Home Mortgage Disclosure Act Public Hearing, August 5, 2010
Panel Two: Elvin Wyly

Elvin Wyly:
Director Braunstein, Members of the Council, and dedicated staff, thank you very much for the opportunity to comment to on the changes to Regulation C.

One definition of the word "data" is "known facts," but the word "fact" is Latin for "a thing done, good data, or good deeds." HMDA was a good deed, although it has always been criticized for what it does not include. This information is missing, of course, because most of the financial industry has fought disclosure every step of the way. The Board now has the chance to do good deeds: fix Reg C so that HMDA data reflects all of the innovations of today's financial marketplace.

Now, two things work and should not be changed. First, HMDA is extensive. It's not a sample. It is a micro-data, and it covers most of the market. True, it cannot tell us all the unique circumstances of individual consumers, but whenever we see these unique circumstances in a news story or report case on predatory lending, the inevitable response is, “This is just anecdotal.” Well, whatever else you can say about HMDA, there is nothing anecdotal about a common-metric analysis of inequalities across millions of borrowers across America's cities and suburbs. If unique details matter, add data elements so that we can account for those factors.

One successful model of thinking beyond what was specified in Dodd-Frank created is the National Mortgage Data Repository created by Renoir, McCoy, and Ross. Now, the second success is freedom of access. The data was created by public law, and they're a public resource. Keep it as free and as public as possible.

Now, how do recent events change the way we should think about HMDA? Well, using HMDA to study mortgage markets today is kind of like surfing -- riding the big, fast wave of market innovation, but you're perched on a surfboard looking backwards. It may well be impossible to anticipate all of the next innovation, like securitization and the mortgage market. The new data elements specified in Section 1094 of Dodd-Frank are not much more than what researchers recommended a decade ago. So the Board should regard these as an absolute minimum, make the reasons for denial mandatory for all institutions, add data elements for combined loan-to-value, home equity lines of credit, reverse mortgages, balloon-payment terms, cash-out refinances, and both front- and back-end debt-to-income ratios; reduce the reporting thresholds, and cover all entities making or purchasing any significant number of loans. Subsidiary structure was used during the bubble to evade regulation, and there's already evidence it is being used to evade parts of Dodd-Frank. Level the playing field.

Now, how should we balance public disclosure with privacy concerns? As far as possible, preserve the historical continuity of today's LAR format, but to minimize the risks of the new data elements, the Board should distinguish the concepts of privacy, confidentiality, and anonymity. Privacy refers to people interested in controlling the information about them. Confidentiality is the rules of data sharing. Anonymity simply means no personally identifiable information. Now, Reg C already maintains anonymity and confidentiality. Now there are several technical steps the Board can take with the new data elements to minimize privacy threats -- and I've written a little bit in my written testimony – but that threat comes not from the information, but from how it is used. The main threat comes from private industry itself. So, beyond the steps the Board takes to ensure anonymity in public-release files, the Board should explore the legality of issuing parts of HMDA under something like a creative common, noncommercial use license, or having to establish confidentiality protocols now used for certain census data.

For anyone who respects the value of measurement, evidence and reason, HMDA has been one of the most successful policy innovations of our lifetime. Dodd-Frank gives the Board the opportunity to modernize and expand disclosure and to capture the dramatic landscape of innovation in the financial marketplace. Let's do a good deed.