

Home Mortgage Disclosure Act Public Hearing, August 5, 2010  
Panel Two: James Zahradka

James Zahradka:  
Good morning.

I'm James Zahradka with the Law Foundation of Silicon Valley, and I'm Supervising Attorney of two of our programs there -- Fair Housing Law Project and Public Interest Law Firm. So I'm the last person to talk today, so I'm going to really try not to rehash what's already been said, but I'll try to focus on a few points: our experience with the HMDA data, the few additional data points we think should be in there.

On the privacy issue, though, I think I may not be as fluent as the gentleman to my left here --- I'm not really sure if you're to my left here, but anyway -- eliminating the issues that Elvin brought up and also the issue of expanding it to include mortgage brokers. So I talked to a couple of other fair-lending practitioners out there in preparation for this, and we found it of limited use in achieving one of the stated purposes that you heard at the beginning of the day, which is to identify possible discriminatory lending patterns, and enforce anti-discrimination statutes.

You know, I heard the phrase used by one of the industry representatives that there are exaggerated claims of discrimination out there. I imagine that's probably the case, but there are other problems created by bad data on the other side of the equation.

The case that we -- when we were trying to put HMDA's data to use -- was interesting in that it showed that 100 percent of the loans that were issued by the particular lender we were looking at, which were white borrowers, which was interesting to us, because we had just signed retainers with six Latino families who'd gotten loans from that lender in the relevant time period, and we had five or six others out there who had also gotten loans from this lender. We did end up representing them, but clearly, this data was fundamentally wrong.

Of course, we had additional information demonstrating that, in fact, this lender was targeting Latinos for inferior loans through, I might add, some unscrupulous mortgage brokers. We got that data from our clients and from the Business and County Records office and put it together manually. But if we hadn't done that, these discriminatory practices by the lender, this case study resulted in a very positive settlement. This was in 2003, 2004, as Elvin said, kind of at the very beginning of the cusp of the crisis really. This discriminatory lending would have gone undetected, uncorrected, and more folks would have been hurt. So we weren't really thrilled by that performance of the HMDA data, and I think you heard reference earlier to the Citibank settlement, where I think they under-reported -- something like \$90,000 just weren't reported at all, and that had slipped through until the state AG sued them.

So there are some issues there, and so, it's critical for us to get good data when we are going to court. The courts are, you know, quite rigorous about making you show and prove your case in a way that is more than you would put in a report to go to the media and to the public. And if we can't get good data that a court will use, the law is not good use to us.

We also saw during the crisis that, unfortunately, government doesn't always do a good job of policing of issues, so private enforcement is very important, because, again, this idea that some of the data should be kept private and only held in the government's hands, we need private enforcement out there.

So let me get to some of the issues that we really see in our practice, one of which is this issue of limiting of efficient borrowers. As Kevin mentioned, four years ago in this very room, we heard from a series of borrowers who had been the victims of bait-and-switch tactics by lenders and brokers who preyed on their lack of fluency in English to sell them one loan orally, and then they got a bunch of English-language documents that had completely different terms, and they were immediately in a situation that they shouldn't have been in, with really devastating consequences to them and their communities.

So, these practices seem to also be repeated, I might add, in the loan-modification context, and I want to talk about that in the time I have left here, because what we're seeing is a lot of people who are being taken advantage of by low-mod quote specialists. They've been forced into the arms of these folks by the failure of the servicers to really step up to the plate and modify the loans the way they should. These folks are getting the same routine -- the bait and switch -- where "I'm going to get you a modification of your loan, just pay me \$4,000." And they get a lengthy English-language contract, after having negotiated in Spanish or another language, that is completely different terms, no money back, of course; no guarantees. Surprisingly, the loan mod gets denied, the scammer refused to return the money, and the already stretched homeowner gets some several thousand dollars and lots of precious time into that effort.

So, again, it seems that homeowners are being revictimized on the basis of their national origin, language ability and proxy for national origin and also note that there are media reports out there about separate call centers that some services have for English-language speakers and Spanish-language speakers. The English-language speakers get actual loss-mitigation folks. The Spanish-language speakers get what seem to be more like collection efforts. So there are some real issues out there. Again, I think this is an absolutely critical data field. We need to capture whether this person negotiated the loan in a non-English language and their fluency.

But I want to just address one thing, one more thing on this issue, which is the danger of removing the person who's sitting down with the borrower -- removing their ability to determine the ethnicity. We have a lot of folks who are first generation or just immigrants to this country who, I think, would be very reluctant to identify their race. And if we take that ability to fill in that -- by the person negotiating out of the equation, we might lose a lot of data, and sometimes it's quite obvious that the person is, you know, in a protected category. So I'd caution against that just throwing that out.

Thank you very much.

Sandra Braunstein:  
Okay. Thank you.