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TRANSCRIPT OF THE CONSUMER ADVISORY COUNCIL MEETING THURSDAY, OCTOBER 28, 2004

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TRANSCRIPT OF THE
CONSUMER ADVISORY COUNCIL MEETING
THURSDAY, OCTOBER 28, 2004

The Consumer Advisory Council met at the offices of the Board of Governors of the Federal Reserve System, in Dining Room E in the Martin Building at 20th and C Streets, N.W., Washington, D.C., at 9:00 a.m., Agnes Bundy Scanlan, Chair, presiding.

Members present:
Agnes Bundy Scanlan, *Chair*
Mark Pinsky, *Vice Chair*
Dennis Algiere
Kenneth P. Bordelon
Sheila Canavan
Robin Coffey
Anne Diedrick
Dan Dixon
Hattie B. Dorsey
Thomas P. FitzGibbon
James Garner
R. Charles Gatson
Larry Hawkins
W. James King
Ruhi Maker
Patricia McCoy
Elsie Meeks
Bruce B. Morgan
Debra S. Reyes
Benson Roberts
Benjamin Robinson, III
Paul J. Springman
Forrest F. Stanley
Lori R. Swanson
Diane Thompson
Hubert Van Tol
Clint Walker

Others present:
Sandra Braunstein, Director, Division of Consumer and Community Affairs
Roger Ferguson, Vice Chair, Board of Governors
Susan Bies, member, Board of Governors
Ben Bernanke, member, Board of Governors

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(9:02 a.m.)

CHAIR SCANLAN: Good morning everyone. I would like to acknowledge the eleven members of the Council that are leaving after this meeting today; Janie Barrera, who unfortunately is not with us, but Tommy has done a wonderful job of working through her committee efforts today and yesterday; Ken Bordelon, myself, Agnes Bundy Scanlan, Robin Coffey, Tommy FITZGIBBON, Larry Hawkins, Ruhi Maker, Pat McCoy, Debra Reyes, Buzz Roberts, and Hubert Van Tol. Thank you all for your work over the past three years.

A copy of the schedule for today's meeting are included in your black folder and over on the desk behind the council members. Let's just take a look at the agenda. At 9:15 we will be starting shortly with the Community Reinvestment Act Proposed Rules and a discussion of that. That was discussed fully in yesterday's committee meetings. Then we'll move on to the Courtesy Overdraft Protection discussion looking at issues relative to the coverage of courtesy overdraft protection, concentrating on TILA as much as possible. Then we'll take a break, and then we'll move into the Anti-Predatory Lending Laws discussing both the state and Federal legislation to protect consumers from abusive lending practices. We'll move on to the Electronic Fund Transfer Act, and looking at the issues in connection with the proposed changes to Regulation E. Then we'll have a members forum, a presentation from the individual council member on their organizations and local initiatives with that particular group that addressed current financial services issues, and today's speaker will be Debra Reyes, who will talk about a lending consortium and how it relates to affordable housing. Then we'll go on to committee reports and then have adjournment.

One thing I would like to ask everyone today as we're discussing the different topics on the agenda, please try and remember to focus on the conversations that we had yesterday, remembering the topics and the questions that the staff asked us to review and talk about. Please try and focus on those issues as we begin our conversation. And with that, I'll turn to Buzz to discuss the Community Reinvestment Act Proposed Rules.

MR. ROBERTS: Well, thank you very much, Agnes, and good morning everyone. We had a good discussion in the committee as we have over the last three years of my work on this council; and, indeed, as the council has overall over the last three years on CRA and proposed changes to it. Since we've gone over a lot of this territory in the past, staff asked us to

comment particularly on a series of issues that arise from more recent regulatory actions by the Office of Thrift Supervision, the FDIC, as well as the Fed and the OCC.

And just very briefly, the OTS came out with its own rule, which is now final, to raise the threshold for large banks from $250 million in assets to $1 billion in assets. The FDIC has proposed to do the same, also making some changes with respect to community development, particularly in rural areas. The Fed and OCC have withdrawn a proposal to raise the large bank threshold to $500 million in assets, citing doubts that any savings to institutions would outweigh the potential harm to communities.

And so here we are now with different rules for different regulators, and so one of the questions that the staff asked us to focus on first was how important it is to have uniformity among the various regulatory agencies with respect especially to the Community Reinvestment Act in these issues. So why don't we start the conversation there.

CHAIR SCANLAN: Before you start, could I just say I was remiss earlier in not acknowledging the presence of Governor Bernanke and Governor Bies, who's here with us today. Thank you very much.

MR. ROBERTS: So I'd like to ask Anne Diedrick to kick off the conversation.

MS. DIEDRICK: Thank you, Buzz. As Buzz said, the board has asked the members of the CAC to comment on the process of interagency rulemaking, financial institution oversight and supervision, uniformity, and conformity. My short comments will be in response to that request.

Our industry needs consistency and uniform rules that implement banking laws regardless of the agencies who charter individual banks hold. Setting aside the issue, which in this case is CRA, the process of rulemaking has been damaged, and this is a great concern to the members of the CAC, and many others. It is unclear to all whether this rift among the agencies on this CRA issue is an aberration, or the harbinger of the disintegration of interagency rulemaking. The CAC strongly urges the agencies to return to the rulemaking table and provide the industry with uniformity and consistency, which we have to come to expect, and which makes us stronger as an industry.

MR. ROBERTS: Anybody else like to address this issue? Tommy, did you want to [inaudible]

MR. FITZGIBBON: Well, I wanted to support what Anne said. I think one of

the major concerns we have is not necessarily whether or not the actions taken by the OTS and the FDIC as individual actions on their part, rather than in concert with the rest of the regulating agencies, bodes for similar actions on other very important issues, CRA being an important issue. But there are other regulations that the banking industry relies upon in terms of developing safe and sound operations for the financial industry in general, and for access to credit by small businesses and consumers, as well.

Our concern, my concern, and I think the industry's concern in general is that this is a step outside of that general ability of the regulators to meet in good conscience, if you will, and work on issues that are important to the vital safety and soundness of the industry. These kinds of individual efforts or individual actions by the regulators really give us grave concern about things in the future, in particular with CRA.

The advent of the changes to CRA actually emanated out of FIRREA, which was to deal with the issues of financial industry reform and to develop a recovery, if you will, of the financial industry. The need to focus on developing a change in the culture of the banking industry to focus on not only providing good deposit services in their own community, but also providing and generating good investments and good loans that serve their own market.

As Governor Bies and I were talking earlier today, some things about age. I was here in Washington, D.C. in the early 1980s when the financial industry was in jeopardy, and some of it was because of the Depository Institution Deregulation and Monetary Control Act, where in effect the regulators were not given the ability, if you will, to adequately supervise the banking industry and banks and thrifts really went off on their own, instead of doing things that were not in good keeping with making investments and loans in their own market. And so the focus of FIRREA was to bring them back to the fold, be able to direct, if you will, the culture of that local institution to meet the credit needs in their own market, and so now here we are some twenty-five years later discussing again whether or not these kind of regulations can be imposed on the industry uniformly, and so that's our concern.

MR. ROBERTS: Mark.

MR. PINSKY: Thank you, Buzz. I want to reinforce - I mean, I think it was a clear message coming out of our discussion yesterday that Anne really emphasized, which was how critical uniformity is, with the broader issue, obviously, about how the agencies go about approach. The staff told us that to their knowledge, at least in their recent memory, that there had been no

incident like this where the four regulatory agencies are not on the same page on something of major significance, maybe minor significance. And at the same time, Buzz, and I don't know if you want to get into this later or now, I mean we also talked a little bit about some of the sort of [inaudible] it's not uniformity at all costs.

MR. ROBERTS: Yes.

MR. PINSKY: I mean, I think there was a general sense, and it may have been unanimous. I don't know if we really asked that question, that going to a billion dollar threshold was not… you don't have uniformity if it means going to a billion dollars. I think that was the sense at least of the majority, and that there are a number of other criteria that we discussed that, frankly, you summarized better than I could. And if we, perhaps, in this conversation, we could share some of that, give the Governors some sense of what those criteria might be that would lead to a sort of reasonable and sustainable way of bringing people back together, but there's really a strong emphasis that uniformity really meant not three in one in terms of the regulators, but really all four. And that it had to be a conversation that brought the OTS back to the table, as well as the [inaudible]

MR. ROBERTS: Part of the dilemma here or the delicacy is that it gets to Anne's question, is this regulatory fragmentation and aberration, or is it the beginning of a new pattern? And the way that the agencies move from here we felt could determine which of those paths will prove to be dominant. If the way the agencies move from here reinforces unilateral action on behalf of one agency, then it's likely to encourage similar unilateral action in the future. If the agencies act in a way that pulls everybody back onto the same path, then we feel more comfortable that uniform and consistent regulation will be the rule in the future. Ruhi and Dennis.

MS. MAKER: I agree that uniformity is important. I think the agencies need to get back to the table, but with Buzz and Mark, the solution isn't someone throws a temper tantrum and goes up to a billion dollars on their own. You don't reward. That's not how I parent, at least. I think the solution that can be crafted from the community bankers have addressed specific concerns. You're a community banker in LMI. You have no LMI Census tracts, what do you do? I'm never going to advocate throwing money just to meet some cookie cutter test because it makes a regulator happy. I think you change how you do the exams.

CRA talks about performance context. If you don't have an LMI Census tract, you can do affordable housing, and you can come up with rules where the regulators aren't making you jump through ridiculous hoops, but that doesn't mean you have to throw the whole car away, as I

said, change the wheel instead. And I think this keeps coming up, the examiners are [inaudible] the way they're examining our problem, what do we do? Come up with some ideas and, frankly, using CRA in non-LMI Census tracts to promote affordable housing that desegregates both race and poverty is an incredibly fantastic outcome, that if we can make that switch with CRA, we should certainly, all of us, be advocating for. And I think everyone would agree that that would be a fantastic way to go.

There are lots of other solutions. I'm not going to run through them, but there are ways to tweak community development, to tweak how we do some of these activities and give folks credit for where it's due, rather than saying well, it's a square. You made a circle. Even though the circle is great, it doesn't fit in the square, so it's not going to count. I mean, this is the 21st century, I think we can fix this problem.

MR. ROBERTS: Dennis.

MR. ALGIERE: I agree with Ruhi. Hold on. Number one, I would hope and I would respectfully request that the board perhaps take a lead role in bringing the regulators back to the table to bring some uniformity to the CRA issue. And also, Ruhi is absolutely correct, as a banker it's often discouraging when we go through the examination process and we feel that we're meeting the needs, and we're complying with CRA, and it just doesn't fit that cookie cutter, unfortunately, that's in the regulations. So those are the issues I'd like to see discussed, perhaps the implementation, perhaps some guidance on community development lending, community development loans. Those are the things I'd like to see, and I do agree with your comments, Ruhi.

MR. ROBERTS: Bruce.

MR. MORGAN: Buzz, I agree with Ruhi too. As a community banker, Tommy wanted to talk a little bit about history, and let's talk about the Depository Institutions Deregulation Monetary Control Act. It was during a time when deregulation was being applied to a lot of industries, and this was the first major bill to deregulate the pricing side of banking. And it was phased in over a six-year period.

Garn St. Germain followed in ‘82, and offered additional services and products to the industry, and greatly expanded the thrifts. FIRREA was a knee-jerk or overreaction to what happened during the 80s. We went from 15,000 banks to about 8,500 since then. But during that time, we went from 3,000 thrifts to around 1,000 or 1,200.

Reregulation is not the solution to community reinvestment. We need to think

about what were the original purposes and intents of CRA, and how have we gotten away from that with the punitive approach that we're using.

The proposal that FDIC and OTS has adopted FDIC board, and it is a five-member board, have on the table is not to do away with CRA. It's to streamline the exam processes for smaller institutions. In the past, the idea that the Federal Reserve espoused was to let the market and market forces direct what happened, rather than to use the more punitive regulatory approach. As I recall the Federal Reserve NOCC withdrew their proposals to raise it.

The burden of regulation of smaller institutions diverts resources away from community reinvestment to comply with that excessive burden. And like I say, if we go back to the original purpose and find ways to incent CRA rather than the punitive approach that we're using now, because a lot of the activities that in the past community banks would get credit for on CRA exams. In the present environment and the present approach, those activities are totally ignored and it becomes a rather mechanical statistical process. And I think we need to think about what we're really trying to accomplish, whether it's affordable housing, or low- and moderate-income housing, or development of the communities that we're a part of.

Frankly, if my neighborhood in Northeast Johnson County, Kansas becomes destabilized, that impales the value of franchise. It's in my best interest economically as a bank owner and CEO to see my community develop, and stable, and growing, so to put additional regulation on me doesn't accomplish that task. But I do agree with many of the comments that were made, but remember that CRA… FIRREA was not an industry positive measure. It was an attempt to re-regulate an industry that it kind of spun out of control during the time in the 80's. In our state, we lost over 250 banks during that time.

MR. ROBERTS: Dan.

MR. DIXON: These discussions are generally more interesting if there's a little bit of disagreement, so I'll try and offer a little bit. And in the spirit of disclosure, my company is not in the range of the threshold. It's a hundred billion dollar thrift OTS supervised, but the OTS action didn't affect us, obviously, and wherever this rulemaking ends up, won't have any direct impact on us. But there are different statutory authorities for the different regulators. There is not just a single regulator. Congress, for whatever reason, has endorsed the notion that different regulators for different charters are appropriate, and there is strong support for a dual banking system.

Some institutions are appropriately regulated primarily at the state level, and

others at the Federal level, et cetera. So either we believe that there is a basis for having different charters and different regulators, and different regulations or we don't. So I'm not trying to argue about the merits of what level may be appropriate, but I would suggest, I don't think it is eminently obvious that the same threshold, for example, on this particular question is automatically appropriate for all different charters who have different types of supervisory oversight, different missions.

What I would say, the thrift industry that traditionally focuses on housing and for whom the vast majority of the balance sheet is housing and home loans, and for whom I would assert, without having any data at my fingertips, but at least for my own company, a very substantial part of our home loans are to low- and moderate-income individuals every year, every day, and in all kinds of census tracts all over the country, and all over our markets. So I think one could make a logical case that maybe you get the objectives of CRA for thrifts without necessarily the same need for oversight and review. And it may be that the OTS action is completely rational and justifiable, and that it have a higher threshold.

MR. ROBERTS: Agnes.

CHAIR SCANLAN: Just two comments. First, I do want to acknowledge the presence of Vice Chair Ferguson. Thank you for being here. As it relates to the support for uniformity, I support that. I do think that when you come to community development lending, it's such a difficult type of a project at times to put together, it's not a cookie cutter approach. It's almost a case-by-case scenario, and I've managed many CRA examinations, surely for a larger institution, but it's great when there's approach that all four of the regulators have come together and have discussed, because at times you'll have an examination that might be a bit different from one than the other, and that's a waste of time. That's not really putting the efforts of the community in perspective, so while your comments, Dan, about how there are different regulators, and they have different charters and different purposes, that's correct. But on this particular issue, I think uniformity is the best way to go.

MR. ROBERTS: Hubert.

MR. VAN TOL: I think, as well, that uniformity is the best way, although I'm less concerned about that, perhaps, than that uniformity not be an excuse for being a race to the bottom. I think if we're looking for ways to make community development lending work better, particularly I'll speak to rural areas, I think there may be ways to do that that the board should be thinking about and discussing.

I don't think that the FDIC proposal did that very well. On the one hand, one of the things that they did was attempt to decouple income from the equation by the part of their proposal in which all rural areas, community development in all rural income areas would be considered community development for CRA purposes. And I think probably a more productive way of doing that would be to deal with some of the census, median income problems in rural communities by bumping up how median income is measured in rural areas.

Currently, if your LMI is in a rural area, it means that you're 80 percent or less of the median income over the non-metro areas of the state. There's no reason that that has to be so. It could just as easily be the median income of the entire state, and what that would do would be to bump more areas into LMI geographies, because I think what happens, and particularly in rural areas, is the town [inaudible] the census tract which encompasses the town is higher income than the surrounding agricultural or rural areas, and then it becomes difficult to do community development in the town, so I think dealing with that is a structural matter.

If you look at how the largest banks are tested on investment and service area, you will almost never see a full scope review that includes rural areas as part of a full scope review. Instead, they do a limited scope review, and I would contend that if more of the largest banks that have presence in rural areas had occasional full scope reviews in those areas, it would drive more competition into those areas, and it would force the community banks to, as Bruce says, do what they always do anyway. I think, like Bruce, I think there are a lot of very good community banks that are tied to their communities, but that isn't always the case.

Another issue relates to what the FDIC has done in terms of collection of data. If you raise the level to a billion dollars and say that all institutions under that level don't have to collect small business and small farm data, the small farm data, in particular, becomes meaningless because a great majority of that small farm lending is done by the billion and under institutions, and I think there's nothing left to really do with the data. I think with small business, it's a little different situation. It takes a whack away from the usefulness of that data. It probably doesn't eliminate its usefulness all together, so I think structurally, those are some of the issues that I would hope the Board would look at and discuss this with the FDIC.

And I guess one other thing to say would be if there is a separate community development test, and it simply becomes sort of icing on the cake for other factors, it becomes a way for that institution to get an outstanding, I don't think the smallest institutions really have much

incentive to get an outstanding CRA rating at this point. I don't think it means all that much, so I would hope that that would, at least, remain a separate test, and it would be weighted appropriately so that there was still a strong emphasis on doing some of the harder community development work that needs to be done in rural areas.

MR. ROBERTS: One of the things in the staff briefing was that there have been an enormous number of comments from the community and consumer sides, as well as from the industry side to this set of issues, and they tended to be fairly polarized comments. And that really is a very clear contrast to the tenor of the discussion we had in the committee, where it seemed that there was all kinds of room to work out compromises that would both make CRA work better for communities, and reduce regulatory burdens and permit streamlining for banks. I think there was a feeling that both interests could be accommodated in a way that would work well for everyone, but that doesn't get reflected in the formal comments that have been part of the regulatory process to date. So let's talk about a couple of the specific areas that the FDIC had proposed, and that the staff had asked for comment on. And we've already gotten a little bit into this.

There are two aspects of community development, and it would be good to take them a little bit separately. First, in general, the FDIC proposed that for small banks which would now go up to a billion dollars in assets, in addition to the five lending factors under the small bank exam, there would be a community development factor added as a sixth factor, and that that could be satisfied by a bank's lending, community development lending or community development investments, or community development services, or any combination of the three.

Hubert has already spoken somewhat to this, whether it should be an additional factor along with the other lending criteria, or whether it should be a separate community development test. And then if so, the question is what should be the composition of that test; any one of the three, or some kind of combination.

I will say that I was concerned that a bank could satisfy its community development requirements without providing any financing at all merely by providing a community development service, which could mean sitting on a chamber of commerce committee, or perhaps providing advice to a nonprofit. That concerned me that whereas those activities may be important compliments to financing, that they are not in and of themselves a real community development program. So let's open it up on community development. Robin.

MS. COFFEY: I think what I mentioned yesterday was really getting to a number

of the comments that came through the original ANPR, and that dealt with the underlying concern that the definition of community development was narrow to begin with, but its interpretation by the examiners in the field over time has further defined it to be a very narrow definition that makes it extremely difficult for banks who believed that they were doing community development loans, investment and services, becoming extremely difficult to comply with that now when you go to the extreme of having to prove that the people partaking in those services, that you did an income verification for them to prove that they were LMI, or that the investments that you did, that the actual recipients of those investments were truly LMI.

I'm speaking specifically about those areas that don't have low- and moderate-income census tracts. Whenever you did anything or do anything in a low- and moderate-income census tract, it's an automatic checkbox in the community development side, but if you're dealing in areas where you've got a lot of affluent people, you do have low- and moderate-income people who reside in middle, and upper, income census tracts, and when you're dealing with or lending to, or participating on a social service agency board and finding that you don't get community development credit because either as a board participant you're not on the finance committee or the loan committee, that you're just on a general fund-raising, that doesn't count, or that the agency itself is located in an upper-income census tract, and even though those services are directed at low-and moderate-income people, you then are required to get that agency to prove that everyone that they serve is low- and moderate-income. And the only way now to prove it is through income verification. I think we've taken this way too far at the examination level, and so I think that's what a lot of the pushback is at the community banks about proving what community development is, when in their mind they believe that they are fulfilling it.

MR. ROBERTS: Other comments here? Mark.

MR. PINSKY: There's an old saying that sometimes what seems like a blessing may be a curse, and what seems like a curse may be a blessing. And there may be an opportunity, and I think in the discussion yesterday, as you talked about, Buzz, I think we saw some opportunity here; that the last time that -- in ‘95 when the new rules came out, there was a lot of discussion based on, in a sense, not all that much data, because the Community Reinvestment Act wasn't used nearly as much in the period from ‘78 to ‘95, as it's been used from ‘95 to today. And we know or should know quite a lot more than we knew then. And one of the issues that I know came up in 1995 was a concern that the Community Reinvestment Act regulations were too mushy, they were too sort of

touchy-feely, and not quantifiable enough, or not algorithmic enough. And what we're hearing now is some sense that sometimes those algorithms just don't work, because we made them up based on what we knew at the time. But we know or should know quite a lot, and I think that there may be an opportunity to look -- Ruhi raised the issue before, sort of implementation and how this gets implemented. I think that banks, as Bruce has pointed out, Dennis has pointed out, as Robin has pointed out, know a lot more about how to do this. And I think that's partly because of CRA, it's partly, I like to think, because of what CDFIs do, it's partly because there are a lot of people trying to figure this out. And it is more of a market-driven activity, or it has a potential to be. And I think we need to root whatever we're going to try and do in really an understanding of banks as they think about low-income people, or low-income populations, or low-income geographies as part of sort of a broader market strategy.

Perhaps if we can get to that in some way, and I'm not trying to do this in a way, you have to do a whole new business plan to do this, but it ought to fit in a business plan. We ought to be able to understand, Bruce, how you're trying to serve those markets as part of a sort of a market intervention strategy. And that if there's some way in framing a less-quantifiable strategy or less-quantifiable CRA that's rooted in bank's business strategies, because the Fed certainly has the ability to do that. I think maybe there's a way to sort of move forward on that and look at some of these options that we're talking about.

One last point if I can, Buzz, and then I'll be quiet for a little bit; is that, one of the things that really concerns me is that, in fact, and it seems clear, and it came up in the conversation yesterday, that there's a lot of data out there, but we don't have a lot of knowledge about it. We haven't really organized the information that's out there, and so the question about some of these cost benefit issues -- I have no doubt they're real. It's got to be expensive to comply with CRA or any of these other regulations, but the numbers are so divergent, all over the map, and it seems like we ought to have better data on which to make these informations. It ought to be available with the volume of activity that's going on under CRA to really understand this. And I know that the Fed staff, in particular, really in the proposed rulemaking that was out earlier, really worked very hard to try to understand, in particular, what happened in rural communities, or what the difference was between 250 and 500. And the board ultimately said that there wasn't compelling enough information or data to really make a justification going to $500 million, but it seems like there's a gap there and we should… I would urge the Fed, to the extent it can, to try and figure out how to get

-- and the other agencies -- to figure out how to get into that information.

MR. ROBERTS: One of the sore points on this whole issue, particularly among smaller banks, has been the investment requirements under CRA, with the claim being that there aren't a lot of good investment opportunities that really add value to communities available to all banks. And I think there's some validity to that. At the same time, we've heard from many banks, and have seen ourselves that the community development lending activities, as part of the lending test, don't get much attention because they tend to be low-volume lending activities that are dwarFed in what is otherwise a fairly quantitative analysis. And this gets back to, I think, some of the points that others have made; sometimes it's not just the quantity of an activity, it's strategic value to a community. So that, to me, argues for a separate community development test, which could be a place where the qualitative aspects of a banks' activities in community development get at least as much weight as the quantity, so that their value to the community is really looked at in a balanced way. That doesn't mean that you would have to totally throw out any consideration of investment activities. You could look at investment activities and community development lending activities within a community development test, but make a judgment on the test based on the totality of those activities in the context of the community itself. So I think there is room to restructure that in a way that would work along with the kinds of modifications that Robin has said, so that we can really look at where these activities are aimed without imposing a great deal of extremely difficult monitoring and data collection. Dennis.

MR. ALGIERE: Yes, Buzz. In recent years, more emphasis has been placed, at least in my opinion, on the investment tests under CRA, and it's often difficult for banks, and I'm not talking to small community banks, but larger banks, 500 to let's say a billion or more, to find those investments would qualify. And we often hear about innovative and flexibility, and that's sometimes what we don't have.

I've actually had examiners tell me, help me. Help me make this eligible for CRA. What can you do? And it's just sometimes difficult for us to go out and find those investments which qualify. So again, when you're looking at this, innovative and flexibility sounds good, but during the implementation stage it just doesn't work.

MR. ROBERTS: Tommy.

MR. FITZGIBBON: I just wanted to emphasize before we close off the discussion on this at some point, is that I think there was general consensus in the discussions that

we really need to get to the table with the FDIC and the OTS, and the OCC to make sure that these and other very important portions of the orientation of CRA get full both staff and official review.

The arbitrary changes, despite the fact that yes, there's a recent ban for a dual banking system, the fact is that many of our organizations, institutions, the non-profit world need to have some form of uniformity in order for them to be able to develop the partnerships with the financial community that sort of make sense for it.

And the other is on the cost-benefit analysis that Mark had brought up is that in looking at community development lending, and community development investment, and even to a certain degree community development service, is that this is, as Mark said, if it's part of a business plan for a financial institution, it is part of the standard business practices. I mean, the reason why I do mortgage lending on multifamily properties is not so that I can make a loan that's underwater or has more risk. It has to fit the same sort of standard credit criteria. It may have the impact of serving low- and moderate-income, or some economic development, but it's part of the standard business practice of many financial institutions that are out there that are really not national institutions, but are local, as well.

MR. ROBERTS: Clint, did you want to get in here?

MR. WALKER: Yes. I wasn't part of this conversation yesterday about…

MR. ROBERTS: I have Clint, and I have Larry, and I have Hattie, and is anybody else trying to get in, as well? Okay.

MR. WALKER: I wasn't part of this conversation yesterday, but I'm actually very encouraged to hear what I said because this whole concept of creating a little flexibility and innovation in the exam process in CRA exams. About a year ago, we had our first CRA exam. We did fine, because we do a good amount of community development loans, community development investments. But we also, what we thought were innovative services that we provide. For instance, we have a service where we basically created a furniture warehouse. Employees bring furniture in, we go to scour furniture stores and get slightly used furniture and stuff like that, and we've outfitted eighty-eight low-income, clearly low-income apartments in the Wilmington area. Now that's not a lot, but Delaware is small, and we thought this is kind of a neat program. We're doing it. And the examiner loved the program, but she said there's nothing I can do. We got absolutely no credit for it, other than in her mind we were good actors, so obviously some, but create some flexibility so when people do come up with something different that we do think helps, and maybe not technically

housing, maybe not technically community development, but it's certainly a wrap-around feature to it, I think that would be extremely helpful to a lot of institutions, who have a lot of great employees who want to do the right thing, and looking for ways to do it.

CHAIR SCANLAN: Can I just ask a question; that wasn't even something considered under the service test?

MR. WALKER: No, it was not.

MR. ROBERTS: Larry.

MR. HAWKINS: We talk about the lack of uniformity among the various agencies and regulatory bodies but, in fact, there might be a lot more uniformity than we believe, because one thing that seems to be very uniform is that no matter who the regulatory body is, if you're the entity being examined, they all seem to not like the examination, so it appears to be a lot of uniformity among the agency as it pertains to CRA.

I sometimes wonder if maybe this is as good as it gets. CRA has been on the books for twenty-seven years. I can recall when John Kennedy talked about putting a man on the moon, and we put a man on the moon in ten years, but we can't figure out CRA. Something is very wrong with that picture, and maybe this is as good as it gets.

I think one of the problems is, is that it's an animal that's very hard to define among the regulators because they don't really know what to do. I'll give you another example. In my small bank, we're the only African American owned bank in Texas, I had a white examiner at OCC doing a CRA exam who tells me, who says now you know, I'm going to really, really stretch this thing to look at giving you maybe a satisfactory as opposed to a needs to improve. I dared him to give me a needs to improve. Okay. Because essentially, our bank kind of dots the county, Houston is Harris County, and does the low- to -moderate-census tracts. But that given how they shake the thing out; well, here's where your deposits are, and here's where your loans are, it just didn't match up, so it's like…it appears that probably what's needed more in CRA, some kind of way, is just common sense. Okay. And maybe that's the factor that's being left out. Maybe if they employ more common sense, we can move this thing forward. But it's very, very disturbing that this has been on the books for twentyseven years, and we're still sitting around the table trying to figure it out. And it appears that nobody likes it. That's the only thing we've got in common.

MR. ROBERTS: Is it true that nobody likes it?

MR. VAN TOL: No bankers like it.

MR. ROBERTS: I have not heard that from bankers. Hattie.

MR. HAWKINS: Oh, they won't come out and say it.

MR. FITZGIBBON: I'll say it, if you want. No, I won't say that they don't like it. I think it's the culture of our board of directors, and of our holding company board of directors, and the staff in general, is that this is part of a business plan we would have anyway. The examination process, whether it's for safety and soundness, or for information systems, or for other things that we have to go through, Bank Secrecy Act and others, is part of the value of that is the intelligence of the examination force. And I have to give them great credit for the work that they do to give the banking industry guidance not only in sort of the safety and soundness of the operation of the bank, but also in finding ways for us to develop new markets, and to identify community development qualifying investments, or loans, or things of that nature. And we don't give them enough credit, frankly, for the value-added that they bring to us, not only in the safety and soundness side of it, but also in CRA. Would we like not to have any examinations at all? I don't think that that really is a realistic alternative.

MR. HAWKINS: Well, since Tommy kind of directed at me, may I respond?

MR. ROBERTS: Sure.

MR. HAWKINS: Well then, Tommy, what you're kind of saying is that well, you know, we just believe that it's not necessary because we'd have been doing all this anyway.

MR. FITZGIBBON: No, I don't. I'm not saying that at all.

MR. HAWKINS: Okay. Then it's necessary.

MR. FITZGIBBON: Yes.

MR. HAWKINS: And you like it.

MR. FITZGIBBON: Yes.

MR. HAWKINS: Okay. He likes it.

MR. ROBERTS: Okay, Hattie, you've been very patient.

MS. DORSEY: CRA exists for a reason, and I speak on behalf of the community development corporation-based groups that have overwhelmingly supported the activity of not changing the criteria for measuring how a bank performs in its community.

I, for one, have to approach both the large, the small, the thrifts, and all other kinds of banking groups in order to make investments in low- to moderate-income areas. There are great opportunities in these areas for investment, and because of groups like mine across this

country, we have been able to effect the revitalization of many of our neighborhoods. And so sometimes if we did not have the CRA at our disposal and at our reach, in order to entice investments, in order to entice the kind of lending, that we would not be able to get our job done. And I think oftentimes, that is lost in these discussions when we talk about reinvestment strategies.

And I would daresay that if we change and raise the threshold, then community-based banks would not feel compelled to invest, or to lend, or to participate on the various boards in their community. So I encourage, as we think about how we move forward, that community reinvestment is a very positive thing, not only for some of our neighborhoods, but for revitalizing cities. The city of Atlanta, where I'm from, is going through a revitalization area-wide. If we don't continue to invest, we will leave out low- to moderate-income households, or the desire to invest in development of mixed-income communities.

MR. ROBERTS: Debra.

MS. REYES: Well, having been originally a banker who managed CRA for two regional banks, I was a banker who really liked CRA and community development, and I jumped in with both feet. And having been involved in community development lending and investment for the last thirteen years, I will tell you that I think that CRA has been an important component of us accomplishing a great deal in the area of community lending, and community development investment.

I think where we have failed as an industry being involved in community development is really showing our constituencies what good business it really is, and that's where we have to step to the plate. But I believe that we need to keep the bear in the room, as I heard a speaker say at another press conference that we had on CRA -- the bear in the room really keeps the players there talking to us. And yes, I agree that we maybe have not been as forthright in selling our story, telling what we're doing, and showing that we're creating really good business lines for our investors and for our constituencies.

I believe that the community development finance and investment folks that are working on this day in and day out really bring those emerging markets in our country to the forefront to the major bank lines and banking business lines. I think that we're part of bringing those to the forefront, and creating that. And then we go out and we create a new niche. We don't stay in the same place. We're constantly moving forward, creating a new market for ourselves, a new niche where we're looking at the unmet credit needs of this country. And we're trying to find a way to

really serve the low- and moderate-income populations, immigrant populations, the minority populations. That's what the work is, and I think we have to do a better job of stepping to the plate, proving what good business it is, and how important it is to the banking community. But I do think keeping the bear in the room is an important thing, and I think it's important to do that on a consistent basis.

MR. ROBERTS: Yes. CRA really addresses a classic kind of market dilemma. If you're a bank that is interested in lending in low-income communities, it will be far riskier for you to do that if no one else, no other banks are going to be participating in that process. If you know that other banks will be participating in that process, it makes it much easier, and frankly, must less risky for you to do that, as well.

CRA really creates that mutual obligation to help meet the credit needs of low-income portions of communities, so if the FDIC is saying that a much lower level of scrutiny will apply now to 94 percent of the banks it regulates, or 96 percent I guess of the banks it regulates, that leaves only 4 percent of the FDIC regulated banks subject to a full CRA exam. And I think that really calls into question whether a bank can look around and with confidence know that it won't be the only player in the marketplace. Hubert.

MR. VAN TOL: Yes. I'd like to build somewhat on what Hattie and Debra said, because I think there is the implication sometimes that there aren't the investments, community development and investments in rural areas, and I think we have to look at that very carefully, because I think in some ways for many rural areas, it's that the community development infrastructure hasn't been developed as fully as it has been in many urban areas.

I have the benefit of having started working on community reinvestment in an urban area in Memphis, and 1985 was the first time I heard about the Community Reinvestment Act. And I remember our approaches to the banks at that time, there was the idea that there couldn't possibly be markets in the inner city of Memphis that folks could make money off of. And it was only after one of the thrifts that we dealt with had one of its branch applications denied that suddenly many of the financial institutions found that, in fact, there were very good reasons to be looking in those inner city markets, and they began to develop those markets.

I think in rural areas, we have to be careful that not to think that the same path could not be followed in some of the rural areas where it's perceived now there are not CRA investment opportunities.

MR. ROBERTS: Anyone else? Jim King.

MR. KING: I think one of the things that we, as CDC Directors and working communities kind of look at CRA as a tool to help us solve our problems in our neighborhoods. It's not the only tool, but it's an important tool.

As the president said, this is hard work, hard, hard work. And I think one of the issues that we face is, I'm not sure I like the concept that having credit for things outside of what you do is that important to me. The program you identify is a good program, but at the end of the day, I can get volunteers. I can't always get bankers to come to the table to do what they do. And to understand that this whole process is hard work, and the process by which we get there is a concept that says you do what you do best to help solve the problem that I can't even help you solve, because I don't know the implication of the things you do. If regulation is a problem that causes us all problems, and just sit down and talk about those regulations about what it really means to the people we serve, and the neighborhoods we serve. And sometimes we get caught up in the fact that at the end of the day, why do this work. It's not for Jim King, but it's for the lady on the corner who makes less than $10,000 a year, has two grandkids living with her now because her daughter is on crack. We need to have the problem solved to solve that problem. It is poor housing, it is unsafe conditions, it's all of those things. And as a banker, I would like your effort to be spent on changing that, and not helping me pick up trash to say you did your service in my neighborhood.

MR. ROBERTS: We haven't had a lot of discussion about the rural aspect of this. Hubert addressed it some, and I wanted to pick up a little bit on Hubert's point, which I strongly support. We do a lot of work in rural areas, as well, and we would be very concerned about applying a community development standard for rural areas that really pays no attention whatsoever to income. That's a real important deviation from the purpose of CRA, which is to focus on low-income needs.

I agree with Hubert also that sometimes the way low income gets defined in rural areas doesn't work that you can have entire rural areas that are low income. And so if you're comparing the income of a particular corner of that rural area to the very low income of its surrounding area, it's not going to show up as particularly low income, and we see lots of places in the Mississippi Delta, in Appalachia, in other parts of the country where that's the case, where the entire area is low income, and a better definitional standard of what low income really is, a better reference point, would enable those activities to be recognized; whereas, in a fairly affluent rural

area, the same thing is not the case, and so there's no reason in that affluent rural area to credit any activity, regardless of income targeting as really CRA beneficial. So I do think there are some perhaps technical-sounding things that could get at some of the more difficult rural issues without really breaching the principle that CRA is really there to help address low-income communities. Are there other comments in this area, or are we ready to turn it back to Agnes? It's all your's.

CHAIR SCANLAN: Okay. Thank you. Our next conversation is on Courtesy Overdraft Protection, and we're going to concentrate on TILA. And this is you, Pat. Could you lead us.

MS. McCOY: Yes, Agnes. And, Agnes, do we have until 10:45?

CHAIR SCANLAN: Yes, if you'd like.

MS. McCOY: I don't know if we'll need the whole time. Yesterday, we had a discussion of Check Overdraft coverage in actually two committees, only one of which I sit on, Depository Delivery Services, and then the Consumer Credit Committee. I chair the Consumer Credit Committee.

In our committee, we were asked to revisit the question of whether certain bounce loan programs should be subject to regulation under the Truth In Lending Act, Regulation Z. And as I think all of us in this room know, there seems to be a spectrum of different types of check overdraft coverage. On the one end is the rise of actively marketed, formally marketed so-called bounce protection programs, which sometimes are automated, sometimes are marketed in such a way to actually encourage the incurring of overdrafts.

These programs tend to charge flat fees that are calculated in a variety of different ways. And then as we move towards the middle of the spectrum, at some point we move to bank practices that involve the honoring of overdrafts on a discretionary basis as a customer accommodation. In some cases, this may be more the rule than the exception, and the honoring may be somewhat frequent. In some cases, it's truly a very rare occurrence that an overdraft is accommodated.

The spectrum is then wholly apart from a different product line which would be overdraft lines of credit, and banks that offer those often will reserve them for the more affluent or highly creditworthy customers. Those overdraft lines of credit are regulated under the Truth In Lending Act already.

We had, I would say, a very lively discussion, and there were a number of bankers

and consumer advocates on the committee -- I would not say we had a consensus, but certainly a number of bankers and consumer advocates who agreed that the actively marketed programs indeed are credit, and indeed should be covered by the Truth In Lending Act and Regulation Z.

Now the primary implication, if this were to be the case, is that the overdraft fees in those programs would have to be computed and disclosed as an annual percentage rate, as an APR. And in further practical implication is that if the fee structure remained as they generally are today, those APRs would be relatively high, which is the reason why consumer advocates are concerned, is that the APRs, in effect, are very high. Consumers don't understand this. They cannot do comparison shopping at the moment.

The discussion first focused on the issue of whether or not any of these programs should be regulated under Truth In Lending; and then, if so, much of our discussion then was on where does one draw the line. And the challenge is, in part, how to have a line that operationally is practical to implement. And from a policy perspective, to differentiate between those programs that would not regulate under TILA, the occasional honoring of an overdraft as a courtesy versus programs where consumers are likely to make a practice of overdrafts, which was seen as undesirable.

We also had discussion on whether or not calculating an APR would be difficult, and I hazard to say that there was a fair amount of disagreement about this. And then, finally we turned to the topic of ATM and debit card withdrawals. Many banks today calculate the available balance for an ATM withdrawal solely based on the amount in the account without including any check overdraft protection, and so if your true balance is zero, you cannot take out your $20, and you have to come up with some other way of getting your cash. But some banks, in fact, include an overdraft cushion as part of the available balance, but this is not disclosed, and so individuals in that case may be tapping into their overdraft cushion without realizing it, and without having a fee disclosure. So we finally had discussion about whether it would be feasible at the time of the attempt to withdraw to have some sort of notification that they are about to tap into overdraft cushions.

And so with that, Forrest, I see your hand up. And if I could start with Forrest, and then Dan, would you be willing to address the two initial issues of should there be TILA coverage; and if so, where would one draw the line. Forrest, please.

MR. STANLEY: And I do want to address the TILA coverage. I'm part of the

loyal opposition, as opposed to the consensus. I do think we have consensus on the issue that encouraging overdrafts is bad. What I don't agree with is that I don't think that there's any workable way to try to draw a distinction between what's marketed and what is not marketed.

As a matter of fact, under the proposed FFIEC guidelines, you would have to tell the customer, explain to the customer that this service is out here. When does that explanation become marketing? I think to try to shoehorn this under TILA, I don't deny that when you pay the overdraft you have extended credit. You've extended credit in the sense that the bank has taken its money and covered the check, but I don't think that's where the debate really is. The debate is that in Truth In Lending, that has traditionally not been considered credit, and the fee for a discretionary overdraft has not been considered finance charge, and that's been in the regulations for years.

One of the things that distinguishes it from traditional credit is there is no deferment. It is payable immediately at my institution, and I would say my institution is one of the ones that does it on an ad hoc basis. We do not advertise it at all. We certainly do not encourage people to overdraft the account, but it is readily available on the system as an algorithm that pays overdrafts from time to time, depending upon a mathematical model.

I just think that the whole Truth In Lending issue is not about meaningful disclosure. We had the proposed Reg D rules. We had the proposed FFIEC rules. As was discussed in the meeting yesterday, most banks send additional disclosures. As soon as you overdraw your account, most financial institutions immediately send you a notice saying you've overdrawn your account, and we want to be paid back immediately. So there is plenty of opportunity, and plenty of information that's given to the consumer about the overdraft.

What my concern is, is that if we turn this into a TILA, it's not designed to add more disclosure. What it's designed to do is make the process so fraught with legal risk, so fraught with compliance risk, and so expensive that banks will no longer offer the product. And I do not think that's consumer friendly. I think most consumers who are put in a bind would rather have the bank pay the check and impose the fee as opposed to bounce the check and impose the exact same fee, which is the alternative.

MS. McCOY: Forrest, a point of information. It sounds as if Key Banks program is automated.

MR. STANLEY: Yes, it is.

MS. McCOY: All right. And then Dan.

MR. DIXON: Well, I think as Forrest said, I think it's very hard to write a set of rules which would clearly differentiate effectively which programs are marketed and which programs are truly ad hoc. I think that it's very hard to do that. As to the question of whether there might be some other way to differentiate these programs, the only thing that has occurred to me, and my company doesn't have a regular program with a consultant or anything like that, but the only thing that would seem rational to me is some just numeric that says if this is a product that a customer is using on a frequent basis, and by behavior you can see that it's being used as a line of credit, then that's a line of credit. And if it's truly ad hoc, then it's not. So I think the only hope to draw that line would be just a simple numeric, and trying to think about how that might work; the customer needs the service the first time, then that's one. And maybe there's a second time, but once you get beyond that, if it's behaving like a line of credit, then it's a line of credit.

MS. McCOY: Dan, in a numeric test, what time period would you apply that to?

MR. DIXON: That's going to be a judgment call. I have the impression, at least in our experience, again as Forrest says -- I mean, we certainly…checking account is a checking account, and a loan is a loan, but that's not to say that we have never had an ad hoc or accommodation for a customer. We have, but I don't know. To make it manageable, maybe it's based on per statement cycle or per quarter, or some way that's operationally feasible, that it's possible for people to look at it as an examination matter and determine whether a rule is being complied with or not.

MS. McCOY: Let's see. I have Dennis, and Benjamin, and then Larry.

MR. ALGIERE: Thank you, Pat. First, I agree with Forrest's comments; banks should not be out there encouraging people to bounce checks. In my state, it's illegal. I do not feel, though, overdraft fees or overdrafts are an extension of credit. I think that the fees charged by a bank to a consumer for an overdraft item is the payment of a service. Those checks and those items are handled differently than checks that go through the normal process that are being paid; therefore, I don't think it's an extension of credit. Therefore, I don't think APR is applicable with the Overdraft Protection Plans.

I also feel that if we're to go forward with it, providing an APR would be very complicated. I don't know how a bank would be able to even calculate an APR. Right now banks provide notices in most cases to a consumer once they bounce a check. Secondly, they do receive periodic statements which outlines in detail when, what, and how much is paid for that returned

item, so I feel right now a consumer has a pretty good idea what their cost is, what it's costing them for their overdraft items. Anything else would further complicate banks operationally in putting together APRs, aggregate fees. And I think right now providing the fees and the items on a periodic statement clearly outlines to the consumer what's going on in their account, and what's happening, and how much they're being charged. And I think consumers are educated enough to add and tally up those numbers, and if they feel they're too high, they can go to another bank. I don't feel consumers shop around for overdraft fees. It's cheaper at Bank A than Bank B. I don't really feel they do that.

And last but not least, banks are required to provide initial disclosures on fees, which includes overdraft fees. If a bank customer does want to shop around, which I don't feel they do, for a lower fee, they can do so with initial disclosure.

MS. McCOY: If I may take the Chair's prerogative, my concern is that some of the people, and I fear many of the people who may use this frequently are people who are relatively new to the banking system. They're our most precarious customers, the people we wanted to encourage to join the banking system.

If we do not give them the common metric to understand how their fees compare to other comparable products, be they payday loans, refund anticipation loans, overdraft lines of credit, et cetera, my concern is that there's going to be a push to say to people if your fees are too high, maybe you should leave the banks, maybe you should close your checking account because it's so costly. I don't want to drive people out of the system. And I also think if we are serious about financial literacy, we give people the means to shop among comparable products.

We know from the Smiley case that for purposes of at least the National Bank Act, that flat fees are treated as interest, and that should be true here, as well. I now have Benjamin.

MR. ROBINSON: A lot of our discussion has been focused on whether we disclose what an overdraft fee is. And as I look at it, our focus has been to influence inappropriate behavior of consumers, and I think we oftentimes lose that focus.

The other aspect is clearly when a person overdraws their account, it's symptomatic of some other issues, of financial management. The other aspect that we talked about, every meeting that I've been here, is the marketing of these programs. If we're really going to study the root causes of overdraft and focus on that, we should look at both sides, not only consumer behavior, but what banks do.

It was mentioned yesterday that banks will basically do a sequencing of processing debits and credits, and I think that's something that we should also look at in conjunction with the marketing of overdraft programs.

MS. McCOY: Thank you, Benjamin. Larry.

MR. HAWKINS: Okay. First of all, Pat, let me thank you for as chair of the committee being so balanced in how you presented this material.

A lot of people who overdraw are not new to the banking system. I mean, I disagree that a lot of these – you say that a lot of people who may overdraw may be new to the banking system. I disagree with that. Also, as stated earlier, is that some of the overdraft lines are just offered to some of the more affluent customers. That's not the case either. A lot of overdraft lines are offered to people all across the spectrum, because usually they're smaller extensions of credit.

I'm not going to insult anybody's intelligence. If I give you my money in any form or fashion, and I expect you to pay me back, I think Webster defines that as a loan. Overdrafts are loans, but they have historically been looked at differently. They always have been for a very, very long time in the banking system. Let us not kid ourselves, it is still a loan. But I think the real issue, as we discussed it in our meetings the other day, was that if you have a bounced check protection product, it normally has a defined dollar amount, which establishes it as a line of credit. If there is no established amount and there is no agreement to continue to pay on an ongoing basis, it is truly the classic overdraft as we know it.

The big concern and the problem has been that with these products that are marketed, they are established lines that people use. With an established line of credit, I do believe that you should have APR disclosure, and so on and so forth. And that's, I think, pretty much the differentiating factor in what we're looking at right now, is that these are lines attached, because they have a specified dollar amount attached to them.

MS. McCOY: Larry, if I could just follow-up. Would that be a place which we could draw a line?

MR. HAWKINS: I believe that's where you have to draw the line. I think otherwise it's going to be impossible, as Dan said.

MS. McCOY: All right. Let's see. I have Bruce. I'm sorry. I can't even remember where people are now. I see Hattie. I'll add you to the list. Thank you.

MR. MORGAN: Thank you, Pat. I agree with the comments of Larry and of Pat. And Pat has been very fair and balanced in trying to air this issue, but I feel like, as a community bank, we don't have one of these so-called bounce protection programs. We have an ad hoc discretionary program. We do have a line of credit that's offered to the consumer in a small modest amount, and we do have a signed agreement. We do credit underwriting. We do disclose a periodic rate and an APR on that product. But what's happening here is we're kind of forgetting about the consumer in the whole discussion.

I do not believe that consumers shop for overdrafts based upon APR if you give them an APR. People that use these services shop for a bank that has an ad hoc system sometimes, not automated, and will pay the check and not return the check. A few years ago, Bank Administration Institute in Chicago did a study – why would people close a checking account and move it from one bank to another, because it's really a pain – especially if you have a lot of direct deposits and automated payments, and direct debits and so on. The number one reason was bank fees and service charges. Okay. And not paying an NSF item if it came through.

In our bank, and in a lot of banks in this country, it is an ad hoc discretionary process. We have a product that is a TILA product, but remember that in what we're talking about, the locus of control is not the bank. The locus of control is the consumer. The consumer knows they've written checks on Tuesday, their deposit won't come in until Friday. The bank doesn't know that. Okay. Under Truth In Lending Act, I have an application. I underwrite it. The locus of control is with the bank. I can calculate a term, I can calculate an amount, and I can calculate an APR. I have no idea on an overdraft when someone will overdraft their account or not. I mean, we're kind of forgetting about the consumer in the whole discussion here, and I think consumers that use this, whether it's the overdraft, bounce protection program, or the ad hoc program, I think they're more aware of where they are than the bank is. They get on my website and see what items have cleared. They call the bank every day – what items have cleared. They go through the drive-up and get a printout of their statement. What items have cleared? They're more aware of their status than we are. And the decision we make is do we return the house payment, or do we return the payments to the Riverboats. Okay? And at our bank, we make the decision to pay the house payment. That's the most important. The Riverboats can get their money when they get it. But that's the kind of reality that we deal with day in and day out dealing with a consumer.

If you ask a consumer, do you like the fact that your bank pays your overdraft

rather than return it, they're going to say yeah, that's why I went to that bank, because the bank with three initials two blocks down the street had an automated system, and I didn't have a big enough balance, so they just automatically return all items. Some banks pay all items, some banks return all items, some banks have a discretionary program, and I'm saying as some of the other commentors have, that it's very difficult to write a rule that gets at the programs that are abusive. And I think, as Larry says, if you market this as a service, just write all the checks you want and bounce all you want, you have established an amount, you've established a term that you're willing to tolerate that, and you could put an interest rate to it. I agree with that. I think you can draw the line on those aggressively marketed programs, but don't try to bring us into the dogfight if you have an ad hoc discretionary program that is a service, and for that service you charge a fee. And right now that fee is not considered a finance charge under TILA.

MS. McCOY: And again, I see you drawing the same line that Larry does.

MR. MORGAN: Yes.

MS. McCOY: Yes. Okay. Lori.

MS. SWANSON: Okay. Thanks, Pat. I want to talk a little bit about what it means to shop for credit. There's been some discussion about will people shop around if they have better disclosures. And what does it mean to shop around? And here, again as I think Pat mentioned, you're talking with these products in particular about people who may have been unbanked before, who are new participants in the system. And I think TILA is designed to promote the informed use of credit, and shopping around doesn't just mean should I open a bank account at that particular bank, or should I allow overdraft protection to kick in this particular time.

It also means what do I do the next time? Do I go to an overdraft protection account to tap into a line of credit. If I'm behind on my bills, do I know that I have this account, and that I can access that account to get access to money? So when we say shop around, I don't think we're just looking at opening an account, or we're looking at using it retrospectively, but we're looking at the future, and what kind of behavior are people going to use in the future when it comes to needing access to money.

That ties into the marketing materials. I think that overdraft protection or overdraft fees in the past were justified in part because they were designed to be punitive, frankly, that it was a bad thing to bounce a check. We didn't want people to bounce checks, and so we're going to punish them for bouncing checks by imposing fees. But now when you look at some of the

products on the market, I mean just pulling one out, it says if you ever need more money than you have in your account, simply write a check. Well, that sounds an awful lot like a loan. I think most people here would agree that sounds an awful lot like a loan. And so I think that disclosure of an APR and having TILA apply does make sense. I think that it allows people to compare apples to apples. If you ever need more money than you have in your account, simply write a check. It allows them to make judgment calls, should I access that account? Should I tie my checking account into a savings account maybe and access money that way? Should I get a payday loan, should I get a refund anticipation loan? Should I get an overdraft line of credit, a traditional line of credit at my banking account? And I think that disclosure of an APR would be useful for consumers to understand what does it cost to the consumer to access money in that fashion.

MS. McCOY: Dennis, would you agree that that is…

MR. ALGIERE: Yes. I have heard a couple of comments here regarding marketing, and I think that's terrible. Clearly, that type of marketing gimmick is detrimental to the consumer, and I think perhaps we should discuss disclosures in those types of marketing pieces. And my comments I made earlier did not…weren't reflective of those marketing techniques.

MS. McCOY: I have Paul, Hubert, Hattie, Sheila, Forrest, Diane and Elsie.

MR. SPRINGMAN: I think we agreed on a couple of things in all the discussions I've heard over the last couple of meetings. One is, is this a beneficial service to the consumer? I think we all agree it is. Do we give the consumer enough notice? We give notice when they overdraft, as Dennis said. We give them notice on their monthly statement, so we are giving them notice. Is it costly? Yes, it really is costly, and I think the consumer knows it's costly. But as we talk about what segments this occurs most in, and why do they do it, and do they move accounts, we probably have to drop back and get some facts from the consumer.

We're all sort of conjecturing as to how they would act, how they feel, what they would do. We need some facts on this thing. And then you get down to what problem are we really trying to solve. Is it to get the consumer to make the right decision to really manage, perhaps over-manage the products that we offer in the market. I'm not sure. I'm not sure if I'd make a different decision – we talked about aggregating monthly and year-to-date service fees for overdrafts on the monthly statement. I'm not sure if that enables me to make a better decision, and I'm not sure if APR would really enable me to make a different decision to use the overdraft protection. So I guess where I am, I think we need some facts from the consumer to take us down the right road, to make

the right decision.

MS. McCOY: One thing I'll just note from prior meetings is, in prior meetings there's been some concern on the part of bankers that historical APR attracts too much attention from consumers because if it's very high, they call the call centers and complain, how did this happen. And I think that's, in my mind, exactly what we want to do, is bring to the attention the very expensive consequences of certain behavior. Now Hubert.

MR. VAN TOL: Well, we keep mixing up, I think, the old ad hoc programs with this new very intensive marketing. And I think there has to be a line drawn somewhere between those two type of products, because I agree the people who did the old-fashioned way should not be saddled with all this burden. But when you have people who are actively encouraging banks to put the largest check through first, checks through before deposits, who create a whole system for creating fees on customers using bounce protection as their means for doing that, we either have to say some of these practices are flat-out illegal and stop them that way, or we have to, I think on the tail end, provide something, as Pat is saying, which customers can reasonably look at and decide for themselves that this is a terrible product for them. So if you don't want TILA to apply somehow, then I think you have to agree that certain practices have to be made illegal and stamped out.

MS. McCOY: Hattie.

MS. DORSEY: You know, my staff hates for me to come to these meetings because I always go loaded back with information that they have got to share with the community. And I think this is one of them that I feel compelled to take back and overwhelm our community with more paper.

One of my concerns with reference to the overdraft courtesy protection is for that low- to moderate-income person who will probably not understand all the rules. And that low- to moderate-income person that many of you are trying to encourage to become that banking customer, is going to be caught between the devil and the deep blue sea. And I say that because of the fact that just think, for instance, that if I'm trying to build up good credit with Equifax in order for me to buy my new house, and I'm writing my check on Tuesday in the hopes that it arrives by Thursday to be credited on Friday, then I have now got caught in this new law with reference to that I am going to be credited, and my float no longer exists, and that now I'm going to also incur a fee because of the fact that you are going to credit me with overdraft protection which is going to cost $25. That next check that shows up is going to be bounced, and there goes another $25. So the financial literacy

education now has to have a new twist on how, in fact, do I handle my small banking account with your bank. And how, in fact, do I cover my fees that you're going to charge me because of the fact that the float no longer exists, and Equifax is going to start putting things on my accounts because of the fact that I bounced checks, or that the money is not there and you have returned a check if I have no courtesy overdraft. So I'm that customer that's going to be caught between the devil and the deep blue sea.

MS. McCOY: Hattie, I believe you're referring to Check 21, and that next week will be eventful for two reasons.

MS. DORSEY: I just checked, and that law goes into effect today. The other is that when I was dressing this morning, I heard I think on "Good Morning America" that these new fees are going to mean millions of dollars per month to the banking community because of the way the overdraft protections are going to kick in, and the fees are going to be charged for the bounced checks. So again, I think the consumer and what's happening to them as new laws and new regulations are imposed, and as we talk about overdraft protection, are the ones that's going to be whacked.

MS. McCOY: Sheila.

MS. CANAVAN: Yes. I'd like to follow-up on what many people have said here today, and start by pointing out that this is a loan product, and we live in an entirely new world compared to the world that I grew up in, and many other people grew up in; in that there are such things as loan products. And in this case, this loan product is really imposed on consumers. It's not something that I really am happy about that my kids are going to have to learn to manage because it's an automatic system. And we also have to consider what's the genesis of this loan product. And, frankly, in my view, it's most likely been generated because banks have seen the enormous profits that the payday loan industry has been generating, and they want some of the action. Let's be honest about it. That's [inaudible] banks are not coming in here and offering this as a service. It is not a traditional overdraft protection which has been historically covered by TISA. It's a new product, and it's a very dangerous and toxic product for consumers. And I think it should be subject to substantive regulation, as Herbert mentioned. But if it's not, then it should. We have to realize that in the world that the people who use this product live in, we have to consider payday loans, and you have to consider that this product is more expensive than a payday loan. And the payday loan industry has to provide APR disclosures, and bankers often talk about an even playing field.

Well, let's think about that even playing field; either this product is going to be regulated under TILA as the payday loan product is, or it's going to be a race to the bottom, because the payday loan industry is out there right now seeking more lenient treatment, and saying banks are getting more lenient treatment than they are. And this product that banks are offering is more expensive than a payday loan, so we're going to have an even playing field one way or the other. And the question is whether it's a race to the bottom, or whether we deal with this realistically and provide consumers with at least half a chance to compare the products that are out there.

MS. McCOY: In the time we have left, we have about six minutes, I have Forrest, Diane, Elsie, James, Tommy, Ken and Mark.

CHAIR SCANLAN: Pat, I can give you a little bit more time if you want to go.

MS. McCOY: Okay.

CHAIR SCANLAN: We'll just take it from the other ones.

MS. McCOY: Yes. Maybe if you could hold your remarks to possibly a minute or so. Forrest.

MR. STANLEY: I'll try to be brief. I think one of the reasons we keep talking around each other and getting confused as we try to equate a traditional line of credit, overdraft line of credit product with these automated overdraft programs. I'm not going to say marketed, but at most institutions they are automated. We don't look at individual checks any more. That's just a fact of life.

There is a very real difference between a line of credit and these programs, and that is that they're discretionary. In a line of credit, you have a written agreement to lend funds, and you're committed to lend funds to an individual. On the discretionary overdraft program, they are discretionary. We may not, depending upon a multitude of factors, we may not overdraft the account. That is both a meaningful distinction for purposes of Truth In Lending, and in the definitions of what's a finance charge. I also think it's a practical difference.

We're not telling the customer we're going to overdraw the account. It is entirely within our discretion, and that is in the agreement. There is no written agreement in most of these programs – and again, I'm trying to keep marketing out of it, because marketing is not something we do - but there is no written agreement to lend. Quite the contrary. It says it is totally, completely, and absolutely at the bank's discretion.

MS. McCOY: Forrest, a couple of questions. Is there an upper limit on the

amount of overdraft protection under let's say your automated program that would [inaudible]

MR. STANLEY: Yes.

MS. McCOY: Okay. And then apart from when somebody exceeds that upper limit, how often is it that that discretion actually is exercised?

MR. STANLEY: All the time. I mean, it's a complicated algorithm that if you abuse the privilege at some point, depending upon lots of different factors, it's not as mathematical as you've done it three times, and so we won't let you do it the fourth. There's many factors that go into it that I don't pretend to fully understand, but at some point it will say no.

MS. McCOY: But it is a computerized algorithm.

MR. STANLEY: Correct, because we cannot possibly at large institutions, unlike Bruce's, can't possibly look at individual checks. I mean, those days are long gone, unfortunately, or fortunately.

MS. McCOY: Diane.

MS. THOMPSON: We've just heard about an automated system. I seriously question whether or not you can say that an automated system is truly a discretionary system. I think that's one of the hallmarks of the difference between the kind of system that we are comfortable with, which is traditional ad hoc system where someone calls up and says I'm having a little problem, can you cover me for this one check.

We've heard a lot about the line drawing and how we're moving, and different possibilities for the line drawing, and I think that there is broad consensus now, as opposed from the last meeting, that this is credit, and that there are places where the lines need to be drawn. That's certainly not an easy task, but we've heard several different proposals for how to draw the line; circumstances where there's an upper limit set, circumstances where you have marketing. I respectfully disagree with Forrest. I think you have to look at the marketing because that's what consumers look at, and it certainly creates an implicit contract, if not an explicit contract.

You can look at what the marketing promises. You can look at, as Dan suggested, how often it's used. Maybe more than once a quarter, that's about how often people, where it's genuinely ad hoc, unexpected use it. You can look at one of the things that I know has troubled many commentators, is whether or not you are permitted - whether or not the bank encourages and knowingly permits you to overdraw at an ATM. And for many of us, that's been one of the most troubling features of these bounce protections, is people go and they get cash out of their

account. And they think they've got cash in the account and they end up paying a fee that is larger in some cases than the cash they got out of their account.

Now certainly there may be cases where that's not possible, but Ken yesterday was telling us about how, in fact, most banks set a floor below which you cannot go, or at least his credit union does, in order to prevent accidental overdrafts at ATMs. So I think that there are lots of possible ways to draw the line. I think it's important for the board to note that we have now wide agreement that it is important that we draw a line, and that wherever you draw the line, the products that fall on the other side of the line should get the TILA disclosure.

I think it's a false choice to say that the choice that banks have is to pay or to not pay fees. That's, perhaps, what the bank's choice is, but for the consumers, there's a third and important option; which is, they have the choice about how they manage their money. They have the choice to overdraw the account, to not overdraw the account. And in choosing not to overdraw the account, they have the choice about whether or not to write that check, or whether or not to get the funds from somewhere else to cover that expense.

People have said, and it's true, these overdraft programs are much more expensive than payday loans. Payday loans are just about as fast as an overdraft program, and they're cheaper. When you are looking at what has now become a major profit center for many banks, I believe it's Washington Mutual that is estimated to make over a billion dollars a year in overdraft fees alone, it boggles my mind that we are contemplating not providing consumers with true information, comparative cost information about the cost of credit. And so when we talk about how if we do this – what we're not saying, we're not saying get rid of the program, but what we're saying is let consumers know how much this costs them so that they can make an informed choice – at least in the circumstances where it is a profit center for the bank, not a simple ad hoc coverage.

We've also had some concern about how we calculate it. I mean, that's certainly something that's probably better done by staff, but I think the general approach is you look at a historical APR. If, in fact, as Forrest says, that this is payable immediately, then by the time the next periodic statement comes out, you're going to know what the term of the loan is. That certainly doesn't tell customers everything they need to know up front, but it does get at the issue, which is the most serious issue I think of the repeat user, gives them an opportunity to look at what the cost was and to say okay, that was 1,200 percent APR. Next time I'm going to get out, I'm going to look into that line of credit that's a 20 percent APR. I'm going to look at that payday loan that's a 425 percent

APR.

There are studies by the Fed from 2002 that, in fact, show that most consumers, that a majority of consumers know that the APR is the most important term to use when shopping for credit, and that they need to compare the cost of APRs. Consumers may not understand what goes into the APR or how it's calculated, but we have been successful in our financial education in educating consumers to look at the APR as a means to compare the cost of credit.

MS. McCOY: Thank you. Elsie.

MS. MEEKS: I'm tempted to pass just because I'm going to be repeating to some extent, but the only reason we're having this discussion – this payday, paying overdraft checks by – banks has been around for a long time. I remember my father – we ranched, and when the bank would clear a feed check, and I know my dad was happy about that. But I think in that time, there was a sense by bankers having this balance between helping people and promoting bad behavior. And I know in one meeting or two ago, I talked about my experience overdrawing my account, and how my banker talked pretty sternly to me about that, and really did change my behavior. And I -- know that for a long time the reservation – well, the border banks around reservations tried to have that balance. And now I think a lot of them, not all of them, and that's why we're talking about it here, has realized that it's creating a really lucrative revenue stream for them.

And as someone who's very involved in financial education and communities, I mean there's been lots of times we've counseled, when we got people to take a look at their money management patterns, they made the decisions to quit banking until they could learn how to manage this, and they bought money orders and that sort of thing. But I think there's a sense by everyone at this table that at some point this is not good practice, and it's slimy. And I'm not sure where the examinations fall in in this, but is there any sense of the Fed, I mean when they look at a bank and they see that their revenue stream for overdraft fees has gone, a bank has gone way up, I mean does that not figure into the examination at all? And something that the Fed counsels against, or the regulations counsel against--I mean, I'm just ignorant on that point, but it looks to me like there could be some guidance drawn on that point.

MS. McCOY: Tommy.

MR. FITZGIBBON: Well, let's not fool ourselves. NSF fees, overdraft fees, deposit service fees have always been, always been part of the revenue stream of mainstream financial institutions in America. It's not something that just started yesterday, and that suddenly it's

a billion dollars a year. I think the concern we all share is that the aggressive management of a practice to encourage abuse of that is a concern, and when we were talking about--Elsie was talking about how long ago – forty three years ago--I bounced a check at Hillcrest State Bank in St. Paul, Minnesota. And it was automated all right. My dad got a call. The issue is whether there's an automated decision-making system, I think, rather than an automated process. We have an automated process which tells us who is overdrawn, and whether or not we honor those checks that have gone through the system is dependent upon a number of factors.

We have a lot of small businesses, frankly, who routinely overdraw their accounts. And it's not about not managing their money right, it's a matter of whether the deposits they made have cleared through the system. The same thing holds true for consumers who do that. There's deposits that are made that haven't cleared yet. Do we bounce the check because their deposit hasn't cleared yet? Probably not. So the important, I think, distinction here is whether or not we look at developing some kind of a bright line between what is an aggressively marketed system to encourage abuse, versus a process of partnership to keep people in the banking system. And maybe that's a difficult line to light up, but I think that's the task of the regulators to do.

MS. McCOY: Ken.

MR. BORDELON: Thank you, Pat. And I just wanted to report, as Pat said, that both committees addressed this issue, the Depository and Delivery Services Committee which I was going to report about later, but basically the Reg DD provisions and the interagency guidelines. But we were asked to concentrate our efforts for this discussion to help staff and the Board re-look at should TILA apply in this case. And it was a little bit, I guess, surprising to me, you heard from some of the industry here that there may be agreement on some type of TILA provision for marketed programs that offer a line. If that's the distinction, I would bet if TILA provisions apply to those programs, they would go away for credit unions. I can't speak for banks, but for those marketed programs with our 18 percent cap, those would go away and you would be left with the traditional line of credits which are protected under contract and overdraft with saving accounts.

If that's the intent, and if that actually happens, then I would respectfully suggest that we take [inaudible] if that's the direction that may be applicable, then perhaps the Reg DD provisions and the inter-agency guidelines and all the rest may not apply since some of us who don't offer the marketed programs would be kind of dragged into the disclosures for the aggregation of fees and that type of thing. So I guess it was very wise on the part of the Fed staff and the board to

ask us to take another look at this, in retrospect, under the TILA provision. And I was a little bit surprised, but there seems to be some general agreement that perhaps there is a line there that those might fall under, that maybe the board should reconsider.

MS. McCOY: Our last commentor is Mark.

MR. PINSKY: I'll be brief. Thank you. Diane raised a point that we talked a little bit about last time, which is that sooner or later, if it hasn't happened already, a financial columnist for "USA Today," or some syndicated columnist is going to write an article that says sometimes you're better off at a payday lender than a bank, and none of us want that to happen. That is not an activity anybody wants to encourage, but that's not really what I was going to comment on.

I think it's the issue of the line. I mean, I think there is an emerging sense that you need to draw a line somewhere, and there might be [inaudible] I actually think that it becomes fairly narrowly defined where that line may be if you listen to this conversation, and it may or may not be right. But I think we shouldn't be afraid or doubt that we can do that. I mean, I think, Forrest, what you said in your opening comment struck me, and I don't mean to call you out on this, but you said you can't distinguish [inaudible] you can't tell when someone is marketing or not marketing it. And then a minute later you said we don't market our product. Right? So internally, you make some decision about what's marketing and what's not marketing, and I just would say that [inaudible] I mean, I think that there is a momentum towards we need to draw a line somewhere, and I just think we trust the Federal Reserve and the Board of Governors who make a lot of decisions about tougher lines than this to be able to sort of figure out where to draw a line, but I would just encourage that we draw a line for TILA purposes.

MR. STANLEY: Ten seconds, Pat. What my comment was, is I don't know under the guidelines what's marketing and what's not marketing. That's my concern.

MS. McCOY: Thank you. I very much appreciate the tenor of the remarks today. It was very constructive. We had a lot of creative ideas on how to approach this. What I hear is that most in the room, perhaps not all, would agree that there is some room along the spectrum and a need for TILA coverage. Three possible lines that could be drawn would have to do with the degree, or presence or absence of marketing. That may be a difficult line to administer. Two other lines that would be quantitative in nature, and bright line in nature would be the existence of an upper limit of protection would trigger TILA coverage, or possibly an upper limit on the number of overdrafts during a certain period, be it a quarter or a month, beyond which TILA coverage would kick in. And

with that, I turn back over to Agnes. Thank you.

CHAIR SCANLAN: Thank you, Pat. That was a great discussion. We're going to take a break now until 11:15. I want to remind members that we're going to go into lunch right after our session that will begin at 11:15. And if you haven't already signed up for afternoon transportation, please do so. There's a sign-up sheet right outside, so we'll come back at 11:15 and start up the Anti-Predatory Lending Laws.

(Whereupon, the proceedings in the above-entitled matter went off the record at 10:55 a.m. and went back on the record at 11:14 a.m.)

CHAIR SCANLAN: Okay. Tommy, let's begin with the anti-predatory lending laws and a discussion of the Federal and state legislation to protect consumers from abuse of lending practices.

MR. FITZGIBBON: Thank you, Agnes. The Committee in its discussion yesterday was brieFed on a variety of different and in some cases conflicting state laws and local laws that have been adopted over the last several years related to the controls and influence over predatory lending practices within the mortgage industry. And in that review, the Committee was asked really to discuss three major things.

One was really looking at whether or not uniformity in the area of subprime mortgage lending is more important than other areas of consumer credit law.

And the second was if uniformity is important, what are the costs and benefits of achieving it, either by state-by-state coordination, such as a model law, or by some Federal legislation that preempts or overrides state law.

The third area was really from the view of consumer advocates what specific provisions to address predatory mortgage lending would have to be in any Federal law in order for the industry itself to support a Federal override of state law, as well as whether or not state legislatures would consider that an important characteristic.

From the view of the banking industry, what specific provisions to address that practice of predatory lending would be considered in terms of how the banking industry itself would support a Federal law, to win support for it, to exempt--or preempt, I'm sorry, anti-predatory lending laws.

So that was the premise for our discussions yesterday. The discussion itself, in centering around those three questions, focused on the issue of not only whether or not a Federal law

would adequately control or influence the predatory practices that appear to be in the mortgage industry and looked at a bill in Congress today, as that is discussing that potential, and also issues relative to assignee liability was another major focus in the discussions yesterday, as well as the yield spread premium debate.

There were a couple of major considerations that were discussed in reference to assignee liability in terms of developing some quantifiable risk before accepting assignee liability. And a discussion that really focused on sort of the nitty gritty of any Federal legislation or model legislation that could be adopted by states about driving really the fee structure of these mortgages into the yield; in other words, limiting the fees and forcing the industry to more adequately disclose the interest rate and costs associated with those loans.

And last but not least was sort of a general discussion that without the major government service enterprises, Fannie Mae and Freddie Mac, involved in the discussion, that it would be difficult for us to develop something that would be an acceptable practice, both on assignee liability as well as some model legislation.

So for the discussion today, I've asked Hubert to start out and then Anne make some comments as well, followed by Dan and Ruhi. Hubert?

MR. VAN TOL: Thank you, Tommy. We did have a very good discussion yesterday. My role in this, I come from the perspective of one of my roles is as Chairman of the Board of the National Community Reinvestment Coalition, which is about 700 member groups from around the country. Our organization has had what we call our Bankers Council in which we've met with the top community reinvestment community, development officers of the largest banks in the country three times a year over the last ten years or so. So twelve consumer advocates get in the same for a day and a half and talk these issues through. And this issue of trying to come to some common agreement about what could be in the predatory lending legislation has frequently been on the table. So I think I have the benefit of that experience of hearing the back and forth between bankers and community groups about this.

I'm not sure that we can come to a perfect agreement on what we think is there, but I think at least most responsible institutions in the country feel a strong need to come to some sort of national standard that will drive the bad actors out of the field.

So there are a couple of things I would like to focus on. I think there are among consumer groups there are some who will never agree to the idea of preemption of state law. There

are people who are purists on that issue, who feel that states should be free to develop an expanded version of consumer protection and preemption is sort of something that they simply can't agree to. And they are a significant part of the consumer movement in this country, people who believe that way. They will say that if you get a standard law with a high enough floor, that preemption no longer becomes necessary because there may be a few outlier states then that will demand tougher protection. But for the most part, you reach your goal of having a standard across the country if you have a high enough floor.

Within NCRC, there is a significant group of people who are willing to discuss preemption and to put it on the table, but we're not willing to put it on the table at the beginning of the discussion. We're willing to say that if at the end of the day we have a law that is as good as the best state law for the whole country, then for us preemption would be something that's negotiable and that we could discuss and talk about.

But in order to get there, the elements of the law I think that we have to deal with -- as Tommy said, we have to deal with the assignee liability issue in some way . From the community perspective, if there is no way to get at the ultimate holder of the mortgage, it becomes very difficult for consumers to get a remedy several years out when the chickens come home to roost. So there has to be some sort of assignee liability.

We understand the industry's concern that this not be an unlimited liability, and I think in the state laws and New Mexico people tried to get at that by saying, if you have proper due diligence, you'll be protected from class action suits and unlimited risk. You'll just have to make individual customers whole if cases come out. But we will consent to protect you from the unlimited liability of class action suits. And tinkering with that formula I think is a place where perhaps both sides could agree with each other on this.

The other element, as Tommy again said, was how do we squeeze the market so that these fees end up on the interest rate side instead of hidden as fees, whether they're yield spread premiums, whatever way hidden fees or not so hidden fees get financed into the mortgage. That's the chief way that equity stripping really occurs is the consumer doesn't know about these huge often bogus fees that get flipped over into the mortgage, and they end up paying for over the life of the mortgage. So is there a way to limit the percentage of the loan that can be financed? That issue has to be dealt with.

A third element would be on the front end somehow coming to grips with the lax

regulation of brokers at the state level. We truly do need to have a national database of mortgage brokers. We need to have real consequences for the bad actors in the mortgage broker business so that we don't have people skipping around, starting up a new shop, continuing to do the things that they did before until they got caught. So if we can sort of cut off the supply from the brokers but we also--on the tail end with assignee liability, we have to cut off the ability of these bad actors to get those bad loans to the secondary market somehow, and Fannie and Freddie will have to be part of that discussion as will the rating agencies.

And then I think in the fourth place there are just some practices that should just flat out be illegal. We've made some progress on things like single premium credit insurance, those kinds of ways of just really milking a customer with basically a worthless product or 98 percent of the time worthless product that ends up causing a customer to have a great number of fees. I think we simply have to make some of those kind of practices illegal.

So that would be the framework I think that many consumer groups, if not all, would feel comfortable in having the discussion about preemption. I fear what the industry wants is to put preemption on the table first and then we on the consumer side say, "Well, we can't do that because then we know in the legislative process with all the compromising that goes on we'll have preemption but we'll only have--you know, our glass will only be a third full or a fourth full." So until we see that the glass is getting close to eight-tenths of nine-tenths full, I think from most consumers' perspectives you won't see a willingness to talk about preemption on the front end.

MR. FITZGIBBON: Thank you, Hubert. I coined a phrase many years ago in the hearings on predatory lending, which was trying to find a way to stop the practice of hooking up the crooks with the capital market, and I think that still holds true today. Anne? Or Dan.

MR. DIXON: Let me just ally a fear, Hubert. You don't have to have a fear about where industry is on the preemption question. That is the question.

(Laughter.)

But having said that, I like very much what you're talking about in terms of finding some common ground, I think that's possible. The specific thing that I was going to address here, one of the questions that was posed for us to discuss was whether it might be possible to do model legislation on a state-by-state basis, and I think I can allay that fear as well.

I don't know of an issue on which the states in this country have reached as strikingly different outcomes than on predatory lending. There obviously are states which have

never enacted any local legislation to try and define or restrict predatory lending practices and then at the other end of the spectrum there are states which have, by almost everyone's characterization, fairly aggressive. I mean the theory in which the 50 states plus the District of Columbia would come together and strike any kind of a voluntary consistency in that area I think is complete non-starter. So I don't think we need to expend any energy thinking that that's got a future.

Obviously there's legislation that's been introduced in Congress. There's a wide range again between the terms of some of those. The most recent proposal, I guess, or the next proposal that we expect to see will be a bipartisan bill by a Republican and a Democrat in the House. We're optimistic that that would be a good starting point for a discussion.

I would also like to assert that it would be incorrect to assume that the Federally chartered banks and thrifts who benefit from a degree of preemption by their Federal regulators are therefore not interested in passing a Federal law that includes Federal preemption. I can assure you we are very interested in pursuing that.

MR. FITZGIBBON: Anne?

MS. DIEDRICK: Thanks. This is just a follow-up on both Hubert and Dan, and Hubert and I must have spent too much time together at banker councils because we're beginning to sound a lot alike.

MR. VAN TOL: Oh no.

(Laughter.)

MS. DIEDRICK: I'm sounding more like Hubert, I guess. He has such a fear of bankers.

Among the questions the Board did ask us was whether Federal legislation should preempt state anti-predatory lending laws. I totally agree with what Dan had to say. JPMorgan Chase favors a strong and uniform national standard that would protect consumers from abusive practices in connection with home purchase and refinancing. This standard should preempt state laws and local ordinances that add complexity and reduce choice for consumers and increase compliance risk and costs to lenders.

However, a uniform national standard must be very carefully crafted to ensure an appropriate balance, and this is where I think we do agree. Too restrictive a standard would discourage responsible mortgage lending and restrict consumer choice, driving customers to irresponsible and unscrupulous mortgage brokers and lenders. Too lenient a standard will not

achieve adequate protection for consumers and will continue to allow the bad actors to tarnish reputation of the mortgage industry.

Setting the appropriate criteria for mortgage loans to be covered by a proposed legislation will be one of the most critical provisions of a national standard. The approach taken in HOPEA and adopted in many state laws is to set a threshold above which loans would be considered high cost and subject to more protected provisions and/or owner's penalties, including in some cases extended assignee liability, recision rights or forfeiture of finance charges.

It's worth thinking about the public policy aspects of this approach before we necessarily go down that path. The practical effect has been that whatever threshold is set to define high-cost loans, loans above the threshold will most likely not be made by the most responsible lenders due to the perceived stigma and reputational risks attached to being known as a high-cost lender. It's become a de facto usury ceiling. Loans will primarily be made below the threshold and has happened in a number of states setting relatively low thresholds, even loans priced appropriately on a risk-adjusted basis will not be able to be made, and those segments will either have their access to mortgage credit or their choice of loan products curtailed. This may not be the best result from a public policy perspective.

In terms of setting an appropriate threshold for the definition of high cost, if the determination is made to adopt that approach, we recommend that the Federal Reserve first study the 2004 HMDA data with the recent changes to HMDA reporting. The Federal Reserve will have a wealth of pricing data available for the first time from a broad spectrum of lenders and calculated, we hope, in a consistent fashion. This will provide the opportunity to analyze real market data and construct a test that only captures true high-cost loans.

MR. FITZGIBBON: Thank you, Anne. Ruhi?

MS. MAKER: I want to preface my remarks by saying that I think we've come a long way in this discussion. This is my final meeting, and I was heartened when most of us who are consumer advocates looked at the Ney bill and we sort of thought this was ridiculous because it was rolling back in fact the existing protections we had, and much to my amazement a lender, who shall remain nameless, pooh-poohed and said that Ney was too low a standard. So I think we have come a long way.

What I'd like to do is focus on what can the Fed do. Someone when we were talking about this said, "The Fed's not the legislative body," but what specifically can the Fed do?

And I want to focus on assignee liability. I agree with Hubert regarding preemption. I'm from New York, we have a bill, and I would be loath to give away our state's rights to regulate this matter and legislate on this matter for a third of a glass full when we have a glass that's considerably more full in New York.

I want to focus on due diligence and assignee liability. I find it inherently contradictory when financial institutions who secure ties of these portfolios of subprime loans claim that they do great due diligence and yet they are completely terrified of assignee liability that really goes anywhere. That's inherently--if you're doing real due diligence, why are you scared of the fact that when the chickens come home to roost and you are the holder in due course you're going to have to make someone whole?

And I think the reality is that the way the market operates you've got regulated, institutions who do securitization, i.e., regulated by the Fed, and you've got institutions that are not regulated by the Fed. And if the regulated institutions had to do due diligence, which is what I'm proposing that the Fed start down that path--you know, the last three larger mergers we had, which I happened to comment on all three of them, the Fed took the first steps.

The staff here asked the institutions what sort of due diligence they do, and they asked questions, there were answers and there were more questions asked. And I think that's a good first step that has occurred. And that can go further. We know the CRA regulations got pulled back, subprime lending and how it's defined, statutory lending, all of that's up in the air right now.

But you've got safety and soundness, and if we can push that envelope around forcing the regulated institutions to be asked, there will then be an incentive on their part to make sure that the Bear Stearns and the Lehman Brothers, et cetera, which are SEC regulated, are also forced to do real due diligence. Right now there's money to be made in not doing due diligence, but my worst case scenario is that the ratios that tell us all is honkey dorey when we got these numbers last are based on debt-to-income and loan-to-values. That's telling us that all is well in the mortgage market.

We repeatedly see false appraisals and false income. Nobody knows. I don't know, the Fed doesn't know, nobody knows how prevalent that is. If we can get to some real due diligence, we can all find out maybe it isn't really prevalent, it's a very tiny percentage and we've got to clean that up. But right now we don't really know the extent of the problem, and dealing with the origination alone isn't going to solve it. I think we're going to get stuck in assignee liability. Can the

Fed move this--can the Fed crack the assignee liability by pushing this envelope through the exam and the merger process? And if the Fed does do that, I think that will be an enormous first step.

And I completely agree with Anne around using the data. I know we're going to start cutting it. I think that's going to tell us a lot. But I have this scenario of flat incomes, going down incomes, a quote, unquote, "housing bubble" that more and more people talk about, problems with debt-to-income and loan-to-value ratios being really not correct in these pools and an enormous economic impact.

I hope I'm wrong, I think I am wrong, but let's figure it out. Let's figure it out, and let's know it, and then let's be able to move ahead rather than everyone sort of like -- I don't want to use the "ostrich in the sand" analogy because it's a little overused recently, but that's how I feel that that's where we are, and I'm like let's figure it out, let's figure out that we don't have a problem so we can move ahead on this issue. And then once we know that, I think the assignee liability and the Federal legislation nut will be an easier nut to crack. So that's where I am on this.

MR. FITZGIBBON: About six minutes left. James?

MR. GARNER: Well, first of all, I'd like to say I agree with Ruhi that we've made a lot of progress in these discussions, because I find myself agreeing with Hubert, which is probably a dangerous thing.

(Laughter.)

But I think there's been more movement by the industry to you, Hubert, than vice versa.

But I do think, going to the very first question that was posed to us about uniformity, is it more important to have uniformity in this area than others, I think the answer to that is yes, and I think there's consensus that the way it is now with different state laws, with municipal ordinances and 25 states have enacted some type of predatory lending laws and the other 25 haven't, and there's a lot of differences between the different states that have. This is an area that cries out for a Federal standard or as Dr. Phil would say, "How's that working for you now?" It's not working very well right now. So I think it is something we ought to move toward.

I would echo Dan's comments about the state-by-state approach of having a uniform law, uniform state law. I don't think that works. I haven't seen anything yet where that has been consistent. Even the UCC, there are different variations by state on what should be a very consistent and uniform law.

So I think it really comes down to can we have a Federal law on predatory lending that preempts state law? And I think the consensus among the consumer advocates and the industry is that we ought to have one. The question is what does it say? And if you have the right standards that there can be consensus on, there's a chance for it.

One of the things that we haven't talked about, although there was some reference made to it by Tommy, is that the industry really doesn't speak with one voice on this issue, though. I think there was some consensus in our committees when we talked about it, but there are some players that are not at the table. The mortgage broker industry, we talked about we need to regulate them. Well, they're not really at these discussions and have very strong feelings about this. You also have banks, whether they're national banks or thrifts, that don't make high-cost mortgages now. And if you bring these thresholds down, you will affect them, and if your preemption's not strong enough, they're giving up something they already have. And so it has to be something that is palatable to them. So that goes back to the preemption question that Hubert raised at the outset, and I would echo with Dan and Anne that that is the question, what's the level of preemption?

When we were talking in committee yesterday, I think the consensus was that we could probably reach agreement easier on the origination practices than we could on the assignee liability and the safe harbors and the remedies. That's where the real points of discussions are going to be. What are the tradeoffs for the level of preemption the industry wants for the safe harbors that they want and for the expansion of assignee liability? Those are the real, to me, the points of discussion.

And there are competing bills out there. I think we'll end up somewhere in between, closer to one than the other, and I won't say which one, but I do think it is a discussion that is ripe and we're getting closer to consensus than we were. We couldn't have this conversation and had as much agreement two or three years ago.

MR. FITZGIBBON: Right. Although I'm not going to ask for a comment on it, one of the other points of discussion was if there is a Federal law established is that it then takes the next step, which is who's going to enforce it and especially in relationship to the origination side? And that was a point of discussion. Pat?

MS. McCOY: Yes. In thinking about how the Federal Reserve, its role in the evolving legislative debates, a couple of different areas occurred to me. One is that, as we know, there's quite a bit of debate on the empirical effect of the state regulation on the availability of credit.

And although we're in the infancy of those empirical studies, they are starting to come out. We now have four or five studies coming out on the North Carolina law using different methodologies, using different databases that have greater or lesser refinement in the fields that are offered. And I think we need to look at these studies very carefully. I know that the governors have but more will come out.

One thing that I've been forced to think about quite a bit as I do empirical research is there's a very unlevel playing field in data access. The proprietary data are usually the richest, and they either are unavailable at any price or prohibitively expensive. So, for example, the loan performance databases is a relatively interesting database and broad-based, but even for a relatively short license of a year to 18 months, the cost is $200,000 to researchers. That's very expensive.

And, in addition, privacy laws, Title V of Gramm-Leach-Bliley may make it difficult to get access in some cases to the data. So this may be--there may be room at the Federal Reserve to try to do impartial analyses of mortgage data with enriched fields that might be difficult to do in the private sector outside of industry.

The other topic I wanted to talk about is assignee liability. The reason why this is so pressing is twofold. One is that assignees currently, under the Uniform Commercial Act code, are mostly immune from any claims and defenses that a borrower could raise against the originator. And so once one's loan is sold, either as a whole loan or into a securitized pool, then you lose the right to even defense against foreclosures in many cases.

Furthermore, at least the last time I looked, which I think is around 2002, two-thirds of subprime home loans were being securitized. So that means the majority of these borrowers have now lost claims of defenses. So that's really where the rubber hits the road.

And in thinking about this, we've seen in evolution in state laws. Georgia had an assignee liability provision that Standard & Poor's found incapable of rating, and so Georgia amended that law. The New York and New Jersey assignee liability provisions are not as far-reaching as the original Georgia one. And the rating agencies, for the most part, feel those can be rated under certain circumstances. So we probably want to take a look at what makes an assignee liability provision capable of rating or not capable of rating. And, furthermore, can these securitized deals be structured in a way to manage the risk? I think by having well-defined damages, caps, it makes it much more amenable to rating.

The other thing that we began to discuss, not only in our committee but also the

full Council late yesterday afternoon, is to what extent can predatory loans be screened out of loan pools, either by the originators, by investment banks, et cetera? And one thing that Jim mentioned, perhaps not in the same context, is that there's a collective action problem. There are originators who are responsible, who are doing very probing due diligence, but they're not rewarded for their efforts because many other originators don't do that.

MR. FITZGIBBON: Pat, I'm going to have to cut you off here if you can make it -- all right?

MS. McCOY: Okay. Okay. So we need a level playing field. It seems like there may be software that can actually review due diligence of entire loan pools for certain types of predatory lending problems. So we ought to think about technological solutions to due diligence as well. Thank you.

MR. FITZGIBBON: Dan, quick follow up and then Sheila.

MR. DIXON: Yes. I don't want Hubert to leave the Council thinking that he's suddenly got complete agreement with everybody.

(Laughter.)

Back on the issue of the preemption, having a new Federal statute that establishes a floor is never going to be enough for industry. The problem, frankly, is, number one, whatever the floor is there will always be a local politician who thinks that their next campaign can succeed if they raise the ante just one more tick. And so it just doesn't work. I mean that is the point. It's got to be full Federal preemption. That's what industry will expect in the legislative process.

MR. FITZGIBBON: Sheila and then that's it.

MS. CANAVAN: In terms of the uniformity issue, I think it's important to address some of the comments that my colleague Jim made. I think it's important to remember the history behind the legislation. As I recall, the industry was not willing to come together and enact a strong Federal law, and that is what resulted in communities who were dealing with the devastation related to predatory lending led them to enact state legislation and even legislation on the municipal level. It was sheer desperation.

So now we've come full circle and you hear the industry crying out for a Federal bill, which they had previously not been interested in. So I mean I have to conclude that if a really strong Federal bill would protect consumers is what is needed to protect consumers, I think you're going to find again that the industry will not buy into that.

The next comment I'd like to make very quickly is with regard to buying class action peace. Since I litigate these cases, and I've only file one class action ever in my career, I have to tell you in terms of litigating individual predatory lending cases, they're very difficult. I represent mostly elderly people. And I can tell you, for example, with regard to one company, I filed cases in '96 and '97 on behalf of elders. By the time they were resolved, it was February 2002 and half my clients were dead. So any class action piece would have to include attorneys' fees and punitive damages to deter the conduct. Because what happens at a practical level is that a lender finally, five or six years later, will say, "I'll give you back your $20,000." Well, that doesn't deter the conduct. It encourages it, and it doesn't make the person whole who now has an increased debt-to-income ratio, increased loan-to-value, is now subprime if they were prime before. You have to be realistic. You have to think about how this works in the practical world.

MR. FITZGIBBON: Thank you, Sheila. Just as a practical matter, Sheila, so that you know, in many of the state laws that were passed were supported by state banking associations and by bankers like myself who went down to Springfield and testified. So I think the banking industry is trying to act responsibly in many ways, but, unfortunately, because we're in different geographies and there isn't a Federal standard is that not only the consumers and the consumer advocates but also the industry itself in many cases if forced to take action. Thank you, Agnes.

CHAIR SCANLAN: Thank you, Tommy, and thanks for filling in again on this topic.

Ken, let's move to the Electronic Fund Transfer Act and a discussion of issues in connection with the proposed changes to Reg E.

MR. BORDELON: Thank you, Agnes. The Board staff provided the DDS Committee a briefing on the proposed changes to Reg E, which is the Electronic Funds Transfer Act of 1980. The proposed revisions and staff commentary were issued by the Board on September 13 of this year for public comment. The comment period runs through November 19 of this year. And, again, as a matter of information that was brought up earlier, not to be confused at all, although I'm sure it will be somewhat, with Check 21 that is effective today.

The proposals cover the following main topics. The first is to require merchants and other payees that use information from a check to initiate an EFT from a consumer's account, to provide notice to the consumer and to obtain the consumer's authorization for the transaction. Currently, merchants are not covered under Reg E but are required under NACHA rules to provide

the notices and to receive the authorizations.

The second piece that we discussed on the Committee, and I'll ask Forrest later to specifically address this issue, is to revision to provide that payroll card accounts would be subject to the regulation and covered as accounts and therefore have the rights and privileges afforded under Reg E.

There were other provisions that we really didn't get time to discuss, I think mostly because of the bounce protection discussion. That had to do with recurring debits and telephone authorization for recurring debits. If we have time in the conversation today, we could definitely address that.

We were given three proposed model notices to offer merchants flexibility to either process an EFT, to create a substitute check or just to process the check normally. The disclosure that the merchants would provide would inform the consumer that the funds would be withdrawn from their account quickly, which basically means the float is eliminated, and that the paycheck would not be returned in their statements from the financial institution.

The proposal would allow the merchants or the payees the choice of how the item if processed, either EFT or check. And the questions that we were asked is is this proposal in the consumers' interest? The other question that we were asked to address is is a sign or some public notification at a merchant's place of business informing the consumer of electronic check conversion up-front sufficient or should the reg follow the NACHA rules and have the merchant provide notice and get the authorization?

Under the payroll card proposals, the questions we were asked to address were basically if they are --and payroll cards only, by the way, not other stored value cards --if they are to be covered under Reg E for consumer protection issues, for error resolutions and for periodic statements.

So I would ask Forrest to address perhaps the payroll card issue first, kind of starting with Number 2 and going to Number 1.

MR. STANLEY: We had an excellent discussion, and I think we had a lot of agreement. The Fed's rules I think are very good with regard to payroll cards. There has been a lot of uncertainty out there among the issuers as to whether payroll cards are covered under Reg E. And in order for them to flourish, both to the benefit of the consumers and for banks, there had to be some clarity around that, and I also think there does need to be the protections under Reg E.

Let's keep in mind that these payroll cards are primarily for the unbanked. The services may be offered elsewhere but right now the model that's out there is to offer a payroll card so somebody can have their payroll put onto a card that they can then access at an ATM or point of sale, and these are people that traditionally don't have checking accounts. In order for that to be a viable option for the consumer, the Reg E error resolution processes or protections are probably -- it's a good thing. And I will tell you that many of the large issuers of cards have been providing those protections today.

We had a discussion about whether or not some of the other Reg E provisions were necessary. And I suggested that maybe the periodic statements weren't necessary because of the transient nature of the population that uses payroll card. We very often don't have a good address and whether it's us or the employer that's sending the period notice, it can be somewhat burdensome. But I will tell you that we had a good discussion about it.

And the other comment was that this is an entry-level product to get people into the traditional banking and that why shouldn't they have a periodic statement just as anybody would under a Reg E product and that if for no other reason to--not if for no other reason, but for financial literacy as a stepping stone it would be a good idea to provide that, and I think I agree at this point.

My only comment is that this is a product that for banks is a low-cost product. Can I just ask that as we go forward, the regulations is an ever-evolving process, as we know, that we not burden these cards with extra notices or requirements because we could very easily price them out of existence. Again, it's meant to be a cheap alternative for banks and for the unbanked to get into the banking system, and I think we need to be mindful of that. But I do agree, upon reflection, that a periodic statement is probably a good thing.

MR. BORDELON: Anne?

MS. DIEDRICK: Thanks, Ken. Well, we agree and we don't agree. Chase currently offers payroll cards, and we're certainly -- it's really a pretty big growth business, and we have always taken the position like Key that the product should be subject to Reg E, and we were happy that this proposal would codify this position and provide an equal playing field, because we're seeing a lot of our competitors out there offering similar products but circumvent the compliance requirements of Reg E.

But although we're very supportive of that part of the proposal, we would recommend that certain Reg E requirements, such as the paper periodic statements, not be applicable

to payroll cards. The Chase product enables a consumer to obtain account information online, by telephone or by ATM. The paper periodic statements would add cost without providing useful account information since the account information is otherwise available to the consumer.

In addition, we suggest that it be treated like government electronic benefit payment programs, which are exempt from several of the standard Reg E requirements. There is also a tangential reference in the proposal that's stored value and gift cards are not subject to Reg E, and we agree with that position and would recommend that it be made clearer.

MR. BORDELON: Okay. Lori?

MS. SWANSON: Yes. Thank you, Ken. I think that generally covering merchants under Reg E is a good thing and a good idea, and I applaud the Board for doing that. I've got two concerns regarding two of the particular areas, though, that I think invite fraud and abuse against the consumer.

The first of those areas relates to recurring debits, allowing consumers to orally authorize debits to their accounts on a recurring basis. And the discussion question that we were presented with is should EFTA be amended to permit consumers to orally authorize a payee to debit their accounts on a recurring debit to pay for goods and services so long as after the fact there's an oral confirmation given to the consumer? Right now, Reg E says that preauthorized debits can only be authorized in writing, and the official staff commentary says that a tape recording does not constitute written authorization.

Telemarketing fraud is rampant in this country. And one of the ways it occurs oftentimes is actually through recurring charges to consumers' accounts. The reason being is that recurring charges oftentimes are lower in amount than a one-time debit, and so the consumer doesn't notice. They're designed to evade detection. They may be $10, $15 a month but they occur in a low amount so that the consumer doesn't necessarily read their statement and understand that these recurring charges are occurring. It occurs in the area of magazine sales, for example, or in the area of membership clubs.

I just pulled out a letter I got from our Legal Aid Office before I came here. There's a fellow, I'll read from it, Mr. Smith, was an 87-year-old man, not competent, living in a nursing home. He was 81 years old at the time he was sold a variety of membership club charges. He was of questionable mental competence, had been unemployed for over 15 years, having retired from his work as a church janitor where he had worked for 50 years. What was he sold through

telemarketing? He was enrolled in an auto membership club with recurring charges? Well, auto membership club for discounts on the car that he doesn't own, right? He's in a nursing home. He was enrolled in a dental plan but he had dental coverage elsewhere. He was enrolled in a credit card security plan with recurring charges, even though under Federal law his liability was capped at $50 but he was paying $15 a month for a credit card security plan. Enrolled in a legal services plan where he was paying recurring charges even though he's represented by legal aid, right, because he's so poor; enrolled in a home protection plan with recurring charges even though he doesn't own a home -- he lives in a nursing home. And he was enrolled in a membership club for discounts on the computer that he never owned.

And so telemarketing fraud does occur and it occurs oftentimes with these recurring charges. And right now the law requires you to get written authorization and that an oral recording doesn't suffice. Oral recordings are particularly problematic because oftentimes it's not the whole conversation that's recorded. It is a portion of the call but only that portion where the consumer's already been lied to and deceived for ten minutes by a slick telemarketer calling at a dinner time when the consumer's not paying attention. And so oral authorizations are very problematic, and so you've seen attorney generals and the FTC taking a variety of lawsuits against telemarketers for these types of recurring charges.

Now, right now, the NACHA rules do allow tel transactions, one-time debits if there's an existing relationship with the customer, but it doesn't apply to cold calls. So either there has to be an existing relationship with the customer or the consumer's got to call the merchant. Why do you do that? It's because these cold telemarketing calls are particularly problematic where people are targeted with calls with someone with whom they don't have a relationship.

And under the existing NACHA rules for tel, these one-time debit entries, the consumer has to authorize that they've got a -- it's got to be clear and conspicuous, the date of the transaction, the amount of the debit, the consumer's name, the merchant's phone number and then the tape recording occurs or a written confirmation afterward.

Now, with those tel transactions there's been a great deal of problems. NACHA had to send out a notice to merchant banks a couple of years ago saying, "Wait a minute, even with all those strictures in place, we have to be careful because there's fraud going on and merchant banks can be liable for that fraud and it's hurting consumers."

My concern is that the EFTA was designed -- the primary objective is the

protection of individual consumer rights and that by allowing oral authorization of these repeat debits, it just opens up consumers to the potential for telemarketing fraud, and I think it also is going to be frankly problematic for consumers' banks. And we had a discussion yesterday on oftentimes it's the consumer banks who receives all the calls. If funny charges are popping up on an account, well, it's the consumer's bank who has to deal with the hassle and the time of getting those calls and dealing with the consumer, and that exposes the merchant banks to the liability. Yes, the consumer's bank can do chargebacks to the merchant's bank, but ultimately the merchant's bank is exposed to a potential liability.

So I would respectfully ask the Board to reconsider that provision. Again, I think extending Reg E to merchants is a good thing, but I would ask that the Board reconsider whether we just want to allow open oral authorizations for telemarketing calls. And if we do and we're going to go with an oral authorization to at least consider some strictures or controls on how that oral authorization has to occur, for example, can it occur when a telemarketer cold calls you or should we limit it to you, the consumer, calling into a customer?

The second area that I wanted to address also relates to authorization, and that's authorization at the point of purchase. It's also an authorization issue in that right now the NACHA rules say that if a consumer goes to a store to buy something at the point of purchase, that they have to give written authorization to be able to be charged for that particular product, and the proposal now would be that the merchant could simply put a sign up and that the sign would be good enough to put the consumer on notice if they've authorized something, and you don't have to have a written authorization. And that too I think is an area that can invite fraud and abuse to the consumer and then once again result in the consumers' banks -- you know, people getting irritated at the consumer bank because, again, these charges are appearing and the consumer doesn't understand why and they end up taking it out on the consumer's bank. So in that area I would indicate I believe the NACHA rules have been working and that a better approach might be to require the written authorization for point of purchase transactions.

MR. BORDELON: Thank you, Lori. Diane?

MS. THOMPSON: Thank you, Ken. I wanted to talk a little bit about payroll cards and then also this question about the oral authorization for telemarketing.

I was very glad to see the Board's proposed rules. I think they're a great step towards regulating payroll cards. I know we've talked about this before, and I, like many other

people in this Council, have expressed my concern that payroll cards often for many families represent a very important asset, most of their income. It's very important to provide them with adequate safeguards for that money. On that tact, I would say that I think that they should be given full Reg E coverage for the reasons Forrest outlined. I think the periodic statements are useful. If you're talking about consumers that we believe may be transient or only marginally banked, online our telephonic access is likely to be inadequate. I know for many of the people that I see in my office, some of whom get their salaries on payroll cards, they have at best intermittent access to telephone, they don't have access to computer, and I don't know about anybody else here, but I don't want to have to review all of my bank records while I'm standing at an ATM machine or sitting in my car at an ATM machine, either way. It's not a private place, it's not a place where I can necessarily fill and complete printouts, it is not a place where it's convenient for me to be able to review the information.

So for all those reasons I think that the full Reg E provisions and the provisions of the periodic statements are important, particularly if we see this card as a transition point from being unbanked to being banked. And particularly if we believe in financial education and asking consumers to take responsibility for their accounts and to understand their money, we need to give them the tools so that they can do that. It's not fair to say that consumers are supposed to manage their accounts but not give them realistic tools to manage that.

I, of course, unlike Anne, would say, oh, I think you ought to extend Reg E provisions to stored value cards, and I think Agnes has a few stories about why it might be good to extend Reg E benefits to stored value cards, because those cards right now there are not clear disclosures, there are not clear disclosures as to the cost, as to what happens if you've got a remaining balance. It is not always clear what the charges are. There are issues there, but I think that the Board has chosen rightly to at least start with the very most important issue which is the payroll cards, and so I'm very glad about that.

I would just like to underscore what Lori said, we also see lots of cases of these recurring charges that are fraudulent, lots of cases of legal services. I think we had one for $50 a month to cover legal services, and all the legal services would do is provide you with a telephonic conference with a lawyer of 15 minutes once a month. And there was no guarantee of any further representation. In some limited cases, they would write a letter under no circumstances would they represent you in court.

There are lots and lots of kinds of telephonic fraud, telemarketing fraud, and particularly with oral authorizations for recurring charges, particularly with people of limited mental competence or people who are simply distracted or people who are elderly even if that's recorded, what you really want is you want an opportunity for information about the fact that that's a recurring charge to be sent to their homes so that they can review it at their leisure and then sign off on it and send it back and not say, yes, thinking they're saying yes to something else, thinking they're saying yes to a one-time debit.

We had a case recently where there were recurring charges for a security system of about $75 a month and the woman who came into our office did not realize that she was agreeing to recurring charges for the security system. Her understanding was that she was paying once for the installation and that then she was going to have some other deal for the recurring charges.

These sorts of problems happen already. They are just going to get worse if we allow oral authorization, and they take one safeguard away from consumers and their ability to double check and manage their own affairs and make sure that they understand what it is that they've agreed to and what the consequences of that agreement are.

And that's I think particularly important if we're talking about debits to a bank account, because what we also see is we see people who end up with overdraft fees, we see people who end up with the banks garnishing against their exempt accounts because only Social Security is deposited in those accounts but the banks will garnish against those accounts. And it makes straightening out these problems much, much worse, and it sets up a whole cascade of further problems for the consumer.

MR. BORDELON: Thank you, Diane. Do we have any other comments regarding these proposed changes? I would echo that. We would also -- I would speak in favor of the authorizations, the written authorizations of the merchants. Financial institutions, I guess more and more of our time is being allocated to research and error resolutions, and whatever can make that simpler for us and get the consumer or the member happy as quickly as possible is our goal. And the written authorizations are always helpful. Unless there are any other comments, I think we're a little bit ahead of schedule, Agnes.

CHAIR SCANLAN: Okay. Then we'll move on to you Debra for our members forum. Debra is the President of the Neighborhood Lending Partners, Inc., which is a mortgage lending consortium in Tampa, Florida. And she's going to discuss consortium lending and

affordable housing.

MS. REYES: Thank you. I appreciate the opportunity to talk to you today. When I was talking about what I was going to present today I decided not to talk about just Neighborhood Lending Partners and the success of our program but rather to talk about consortium lending and affordable housing on a broader scale. The presentation that I had today is a little longer than anticipated, so I will run through it pretty quickly, but I want to give you some background.

This was put together with the assistance of the Community Affairs staff of the San Francisco Fed, along with my care group, which is called ARCH, which is Association of Reinvestment Consortium for Housing. And I think that this hopefully will be meaningful in light of some of the comments I made earlier today about the community development professionalism, finance and investment side showing that our business is good business. Community lending, community development is good business. And also to show the impact of what we've done on a national level. As I said, I won't reserve my comments to Lending Partners.

I did want to start, though, with why a consortium, and really it goes back to when we were all initially formed that we were looking at trying to deliver a product at the time that we didn't think could be delivered on an individual bank-by-bank basis. But if we put the resources together, that it was something that could be delivered on a broad scale, and those resources were not necessarily financial that couldn't be delivered on a one-all basis but rather sometimes the complexity of a product that we were delivering or sharing of risk.

Most of the consortium work created over the past ten to fifteen years, we've had some examples that are older than this, but most of them were formed in the last ten to fifteen years to provide permanent mortgages for affordable multifamily housing. Most created a product specifically to offer that permanent debt piece. And the reason this was done is that these loans were at the time perceived to be very high risk and that the banks would share comfort in the shared risk. So they each developed a permanent loan product. They varied based on the market demands, the membership of the different consortia. In many of the cases, we offered additional services. We offered construction loans, pre-development loans.

This shows the profile of where the ARCH membership that this report codifies is where they are located. There are twelve members in ARCH. We range in size from very small to large, the largest having a staff of thirty-one with the average size being seven. The fewest number of bank investors in any other consortia is nine, the largest is 111 and that is actually the

organization in North Carolina. The average is forty one. I think it's pretty impressive that there are 434 separate institutions that are represented in the ARCH membership. Fifty-six institutions participate in more than one of the consortium. And this shows you a breakdown of some of the larger members that participate in multiple ones. The consortia's loan pools range from $22 million to a high of $554 million. The cumulative loan pool is $1.7 billion.

This shows the size of the different members. You'll see that CIC in Chicago is the largest and they are the oldest. They are about thirty one years old, I believe. CCRC in California is second largest and then Neighborhood Lending Partners comes in as the third largest.

In total, since 1990, the members have originated 2,067 loans. These loans total $1.75 billion. And they have financed over 9,400 units of affordable housing. This shows the annual loan volume, and you can see it's been steadily increasing since 1990. And then there's the cumulative loan volume that shows the level that we're currently approaching.

I think this is very important that virtually all of the units, 97 percent, are affordable to low- and moderate-income renters. Seventy-one percent of the total units are affordable to low income, and that is income at 50 percent or below median. Another twenty six are for moderate, which is below 80 percent. There are 3 percent that are other than those low and moderate. Some of us provide mixed income properties with financing and that represents that 3 percent.

I thought it would be important just to show you a little data about what affordable housing is about and who it's addressing, and so I think I picked of course the Florida market, which is the one I know. But a two-bedroom unit at the area's fair market -- to pay for a two-bedroom unit at fair market rent would take $13.98 per hour. The minimum wage earner can only pay $268 per month versus the $742 required. And so I just picked some median incomes to show you the median and then show you the occupations with annual salaries that are below the area median income. And you can see throughout the state it's pretty significant.

MS. THOMPSON: Debra, by afford you're using the 30 percent?

MS. REYES: Thirty percent of your household income, which does include your utilities.

The median income for Jacksonville is $56,006; the median income for Miami is $45,600. This shows you in Jacksonville all of these wage earners earned less than the median income and in Miami everything from the administrative assistant line on down. I think it's

important for us to make this tangible about the people that are being served with affordable housing. Who are we trying to reach?

And Neighborhood Lending Partners and most of our peer group have affordability requirements on all the properties we finance. We deed restrict the properties, and we also actually do compliance reporting and compliance monitoring of the properties. This is the guideline that we use for Neighborhood Lending Partners, which most of our peer group utilizes as well. And this is pretty much the HUD standard.

I wanted to show you what some of these properties look like, so I built a few in throughout. Williams Landing is a seniors property in Tampa, Hillsborough County. Fifteen percent of the units are reserved for residents earning 30 percent or less than the median income, with the remainder at 60 percent. This is a two-phased project, and you can see that the total cost is $14.5 million with a value of just over $6 million. So it takes a lot to put these properties together, a lot of leveraging of different financing sources.

And then we show some of the amenities. This has a clubhouse with a pool, a leasing office, a clubroom, library, exercise room, mail room, laundry facility, maintenance shop, shuffleboard court, picnic grills pavilion, an access gate. But more than this, this property also provides a lot of services for the seniors: Health screening, transportation services, a great deal of services. And it took six sources of financing to put this property together. This shows you what it looks like.

The next thing we talk about in this presentation is the evolution of the change in the consortia lending. There have been a lot of change in the terms over the years. Basically, we've moved with the market to try to make our products competitive for our member supports but also to make them deal with the unique needs of the different markets that we're trying to serve.

We've also changed our product mix and not only in loan products but in services that we provide, and we're constantly researching new products and services we could offer. Some of the new products that we have developed on the loan side are seamless products that we worked with our member banks, construction perm, equity all in one transaction. The development of an acquisition rehabilitation product to deal with the existing supply of multifamily affordable housing that is desperately in need of repair and/or preservation for affordable--to remain at an affordable level. We also have preservation products sometimes in conjunction with HUD or the USDA Rural Development, and then we also have some of the consortia offering loans for assisted living housing.

We've developed some short-term products, some bridge products. In Chicago, they've actually developed a Troubled Buildings product to go in and preserve some housing that might be totally lost to the affordable -- I guess low-income community. We have also developed some non-loan products, such as tax-exempt bond financing to deal with the fact that in some states the bond cap was not being fully utilized. There are equity investments and preservation products, small grants, tax credit equity funds, life safety repairs to old mobile homes and then the administration of public subsidy programs.

We've augmented our lending with other products and services, administration and liaison services, consultation to developers, particularly nonprofit developers who are doing some of the special needs housing, hard-to-develop areas. We provide seminars, property management courses. And then we're constantly working on new products. One of the things that we've been looking at as a group is for-sale affordable housing. Neighborhood Lending Partners has actually implemented a product, and we have offered several loans through this product at this point, how we can provide small subsidies to improve substandard housing and then also we're looking at charter schools, hospice care facilities.

This is an example of a property in North Carolina that I think is particularly meaningful in that this deals with individuals who have spinal cord injuries and low income as well. It's only a 20-unit property, but you can see it took five sources of financing to put this together. And in this housing they also provide the residents with physical recovery assistance as well as education and job skills. This is the property in North Carolina.

Then we try to talk about our value to our investors, and the first thing is we try to offer a product that is low risk. And I think this is one of the biggest selling points. And part of this ties back to the excellent underwriting and asset management that is then employed by the ARCH group. And we have some data to support this. To date, the loan losses total only 0.3 percent of the total loans originated over the last fourteen years. Only 0.1 percent of that loss has been passed on to the member investors. And the charge-off rate of all insured commercial banks for multiple family loans has averaged 0.45 percent from 1991 to 2003. You can see we pulled this from the Federal Reserve summary profile. So you can see that this is low-risk lending.

In addition, we tried to provide a reasonable financial return to our investors. We operate with minimal to no operating subsidies. We operate with much lower overhead than larger commercial institutions, and most of us have been profitable in at least each of the last three years.

We pool our resources for economies of scale, we have repeat customers.

And this is one of the, I think, more significant things we have to talk about is that we really have shown some self-sufficiency in that there has been a season sold and rated securitized product now. There was an $86 million securitization that went into Wall Street, I want to say, less than 90 days ago. It was composed of many of the ARCH loans across the country. There were some economic development loans and some small business loans in the securitization. Neighborhood Lending Partners had six loans in the securitization. There have been a total of $527 million in loans that have been sold to secondary markets, which has included member banks, the Federal Home Loan Bank of Atlanta, Impact Community Capital, Community Reinvestment Fund who put the securitization together, and the Community Development Trust.

And then of course we go back to the other thing we offer our investors which is CRA, lend test credit but also investment and service test credit through the equity products, the grants and other investment opportunities. And then obviously serving on our loans committees and working with us in providing training for the community, they are offered an opportunity for service test credit.

And we tried to look at this larger banks and smaller banks since there is some discussion about the role they play. For the larger banks, we are able to reach smaller markets where it is more costly for the large banks to do business. We are especially helpful to limited purpose banks who have no outlet for other CRA qualified lending, and then we provide that forward take-out for the construction loans that the banks are providing.

For the smaller banks, we offer almost an outsourcing of -- we can offer the expertise that they cannot staff in-house. It also gives them an opportunity to participate in some of these large-scale developments and to learn about this type of lending and then to do the business with the prominent developers. It gives them a business line that they might not have available to them otherwise.

Another thing that we think is important is that we do provide greater coverage, and this will talk to Hubert's area of interest, that our loan size generally is smaller and a lot of the banks find it very difficult to work with some of the smaller loan sizes. They do take as much time, they take a lot of hand holding, so this is an area where we can really assist our members and allow the members to focus on the larger transactions. We do get greater geographic coverage by working through the consortia. Rather than a few large direct loans, they can participate in many loans. And

we do also have a special emphasis in the rural areas. The loans are small, often the sponsors are less sophisticated, the borrowers and projects are some distance away. So there's some small local economies that can be fragile.

In serving rural markets, we think that this is a very important niche that most of the consortia have tried to address. The share of units in rural markets averages from the different ones represented in ARCH, from 15 to 72 percent. This is an example of a rural property in South Hillsborough County, south of Tampa. This is a farm worker housing development. The rents are available for farm workers at 15 percent--for 30 percent of AMI or less, 15 percent at 50, the remainder at 60. The cost was $9.3 million; the value is $3.8 million. And here again we have six sources of funding.

One of the things in the amenities that we didn't mention that this has an on-site day care that is run by Retalin's Christian Ministry who specializes in day care for the farm worker community. This is the property. This isn't a very good example. We couldn't find a great photograph of it, but this was actually designed by an architect named DeWanni who did the seaside development in Florida which is very upscale. But this property really only helps with the farm worker housing. The other thing that that kind of property does is it stabilizes those families and that the families stay in place and that primary farm worker then just migrates to the work, but you find the children staying in school and those families stabilized. On average, the share of units in rural markets is 29 percent. Seventy-one percent is in the urban market.

So the other thing we do is we do try to meet the needs of hard-to-serve populations: Very low income, the SRO needs, farm worker housing, senior housing, large family sizes and assisted living.

This just shows the distribution throughout Neighborhood Lending Partners at this time this was put together. There are four counties that we serve there that are primarily rural. DeSoto, Hardy, Hendry and Highlands Counties are primarily rural counties.

This is our closed loan distribution, which shows that our housing is not only for families but we do reach out to some of the special needs groups -- seniors, farm workers, special needs, large families.

And then the last thing for the value to investors is our incubator role where we do a lot of research and development. The banks have a great deal of confidence in what we're doing and so they will agree to pilot programs that might otherwise take years to bring online. So it allows

us to be more responsive to the marketplace. And as I mentioned earlier, one of our goals is to create markets down the road for investors to work with those emerging markets through shared risk.

Additional benefits to our investors is the diversity of participating in these pools, getting the larger geographic distribution. In some cases, the consortia have actually provided an outlet for banks, problem loans where they work through those properties that might otherwise be lost to affordable housing.

And then we serve the overall industry. This is a piece I'm not going to go through in great deal but we do try to represent our members in having really serving the industry, working as a bridge between the public and private sector and providing a consistent and reliable source for the permanent financing. We also work in the area of public policy. We try to serve an advocacy role. We try to be a voice in what's going on in our local and state and national governments relative to affordable housing and community development. And then of course we provide financial expertise to our product. We try to speak for the industry as a non-political focal point. And then we do provide educational opportunities for our members and others in our communities. We provide consulting services and technical assistance, particularly to non-profit developers.

And then I think the last thing is what we think we have done is provided an effective and efficient way for banks to extend their reach, develop new products and markets, have a voice in public policy and most importantly work in partnership to build stronger communities.

CHAIR SCANLAN: Thank you, Debra. Any questions for Debra?

MR. FITZGIBBON: I was just going to ask if I could, Agnes, Debra, I just recently closed on a transaction in Chicago in which donation tax credits were part of the structure. Have you or any of your members been involved in that?

MS. REYES: A few of our members actually have worked with that in the north Florida region, and it's been pretty productive.

MR. FITZGIBBON: Yes.

MS. REYES: With historic tax credits as well.

MR. GASTON: What do you mean by donation tax credits?

MR. FITZGIBBON: There's actually a program administered generally by the state --

MS. REYES: It's a state --

MR. FITZGIBBON: -- where donations--it's, in effect, like low-income housing tax credits. You can buy, in effect, a deduction from your income tax by making a donation to a non-profit organization who in turn then can use that capital for equity in a variety of different developments.

MR. GASTON: Okay. We call those affordable housing program credits. It's the same thing.

MR. FITZGIBBON: Oh, okay. Well, it fits both in housing and economic development.

MS. REYES: Others? Thanks.

CHAIR SCANLAN: Thanks again, Debra.

(Applause.)

CHAIR SCANLAN: Let's move to our committee reports at this time for the committee Chairs to talk about the discussion that occurred yesterday and the topics for the next Council meeting in 2005. Yes, Larry?

MR. HAWKINS: Agnes, if I might just real briefly because this is my last meeting and I won't have another opportunity to say this--

CHAIR SCANLAN: We'll always give you an opportunity.

(Laughter.)

MR. HAWKINS: First of all, I want to tell the Fed and staff how much I've appreciated serving for the last three years. This has been a wonderful experience. I can tell you I sleep so much better knowing that there are so many more people in the world who are so much more smarter than I am.

And something else that I just wanted to mention briefly because I know I won't have an opportunity to get in on this discussion is that an issue was brought up in one of our sessions the other day about the composition of the Consumer Advisory Council and how the staff, I guess, comes up with the names and the folks who serve around this table. And I just want to tell them that I believe that it's not an easy task but I think that they do a yeoman's job, a wonderful job of creating, for lack of a better term, a kind of balance in terms of the players at the table and the representation and that I want to encourage them to keep up that good work because this is -- I don't know if I've ever sat on a board where the makeup was so diverse, I mean with the exception of maybe a lot of lawyers.

(Laughter.)

But that it is so diverse and that it is so well balanced to essentially keep everybody in check. I mean I don't think ever again will I see a situation where the fox and the chicken are both in the hen house and they both survive. So I just want to say that and thank the staff and tell them to keep up the good work, because I know it isn't easy. I mean they go through a lot of names to try to come up with this composition, and I think they do a great job.

CHAIR SCANLAN: Thank you. Thank you, Larry. Let's move to our committee Chairs and the Chairman. First, let's start with Community Affairs and Housing. Tommy, you want to talk about the discussion yesterday and the next meeting?

MR. FITZGIBBON: Sure. There were three major topics for the Committee. The first was that we spent a great deal of time on this morning on anti-predatory lending laws and came up with I think some good recommendations relative to some activity that the Fed might undertake and especially in terms of developing some kind of consensus over the development of a process of effective preemption, if you will, that would allow for the adequate flow of capital in the credit-needy markets but at the same time address the issues of the predatory lending practices of certain segments of the market in that regard.

The second topic was the discussion about the Equal Credit Opportunity Act, Regulation B, and the cross-default provision process that is beginning to be more of a practice where, in effect, interest rates on existing credit that a consumer has can be increased of their behavior on an account that is not related to the transaction. And the discussion and debate there was over whether or not there should be some form of adverse action notice given to the customer when the interest rate is increased as a result of the cross-default provisions within the credit card--in particular the credit card activity.

The Committee, although there wasn't really total consensus, but basically said, you know, it's probably good that the customers should receive some notice of the reasons why the interest rate is going to increase as a result of their behavior on another credit. The real, I think, diversion was whether--the dialogue was centered around whether it's truly an adverse action or not, especially in light of the provisions of the Equal Credit Opportunity Act. But there was consensus that it probably -- that the customers should be given some reason as to why that interest is being increased other than if it was a total class; in other words, if interest rates across the board were going up. So individual actions.

The Committee also said that there should be some cost/benefit analysis done about how that notice could be created and what it would do in terms of costs to the industry as well as what benefit it would bring to the consumer.

The last item was really on financial literacy and education, and, in essence, it was an update from the Division of Consumer Affairs, a status report on the Financial Literacy and Education Commission, bringing us up to date on the process that is going forward to develop a better set of standards for financial literacy. There was a briefing on it, talked about the new web site, if you will, that's been created, the phone number, the 800 number, and the fact that it's moving forward in terms of alternative languages that are there as well. Right now it's Federal agencies only that are participating in this Commission or in the web site and the 800 number. There has not been an extension out to other educational channels at this point.

The topic also covered the discussion about a national strategy development plan to coordinate resources and grants and programs and to try to avoid duplication. I think there was adequate discussion that there's an awful lot of people trying to do this and some are doing it better than others and some in the financial literacy side are, in effect, actually doing financial literacy under the guise of offering other kinds of alternative credit, which is not right.

And last but not least was really the question and discussion about the need to know what impediments exist in getting information to consumers so that they can be better educated about the controls over their own financial life.

On the agenda for next time is the anti-predatory lending regulations or discussions are likely to be back on the agenda again as we get more information from other resources. There's likely to be further discussion about the ECOA Reg B and the cross-default provisions. There was a request by the Committee to get some information because housing is part of our mantra, if you will, about housing affordability and so getting some information from Fed staff about for-sale and rental housing and where issues are in relation to affordability, similar to what Debra was talking about today.

Also wanted to get some information about manufactured housing, and I raised the question but I think it was put down. We're not talking about mobile homes but manufactured housing. And then two other items that came up at the end was really getting some more information about foreclosure evaluation. There have been many studies that have come out in recent times, some that I've seen from NTIC and from other places that might give us more

information or more data or at least some more color to the effect of foreclosures on a variety of different both urban and rural communities.

Last but not least, late of 2005 we expect that the Committee will review some of the early information from HMDA on loan pricing. So that probably won't be next time but maybe the time after. Thank you.

CHAIR SCANLAN: Thank you, Tommy. Ken for Depository Delivery Systems Committee.

MR. BORDELON: Thank you, Agnes. In addition to the EFT discussion that we reported earlier, the DDS Committee reviewed balance protection as it relates to the proposed revisions to Reg DD and the proposed interagency guidelines and keeping that discussion separate from the TILA discussion that was on consumer credit.

On the proposed Reg DD changes, there was not much controversy on the account opening disclosures, but there was considerable discussion concerning the periodic statement disclosures, especially for separating out the fees charged for checks paid versus checks returned NSF and for those who are not in the program.

The aggregation of those fees in a month-to-date and year-to-date basis was also of concern to some as to the actual benefit. Some wondered why institutions that do not provide the market programs are being included in the periodic disclosure requirement and we referred to that earlier.

Under the discussion for the interagency guidelines, there was some concern expressed about the provision to disclose in what order checks are paid, although a system of paying probably by sequence number seems to be the most reasonable. Bruce's example of paying a check for the mortgage prior to paying a check for a casino would kind of put that at risk, so there was some concern there.

Finally, the provision for some affirmative consent to get in the program as it relates to the interagency guidelines was considered somewhat risky in that it kind of implied a credit granting procedure. And the opt-out provision, however, was I think if not a unanimous consent was fairly well supported by the members of the Committee.

We briefly discussed the E-Sign Act and agreed that the Board should not pull the interim rules there but probably just pursue further comments.

For the next meeting in March, the Committee would like to discuss--and this is a

new item by an outgoing member to remain anonymous--funds availability as it relates to bill paying programs, Check 21 again because we should have some experience by then and the continued discussion on the E-Sign Act.

And as this is my last year on the Committee too, I would like to reiterate what Larry said, I've sincerely enjoyed serving on the Council and the support of the staff that's provided and the balance that this Committee provides. As you may know, some of the consumer activists may not understand that for a credit union guy to sit and be in agreement with bankers is fairly well balanced also.

(Laughter.)

So thank you very much.

CHAIR SCANLAN: Thank you, Ken. Consumer Credit, Pat?

MS. McCOY: Yes. We did talk about the Truth in Lending Act treatment of check overdraft protection which we debated here today. In addition, we discussed developments with respect to the pending FACT Act regulations with a specific focus on identity theft, the upcoming rulemaking, and staff had a fair number of questions, mostly for the industry representatives on what are red flags of identity theft, how can one give guidance to industry without tipping off the identity thieves, et cetera? And I think that was very useful.

We then proceeded to a separate discussion of the upcoming Board review of Regulation Z with respect to open-end credit. The staff aired before us a number of questions regarding what areas and what potential problems should be addressed, including changes in formatting. There again was some sense of the Committee which had been aired before that it might be useful to have either something like a Schumer box or an executive summary of the salient credit terms.

There was discussion of whether disclosures could be improved in some ways to enhance consumers' understanding such as disclosures about the effects of only making minimum payments on credit cards and then the topic of whether or not the current procedural and substantive protections are adequate. We had a fairly long discussion about the fairly complicated set of laws that govern convenience checks and the fact that the disclosures currently may not capture the complexity of those laws accurately. We talked about possibly changing or tweaking teaser rate disclosures as well.

The last topic was one that actually both of the afternoon committees sat in on at

once, which had to do with the question whether there should be CRA treatment of bank participation in subprime mortgage securitizations. We had some discussion of the extent to which banks either are purchasers of subprime mortgage backed securities or participate at underwriters, as trustees, et cetera. And there was, I think it's fair to say, disagreement about whether or not CRA is the right vehicle for treating that with some people feeling banks should not get credit for such investments without leaning on the process to attempt to screen out predatory loans and others feeling that this is not the right vehicle.

The discussion really morphed into a question of to what extent is screening possible, and I think that topic will come back maybe under the rubric of pending Federal legislation next year in some way. And so that pretty much wraps up the topics of yesterday's discussions in the Committee.

Before I turn this over to Dan, I'm going to pass the baton for next year's topics, but I would just like to say that this is such a remarkable body. There's a sense of great candor and of trying to reach solutions, and I think our discussion today about check overdraft protection, to me, was the perfect example of that.

The staff has been so thoughtful and so professional and so great in informing us, giving us the information we need to do our jobs. And I also have to say they also are very clever sleuths because in the three years I've been on this Committee I've lived in three different cities and they always manage to find me and get me here today.

(Laughter.)

I wanted to say I'm sort of a minority of one because I'm the one professor on the Committee, and I'd hope that future committees do have one researcher just to sort of stay in touch with the research. I don't know if I succeeded in that but I think it might be useful.

And I also just appreciate the sensitivity of the governors. I always feel that we are listened to with such seriousness, and it really, really makes me feel that in my very small way I can make a contribution and it forces me to take the enterprise seriously too. So thank you very much.

CHAIR SCANLAN: Thank you, Pat. Dan?

MR. DIXON: Yes. Just briefly, next year's agenda I think will probably be driven largely by some of the pending regulatory actions that the Fed and the other bank regulators are working on. It appears that the FACT Act regulations will be with us for all of next year, if not

beyond. We spent time yesterday talking about the open-end credit review under Reg Z, so I assume as the proposals are actually published, then we'll have further conversations in the Committee. And, indeed, I think the item that hasn't been mentioned today, GRPA, the whole regulatory burden relief. Obviously, that, in many cases, gets down to what kind of compromises are proposed in terms of some consumer protections versus the regulatory burden on industry. And so I assume that we will have opportunities, requests to consider some of those proposals as they might be coming up next year.

Also, some of these issues tend to overlap more than one committee, and I think the predatory lending will be obviously a major item of consideration next year, both in the legislative and regulatory areas. And even though there are other committees within the Council, I think Consumer Credit will undoubtedly spend some time on those topics as well and possibly including some discussion about mortgage loan servicing abuses.

CHAIR SCANLAN: Thank you, Dan. Buzz, on the Compliance and CRA Committee.

MR. ROBERTS: Thank you, Agnes. We had two topics, both of which have already been adequately aired today. One, of course, the CRA regulations, which we discussed at length here, and, second, the question of securitization of subprime loans and its connection with CRA, which Pat has summarized.

With respect to future discussions, we want to put on the table a couple of things. One is to take a look at the overall regulatory burden costs associated with compliance and community reinvestment. We hear sometimes claims of regulatory burden but don't really understand their magnitude or how they relate to costs associated with other regulatory issues. So we'd like to get some perspective on that.

Second is to take a look at some community development loan definitions under CRA to see if they're really getting at community development adequately or not.

And, third, to take a look at small business data to see whether those data are really getting the kinds of small business financing issues that we think might be most important or whether they're really missing the mark.

So those are some of the topics that are suggested for next time. This is also my last session on this Council, and I wanted to add to the sentiments expressed earlier by several other people. I echo almost everything that was said, and I won't bore the audience with repeating it. I

would only say that I'm struck by the contrast between the subtlety and really elasticity of the conversations that we have here compared with the kinds of polarized position and stance-taking that one sees in other kinds of vehicles for commenting on these kinds of policies, particularly the rulemaking process. And I would hope that some of the respect and give and take and commitment to reach good solutions for everybody that we see here could somehow carry over into that other area.

CHAIR SCANLAN: Thank you. Sandy, you wanted to make a comment?

MS. BRAUNSTEIN: Yes. Since it's the last meeting for several people, I just wanted to say, and I know that Governor Bies is going to be saying a few words at lunch on behalf of the Board members, but I just wanted an opportunity on behalf of the staff here at the Board to thank those members who are departing today.

I think we knew from three years ago when this class, so to speak, as we call each year, when this class came in to orientation we knew that we had a very strong class, because from what I remember a lot of times orientation tends to be very subdued and people don't say much because they're not sure what's going on and they're trying to feel out the situation, but with this group I think they were pretty active and lively and talkative right from the first day they walked in. And they have carried that through through the last three years.

I really appreciate all the hard work that you have done, our whole division does and staff of other divisions here at the Board. You have worked hard, you have participated. The one thing we really ask of people to serve on the CAC is that you speak up and participate and I don't think there's anybody in the class that's leaving now who has not spoken up and participated over the last three years on the issues.

And then I need to just add a special word to Agnes who has been an extremely strong Chair of this Council this year, and we really appreciate that. You know, there have been times -- most of our Chairs are excellent--but where we've had to kind of remind the Chair about things, and that was never the case with Agnes. In fact, she was very good at initiating things that needed to be done, and she was always extremely helpful to staff in getting things done that we needed, and we cannot thank you enough because you have just done an admirable job and provided really strong leadership for the Council over the last year.

(Applause.)

CHAIR SCANLAN: Thank you. I would like to make sure that everyone who's

departing has had a chance to make a comment before I sort of close. Ruhi, this is an opportunity. I remember our first meeting, and you were the one of the ones that spoke up first.

MS. MAKER: I have to be honest, that I--there were times when I thought I've got clients, am I wasting my time, and I have to say every minute that I've spent here has been pleasurable. And while I'm glad that the three years are over and it's been work, I really think this is a valuable experience, and I have said to many of my colleagues and I've asked many colleagues to either get nominated and I've in fact nominated facts, this is really good time spent.

And I'm thinking now what's the next forum that I can get involved in where I can play a similar role because it is, as Pat said, it's very scary to sit here and know that you're making national policy and I didn't think that a day would come when that would be the case. I mean I'm an immigrant to this community, but it's heartwarming and really does make me in many ways, sort of ironic to say, proud to be American.

CHAIR SCANLAN: Okay. Jim, do you--or, Bruce, did you have something?

MR. MORGAN: Just a brief comment, Agnes, just to thank you for the job you've done.

MS. BRAUNSTEIN: You're not leaving, though.

MR. MORGAN: No, I'm not leaving, but I do thank Agnes and all of the other folks that are leaving for giving us some really good guidance this year on what the Council's all about. And I'd like to tell the governors publicly the job that Sandy and her staff does for every meeting. The patience of her staff, the briefing papers, the focus questions. This Council could not do its job but for her and Ann and all the folks behind her, and they need a recognition.

(Laughter.)

CHAIR SCANLAN: Absolutely. The staff of the Fed has been wonderful over the past three years, the work of Ann and Tina and also the work of Sandy and Terri and Adrienne. And I also wanted to make sure I recognized for this meeting Capria Scott and Synethia Thompson who've been really doing a great job to get this organized and get us straight. I also want to thank the Vice Chair, Vice Chair Ferguson, for being here, Governors Bies and Bernanke for being here, and the departing members. The past three years have been phenomenal. I think we've all learned a lot. I think we've all sort of shared a lot of conversations with each other, and we've learned a lot about each other. And all I can say to the groups that are moving forward, keep up the good work of particularly this past year and continue to be informed, continue to bring the message back of this

Council to your communities, continue to work with your district Fed staff.

With that, we're going to be having lunch in Dining Room L, just down the hall. Thanks again, everyone.

(Whereupon, at 1:02 p.m., the CAC meeting was concluded.)