that we need that to do the analysis that we are doing. We have been able to do it without requiring that. Yes, if we can tight ten up some. There are a number of situations where lenders do learn the race even if someone didn't disclose it. Should they put it down if the person refuses to disclose it. That would be a step that would get more information, but telling someone today that they have to say what their race is, I -- I would be troubled by that.

ELIZABETH DUKE:
Okay. Thank you.

Ms. Braunstein.

SANDRA BRAUNSTEIN:
Yeah, thank you very much. I have a question, one question, first of all, for Lance about the rural reporting. I think, you know, that's an issue that hasn't come up much in the other panels and by the way, it’s good to have you here to represent that view point.

A lot of the institutions -- you know, the institutions that are excluded are very small, as you noted, and so, you know, part of the reasoning I'm assuming for doing that had to do with burden, and also low number of loans that they might make. But I understand this is a hole especially for groups like yours that work in rural areas. So I just want to know if it was required, as you said, that everybody report, do you have any concerns about, you know, what the burden might do to smaller institutions, possibly credit access? Would it -- would it, you know, possibly make them rethink whether they are going to offer mortgage loans if they had to be HMDA reporters?

LANCE GEORGE:
That's an excellent question, and I really don't know. We have seen both sides of the estimates on the burden and we see higher estimates and lower estimates and we really don't know, but we do believe that there's just a fundamental gap in HMDA coverage with rural reporting and it's been a systemic, you know, kind of a long term systemic gap that we simply don't know.

And, you know, I would fall back on a lot of the discussion in the earlier panel on this, but it's elemental, but it -- you know, it's a large gap within HMDA reporting that, I think the burden would be worth the cost.

SANDRA BRAUNSTEIN:
Anybody else have thoughts on that issue? That work with the data? Any of the users of the data? No? Pat? Mark?

MARK PEARCE:
I can't resist answering a question. I guess this gets a little bit to some of the exemptions from HMDA reporting overall which is the fact that we're determining which loans get reported based on whether you have a branch in an MSA or what your asset size is or what percentage of mortgage loans you make and which category, it just seems like -- which were for all good purposes and well thought out, but it in some ways make HMDA more confusing challenging in the front end. As we just said, as Josh mentioned in the last panel, why don't we have a minimum threshold, whether it's 100 loans a year or 50 loans a year, pick a number and if you are over that threshold report.

From the banks that I have talked to and the mortgage lenders I talked to of smaller size, HMDA reporting is actually not that challenging compared to the question of can they make money in the mortgage business. There's a lot of price competition in mortgage lending and maybe they can get a better rate down the street. Those are the economics driving whether you are in the mortgage business or not and community banks for a long time have been a little less present in the mortgage market than they were historically and that's been driven by price competition, not by complexity of data reporting, in my view.

PATRICIA McCOY:
If I might add, I come from Kansas where it's mostly smaller banks, and there are great spots in the Midwest and the far west that have very little HMDA reporting because they are relatively rural. So I think we have to remember that the really large geographies that are inadvertently left out, and I would expand it.

I would also say it becomes easier for the smaller institutions to report with software, first of all, but secondly, going back to Mr. Noto's point, let's do it all at once and not keep changing HMDA. So let's not put on training wheels in terms of optional fields. Let's figure out what the fields are. Make it as comprehensive as it needs to be. Get that software in place and automate the process.

LANCE GEORGE:
If I could build on Patricia point and some of the statements about advancements it technology and reducing burden but the important point about geography. In rural areas we are only one fifth of the population, but we are usually 80 to 90 percent of the land mass and some of our analysis has -- or I mean has confirmed their indications that there are large swaths, particularly in the plains states that are completely uncovered by HMDA and that's where the majority of these smaller institutions are located.

SANDRA BRAUNSTEIN:
Okay. Thank you very much. That's helpful.

I want to ask one other question because also I promised during the break that I would do so, and that's that Pat asked me if they could talk a little bit about the credit score issue that the first panel discussed in terms of the difficulty of reporting that score in some way, where you can make comparisons across institutions, because people use different models and different systems. And some don't use credit scores at all. So should they have to report it if they are not even using it in the underwriting?

PATRICIA McCOY:
I for better or for worse have looked at a whole lot of individual loan files across all sorts of lenders in the past few years and one -- one thing that I see invariably are -- are the use of credit scores from FICO, Experian and Transunion and so for those credit scores, I would report the actual credit score to the fed of FFIEC in what sounded like the MISMO format that Mr. Brinkmann talked about earlier for -- for an internal credit scoring system at a bank or a lender, I might consider using percentile buckets instead.

But I would urge that when the credit score is reported for the outside credit score, that they record the actual credits. It's hard to determine what happens right at 620, right below it and right above it for the FICO score and if you are only reporting buckets, you can't analyze those types of problems.

However, when credit scores are made publicly available, let's say in my full access tier one system, at that point, you could aggregate them in buckets and that will give substantial privacy safeguards to people, but the Fed needs to know the individual score.

TOM DEUTSCH:
If I could jump in on the bucketing issue versus the actual credit score.

In dialogue we had internally, the bucketing -- although there's some preference, you would like to see the actual credit score, but particularly for institutional investors who are looking and analyzing the performance over time, knowing somebody's 621 versus 622 doesn't really help you a whole lot. 620 versus 720, absolutely. There's a material difference there. But creating those buckets can effectively hide the actual score that could trigger some privacy related concerns versus some narrow or less narrow depending on the appropriateness by creating that band or bucketing, you can help obfuscate a little bit better the borrower privacy.

JANNEKE RATCLIFFE:
I want to reemphasize Pat's point, the big difference, the distinction between the data that the fed takes in and the data that gets reported on the loan level record. There could be many variations of the way you manipulate the credit score data but if you could start with the raw data and the provider and maybe some relative information about percentiles to begin with and then let the fed determine how it gets released publicly.

SANDRA BRAUNSTEIN:
Okay. Thank you. Mr. Chanin.

LEONARD CHANIN:
Thank you. So I want to ask a couple of questions about specific data that have been raised either at other hearings or by other folks. So the Dodd-Frank bill would require the channel to be disclosed or collected, that is, wholesale versus retail. So presumably if a loan is -- I'm not sure if I want to say originated but started by a broker, then you have to have what's been called a broker flag. Someone suggested that brokers should report information. So I want to ask the panelists their view of whether brokers should independently have to report information and if so, what information?

MARK PEARCE:
I will jump in on that. Having been a regulator for mortgage brokers for the last several years, I have a great trepidation about relying on mortgage brokers to accurately report data. We've had a lot of challenges in our review of loan files and other submissions from mortgage brokers across the board and in some ways I would think -- I would encourage the board to focus in on the lender level and including broker flags and back to the NMLS unique identifier, so that if you actually could track who the broker was, you could accomplish the purpose of knowing what was going on in the brokerage channel. You know who the broker was, but you wouldn't -- you wouldn't jeopardize the integrity of the HMDA database and all the challenges of matching data which you can do with the universal loan number, sure, but what happens if the data doesn't match? Did the broker make the mistake or did the lender make the mistake? It would be much better to focus in at the lender, the funder level rather than at the broker level.

LEONARD CHANIN:
Okay. Other views.

PATRICIA McCOY:
Yes -- oh, please, Paul.

PAUL HANCOCK:

I think this is an important issue. The question is, who is responsible for the data that's being reported and if – if -- I mean, HMDA has relied on the data being reported by the entity that makes the credit decision, that might not be the entity that made the pricing decision and particularly with investors being involved in underwriting today, it could be the investor that made the credit decision, not the lender.

In wholesale lending, I mean disparities that we see in wholesale lending that correlated with race or national origin are driven by differences in broker pricing. So if you want to get to the bottom of that, there needs to be some way to identify where that's arising, and it might be that brokers are discriminating.

It might be that brokers' reason discriminating and the problem you have is that you -- you have a lot of very small brokers out there. So if you are going to require the brokers to report, where do you draw the line? And a lender might draw the line against thousands of brokers all charging what they believe is an appropriate cost for their services.

I would strongly support some way of identifying that, whether it be, like Mark says, with an identification for broker, but some idea of what the broker fees are so that if someone wants to look at whether the pricing of a lender or different -- correlated with different factors can see what's causing that. I think it would go a long way to address some of the things that we have, both on the enforcement side and the industry side.

LEONARD CHANIN:
Okay.

PATRICIA McCOY:
This information is in the possession of the lender, and I think in addition to all the difficulties these gentlemen have identified, trying to enforce HMDA reporting requirements against so many brokers, including guys operating out of their car, I think is going to overwhelm the bureau and I -- I would say, let's just stick to the lender level.

LEONARD CHANIN:
Mm hmm. Okay. Other views?

So let me ask you another data point that's been raised, at least I think earlier this hearing and that is adverse action reasons. So whether a loan is denied or not has to be reported but not the specific reasons, at least under HMDA. Other agencies do require that to be reported. Should the board consider requiring the specific reason for an adverse action? How would that be helpful, if it is required? Would it be helpful?

PAUL HANCOCK:
Well, it's helpful in doing file reviews because if you have that information electronically, the question becomes how accurate is it. I go back to saying these HMDA codes reflect a business model that's not in operation anymore. And lenders often don't know what to put down in the feel, they don't know what to put down as the reason for the denial if it's a denial. Again, if you

get a loan approval with several pages of conditions, you know, how do you decide what's the reason for the denial?

I think in practice, it just it's worthy if we could get accurate information on it, I think it would be helpful. The question is, can we do it in a way that we can get accurate information?

LEONARD CHANIN:
Other views?

JANNEKE RATCLIFFE:
I agree that it's an important field to get right. It goes to the core of what HMDA is supposed to help identify and I was just going to throw in, in improving the coding, there might be something that came up earlier today, especially given the situation we're in now, a potential action about if somebody is turned down for a loan because of some recent default on a prior mortgage.

PAUL HANCOCK: Yeah, and I have looked at a lot of loan files and I have seen often that you will see that loan officers or whoever is making the decision is putting down the reason for the denial is we don't extend credit on the terms and considered condition requests. That's the reason, and that could mean anything.

LEONARD CHANIN: You don't find that very helpful?

[Laughter]

Okay. Just one further question. So there's been a lot of discussion, I will call it about postconsumation disclosures, whether it's a loss mitigation, default and delinquency and it seems to be basically two approaches. One is to try and link HMDA data to those either new or soon to be created databases that deal with delinquency and default and the other is to require HMDA reporters to report that information. Would the first on having the link be sufficient, adequate, or is it appropriate to require HMDA to pull in all of this data?

PATRICIA McCOY:
I would prefer the latter. I would prefer that HMDA pull it in, and in a way, this may be low hanging fruit. Ultimately the consumer protection financial -- the financial protection bureau will administer both HMDA and the new foreclosure and default database and will be in the position to integrate the two. It will be much easier for the federal government to analyze a big set of research questions if those are integrated and I think that is administratively possible. I would -- I would at least aspire to that.

JANNEKE RATCLIFFE:
I really applaud Pat's proposal because I think it looks outside the box of where we find ourselves. The piecemeal data seems like a piecemeal regulatory structure, but that's no reason to feel locked in by it. But I will answer it in a baby step way.

In many ways a loan modification is a refinance. I'm not sure if there's a huge distinction, the loan is being restructured. It's similar to a streamlined refinance. It certainly seems like there's a case to be made for treating loan modifications and giving them the HMDA requirements.

LEONARD CHANIN:
Okay. Other views?

TOM DEUTSCH:
As we developed the reporting fields that investors would like to see, this was a real challenges in getting that information. It's not nearly as easy as it seems, because there are so many variables. We came up with over 200 fields. We started up with 6 or 700 potential fields in loan mitigation, loss mitigation. There is sort of some easy fields, is the loan performing? Are they not performing? Once they are not performing or there's some delinquency or loss mitigation, then it opens up an entire box of possible options. HAMP or non HAMP. If it's HAMP, how much was the reduction, you know the 31 percent DTE – that's an easy target – and then you look at back end DTI. Although there may somebody fields within the loan modification and loss mitigation field that may be appropriate or easily produced, there is so many different optional fields or possible fields that it creates a real challenge to develop exactly what those fields look like and I think that will be, you know, a hard discussion.

LEONARD CHANIN:
Thank you.

MARK PEARCE:
And I guess I would say that it's important to do it all at one time, to get all the regulators on the same page and if you can do that by linking, that would be wonderful. If you can't do it by linking, then HMDA ought to take a step forward to have the data because it's critical, because otherwise, HMDA may, in fact, be misleading because it says a lender is making a lot of loans in communities but those loans, if they are not sustainable and they will lead to foreclosure, I don't know that that's serving the needs of those communities.

So I think for HMDA to really achieve its purposes, it has to be able to look life cycle on whether these loans are sustainable and sort of what the best mechanism to do that, probably you know better than I do.

LEONARD CHANIN:
Okay. I'm still stuck on the phrase of getting the regulators on the same page, Mark. You don't spend much time in Washington, I guess.

[Laughter]

With that, I will turn it over to Michael.

MICHAEL CALHOUN:

First, thank you, Gov. Duke and the Federal Reserve staff for the leadership on this and so many other issues and for the impressive panels that you have assembled not only today, but at the other hearings as well.

I want to start first with a couple of coverage issues that have been touched on. In our experience, two areas of lending that have not been captured have been the HELOC loans and then also mobile homes and we saw in our review of the past years and in of the worst lending that HELOCs were often used as seconds in either the refinancing or even the home purchase, and given their key role in that, as well as the fact that a lot of Reg Z and other requirements do not apply to HELOCs, we fear that a lot of the worst lending can get pushed in there. On the other hand, HELOCs also are a standard bank product run out of, as has been discussed, the consumer lending division, which is a different product.

I have concerns with excluding them completely, and I would appreciate some further comments from the panel about are you advocating a total exclusion of HELOCs even if they are used, for example, as a second at the time of loan closing? If it's a partial exclusion, where would you draw that line? Pat, can you start us with that?

PATRICIA McCOY:
Yes, I'm worried about excluding HELOCs. I have seen the use of HELOCs as -- basically piggyback mortgages in the purchase mortgage market, and if you exclude HELOCs, are you then inadvertently encouraging abuses to go into that market? I have become worried about that.

Also, especially if you have a universal loan and property identifier, combined with HELOCs, you can track the expansion of a consumer's debt load over time, at least with respect to their mortgage debt and that is something that we probably want to understand.

PAUL HANCOCK:
Well, I haven't seen a problem with HELOCs. I mean, HMDA amendments over the years have generally come when the government has identified problems that required addressing, like loan denial disparities, the OTS required that to be submitted before it was HMDA.

And there were a number of cases challenging discrimination in pricing. I'm not aware of any challenge to HELOC practices. I can understand the concern and maybe something will come up in the future but it isn't required now. Perhaps there could be abused in the future. We certainly you know, credit card debt was a major cause of the issue as well, and we don't you know, again, as I said before, not only do we not require that, we -- it's unlawful to even -- even ask for the same kind of information.

So, you know, while HMDA has proved to be invaluable to enforcement in obtaining compliance, I just haven't seen in my own experience in both sides as HELOCs of presenting an issue.

MICHAEL CALHOUN:
We saw in our work, several signature subprime lenders who structured the majority of their loans as HELOCs as the loan, not a piggyback second.

PAUL HANCOCK:
Well, I don't   I mean, I don't -- I don't challenge you in what you found. I mean, HELOCs have generally been by depository institutions rather than private mortgage companies, but -- I just haven't seen it, Mike. I haven't seen it.

JANNEKE RATCLIFFE:
So I think it is true that private -- I'm sorry, that depository institutions often offered HELOCs at the point of purchase as part of the 80/10/10 structure or just as here you go, you might as well get this while you are here. They could securitize the first loan but still keep the HELOCs on their books and as we know the second liens, or the home equity lines of credit or closing line credits has been an issue in the foreclosure market. I think that's enough of a sign, combining the facts that I made about that HMDA shines light and you will be focused on the area where the light is shining and focused on the shadows where the light is shining. And if you don't look at the HELOCs that leads to the potential that their abuses will occur there.

And second, the -- the idea of waiting too long to recognize a problem before you start looking at it, we seem to have some early indicators. Mark mentioned it's been 20 months since -- until recently since the, you know, the 2008 data was the last information we had. Think about how many years it will be after the real abuses in the subprime market, the information that would have pinpointed that. Think about how many years it will be before that actually becomes available in a public law or disclosure. So I think there's a danger in waiting too long when there's something already showing up as a problem, potential problem area.

MARK PEARCE:
Yeah, I guess I would piggyback on --

[Laughter]

-- on that. Regulator rumor. So -- obviously foreclosures have been a problem, right? So if we are looking, Paul, for the problem that's out there and where HELOCs have an important play, you know, they do affect whether a loan may go into foreclosure, whether the borrower has the ability to tap additional resources to get out of a loan when they are struggling to pay financially and I think part of HMDA's purposes are to look at how mortgage credit is being distributed across the country, and the fair lending is obviously a big piece of that but not the only piece. Looking at mortgage credit availability and how it's distributed across the country, and especially when you get into the loan modification standpoint, we've had three years where we have the persistent problem of whether you could modify or do something with a first mortgage and whether the second   whoever owns the second lien, whether it was a piggyback second at the time of origination or a HELOC, and that lender has subordinate in circumstance states and whether they are willing to do that and at what cost has thrown a lot of sand in the gears of foreclosure prevention. I think there's a lot of reasons you would want to know that HELOCs are in there.

PAUL HANCOCK:

The only thing I would add to that -- I can understand that. I think today, though, is where we are headed, you know, the more important issue may be whether credit standards have gone too far the other way to affect lending to low and moderate income borrowers to reach minorities. The most recent HMDA data for the 2009 year shows that 80% of black home purchasers got government insured loans. I mean, that's a pretty astonishing figures. Only 20% of black home purchasers in 2009 receive what we would consider to be conventional loans.

It's not a HELOC problem. It's an issue of just whether -- what credit standards have become. Maybe they are good. Maybe we need to go that far, but maybe we don't. And if we want to keep opportunities available for minorities, we have to take a close look at that.

TOM DEUTSCH:
I think from a secondary market investor, by far the number one concern for programs like HAMP is not the front-end DTI; it's the back-end DTI. It shows and the redefault rates, I think, for many of the redefaults are driven not by the front-end debt but by the back-end debt that creates a tremendous amount of redefault.

So there is a tremendous focus on this back-end debt, credit card, auto, student loan, HELOC, home equity loans as to a driver of performance of the first lien. The difficulty and challenge is first dividing it between a simultaneous second or simultaneous HELOC and, of course, the subsequent second.

The tracking of those subsequent seconds, we have taken about as deep a dive as we possibly could and still have not figured out a great way. We've come one some ideas to through using the credit bureaus and AFS link to try to create that linkages because investors and mortgages would love to know if a -- if a subsequent second or a HELOC has been made, because that certainly impairs the performance of that first lien. Now, a person has more debt over time, so they would like to see that. But the difficulty of tracking that, even for people who are really moving billions of dollars into this industry have still not found a good way to track that.

So it may be interesting to know HELOC information, but it's only as valuable as trying to link it up with the first lien, which particularly for subsequent seconds or subsequent HELOCs is extremely difficult.

MICHAEL CALHOUN:
Any other comment on that? I have a related question about mobile homes because I know in a state like North Carolina --

SANDRA BRAUNSTEIN:
Can I -- Excuse me, Mike.

MICHAEL CALHOUN:
Did I go over time?

SANDRA BRAUNSTEIN:

No. Tom, I wanted to ask you one while you were on that. The information that the investors are looking for, is it the fact that somebody has a HELOC or are they more concerned about what kind of draws they have taken on of it, because that's two levels of reporting?

TOM DEUTSCH:
Both. Both. They would like to know the HELOC exists because then it shows a propensity for the investor to take some more risk over time, but obviously the draws create that higher back end DTI, which creates, you know, on a relative margin a higher probability of default or redefault.

SANDRA BRAUNSTEIN:
Which complicates the reporting.

TOM DEUTSCH:
Right.

SANDRA BRAUNSTEIN:
Sorry.

MICHAEL CALHOUN:
Regarding the mobile homes, in a state like North Carolina, where mobile homes are about 25 percent of the market, and I know that's the issue with many. I would like the idea of the institutionalizing exclusions of mobile homes. I appreciate the comments on mobile homes, especially in how different states treat them. Some are chattel. Some are land secured. Some states treat them as real property. So where should the lines be drawn there on inclusion of -- of any or all of mobile home purchases and refinances?

LANCE GEORGE:
I think it's -- I would like to reiterate one issue about manufactured housing that it is, you know, largely left out of the shadows. We applaud the Federal Reserve for placing this in HMDA in 2002. You know this type of housing has traditionally been maligned and kind of set to the back side and more so than I think, personally than the type of structure it is or how it's constructed. It's more so the type of people would live in these -- or live in manufactured housing is predominantly been low and moderate income households.

And in that respect, manufactured housing is in many respects gone into parallel worlds where the structures themselves have improved markedly, largely due to the HUD code, the 1975 HUD code, but the parallel worlds in how they are sold, financed, appraised, all of these issues are really kind of a remnant of the old automobile industry, and the industry has really fallen behind in that respect. That's where we see this schism where the homes have improved largely themselves and they are much more home-like, but all the peripheral elements seem to drag this industry behind and one of the key issues is how this home is financed. It's difficult to determine, but we believe a large number of them are through personal property or chattel loans and you are correct in that, in some states, you can’t title a manufactured home as real estate. There are a few exceptions.

I think those loans are trying to be changed, but it's our understanding in still a few states you can't. So those are issues that need to be worked out but for the most point we would like to reiterate our focus on specific reporting of whether a loan is a personal property loan or a real mortgage loan.

PATRICIA McCOY:
I think if we are going to be faithful to HMDA's purposes in -- in understanding what's happening in low and moderate income communities, we have to continue the reporting of -- of manufactured housing loans.

I am not at all deterred by this question of how states treat it, because HMDA is federal law, and as -- as a matter of federal law, the Federal Reserve can define any loan secured by a manufactured home as -- as secured by real estate. It need not be deterred by what the states are doing.

PAUL HANCOCK:
I guess I'm a little confused by this because it is reported now. Are you talking about expanding that or the question is should it be eliminated?

MICHAEL CALHOUN:
Should there be any distinction about whether it's a chattel mortgage or a real property mortgage?

PAUL HANCOCK:
Yes, I think when the Fed imposed that the last time to identify those, it's very helpful to do analysis of practices because those are subject to different conditions and lending and you would have different denial rates. You have different pricing standards. So anyone wanting to analyze that will want to know if it's for a manufactured house or is not.

MICHAEL CALHOUN:
But all should be included in the reporting?

PAUL HANCOCK:
Well, they are now. I'm not suggesting they shouldn't be. I'm not suggesting eliminating them. I don't know the extent, if there's some that aren't being captured now. I haven't heard of, that but to the extent they are, I'm not suggesting that they not be. My only suggestion is we just need to make sure we identify those and the data so that the proper analysis can be conducted.

LANCE GEORGE:
I think this is a question we had. We have a question on what how much of the personal property market are we capturing? Because we simply don't know because of that question. So it's difficult. We can't determine whether a loan is a real estate mortgage. We think that the you know, the -- some other census figures estimate that currently two thirds of all manufactured homes are financed with personal property or chattel loans but we simply can't discern that from HMDA. So we really don't know what the market is.

MICHAEL CALHOUN:
Mm hmm. Okay. Those are good points.

MARK PEARCE:
The states from a licensing standpoint, the SAFE act requires that if you are making a loan secured by a manufactured home, whether it's chattel or real estate, those originators have to be licensed in the various states, and so they will you have the NMLS unique identifier so it's making sure that we are capturing all the loans that are originating to those folks regardless of whether a state catalogs it as real estate or chattel.

MICHAEL CALHOUN:
I don't want to use too much time. I have some more, but I will save them.

ELIZABETH DUKE:
I will tell you what, since this is your first panel, I will kick it back to you. I did have one question though. In the continuing search for a single piece of data that's absolute historically not necessary.

TOM DEUTSCH:
Just one? A unicorn search?

ELIZABETH DUKE:
One nomination that's gotten the most votes is the unsecured loan for home improvement and so my question would be, you know, is -- is that potentially something that is of lesser value that could be left out? And it has all the same issues of being tracked and reported on different systems. Any?

MARK PEARCE:
If you add all the other fields we are asking for, then yes, you can drop that one.

From the way I look at HMDA and this gets back to the HELOC question. Can you lose your house is in some ways should you report a loan? Can you lose your house? Unsecured debt, I think is one place where you can make a distinction and say, well, you won't lose your house for that particular loan. Well, there may be some lien on it, but that's a contractor's lien or something like that, but that might be worth taking out.

ELIZABETH DUKE:
Okay. I'm encouraged by that progress. If we had debt to income, and some of the underwriting factors, could you live without the reasons for denial? And I just -- I remember my days as a lender, if it was a debt to income issue, it was whether it's what limited income or excessive obligations. You didn't know which was causing that. Again

PAUL HANCOCK:
Well, if you can get accurate data on it, generally lenders will look at DTI to see whether the loan can be made. I don't know that they are as precise with the data in determining precisely what it is, if the loan if it will support the loan. It is an important factor, of course. But I guess

the question is what would you require reporting in? Debt to income can change a lot during the loan application process.

So you would have to be pretty careful about how you define it, is it -- I guess it would be the debt to income you relied on in making the loan, but many lenders look to that and if it -- if it supports the loan, there's no need to drill down further. So you are not going to get the same kind of data like you would with credit scores because you will get someone's credit score

ELIZABETH DUKE:
What I'm going for is the reason for denial.

JANNEKE RATCLIFFE:
I think we talked here about the difference -- there's a difference between a field not being useful because it's just not useful, the potential information is not useful or the way it's collected. And I also -- I just -- I don't have an answer for your question, yes or no, but I would recognize all the changes pending in Dodd-Frank about loans and how they are qualified and how they have to be underwritten for ability to repay, and I think before we get ready to throw away that reason for denial, it may actually become much more important in the future and it may become more standardized, so I think it might be worth looking at those requirements before we sort of…

MARK PEARCE:
From a regulatory -- from the way we would look at it, from an examination standpoint, that code is not terribly helpful. We look at HMDA for disparities and then it's as Paul said the starting point. And then we are doing deep dives into loan files to see what were the decisions and why were they made? And, you know, I do worry that the coding isn't terribly relevant or it's not consistent enough to be -- to be useful from -- from a regulatory standpoint or enforcement standpoint.

ELIZABETH DUKE:
Okay. Sandy?

SANDRA BRAUNSTEIN:
Yeah, a quick tag on to what Elizabeth Duke was asking. I wanted to ask you quickly about the multifamily housing fields. Are they -- Jay Brinkmann mentioned it briefly in the first panel, said he didn't think the data was very helpful because there's so much missing. I was just wondering what your thoughts are on that. Is it useful? Do you use it? If not, should it be improved and how? Just kind of a sense of that.

JANNEKE RATCLIFFE:
I just -- again, looking forward and with the inflection in the market and rental housing, affordable rental housing market becoming available, I would be reluctant to reduce the amount of data or the emphasis on that. Maybe I would move in the opposite direction.

SANDRA BRAUNSTEIN:
Right now, do you use it or --

PATRICIA McCOY:
In New England we do.

SANDRA BRAUNSTEIN:
Oh, okay.

PATRICIA McCOY:
You certainly have the long New England tradition of the triple decker, and that is so ubiquitous in New England that it's an important thing to look at.

SANDRA BRAUNSTEIN:
Okay. And then one other quick one, what about reverse mortgages? Is that something that should be added? The data?

PATRICIA McCOY:
You know, I am worried as our demographics change in this country, and a greater proportion of us become gray haired, that reverse mortgages is a sleeper issue. And -- and the underwriting on reverse mortgages probably is not as rigorous because you are drawing down equity, essentially.

So at the same time, I find the -- the real interest rate on those loans very difficult to unpack. And so I would like to start tracking reverse mortgages before they become a real problem.

MARK PEARCE:
Yeah, I don't think it's a sleeper issue. I think it's here. It's a burgeoning part of the market. There are a lot of ways to lose your home or be taken advantage of in that market place. We need to start selecting information on that sooner rather than later.

SANDRA BRAUNSTEIN:
Thank you.

LEONARD CHANIN:
Just a quick follow-up. In your opening statement, you were mentioning experiences of other agencies and you mentioned the Census Bureau and then I think social security and then you stopped. Can you -- can you finish that, take you back there?

PATRICIA McCOY:
Yes, absolutely. So, of course, the Department of Health and Human Services with HIPAA has has had to come up with very stringent medical privacy protocols that do allow lots of outside researchers to work with this data without disclosing the names of patients.

And in the last footnote -- law professors love footnotes -- in my last footnote of my written testimony, I list all the federal agencies I was able to find that have come up with privacy protocols to allow outside researchers under really controlled circumstances to work with the data.

And I -- the last thing I was going to say, but ran out of time to say, is I would urge the board to survey other agencies that have actually been doing this for a long time, because there really are a lot of protocols. Census may be the right one. It may not be the right one, and that would be well worth doing.

LEONARD CHANIN:
Okay. Great. Thank you.

PATRICIA McCOY:
You're welcome.

ELIZABETH DUKE:
All right, Mike, you can have all the rest of the time until 12:30.

MICHAEL CALHOUN:
But it's prelunch.

I want to follow up on some discussion about the challenges of one of the key data fields and that's race, ethnicity. And a two part question, first, a technical one is in -- I will toss 'em both out at the same time, given the short time, so we can wrap up more quickly there.

So what extent do researchers use census track as a surrogate for the race, ethnicity data, particularly given how often it's missing?

And then an overall question about the general integrity of the data that populates the fields in HMDA. Do you have ideas, suggestions on how do -- to better test or improve the reliability of the data overall? So anyone willing to take on one or both of those?

MARK PEARCE:
I will just do on the last point, in -- I really encourage the board to go to quarterly data and I think having regular submissions of data will help to improve the integrity of data across the board. So I'm not particularly on any specific fields but another way of regular reporting will make easier rather than lenders who are supposed to be keeping it quarterly but then they wait until the end of the year to do all of their scrubbing, and so the more frequent reporting may improve the quality of the data.

PATRICIA McCOY:
On the first question, researchers have at least two techniques for navigating that, and sometimes they simply go ahead and use the individual loan level observation, and if there's no observation, of race or ethnicity, they drop that loan from the analysis.

Another way to do it is -- is within the census tract to run the analysis according to the proportion of people of different races and ethnicities that populate that Census. So there are a variety of ways. Or you could aggregate up to the county level if you need to do that.

PAUL HANCOCK:

Well, I haven't seen an issue where the underreporting of race has proved to be a problem in analysis, and by that I mean I don't think I've ever seen a suggestion that it's disproportionately affecting a certain racial group. And as you say, you usually analyze the data that's available, and I haven't seen a concern arise that we are missing something by doing that. Geocoding has not been used in my experience very much in home mortgage lending because we have HMDA. It's used more in consumer lending like some of the auto cases where you didn't know the race of the borrower and then you have to go to geo coding or even address -- or surname lists, the Census Bureau publishes surname lists that have varying levels of validity. The Justice Department, for example, had a case dismissed recently in California that was -- that was based on an Asian surname list with the court thinking it was not sufficiently reliable. So HMDA is really pretty remarkable in that it gives us this information. It maybe isn't perfect, but for the most part, it gives us enough information that I think the enforcement officials have thought that they could rely on it to determine the -- the number of borrowers by different races and ethnicity and gender who were impacted by different loans.

LANCE GEORGE:
Quickly from the rural perspective, we've traditionally used the county as the primary unit of analysis but we are increasingly moving to track and subcounty unit of analysis for various reasons with geography.

MICHAEL CALHOUN:
Thank you.

ELIZABETH DUKE:
You have two more minutes.

[Laughter]

All right, with that, let me thank this panel. This has been really very, very helpful. Thank you very much.

[Applause]

And we will now break for lunch and we will resume at 1:10 for the third panel. Lunch is right over here.

[Break]

ELIZABETH DUKE:
-We don't have Raphael Bostic yet, assistant secretary of policy development and research for the Housing and Urban Development, so we will put him at the end of the order. We also have Allison Brown, acting assistant director, division of financial practices, Federal Trade Commission; Michael Bylsma, Director for Community and Consumer Law, Office of the Comptroller of the Currency; Tonya Green, director of consumer compliance and outreach, Office of Consumer Protection, National Credit Union Administration; Eric Halperin, special

counsel for fair lending, Civil Rights Division, U.S. Department of Justice; Patrick Lawler, associate director and chief economist, Office of Policy Analysis and Research at the Federal Housing Finance Agency; and Robert Mooney, deputy director, consumer protection and community affairs, Federal Deposit Insurance Corporation.

Thank you all for coming here. Clearly this is our fellow agency panel. We're interested in all you have to say Let me apologize in advance – I may have to slip out of here before this panel is over, but I want to thank you for your willingness to come here and give us your thoughts. Ms. Brown, if you want to start?

ALLISON BROWN:
I'm Allison Brown, acting assistant director of the division of financial practices at the Federal Trade Commission. I am speaking for myself today, and my statements do not necessarily reflect the views of the Commission or any individual Commissioner.

[Laughter]

My comments today are base based on the Commission's experience in enforcing the ECOA as to non-bank and financial institutions.

First, I'll provide background data on the HMDA, then make several recommendations for amendments to Regulation C, including expanding coverage, expanding the data reported, and ensuring consumer privacy.

The Commission has an active law enforcement program directed at discrimination and mortgage lending. The Commission uses HMDA data as a screening tool. As the variables contained in current HMDA data alone are not sufficient to establish a law violation. In a fair lending investigation, the staff obtains the target's loan underwriting and pricing data and its underwriting and pricing policies, particularly the extent to which the lender allows discretion in loan approvals and pricing terms. The staff tests the accuracy and integrity of the HMDA data and carefully analyzes the additional data, employing rigorous statistical analyses to determine if disparities can be legally explained as warranted by the lender's particular statistics, by loan characteristics, geographic variations, or other relevant factors.

On Monday, the Commission announced a settlement with Golden Empire Mortgage and its owner. The Commission had alleged that defendants violated the E COA by charging Hispanic borrowers higher prices for mortgage loans than similarly situated non-Hispanic white borrowers. In the settlement, defendants agreed to limit discretionary approvals, to implement a fair lending monitoring program, conduct employee fair lending training, ensure data integrity and conduct regular compliance reporting. The settlement imposes a $5.5 million judgment, all but which -- $1.5 million of which is suspended based on defendant's financial situation. The $1.5 million will be distributed to redress consumers who are harmed by defendant's pricing policy.

In my view, changes to HMDA's coverage and reporting requirements are needed to facilitate fair lending analyses. First, the Board should consider expanding HMDA's coverage. Under current regulations, many nondepository institutions are not required to report data under HMDA at all. I recommend expanding HMDA's coverage to require mortgage lenders to report if they receive a minimum number of applications in a year, not based on asset size or number of actual originations. This would ensure that all nondepositories that make significant numbers of mortgage decisions report these essential data, providing the government and the public an accurate, timely picture of mortgage lending activity.

Furthermore, I recommend expanding HMDA's reach to rural area, as it is unlikely that all discrimination occurs in metropolitan areas.

The Board should also consider different types of loans to regulate. Reverse mortgages and home equity lines of credit are particularly important in this regard.

Second, the Board should consider requiring lenders to report additional data points pursuant to HMDA. In addition to the underwriting criteria require by the Dodd-Frank Act, I recommend board requires mortgage lenders to report combined loan to value ratio and debt to loan ratio, crucial determinants of underwriting pricing. In implementing the changes required by the Dodd-Frank act, I recommend that the Board, with respect to credit score, require lenders to report the name of the credit score being used and if it's a proprietary scoring system, the scale used in addition to the score itself.

Moreover, I recommend that lenders be required to report any results they obtain from automated underwriting systems. This information is often crucial to isolating and examining discretion in a lender's loan approval and denial statistics. In order to enable a more complete fair lending screen, the Board should also require lenders to report first whether the lender made more than one loan against the property and, if so, means to identify any second lien loans. Second, loan type or purpose, so, in addition to the current categories, including categories for reverse mortgage, home equity line of credit, and cash-out refinance to the extent the Board requires those to be reported. Also whether the loan is a fixed rate or an adjustable rate mortgage.

Institutions must make HMDA data available to the public with certain fields redacted to preserve applicants' privacy. In many cases, sophisticated researchers can match the loans in the HMDA data with individual consumers. Thus, I recommend that the Board find a way to report the data so that it can't be matched to individuals or even a small group of individuals. If the board can't achieve in a way that allows academics and researchers use the data, I recommend sensitive fields be redacted and made available solely for law enforcement.

MICHAEL BYSLMA:
Governor Duke, my name is Mike Bylsma. I'm the director for Community and Consumer Law in the Office of the Comptroller of the Currency.

As Governor Duke has noted at these hearings, HMDA data generally serve three purposes. I plan to focus my remarks on the third purpose listed, which is to promote fair lending and to assist in enforcement of the fair lending laws. HMDA has been valuable over the years as a tool the banking agencies use to screen institutions for fair lending compliance risks. Nonetheless, the data elements currently required to be reported have never been sufficient to permit the agencies or the public to draw reasoned conclusions about fair lending compliance. The additional data elements required by the Dodd-Frank amendments to HMDA will go a long way toward addressing the current limitations that have led to false positives, suggesting that a particular lender may be engaged in unlawful discrimination.

You asked for comment on whether the Board should add data elements to HMDA reporting requirements. As part of my answer to that question, I'd like to first discuss the OCC's experience in using HMDA data and describe what we've done to augment these data for preexamination screening purposes. Beginning in the 2008, the OCC started a pilot program at six large national banks to use HMDA data plus elements not captured by HMDA data in our initial fair lending risk screens of these banks. The initial data elements we reviewed included the business line of the bank that originated the loan, product identification code, whether income was documented and verified, loan-to-value ratio, the applicant's debt-to-income ratio and credit score, the annual percentage rate, the term of the loan, and whether the loan is fixed or variable rate. We call these data elements HMDA plus.

We found that the augmented data used in the pilot helped us to better target our fair lending examination work, and the OCC has since expanded the use of HMDA plus information to our fair lending screening of all HMDA reporters in our large bank supervision program.

We recommend that you consider the OCC's HMDA plus elements as part of your review. Some of these data elements are included in the amendments to HMDA contained in the Dodd-Frank legislation, but not all. For example, the recent statutory amendments do not specifically require reporting on debt-to-income ratios, the APR, or whether the loan is fixed or variable rate. We found these to be valuable screening factors.

Now, as the Board suggested in its hearing notice, requiring collection of any additional information will result in additional compliance costs, even though it could benefit lenders by reducing the frequency of false positives in the public data. One way to address these cost benefit considerations would be to require more detailed levels of reporting beyond those mandated by the statutory amendments only for HMDA reporters who exceed certain origination threshold levels.

You also asked for comment on other aspects of the Reg C review, and I would like to offer a couple suggestions. First, lender coverage rules should be reevaluated. The current rules for coverage differ depending on whether the lender is a depository institution or a nonbank mortgage lender and can have anomalous results. They can cover depository institutions that just originate one mortgage loan but exempt nonbank lenders that originate substantial number of mortgage loans. And based on language in the HMDA statute, the rules also exempt rural lenders that do not have offices in a metropolitan area, even if those lenders have substantial assets and significant mortgage origination volume. Mortgage brokers and nonlender loan purchasers also are currently exempt.

We recommend that the Board review whether its rule-making authority would permit it to expand HMDA coverage to these additional types of lenders in appropriate circumstances.

And reporting on the parent company, such as the name of the bank holding company, could be very useful in identifying lending patterns across an organization. While this would not directly affect fair lending supervision and enforcement by the banking agencies, it could provide valuable information about how affiliated companies under a single corporate umbrella are serving local mortgage lending needs.

And again, I thank you for this opportunity to testify. Look forward to your questions.

SANDRA BRAUNSTEIN:
Thank you.

TONYA GREEN:
Good afternoon, Governor Duke and Chairman Calhoun and Fed staff. Thank you for allowing NCUA to participate in these hearings today. The National Credit Union Administration's primary mission is to ensure the safety and soundness of federally insured credit unions as well as their appliance with applicable federal regulations. It performs this function by examining all federal credit unions, participating in the supervision of federally insured state chartered credit unions in coordination with state regulators, and ensuring credit union member accounts.

In its statutory role as the administrator of the national credit union share insurance fund, the NCUA provides oversight and administration to approximately 7,554 federally insured credit unions, representing approximately 98 percent of all credit unions in the nation and approximately 90 million members.

The NCUA regulates and insures all federal credit unions and insures most state-chartered credit unions. Under this framework, the NCUA is responsible for enforcing regulations in federal credit unions and evaluating safety and soundness in all federally insured credit unions. The NCUA is also responsible for monitoring and ensuring compliance with most federal consumer laws and regulations in federal credit unions. In federally insured state chartered credit unions, the appropriate state supervisory authority has regulatory oversight and enforces state consumer laws and regulations.

As of December 31, 2009, credit unions with assets over $39 million must provide data about home purchase loans, home improvement loans, and refinancings that they originate or purchase or for which they receive applications. That data includes information about the loan type, action taken on the application, loan amount, and specific information about ethnicity, race, and sex of applicants.

Regulation C, which implements HMDA, sets our procedures for disclosing mortgage lending data to the public. NCUA has administrative enforcement authority over all credit unions for violations of HMDA and Reg C, including the imposition of civil money penalties.

NCUA has exercised the authority to penalize credit unions that were late in submitting or intentionally reported incorrect HMDA data. In addition to administrative enforcement, NCUA uses HMDA as a basis for implementing fair lending examination procedures developed by the Federal Financial Institutions Examinations council.

NCUA uses the examination process, along with member complaint trends, to evaluate fair lending and credit unions. NCUA recently centralized resources and employees under the supervision of the Office of Consumer Protection, the division of Consumer Compliance and Outreach, to conduct fair lending examinations and manage the member complaint process.

The Dodd-Frank Wall Street Reform and Consumer Protection Act requires mortgage lenders to disclose additional information, including the age of applicants and other data. NCUA supports the implementation of the changes, and will work to ensure credit union respondents complete the loan application registers accurately and on a timely basis. NCUA will work with interagency groups to develop resources for respondents to use when completing the loan application registers.

NCUA has no recommendations regarding other information mortgage lenders should be required to disclose.

In summary, HMDA data is a useful supervision and enforcement tool for NCUA. NCUA remains willing to work with the FFIEC to implement the new statutory requirements. The long-term reduction of discriminatory practices depends primarily on consumer education and the timely identification and correction of problems. NCUA continues to support the national financial literacy initiatives to ensure consumers understand their rights. The agency has also invested in centralizing resources and training staff to better identify potential examples of desperate treatment and disparity impact in mortgage lending practices.

NCUA is committed to providing strong regulatory and supervisory controls in monitoring federal insured credit unions to ensure member protection. As the agencies continue deliberations on policies that prevent unfair or discriminatory practices, the NCUA will continue to ensure credit unions comply with all federal laws and fulfill its enforcement responsibilities for any regulatory and statutory changes. Thank you. And I look forward to answering your questions.

SANDRA BRAUNSTEIN:
Thank you. Mr. Halperin.

ERIC HALPERIN:
Good afternoon, members of the presiding panel. Thank you for the opportunity to appear before you to discuss the Department of Justice's views on revision to Regulation C. I commend the Board for taking on considering changes to HMDA.

The foreclosure crisis has devastated communities from coast to coast, but one thing is clear: Communities of color have been particularly hard hit. The lack of timely and effective fair lending enforcement was one of the very long list of factors that contributed to our current crisis, and improvements to HMDA will play a critical role in improving both government and private enforcement of the fair lending laws.

The fair lending enforcement is a top priority for the Justice Department. The Civil Rights Division has established a Fair Lending Unit within our Housing and Civil Enforcement Section and devoted more resources to fair lending enforcement than we ever have in the past.

The information collected under HMDA is an essential but limited tool in our fair lending program. The inclusion of more information on credit worthiness and terms of the loan would increase effectiveness and efficiency of our program as well as effectiveness of regulators and the public to detect and prevent lending discrimination.

We get our cases from referrals from many of the people on the panel as well as the Board, and we have under the Housing Act and Equal Opportunity Fair Lending Act. HMDA is a critical piece of what allows us to build our own cases.

Currently, we use the data much in the way that our friends at the FTC use. The HMDA data is a critical component for us to develop our red-lining cases. It also allows us to target potential lenders for pricing discrimination. But the HMDA data alone, as has been said earlier, is not sufficient for us to prove a case of discrimination. We need to augment that data with either other publicly available information or, commonly, with making an information request to the lender. So as Mike Bylsma mentioned, decreasing the number of false positives will also make a more efficient program for us because we often request data from lenders who are able to explain the nondiscriminatory reasons for why their loans are priced or their activities are in a certain way. If we had that information up front, it would lessen the burden on lenders, would provide more transparency to the public, and would also allow us to efficiently target our resources at the actors that are actually engaging in discrimination.

Much of that data that we request in the course of a routine investigation is included in the amendments to Dodd-Frank. Like earlier, people who spoke on the panel, we would recommend adding both debt to income ratio and combined loan-to-value ratio to those components. They are key elements in any pricing investigation, and without those elements, we will not reach really what I think was one of the driving purposes behind adding those factors to Dodd-Frank, to be able to make an assessment of why a lender priced or denied a certain loan.

In addition, I'd like to touch on a few other areas in addition to credit worthiness and loan terms that we'd like to see expansion, so one, as has been mentioned earlier, the rural exception. We think that should be revisited. The Justice Department recently brought a red-lining case against a lender who did have a branch within an MSA, so we were able to get -- we were able to ascertain information from HMDA. It was a referral from the FDIC, so we also had a good starting point. But one of the things that came up in the course of that investigation is we did not have good information on a lot of other lenders in that market because there were a lot of rural-only lenders in that market. So more rural disclosure will help us in reaching further with our law enforcement activities into that marketplace.

In addition, expanding reporting to other types of loans secured by a dwelling, such as HELOCs and other home improvement loans, and as was mentioned on earlier panels today, we think the Board should explore ways to link the HMDA data with other databases involving loan performance or foreclosure, such as the database that HUD must develop under the Dodd-Frank bill.

Finally, two other brief issues. One on timing. Timing, determining if there's a way to accelerate when HMDA data is reported would be critical for law enforcement. Right now we're all just getting our 2009 data as we speak, and as we start working through that, these investigations are time consuming. Even under the best of circumstances, enforcement actions on 2009 data won't be available to be brought until 2011 or maybe later, especially if our friends at the regulatory agencies first work through them and then send them over to us. So more timely disclosure of the data is critical to a more effective enforcement program.

Then although I recognize that it is probably beyond your current scope of what is a very ambitious review, we think policymakers in the future should look for other nonmortgage loan products that would be appropriate for this type of disclosure. One thing HMDA has given us is a tool to advance fair lending enforcement in the mortgage arena, and there are other areas, such as auto lending, there is some business lending disclosure under the Dodd-Frank bill, that it would be effective to have more disclosure to allow us to have more vigorous fair lending enforcement in those areas as well. Thank you. I look forward to your questions.

SANDRA BRAUNSTEIN:
Thank you. Mr. Lawler.

PATRICK LAWLER:
Thank you. Members of the presiding panel, thank you for inviting me to provide comments on your implementation of HMDA. My comments today will focus on two areas. First, whether HMDA data collection should be extended to non-lender purchasers of mortgages, such as Fannie Mae and Freddie Mac, and the merits of coordinating new legislative requirements that direct multiple regulators to capture similar data for differing purposes with the Federal Reserve Board's current review of HMDA.

Congress passed HMDA in 1975 in response to concerns there were areas in cities where banks were unwilling to make mortgage loans. The purpose was to provide citizens and public officials of the United States with sufficient information to enable them to determine whether depository institutions were fulfilling their obligations to serve the housing needs of communities in which they were located.

Federal Housing Finance Agency believes that requiring non-lender purchasers of residential mortgages to collect and report HMDA data would not be consistent with the purpose of reducing red-lining and discrimination by lenders. In particular, such requirements would impose a significant compliance burden on Fannie Mae and Freddie Mac, and they would duplicate data reported by lenders that sell mortgages to those enterprises.

There is public benefit, however, in comprehensively populating the action taken data field in the HMDA record. Enterprise staff and analysts at the Federal Reserve board already cooperate to facilitate matching of data on mortgages sold by lenders and loans acquired by the enterprises. We at FHFA support those efforts and would be willing to facilitate a formal process of providing loan-level data on enterprise acquisitions to the staff of the Fed or its successor on HMDA implementation, the Bureau of Consumer Financial Protection, in order to comprehensively populate that data field.

A number of recent legislative and regulatory initiatives require different federal agencies to collect data or analyze and report on residential mortgage lending. The Housing and Economic Recovery Act of 2008 requires FHFA to conduct a monthly survey of mortgage markets and make market data derived from that survey available to the public in a timely manner. FHFA is required to collect information on the interest rates of the mortgages, the credit worthiness of borrowers, and the points and fees charged at origination, among other data.

The Dodd-Frank Act expands the range of mortgage data to be collected under HMDA, including a unique mortgage loan identification number. At the same time, other financial regulators also collect extensive information on mortgage originations so that many originators are faced with providing the same or similar information to multiple regulators. Consolidation of surveys and data submissions could be more efficient for both regulators and respondents. Accordingly, we think that the Fed or the Bureau should explore partnering with other agencies and the newly created Office of Financial Research when implementing the required additions to HMDA data.

The OFR is a new independent office in the Department of the Treasury created by Dodd-Frank to support the Financial Stability Oversight Council. OFR has the authority to set standards and require the reporting of data from all financial firms. FHFA believes that partnering and coordinating efforts with OFR has the potential to reduce costs and improve data for a wide variety of uses, and mortgage data might be a good place to start.

This is particularly true with respect to developing a unique mortgage identification number. Several numbering systems have been proposed to federal regulators. It will be important for the Fed or the Bureau to coordinate its efforts in order to establish one truly unique loan identification system.

As we think about coordinating mortgage data collections into a single unified repository, we also need to expand our view on the potential uses of such data. For private investors to return to the mortgage market, we must be preparing to make available to those investors far more granular data on mortgages than has been provided previously. So in thinking about a unified mortgage data collection process with uniform data definitions and mortgage identifiers, FHFA encourages the Fed, the Bureau, and other fellow regulators to be thinking about how such a program could also facilitate mortgage sellers providing necessary data elements to investors and mortgage pools. That is the common data definitions and data reporting schemes developed for public reporting, such as HMDA, should be flexible to support the provision of loan-level mortgage data to investors in mortgage-backed securities, thereby reducing cost burdens, increasing efficiency, and giving investors the information needed to properly price and manage mortgage risks.

Thank you.

SANDRA BRAUNSTEIN:
Thank you. Perfect timing. Mr. Mooney.

ROBERT MOONEY:
Dr. Braunstein, thank you for your invitation. We support efforts to review HMDA data requirements, especially in light of the new provisions of Dodd-Frank, and thank you for the opportunity to express my views. We think we are committed to protecting consumers and ensuring bank compliance with fair lending laws; therefore, HMDA data is a critical data source for the FDIC. It serves as an important tool for identifying potential discrimination, and we use it in several ways. HMDA data analyses is a part of every bank compliance examination. We also conduct annual analyses of the data from FDIC supervised banks to identify those that warrant additional scrutiny, so-called outliers that have significant pricing and denial disparities for minorities or females in one or more product categories.

Since 2005, the annual outlier review has resulted in the referral of 12 potential cases of pricing discrimination to the Department of Justice. During this same period, we also referred 90 other potential cases to DOJ, some of which resulted from examiner analysis of HMDA data during the course of regularly scheduled examinations.

We also referred two of these pricing outlier cases in another fair lending case to the FTC.

Examiners also use HMDA data to prepare CRA performance evaluations, and the data can also alert regulators to lending disparities that may arise between scheduled examinations. FDIC economists use the data to analyze various aspects of national, regional, and local housing markets, and of course, the HMDA data provides critical information to the public for analyzing the broad housing market.

However, while the information has been useful, the data has not provided certain information that policymakers could use to help ensure that the problematic trends and practices of the past do not repeat themselves. For this reason, the FDIC welcomes the additional requirements called for by Dodd-Frank, and we expect them to result in more focused fair lending reviews. Loan pricing and underwriting can be affected by factors that HMDA has not required lenders to report here to fore. And the new reporting requirements should streamline the screening process for identifying discrimination.

Now, regarding the timing of HMDA reporting, we note that a limitation of HMDA is the length of time between when loans are made and when HMDA data are reported. For example, 2009 data is only now being released to the public. While the regulators have had some of the data for several months, it is still long past when the lending took place. This limits its usefulness for responding to what is currently happening in the broad mortgage marketplace.

Perhaps consideration should be given to whether more frequent reporting is practical. Such a change could allow more rapid supervisory response to potential problems that may be revealed by the new data elements required by Dodd-Frank.

The FDIC looks forward to continuing the discussion about how to update HMDA data so that it continues to provide the data necessary to serve its statutory purposes. Thank you.

SANDRA BRAUNSTEIN:
Thank you. Dr. Bostic, welcome.

RAPHAEL BOSTIC:
Thank you. Good afternoon, Chairman Calhoun, Director Braunstein, members of the Advisory Council. I want to thank you for inviting me to testify regarding potential revisions to the Board's Regulation C. This topic is extremely important in light of current mortgage -- in light of the current mortgage crisis, which many would agree results in large part from a mortgage market that was not sufficiently transparent and lacked appropriate consumer protections. It is my hope that the lessons we've learned through the efforts to stabilize the housing market will inform our discussions and actions as we move forward with respect to HMDA changes.

HMDA data represent a comprehensive source of information on primary mortgage originations and secondary market loan purchases. Since its enactment in 1975, HMDA has provided useful information to the public regarding relative performance of lenders and serving the needs of their local communities, and has been a critical tool in enhancement enforcement of laws in prohibiting discrimination in lending.

Unlike many other market groups that provide HMDA data subsets for lenders, for communities in metropolitan areas, HMDA represents a virtual census of lending activities. Within designated areas, HMDA provides information on borrower and loan characteristics and property location coded to the census tract level as well as the identity of the institution making the loan.

Nondepository institutions are required to submit HMDA data to HUD, and the Department has historically relied on HMDA data for estimates on the number of mortgages originated for low- and moderate-income families and in underserved areas when setting affordable housing goals. HUD also reviews HMDA data for lenders, in our case, FHA lenders, to be sure they are abiding by fair housing and lending rules. The relatively new data on loan pricing has been critical into gaining insight into the higher cost and subprime mortgage markets.

In recognition of the important role HMDA data has played over the years in enhancing consumer protection and advancing fair lending and fair housing objectives, the Dodd-Frank Wall Street Reform and Consumer Protection Act transferred the responsibility for HMDA data collection to the newly created Bureau of Consumer Financial Protection. In addition, the Dodd-Frank bill made a number of important changes to HMDA, including adding a dozen new mandatory and discretionary fields to the HMDA data fields that which will provide additional insight into the characteristics and quality of loans originated.

Of particular importance to HUD and many in the advocacy community is Section 1094 of Dodd-Frank, which gives the bureau the discretion to require all mortgage loans to include a universal loan identifier. We are very supportive of the concept and encourage the bureau to implement regulations to make this a reality and ensure that each loan originated in the nation is provided a unique and universal identification number. Such a number would allow regulators and the public to track the performance of the loan over its lifetime.

The identifier is needed to strengthen HMDA in several important ways. First, it will make HMDA data more effective for monitoring the market and enforcing regulation. Second, it holds the potential to greatly enhance our enforcement of consumer protection and fair lending laws. Third, it will help improve research in the area and enhance our understanding of market dynamics. And finally, it will make HMDA a powerful complement to other databases that exist currently and that are authorized under Dodd-Frank, in particular, one that my agency is charged with doing -- creating on default and foreclosure.

Some in the industry oppose the concept of the universal identifier, citing regulatory burden and costs. We believe there are arguments to suggest that these -- the benefits outweigh the costs, and I'd be happy to discuss those as we enter the question period.

As discussed before in just a couple other items, the Dodd-Frank legislation requires lenders to report total points and fees payable at origination. HUD welcomes this innovation, but we urge that we use this authority to define points and fees in such a manner that will help promote rather than compromise data for fair lending screening. We would recommend that lenders not include discount points in the calculation of total points and fees as one example. Another point limitation of HMDA is that not all mortgages are required to be reported. The absence of data for many non-MSA lenders hampers our ability to screen for fair lending problems, and we recommend expanding in non-MSA census tracts.

For 35 years, HMDA has provided HUD and other enforcement agencies with critical information on lenders' performance and loans originating in their areas. Unfortunately, the current crisis revealed the weaknesses of HMDA, which created a comprehensive review of practices. Dodd-Frank has taken a significant step toward modernizing HMDA, provide significant protections and fair lending data, and we encourage the implementation of many of those provisions.

SANDRA BRAUNSTEIN:
Thank you very much, and thanks to all the panelists for their testimony. At this time, I'm going to start the questioning by handing it to Mr. Calhoun to start so you don't have to go last. Why don't you start the questioning.

MICHAEL CALHOUN:
Thank you. Let me just follow up with one detailed question, Dr. Bostic. On your recommendation regarding the treatment of discount points in the points and fees, are you recommending that those be excluded completely from the coverage or simply reported separately and not included in the points and fees reporting?

RAPHAEL BOSTIC:
We would prefer them reported separately so we have a complete picture of the pricing that is associated with each loan product.

MICHAEL CALHOUN:
Okay.

MALE VOICE:
I think that's important.

MICHAEL CALHOUN:
Mr. Halperin, could you describe what ways more in particular the proposed changes to the HMDA reporting would facilitate fair housing enforcement and screening in the Department of Justice?

ERIC HALPERIN:
Sure. Well, it's typical in any -- for example, if you're doing a pricing discrimination investigation where you're trying to determine whether similarly situated borrowers are treated differently based on their race or other protected characteristic, and so one of the key things you need to do as part of that analysis is look at the factors that the lender looked at, the non-race factors that the lender looked at in pricing the loan, for example. So key to that would be if they relied on a credit score or an external credit score, proprietary credit score -- that is one factor that often goes into pricing. In addition to that would be loan-to-value ratio or combined loan-to-value ratio, debt-to-income ratio. And so often what you're going to be doing in any pricing review is you're going to be evaluating the outcome for the loan product and controlling for these nonrace factors to isolate the impact the race had, and that requires you to do things on the borrower's side and on the loan product side.

It doesn't do you any good to compare pricing on different loan products that might have different price structures, so you need to be able to isolate and control for both of those areas.

Currently in HMDA what we can do is look at the rate spread information on higher cost loans, allow us some pricing information. Perhaps it gives us an indication of who might be an outlier, as Bob mentioned, you know, you can look at outliers, look at people who deviate from the norm, and maybe that's a place you can concentrate your enforcement resources.

But if we had a more comprehensive HMDA database, clearly the type of database envisioned by Dodd-Frank, it would allow us to do runs of data without, one, burdening the lender; and then, when it comes time to focus in and look at those other explanations, no database is ever going to capture every possible explanation, so you still need to go to the lender and ask them if they can explain the differences. But at that point, hopefully we will have a much more precise targeting mechanism and we will be able to target our resources, which are limited, on the lenders most likely discriminated.

MICHAEL CALHOUN:

Thank you. Ms. Green, thank you for your testimony. I was particularly interested in your testimony about how NCUA had engaged in review and enforcement actions regarding HMDA reporting from federally chartered and federally insured credit unions. Could you describe some more about what -- how that program operates? Because there have been concerned expressed about the general integrity of the data reported and the completeness of data reported, and it sounds like what NCUA is doing is an important step to advance those goals.

TONYA GREEN:
Broadly what we do when it comes to HMDA data is much like FDIC. When we get the data in every year, we scrub it thoroughly to look for outliers. If there are outlying credit unions reported, we use that information to set up what we call our fair lending examination schedule for the year. And NCUA has authority to get access to any record at a credit union, so that allows us to go in and do a more thorough review during our examinations of what is really happening in loan files.

So based upon the indications that we get from HMDA data, we know exactly where to go look and what to look for during our fair lending exams, and that's exactly what we do. We send teams of examiners in, and they will spend a week, sometimes two weeks, at a particular credit union going through thousands of loan files to ensure that there is no discriminatory practices in place compared to what we see in the HMDA reporting.

MICHAEL CALHOUN:
Thank you. A general question that's come up, obviously, with all these different additional requirements for data reporting, it begs the question of how this is coordinated, and I would like to hear suggestions and comments from particularly the various federal regulators on this, and Ms. Brown as well. So how do you coordinate that better, and do you support the requirement for unique loan identification number to help track the loans?

ALLISON BROWN:
I can start. I do support the inclusion of a unique loan identifier number in the data set. We already do a lot of coordination, and I imagine and hope that will continue. There's a Fair Lending Task Force that's an interagency group where we talk about various issues that come up in terms of fair lending type, whether it's an exam at one of the banking agencies or an investigation at the FTC. We coordinate very closely with the Department of Justice and HUD in terms of specific lenders in any outlier list. There may be similar nonbank institutions, but we make sure with our colleagues that we are, you know, making sure that investigatory resources are not duplicated and that we're not investigating the same lenders. So we expect that would continue as well.

MICHAEL CALHOUN:
What about coordination of the data reporting requirements themselves?

ALLISON BROWN:
We don't do examinations, so maybe that's less an issue for us than it might be for the other agencies.

MICHAEL BYLSMA:
Well, I think the point made earlier was good in general that there are a lot of sort of either statutory or otherwise reporting on mortgage loans that are -- databases that have been created or will be created, and HMDA is the major public driver, but now you have the foreclosure and delinquency database that will be created. You have the HAMP disclosure that will be made under Dodd-Frank. You have databases such as that we maintain for bank safety and soundness that look at loan modifications and status, foreclosure and delinquency and the like.

So the question, I guess, would be, do you really have an issue with respect to all those databases not being coordinated or not? And if the issue is HMDA, for example, should track modifications, foreclosures, and the like by race, by census tract, then you need to coordinate with HUD and with the HAMP database. But I think the first question would be, are there any sort of conflicts between these multiple databases? What is the overriding policy goal for kind of getting coordination?

And we coordinate to the extent of sharing our information, but we collect it specifically for our banks. And we use it in our safety and soundness supervision. So I think in general, the point is good, and it would be worthwhile for HUD and the Bureau or the Board to coordinate in creating these databases.

MICHAEL CALHOUN:
And do I understand -- has the OCC been collecting credit score and income documentation at this time?

MICHAEL BYLSMA:
Yeah.

MICHAEL CALHOUN:
How long have you been doing that?

MICHAEL BYLSMA:
The pilot I described -- and we expanded to about 50 of our largest national banks -- was started because we found that screening that was done, we would get some screens from the Fed every year. We would get our own HMDA screens, but it was screening done on the limited HMDA data that is available. We found it wasn't ultimately that helpful in identifying products, business lines, and so on to target our examination. So we did a pilot to see whether we took more information than that at an early stage to screen banks whether it would refine our process.

And we were able to do this pilot because the banks all have this data. They all have it in a database, it's electronic, easy to get. We looked down the road in all exams in most cases. We just moved up our screening process. So I would say it's been very valuable to have this information. It was collected by the banks already, and it's in the loan file, and it just happened to be in an automated form.

MICHAEL CALHOUN:
Thank you.

TONYA GREEN:
Something I'd like to add regarding the unique loan identifier. While NCUA would not say it's a bad idea, it's good for tracking, but currently, the databases that are being proposed as -- being created for using these unique identifiers leave out a very important point or consideration. While we may be able to know when a loan is made based upon that number and ultimately we'll know whether that loan defaults or is foreclosed upon, what we won't know is why.

NCUA sits in a unique regulatory position because in order for a credit union to serve a consumer, that consumer must have an affinity with the field of membership that the credit union is authorized to serve. And most credit unions are built around cultural groups, professional associations, or some other type of civic association, and so when NCUA examines a credit union and there is a significant number of defaults at that credit union, it's easy for us to go back and look at what's happening within that field of membership to give us an indicator of why there's been this uptick in defaults.

The general population, that would not be the case at a bank. A bank may have a significant increase in defaults, but if that bank is not primarily serving General Motors' employees who have been laid off in a significant number, the bank is not going to be able to tell you that it's because of the increase in unemployment that is causing the increase in foreclosures.

And so while the unique loan identifier will allow us to see the beginning and the end, I think it's going to leave out important information in the middle that right now we are not set up to collect or even discussing collecting, and it will put us in a situation where now we're speculating based upon statistics from the Department of Labor or some other agency for why there's been an increase in foreclosures.

RAPHAEL BOSTIC:
Could I speak to that? I take your point as an important one. I do think one of the real values of having the universal loan identifier is that it allows others beyond the regulatory agencies to be reviewing data and information and starting to do some of that legwork. At HUD, we engage with the NeighborWorks network of housing counselors that has contact with people on the ground level in every community in America. And while we have anecdotal information from them as things are developing, this identifier would allow us to do a much more systematic analysis and get out in front of problems before they become a wholesale neighborhood crises. So I think this is an important tool that will empower a whole host of institutions and organizations that have not had the ability to really weigh in, and in that regard, I think it does offer the potential to help us know the why behind the experiences that families go through.

In terms of coordination, I think, Chairman Calhoun, your question is exactly on point, having now been here in the federal government for a little more than a year. I've been through -- we'll call them challenging interagency meetings where we're trying to reach decisions. Getting to a place where there is consensus is particularly important. There are already organizations that operate in that framework, such as the FFIEC. I would encourage -- I've actually started an interagency housing data statistics task force and working group. There are a lot of organizations in Washington that work on these things, and that coordination will be particularly important.

I would offer up two organizations that might take a lead role in that. One would be the Federal Reserve, which has a long history of being a leader in terms of managing the data, collecting it, and doing that initial screen. It would be a natural place to convene a conversation around standards.

A second organization might be the Bureau of Consumer Financial Protection. Given their new introduction into this area and their particular focus on the consumer and what happens to them, one might think that they would be very well suited to engage in a probing conversation about what exactly is required in terms of setting these standards.

So I think that's important, but I do believe that it is quite important that we have -- identify an institution that has a lead role in convening such a coordinated effort.

SANDRA BRAUNSTEIN:
Thank you. Mr. Chanin.

LEONARD CHANIN:
Thank you. So I want to talk a little bit more about data collection. There's been, both on this panel and other panels, a lot of discussion about new data elements. In fact, I was surprised that no one even suggested the borrower's favorite color as an additional data element, but if we wait long enough, maybe that will come.

So the focus has generally been on, you know, whether you should add a piece of data or not, and then you engage in some sort of cost-benefit analysis of that. And I'd like to get panelists' view on I guess what I see as Mike Bylsma's kind of alternative suggestion; that is one approach is you add it, the other is you don't add a piece of data. The third, if I understood Mike correctly, was perhaps you add some additional data elements for lenders above a certain threshold; that is, lenders who make a certain number of loans or however you measure it, you require more data. So I guess I'd like to get the panelists' view. Mr. Mooney, why don't we start with you?

ROBERT MOONEY:
Well, we look at a variety of data, and typically, when we're doing a fair lending examination, we go to the loan file to pull out most of the nonapplicant characteristic data, data like loan to value, loan to -- debt to income ratios, excuse me -- credit scores, property locations, and other information. It's very timely to collect that information in our review of the files.

Nonetheless, the lenders robustly look at all the information when they underwrite a file. Typically collect that information in some form before the decision is made. And we should consider whether or not it's -- nothing is easy, but relatively easy for them to report that data. And if so, I agree with Eric that it would enable our off-site analysis to better focus and determine where the risks are. And I think it may be worth looking at that.

While the more data the better in identifying possible discrimination because you can better compare differences in treatment, that has to be weighed against whether or not it's really necessary. I do believe there's a great amount of data that could be collected relatively easily that would very much assist our fair lending evaluations and reduce burden on an institution when we are examining them.

LEONARD CHANIN:
Thank you.

PATRICK LAWLER:
Almost all lenders produce loans for Fannie Mae, Freddie Mac, FHA, and there are a whole host of reporting factors they have to provide in order to make decisions. They already have to report them in effect to someone.

If we can combine the different types of data collection so they only have to be reported once, then the burden will be minimal. The organization required to do that may be very serious here in Washington, but once we do that, we have potential for an awful lot of benefits. We have a great deal of information about each loan. We would have to have standards for who had access to what parts of that information about a loan, but if every loan had a single identifier and it was established what types of interested parties could look at what data, I think we could have a much more efficient system for a whole variety of purposes, including examining for discrimination, but also for a whole host of research needs as well.

LEONARD CHANIN:
Okay. Eric, before you answer, let me sharpen the question a bit. Suppose we add eight data elements to the list of reporting. Let's say, would it be appropriate to not require banks, either with assets below 50 million or 100 million or banks who make fewer than 50 loans or 75 loans, whatever the measurement is, to report all of those? Is there enough value in getting that type of data from small institutions as well as larger institutions, wherever the cut is made?

ERIC HALPERIN:
Well, there is -- so to start with the general proposition and then get to the sharper part of your question, we would not necessarily favor a cutoff of when loans would be reported. Typically, we request much of the same data that is being -- would be considered as part of this enhancement, and in all but a few circumstances, the lender is able to provide it to us in electronic format.

So the market -- you know, there are exceptions. I'm sure there are some very small lenders who currently aren't doing that, but for the most part, the market is probably already moving to a place where most people are storing their information electronically. It may be different for some of the smaller FDIC institutions, but I think you're already there. So there's a real danger in drawing a line that would lag behind the market and deny access to information that is essentially already -- no one's having to pull it out of the file. It's already being maintained in some format.

And that's particularly true with the agency in FHA mortgages, which as we all know are essentially the mortgage market right now.

So on the sharper question, I guess what I would -- I would wonder in terms of there's also a cost of drawing a line, so we know one of the things that is potentially under consideration is whether you want to simplify your test about the nonbank reporters, and the Department favors a more simple test based on number of loans made, making it easier. And so potentially you could look at that same line, as long as that line is drawn low enough from an enforcement perspective -- and this is just an enforcement perspective. If it's a few enough number of files, we can do the hand review. You miss the opportunity to do the peer group comparison and all those other things, and that's a loss. That will be a loss from an enforcement perspective.

So I guess how I would proceed is I would take a look, a real look at who is left in that category where this reporting burden is really a burden because they're not maintaining information in electronic format and then assess that against the cost of some diminishment of enforcement but not a horrible situation.

ROBERT MOONEY:
I do think -- I'd just add to help put it in perspective -- the FDIC supervises 5,000 banks. Only 60 percent of those are actually HMDA reporters. The others are either below the asset threshold or outside of metropolitan areas. And of those, those 3,000 reporters account for 36 percent, I think, of all HMDA reporters, but they report only 11 percent of all reported loans. And then one-third or 1,000 of those institutions report fewer than 100 loans per year.

So while collecting that would be good for in terms of looking at peer group analysis, to some -- at some point you reach a de minimis number of loans offered by an institution over a period of time which would be useful in terms of fair lending evaluations.

LEONARD CHANIN:
Thank you. Ms. Green, any thoughts?

TONYA GREEN:
I actually would concur with what Mr. Mooney just said. Credit unions tend to be smaller institutions. We tend to do a little less lending than your larger financial institutions. And so after a while, you get to a point of diminishing returns when you start collecting excessive amounts of data.

LEONARD CHANIN:
Okay. Other thoughts, Mr. Bylsma, Ms. Brown?

ALLISON BROWN:
If the thresholds were low enough, we wouldn't have any opposition to a two-tier system. You know, if you were talking about requiring HMDA data for everybody who made 25 loans or 50 loans, but at 5,000 applications or loans, the more significant data requirements kicked in, then that would -- you know, that wouldn't hurt FTC enforcement.

But, you know, if the threshold went a lot higher, then we might have concerns.

LEONARD CHANIN:
Other views?

RAPHAEL BOSTIC:
I would just concur with that. The devil is in the details, if you will, and we definitely are concerned about the role that community banks play in neighborhoods, and if we don't -- if we are not mindful for their activity and understand how those fit in, there's important information that we could be losing as we think about how mortgage markets function. So we would want to think very carefully about exclusions and have a good sense of who we were excluding and how they fit into the broader banking system.

LEONARD CHANIN:
Okay. Thank you.

SANDRA BRAUNSTEIN:
Okay. Thank you. A couple questions about some issues. So I think that all of us who work with the data for fair lending enforcement would agree that one of the most important pieces of the data that we get is the race data. And that was discussed on the previous panel, and even the outside researchers were saying that HMDA is one of the only places where you can get that kind of data on lending.

But one of the things -- trends that we've seen is because the data probably, you know, is not required, that it is discretionary on the part borrower to fill it in, although it is supposed to be filled in by observation by the lender if the borrower doesn't do it, but some of the reporting on that has gone down over the last few years, and one of the, I think, concerns that we have and we've discussed this at some of the other hearings is with the advent of Internet banking, it seems that that reporting could go down even further and considerably, depending on how much lending is done over the Internet because you lose the power of observation, and a lot of people are going to see that and not fill it in.

So -- especially when it says that it's optional.

So I was just wondering, given the importance that we place on that from a fair lending enforcement perspective and the potential for that piece of the data to, you know, decrease, any ideas on what we can do to make that reporting more robust, to ensure that that is still available and, you know, is going to be helpful to us because if it gets to a certain level, it will cease to be as helpful?

ALLISON BROWN:
I'd have concerns about requiring borrowers to report that, as you suggested in the last panel, but we would certainly -- you know, if that happens, if the field is less and less useful, then we would look at things like geo coding or other statistical ways to make some judgments about what's going on.

SANDRA BRAUNSTEIN:
Others have thoughts? Eric, do you have thoughts?

ERIC HALPERIN:

Like Allison, I would be reluctant to enter regime of -- well, I would have to think more about anything that was a required reporting. That doesn't seem to -- on first glance, it's something that doesn't quite sit right. I think there might be ways you could package the reporting form to make it, you know, more of an encouragement than the current form is. That's potential to try to increase the amount of compliance.

But I think it is -- as we go forward, I think we have to accept the fact that it is going to be a -- we're going to have a decline in the amount of that individual reporting as we get less face-to-face lending. It just seems in some ways an inevitable course of the marketplace.

Now, in thinking about what fair lending enforcement you're going to have, so if it's an Internet-based transaction, essentially, trying to think it through, you are really looking at potentially race-neutral policies that have a disparate impact, and one of the main geocoding and looking at neighborhoods and communities is going to be something I would imagine is going to be a main tool in looking at that, and that is, of course, still actionable under the discrimination statutes, and that may just be where we go with that.

I think determining some way where we could increase the -- increase the reporting through a more encouraging reporting form, something that potentially provides borrowers who aren't like everyone in this room and intimately familiar with why HMDA's so beneficial to society a reason to give up that information and it doesn't just seem like something the government is asking you for. That's one of the issues.

RAPHAEL BOSTIC:
So I would echo what Eric just said. I would just -- modification on some of these policies may not be race neutral to the extent that they're tied to the race of the neighborhood, so I think we have to be mindful of that.

The other thing -- the other implication, I think, that's quite important is what are the alternative approaches to doing testing on fair lending grounds, so at HUD, we do a housing discrimination study where we send matched pairs of applicants for rental units and the like, and it's a much more experimental approach, perhaps more labor intensive, and I know there is a lot of discussion about whether people like to do that or not, but if we are going to have serious enforcement along these dimensions, I think it's important that we consider all of our testing options as we move forward.

ROBERT MOONEY:
Sandy, I would add I think it's too bad if we only have to rely on, perhaps, geocoding. Because what we would do, then, is lose the opportunity to identify discrimination against individuals and families. And frankly, most of the referrals we've made to the DOJ and that we have taken enforcement actions on do involve finding individual cases of discrimination. So it would be a shame if, in fact, it gets to that point. So perhaps it would be worthwhile exploring different ways of requiring or encouraging the disclosure of that information at some point between the time of application and the time of loan closing.

MICHAEL BYLSMA:

I just would observe -- there are a few things. It seems you have the authority, probably, to require this. It raises significant public policy concerns. This may not be the time to do it. And as Eric said, maybe there are some ways to kind of ease the pain as the data becomes less available over time, but you may face this ultimately down the road. And the only sort of practical observation I'd have is if the example is Internet lending, you know, you may have an accuracy problem regardless. People may not fill it out correctly on purpose or otherwise. So you know, there will be some of that concern, even if it's required, I'd say.

ROBERT MOONEY:
But at some point in the loan closing process, unless that changes too -- and electronically it may -- and it may already. Maybe I'm out of touch. But the notary -- somehow they are verifying signatures, and at some point, the signature, the race and gender reporting can be verified at the same time. Just idle speculation.

SANDRA BRAUNSTEIN:
Okay. Thank you. Another question that I had for this panel was that we've heard a lot throughout all four hearings that we've held about issues of privacy in terms of the public disclosure of the data. And we've heard -- I mean, it cuts both ways as to whether it is truly just a red herring. The issue of privacy, or whether there are real concerns about the level, especially adding in the new data elements that are required plus possibly some others, you know, is there a real concern here?

And I was just wondering what the other agencies felt about that issue and any suggestions -- we heard some suggestions earlier today about ways to deal with that in terms of public disclosure, but I was wondering if you had any ideas on that.

RAPHAEL BOSTIC:
Sure. Privacy is very important. We have a number of data systems in our agency where we have been very reluctant to disclose. I would also say that how people -- there is a real concern about having such a powerful data tool that's available to the private sector as well. In that it could facilitate some of the targeting that created some of the difficulties that we've gone through.

So I think we have to be very mindful about that. I do think that there are ways to manage that process, and I think it's important that we engage in sort of more disclosure and more openness and more scrutiny than less. So we have to be very mindful of that, but I do think it's important that we move forward.

ALLISON BROWN:
Protecting privacy is very important, and keeping sensitive information, such as credit scores, confidential is very important, even if you are looking at reporting quintiles of credit scores, I think that targeted marketing companies would find that very useful, and quintiles or something that's not a pinpointed score would still be so useful to the marketing companies, make it cheaper for them and easier for them to target certain people for certain kinds of products, which is problematic.

But having these detailed data is very important for researchers, so we would encourage the Board to think about establishing some kind of system where the researchers could proposals to the Board, and the Board would grant access only if there were legitimate research needs, people pass basic security checks and sign confidentiality agreements to make sure they wouldn't be passing on confidential information to others.

MICHAEL BYLSMA:
I am concerned about the privacy implications too. I think what has been said in other hearings is that you have this information currently with respect to income where you can sometimes really tie an income to, perhaps, even an individual.

But I think some of the policy decisions that may have been embedded in that rule are dated, and currently the ability to sort of mobilize all these databases out there and sort of create individual profiles about individual financial and personal characteristics is so much more sophisticated now and so much easier that I think the more you allow to be out there in the public that could be traced to an individual, the greater the privacy risk.

And I think with the individual property identification number, that ramps up the privacy concerns if you can tie all this to the property number. I think Patricia McCoy had a good point, and it was something that occurred to me, which would be where you'd have levels of access to this information, from the public part of the data that's extremely sensitive, maybe it should be aggregated to a higher geographic base or maybe by lender, where they could say we made this many loans in this state, but when you get down to the Census track or property level, I think you'd have identification and targeting.

SANDRA BRAUNSTEIN:
To play Devil's advocate for a minute, what about the argument that we've heard at several panels that the industry already has all of this? They use it all the time and they sell it. They're sharing it with affiliates, and people are already targeting individuals based on this.

MICHAEL BYLSMA:
Some of this is covered by the privacy rules, and I don't know that credit score can just be willingly given out unless the consumer has opted into that. So I think there are protections out there already. If it were required to be reported and made public under HMDA, then the GLEBA rule doesn't conflict. But I think there are some rules on that, and I don't think they can just download all of my stuff and give it to a marketer. So I'm not sure what all is entailed in that argument. I see the point, but I think some of this is protected.

ERIC HALPERIN:
From our perspective, the privacy aspect is real. Despite the fact that some lenders already have access to that, we're talking about making it available to many other actors as well.

I think the public disclosure part of HMDA, though, plays an incredibly important role, I know for our agency and for many other agencies up here, is thinking about what the public benefits are, some of the key public benefits from a law enforcement, fair lending enforcement perspective, the work done by researchers to identify problems in the marketplace.

So in thinking about sort of working backwards, thinking about what sort of accommodations you can make for privacy, that would be a goal. As we've talked about here, there's a lot of ideas where we can continue to give private researchers that can supplement the work done by the government on the research side. That is an important part that I think we all rely on.

And the second piece is private enforcement by either civil rights organizations or private attorneys. The statutes that we enforce have an explicit private enforcement portion, and I think anyone, even in an area where -- even in an area where we're all focused on fair lending, no one thinks the government is going to have enough resources to address all the problems in the marketplace, and it requires private attorneys general to get significant enforcement under the Act in order for us to make an impact. And that's, obviously, going to be trickier than researchers, but there still may be ways to provide summary data on institutions or lenders that won't identify institutions or blur it at a certain level that will still provide at least private civil rights organizations the ability to do their own targeting and allow them to do some of their own investigation.

I am thinking if those are the two goals, and then working back to the important goal of protecting privacy as well and making that work together.

SANDRA BRAUNSTEIN:
Thank you.

MICHAEL CALHOUN:
There was a specific field discussed earlier today, and that was in declined applications. And the reason for the declining application. There was resistance for getting rid of the field, but there was also uniform criticism of the data, there was fairly -- do you have any particular suggestions to what to do with that field? It seems like it's taking on increased importance given the tightening of credit that I think we all see in the market and think will continue for some time? Is it a worthwhile field to continue?

MICHAEL BYLSMA:
Well, what I think was said in an earlier panel is the OCC does require national banks to maintain this data, and I can't speak to how effective that data is in terms of our screening currently, but it's been viewed as a very important piece of data and good to mine for when we're looking at denial/approval discrimination.

One issue raised earlier as well as perhaps the problem is people don't have enough guidance on what goes into the different codes. And maybe the information that's out there about what should go into in the code is a little dated compared to the current mortgage market and the economic situation. So maybe there should be more guidance on that.

And the more you pack into one of those subcodes, perhaps, the less refined that code, when you mark it, will be, but I think maybe it's a valuable thing to maintain.

RAPHAEL BOSTIC:

I agree with that. When you have a field where you don't think it's working very well, you have two choices. You can either try to make it work better or you can ditch it. And in this instance, I would strongly encourage that we try to make it work better first to see if we can make it as powerful a tool as it possibly can be.

As Mike noted, in the -- particularly in the era that we're in now, where credit is so tight, we want to make sure that we are monitoring the decision that lenders are making. I'm hopeful we won't be in this era forever, but we will undoubtedly go through cycles where there will be questions as to how readily is credit being made available, and only by having information and insights as to what's behind the decisions, sort of the how or the why you were talking about earlier, Ms. Green, that's where we're going to start to get insights and understand how to act and respond.

TONYA GREEN:
And I would add -- I believe this point was made earlier in a prior panel -- with the additional data that we're required to collect now because of the Dodd-Frank Act, I think the approval/denial data piece can be clarified and improved.

Now, the devil's advocate in me prepares me as a regulator for the come-back from financial institutions in that they're going to wonder if we're now going to second-guess all of their underwriting decisions because we will have income data at some point. We will have the LTV or we will be able to determine it. And if they say the reason for the denial was because the LTV was more than they were willing to risk or the debt-to-income ratio was too high and we come back and say, well, now that's a discriminatory practice, it's going -- I think possibly create an argument for financial institutions to argue that we're now going to usurp our authority and tell them who they need to lend to, despite the fact that we want them to be risk-focused lenders.

So I think that's something we need to be prepared to combat should we decide to keep that data piece.

ERIC HALPERIN:
I think you -- so denials clearly are an important part in the marketplace, and right now we have a number of red-lining and denial investigations going on. And I think the issue is we're not interested in -- in making lenders lend to people who don't qualify under their standards. We're interested in making sure that they apply their standards equally without regard to race. So that's why I think that information would be helpful, and I think there would be a very clear response to a lender who said if that was their concern, our concern is that you apply that same standard equally, and that would allow us to do it.

ROBERT MOONEY:
We require the lender to maintain the information for a couple of years so when it's examined by banks it will be readily available, and it's a critical piece of information to find discrimination. There are definitions. We might take a look at that to find what might be more useful. But I also agree with Mike. You can deal with some of the privacy issues by -- we can collect all of the data. We can report some or most of the data, and we can disclose some or most of the data and do it in ways that might protect privacy.

MICHAEL CALHOUN:
Another of the more data collection or broader coverage issue, and that has been those discussed earlier today, coverage of HELOC loans. I'd be interested in getting the views from all the panelists who have them on are we missing critical data with the current HELOC exceptions? Are we encouraging more questionable practice to migrate to the HELOC space by the way that it's treated in this for HMDA as well as in some other regulatory respects?

You track HELOCs? Do you review the HELOCs in your fair housing reviews now? And what procedures do you use for that?

ALLISON BROWN:
I do think that reporting HELOCs is very important, that it is part of the market that we need to look at and that's harder to look at now because it's optional in HMDA, and at least most of the nondepositories don't tend to report it.

We have seen problems in investigations where companies are providing a HELOC at the closing, and it's maxed out. It's basically a way to do an 80/20 without using a second mortgage. And we'd want to make sure that those -- you know, that that's not done in a discriminatory manner or for some reason white borrowers were getting seconds and minority borrowers were getting HELOCs. That's something we would be interested to look at. And there may be other issues as well. If we had more information on that, it would be extremely helpful.

RAPHAEL BOSTIC:
I would echo that, and as we think about the evolution of how people finance their homes and the much more sophisticated combinations of accessing the debt markets, we will want to have a complete picture of how people are living, how they are managing their process, as we go into default and foreclosure questions. As you know, there's been a shift to some extent to accept/deny to at what price and at what terms. The access to home equity lines of credit, to second mortgages, all those sorts of tools, they are an important part of the story, and if we don't have that in the mix, it makes it very difficult to do a diagnosis of what exactly is going on and how do practices impact people's decisions and how do people's decisions impact how the market plays out.

So I think we want to be as comprehensive as possible in our coverage of the mortgage and housing finance space in terms of our reporting so that we can really understand what's going on.

PATRICK LAWLER:
I would echo that and say that it's been a real problem in managing modifications, people who have problems, to try to identify where the first and seconds are on the same property, to find out if that exists.

And we've started with a program that will help for some servicers, but not nearly all of them. There's huge gaps. And different people with the same situation are going to be treated very differently simply because of what data is available. And so whether it's part of HMDA or some other mortgage data system, it would be extremely valuable and help ensure that people had a chance to be treated equally and fairly if that data were available.

ERIC HALPERIN:
And one thing just to add which was implicit in Mike's question was recently during the -- when the mortgage bin was happening, there were a number of HELOCs being used basically as seconds. When you allow a product essentially being used interchangeably with another product to have less of a regulatory burden, you are going to create an encouragement to use that product. That would be an imbalance, I'm afraid, especially as we increase the HMDA reporting burden, would be exacerbated.

MICHAEL CALHOUN:
So we heard earlier a variety of approaches suggested for HELOCs to include them all, exclude them all, to include only those at or near closing. Do you have comments on should there be a distinction in the HELOCs of which ones are included, or do you include them all?

ALLISON BROWN:
I think include them all. The specific problems we've seen have taken place with HELOCs that happen at closing, but I think we'd like to have the full picture anyways.

TONYA GREEN:
I would agree with that. In the credit union industry, because credit unions tend not to have sufficient levels of capital to do first lien mortgages, a lot of them are in the business of doing HELOCs, and we do monitor HELOC lending in the credit union industry through our risk-based focus exams. And the default rate on those HELOC loans tend to be indicators for us at NCUA that there is trouble with the borrower financially because there are studies that say borrowers tend to default on the second lien mortgage before they default on the first lien. It puts creditors in a predicament because the second lien doesn't have priority, so if they go into foreclose, they have to deal with that first lien mortgager who may say, my loan is current; I don't want you to do a foreclosure.

So not collecting that information on HMDA does not give us the full picture of how much of this is going on nationwide versus what we have at NCUA simply because of how we do our examinations and because of the nature of credit unions and their business.

MICHAEL CALHOUN:
Thank you.

LEONARD CHANIN:
There's been a lot of discussion about adding data elements, and a lot of those elements, whether it's debt-to-income ratio, loan had to value, some are statutorily -- some of those obviously would clearly assist in doing fair lending analysis and looking at loan distributions in communities and the like. My question is whether there are any existing data elements that you feel could be dropped or some that simply are not useful in terms of either fair lending analysis or other evaluation of lenders' commitments to their communities?

MICHAEL BYLSMA:
Well, here I'll take Allison's earlier disclaimer. I don't speak for the Commission or the FCC, but I did discuss this with staff, but I didn't get an answer to the affirmative. I did specifically ask about preapprovals, which came up several times today, and we do use that information on preapprovals denied or accepted, but not -- I mean, approved but not accepted as part of a screen. I don't think we've seen such a volume that we actually do single preapproval kinds of exams.

So I think we do find that to be a useful, if limited, individual characteristic, and we didn't identify any others.

LEONARD CHANIN:
Okay. Other views?

ALLISON BROWN:
I can say we actually have not found the preapproval data to be useful given our resources and the way we've conducted our screening, so it may be useful for other people, but the Board should really consider the burden cost of the information collection on the preapprovals in particular.

LEONARD CHANIN:
Okay. Anything else? Unsecured home improvement loans?

ROBERT MOONEY:
I've always marveled that at least those with significant dollars attached to them were not reported, going back 30 years. My experience was even 30 years ago, with one institution that was notorious for making Title 1 FHA insured home improvement loans that were either both recorded as liens were recorded or not in conjunction with predatory tin men and signing dealers.

There are home improvement loans for the lower dollar volumes that don't create a lot of risk and perhaps don't need to be reported, but at some point somewhere, there are those that should be reported, and perhaps it's dollar amount. I live in a minority neighborhood. We've been push marketed for years by lenders for home improvement loans, and I think they were tied to home improvement dealers as well.

LEONARD CHANIN:
Were those secured or unsecured?

ROBERT MOONEY:
Some were secured situations, and some of the lenders, I think, that were involved in that push marketing were making them that were not secured. So I think that I just don't understand why property security alone for that kind of product would be a consideration, although it always has been. I think it's worth looking into.

LEONARD CHANIN:
Other views? No? Okay.

SANDRA BRAUNSTEIN:
Just on that theme, I have a question about at the agencies, do you use the multifamily housing data very much?

ALLISON BROWN:
We have not.

SANDRA BRAUNSTEIN:
Do you use it, Raphael?

RAPHAEL BOSTIC:
We haven't, but we're going to more. One of the things that has become very clear to us in this housing crisis is the important role that multifamily plays and the reality that housing finances often doesn't serve multifamily product very well. And so while it hasn't been historically something that we've done a lot of market research on, we at HUD, and we in the broader research community, it is something that is of particular importance, and we will be paying much more attention to activity in those markets.

SANDRA BRAUNSTEIN:
Have you -- let me just follow up on that. Have you paid enough attention to it that you know whether what's currently collected will be useful to you, or is there more needed?

RAPHAEL BOSTIC:
I can't say that right now, but I can get back to you with our collective reflections on that.

SANDRA BRAUNSTEIN:
Okay. Others on that issue? Mike?

MICHAEL BYLSMA:
No, I think I would say the same thing. I would get back to you on how much we use it and how valuable it.

ERIC HALPERIN:
One of the things we broadly look at in some of our red-lining cases is whether credit -- financial institutions are meeting the credit needs of their -- of communities. But I also will check to see if we actually -- if that's a data field that we find useful in those kind of analysis and let you know.

SANDRA BRAUNSTEIN:
Yeah, anybody else? Bob? No. I don't think I have -- do you have other questions?

Robert Mooney:
I'm good.

SANDRA BRAUNSTEIN:
Are you good? Well, we're actually ending a bit early, so I would like to really thank the panelists. This has been extremely helpful. Thank you very much. I am sure as we move

forward in this rule making process, we will have additional contacts with you. And any other thoughts that you have later, please feel free to share them with us. So thank you very much.

I just want to check, do we have anybody signed up for the open mic? No? Oh, Dave, okay. No? Okay. So I guess since we have nobody that wants to talk otherwise, that we're going to adjourn this hearing. Again, thank you very much. The hearing is adjourned.

[Applause]