Home Mortgage Disclosure Act Public Hearings, September 24, 2010
Panel Three: Eric 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.