Home Mortgage Disclosure Act Public Hearings, September 24, 2010
Panel Three: Question and Answer Session

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 or 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 establish 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 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 – 33:49

[Inaudible]

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.