Home Mortgage Disclosure Act Public Hearings, September 24, 2010
Panel Two: Paul 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.