Comments of Tom James

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First I want to thank the Federal Reserve Board, Governor Duke, the FED staff, and the members of Consumer Advisory Council for inviting me to participate on this panel today to inform the potential rule-making process; and I want to commend the Board for convening these public hearings, now, in expeditious fashion, to review Regulation C which implements the Home Mortgage Disclosure Act of 1975.

Second, I wish to point out that the views and observation that I will express here today are my own and are not those of my Office or those of Lisa Madigan, the Attorney General of Illinois.

As an Assistant Attorney General for the State of Illinois, I want to focus on the shared mission of enforcement agencies and policy makers in carrying out one of the three listed policy purposes of the Home Mortgage Disclosure Act – and that is the duty to identify discriminatory lending patterns and conduct in the mortgage marketplace.

As you may be aware, the Office of the Illinois Attorney General has recently brought two major enforcement actions against national lenders that allege disparate impact and steering claims under our state's antidiscrimination and fair lending laws. Both lawsuits depended heavily on access to, and analysis of, HMDA data. For those of us who police the marketplace to identify discriminatory conduct, HMDA reported data is one of the most important analytical tools at our disposal. This is especially true in regard to federally chartered banks. Although the US Supreme Court has recently made clear that states have the authority to sue federal charters under our fair lending laws, our authority to investigate these institutions prior to filing a lawsuit is extremely limited. Thus, on the state enforcement level, having access to a rich field of HMDA data is critical to maximize accuracy and precision in screening for discriminatory conduct, as well as eliminating uncertainties and minimizing the likelihood of statistical error and the incidence of false positives.

Unfortunately, our investigatory resources are limited and time is always at a premium. Our analysis of suspicious market phenomena, particularly race-based pricing disparities, has consistently been informed by not-for-profit research and academic institutions (and sometimes the press) which often interpret available market data in the first instance, bring it to our attention, and aid us in our inquiry when we have reason to believe that the suspect market conduct may, in fact, be rooted in unlawful discrimination. Of course, all of these institutions depend heavily on access to HMDA data and are in many cases better equipped and positioned to make the first cut in screening the numbers for suspicious market conduct.

In some cases, while HMDA data has provided crucial data components in the process of identifying apparent race-based pricing (and product) disparities, the here-to-for available data set has historically lacked key loan-level variables that may be necessary to prove a case of discrimination without more. These missing variables include: combined loan-to-value ratios, total borrower income (back-end, in addition to front-end), as well as credit score and the annual percentage rate on the loan. To eliminate the likelihood that a thin data set would demonstrate a false-positive indication of discriminatory market phenomena, enhancing the data set may require including a number of additional data points that limited time does not allow me to catalog in detail right now.

In addition to determining what HMDA data to collect, the Fed must also determine what data to disseminate and to whom. I encourage the Fed to make comprehensive, loan-level HMDA data available to top state law enforcement entities if not as a matter of routine, then routinely upon request. With respect to access for academics and research organizations, keeping access to data open and as transparent as possible will facilitate the investment opportunity and community service policy prongs of HMDA, in addition to aiding law enforcement in interpreting the data for policing the market and regulatory compliance purposes. I urge the Fed to explore ways of protecting the privacy of individual borrowers while keeping the enhanced HMDA data sets meaningful and accessible to those of us who depend on them to do our work.

As a last word, I also wanted to draw the Board's attention to the growing issues surrounding our aging population--age discrimination and the targeting of the elderly for unnecessary or inappropriate, if profitable, reverse mortgage products. State AG offices are increasingly bringing enforcement actions against lenders and originators involving the marketing of reverse mortgages and other equity-conversion products. It is important that comprehensive loan-level data be collected on reverse mortgages, including the age of the borrower, payment option (e.g., term, tenure, line of credit, modified term, modified tenure), whether federally insured or proprietary, the length of time from closing until repayment, among other significant and telling attributes. And it is important that this data set be disaggregated from the forward amortizing mortgage data otherwise made available through HMDA reporting requirements.

Thank you for giving me this privileged opportunity to share my thoughts on the important topic of enhancing the HMDA data set and the mission of ensuring equal access to affordable home loans for all of the people.