U.S. COMMISSION ON CIVIL RIGHTS

BRIEFING ON EFFORTS TO END DISCRIMINATION IN MORTGAGE LENDING

EXECUTIVE SUMMARY

On March 3, 1995, the Commission on Civil Rights held a briefing on efforts to end discrimination in mortgage lending. The Commission frequently arranges such public briefings, with presentations from experts outside the agency and a representative range of advocates, in order to inform itself and the Nation of civil rights issues.

From its beginning, the Commission has taken a strong interest in fair housing practices. As recently as September 1994, the Commission issued <u>Fair Housing Amendments Act of 1988: The Enforcement Report</u>, which concluded that enforcement of Federal fair housing laws, while improving, should be further strengthened. Earlier Commission reports on housing matters included <u>A Sheltered Crisis: The State of Fair Housing in the Eighties</u>, in 1983; <u>The Federal Fair Housing Enforcement Effort</u>, in 1979; <u>To Provide ... For Fair Housing</u>, 1974; <u>Mortgage Money: Who Gets It</u>, 1974; <u>Understanding Fair Housing</u>, 1973; <u>Home Ownership for Lower-Income Families: A report on the Racial and Ethnic Impact of the Section 235 Program</u>, 1971; <u>Federal Installations and Equal Housing Opportunity</u>, 1970; <u>Civil Rights USA/Housing in Washington, D.C.</u>, 1962; and <u>Housing</u>, 1961.

The March 3, 1995, briefing had 10 panelists, divided into three panels. The participants generally agreed that more is being done to counter discrimination in lending for home ownership. But judgments differed on how much more is being done and what else should be done.

The panelists were Governor Lawrence B. Lindsey of the Federal Reserve Board; Suzanne C. Hutchinson, executive vice president, Mortgage Insurance Companies of America; John Taylor, president and CEO, National Community Reinvestment Coalition; Peter Kaplan, Director of the Office of Regulatory Initiatives and Federal Coordination in the Office of Fair Housing and Equal Opportunity, U.S. Department of Housing and Urban Development; Julie A. Gould, Vice President for Community Lending, Federal National Mortgage Association; Paul A. Mondor, associate director for regulatory compliance, Mortgage Bankers Association of America; George C. Galster, senior research associate, the Urban Institute; Marina C. Wang, president and CEO, First Public Savings Bank, Los Angeles; Judith A. Browne, assistant counsel, NAACP Legal Defense and Educational Fund; and Manuel Mirabal, president and CEO, National Puerto Rican Coalition.

The first speaker, Governor Lindsey of the Federal Reserve Board, said that evidence points to expanding opportunities of home ownership for minorities and to lower-income people overall, but cautioned that there remains "a long way to go." As contributing to expanding opportunities, he cited more flexible credit standards, stepped-up efforts by government regulators on behalf of fair marketing practices, increased community outreach programs by financial institutions, and the development of new products to assist in the placing of loans.

Governor Lindsey also noted that some mortgage bankers are allowing a 5 percent and even 3 percent down payment, instead of the traditional 20 percent. The Fed official expressed hope that the lower payments down would not result in an unacceptable number of defaults, but added that a full business cycle would probably be required to test fully the risk.

The next panelist, Ms. Hutchinson of the Mortgage Insurance Companies of America, said that in recent years the member companies have been working to make mortgage loans more available to traditionally underserved minorities and thus expand the market. Ms. Hutchinson cited community outreach, lower down payments, a sharing of risks, counseling, and other efforts.

Ms. Hutchinson called community outreach "good business" for the companies, even if originated by pressure from the government.

Speaking next, Mr. Taylor of the National Community Reinvestment Coalition told the briefing that much more needs to be done to counter lending discrimination. Mr. Taylor said that the Community Reinvestment Act, which requires regulatory agencies to assess community lending when considering applications by banks and thrift institutions, should be extended to mortgage companies. He also urged an "affirmative-action approach" that would provide subsidies to minorities as compensation for historical discrimination.

On the panel Mr. Kaplan represented the Department of Housing and Urban Development in place of Roberta Achtenberg, Assistant Secretary for Fair Housing and Equal Opportunity, Mr. Kaplan presented Secretary Achtenberg's written statement, which was made a part of the record.

Mr. Kaplan reported that HUD has strengthened its enforcement efforts for fair mortgage lending. He said that HUD enforcement has focused on improved processing of individual and department-initiated complaints and better cooperation with bank regulators and the U.S. Department of Justice to achieve results.

Mr. Kaplan noted that last autumn HUD and the Mortgage Bankers Association of America reached a voluntary compliance agreement that commits the association to support such fair lending practices as testing for discrimination, outreach to minority brokers and communities, training and recruiting of minorities for the mortgage banking industry, training on fair lending issues for employees, and flexible standards by lenders.

The first speaker on the second panel, Ms. Gould of the Federal National Mortgage Association, described a computer software program produced by Fannie Mae to analyze objectively where a potential borrower stands financially and what he or she must do to qualify for a loan to purchase a home. Carolyn Mattox, who developed the software, demonstrated the use of it for the briefing.

The software, called Desktop Home Counselor, is being provided free to community housing groups to use in counseling programs and sold to mortgage banking companies to assist in minority and lower-income outreach programs. Ms. Gould told the briefing that the software was intended to put more minorities and lower-income people in general in their own homes.

The next panelist, Mr. Mondor of the Mortgage Bankers Association of America, said that the association has already begun programs under the voluntary compliance agreement with HUD described by Mr. Kaplan. Mr. Mondor said the mortgage banking industry cannot afford to ignore a population that is nearing one-third of the housing market. He also said that the association is "working to be part of the solution and not the problem."

Speaking next, Dr. Galster of the Urban Institute told the briefing about the various means of checking for discrimination and how they are subject to misinterpretation and error. He said that all the evidence must be considered and additional evidence should be developed. The "bulk of evidence" now indicates that discrimination exists but there remain "questions of particulars," Dr. Galster said.

The first speaker on the third panel, Ms. Wang of the First Public Savings Bank, told the briefing that some minorities have developed their own institutions to serve needs arising from past discrimination or other problems and that the special role of these institutions should be considered in checking for current discrimination.

Ms. Wang said that persons of Chinese, Hispanic, and Japanese descent all have their own small savings banks, for instance, and that customers, whether for deposits or loans, are primarily of that descent, regardless of the neighborhood in which the bank is situated. She said that a statistical analysis might, therefore, indicate discrimination where there had been none.

The next panelist, Ms. Browne of the NAACP Legal Defense and Educational Fund, said that African Americans continue to encounter mortgage lending discrimination in many ways. Ms. Browne said that as a remedy for discrimination, bank regulators should "do the job seriously," the mortgage lending industry should "crack down on discrimination," and organizations such as Fannie Mae and the Federal Home Loan Mortgage Corporation (Freddie Mac) should assume the lead.

The final panelist, Mr. Mirabal of the National Puerto Rican Coalition, told the briefing that remedies still must be developed if fair housing and lending are to be achieved. He said that unique problems are encountered by people of Puerto Rican descent.

Despite encountering much discrimination, Puerto Ricans have been reluctant to pursue complaints because of such factors as fear, mistrust, and inability to communicate in English, Mr. Mirabal said. He urged Spanish-language housing and lending initiatives directed to low-income Hispanics and involving community organizations.

The attached transcript provides the complete presentations of the panelists and the discussions between the Commissioners and the panelists at the March 3, 1995 briefing.

Members of the Commission

Mary Frances Berry, *Chairperson*
Cruz Reynoso, *Vice Chairperson*
Carl A. Anderson
Arthur A. Fletcher*
Robert P. George
Constance Horner
Russell G. Redenbaugh
Charles Pei Wang*

Mary K. Mathews, *Staff Director*

* Members of the Commission at the time briefing was held.

THE UNITED STATES
COMMISSION ON
CIVIL RIGHTS
624 Ninth Street, N.W.
Washington, D.C. 20425
Public Affairs
(202)-376-8312

NEWS RELEASE

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Contact: CHARLES RIVERA
or
BARBARA BROOKS

CIVIL RIGHTS COMMISSION EXAMINES ACCESS TO MORTGAGE LENDING

WASHINGTON, D.C.---The U.S. Commission on Civil Rights will hold a briefing on efforts to end discrimination in mortgage lending on **Friday, March 3, 1995 at 10:30 a.m. in Room 540 at 624 Ninth Street, N.W.** (the YWCA building at Ninth and G Streets).

Among those scheduled to speak are Federal Reserve Board Governor Lawrence B. Lindsey; Roberta Achtenberg, assistant secretary for fair housing and equal opportunity, Department of Housing and Urban Development; Julie A. Gould, vice president for community lending, Federal National Mortgage Association; Suzanne C. Hutchinson, executive vice president, Mortgage Insurance Companies of America; Paul A. Mondor, associate director for regulatory compliance, Mortgage Bankers Association of America; Marina C. Wang, president and CEO, First Public Savings Bank, Los Angeles; Judith A. Browne, assistant counsel, NAACP Legal Defense and Educational Fund; Manuel Mirabal, president and CEO, National Puerto Rican Coalition; George C. Galster, senior research associate, The Urban Institute; and John Taylor, president and CEO, National Community Reinvestment Coalition.

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It's my pleasure to be here, and I would very much like to spend as much time as possible addressing the questions and concerns of the Commission.

I'd like to begin perhaps with some good news.

CHAIRPERSON BERRY: Okay.

DR. LINDSEY: We --

VICE CHAIR REYNOSO: Good grief.

(Laughter.)

CHAIRPERSON BERRY: Good grief, good news.

DR. LINDSEY: I think the good news is that we are seeing some evidence of expanded home ownership opportunity for low and moderate income Americans, as well as for racial and ethnic groups that traditionally have been underserved.

For example, the '93 HMDA report showed that home loans granted to low income individuals rose 38 percent, compared to eight percent for upper income individuals. The growth among people identifying themselves as black was 36 percent, 25 percent for hispanics, and 18 percent for whites.

Those patterns are roughly similar to the '92 over '91 data. So we have seen, at least in recent years, an expansion of home ownership opportunities to groups that traditionally have been underserved.

I think, of course, we all agree that there is a long way to go. I am also, as you know, Chair of the Neighborhood Reinvestment Corporation, and part of our efforts are, indeed, directed in that area.

I think there are probably three reasons that we can attribute this good news to. First, I think the financial services industry in general has begun a policy of increased outreach. That has included marketing, and, in particular, new product developments. We are seeing increased experimentation with low down payment loans. We have also, in part due to my other hat, had a period of lower interest rates, which has allowed people to take on housing.

The biggest increase -- outreach and new product development, in particular, is something that has been very positive. I think as we go ahead we're going to have to watch very closely to see the development of these new products; there are many of them. Some of them, frankly, from a bank regulator's point of view, may turn out to be risky. Some of them, I think, will not turn out to be risky.

And, in part, we are going to have to learn in the years ahead what we can do and what we can't do with regard to changing and easing the traditional credit criteria, in order to expand home ownership opportunities to more Americans.

But most important, though, I think that behind all of these initiatives has been increased creativity on the part of the banking industry, and I can't underestimate that enough. When you have a traditional regulated industry, trying to reach out to the extent it has in new markets, I think the change in culture has been profound, and I think very much for the positive.

I'd like -- part of one of the questions you asked is what we have been doing as regulators, and I think it is fair to say that we have increased our fair lending focus as part of our exams. We have a different format, and I will turn to that particular issue later.

We have also increased research. One of the great challenges, I think, before us all is to understand the process of lending better. That will help us understand where and to what extent discrimination is occurring. I think that's probably necessary, because all of the evidence to date suggests that to the extent discrimination is occurring, it's not occurring in the obvious fashions. That was one of the conclusions of the Boston study; that it tends to be subtle.

Therefore, what we've got to examine is what part of the decisionmaking process, where in the chain, starting with applications and going right on up, is the key focus point. And our research both at the Boston Fed. study, and more recently by Glenn Canner of our staff, which looked at FHA loans, is designed to do that.

The third step that I think is very important for all of us is information. Not knowing for sure exactly where the key decision point is, we've put out this pamphlet "Closing the Gap," and it's one of our best-sellers, actually. I think it's free, so to call it a "seller" may not be the right phrase. But --

(Laughter.)

-- the price is right, and we have issued many tens of thousands of these, and it's a very popular document. I think it's targeted toward lending institutions.

You get a feel for ten steps they could take --

CHAIRPERSON BERRY: Did you bring a stack of them?

DR. LINDSEY: I should have brought a stack, but let me make sure I have a -- I'll send a group of them over, because I think everyone -- why don't I pass this up to you, Madame Chair, and I'll make sure that each member of the Commission gets it.

Regardless where the key decision point is, I think this helps with some creative steps that any institution can take to try and expand opportunities for traditionally underserved groups.

The last point I'd like to turn to, if I could, in my opening statement is to help provide the Commission with an understanding of the exam process and its evolution over time. As you know, we have been charged now for, oh, just short of two decades with enforcement of fair lending laws.

The institutions, the four regulatory institutions that now conduct those have a long tradition of looking at safety and soundness issues, concerning themselves with the financial quality of bank balance sheets. Asking for enforcement of a new type of law required creative thinking on our part.

And so we began the process by going in and looking at loan files and saying, "Why was this person rejected?" if we found a minority applicant or a member of another protected class who was rejected. We'd ask the bank to provide us with the reason for rejection. And if the bank had a reason for rejection -- bad credit history, lack of income, or whatever -- we said, "Okay. That's fine." That's how we began the process.

I think what that was designed to detect

-- this is -- again, I'm talking about 10, 15 years ago -- was blatant unfairness in the process, a clearly qualified applicant who was turned down. We didn't find a lot of evidence of that, and I think it was perhaps, we felt, as we learned that maybe we were asking the wrong question.

And so our next step was to note that reasons given for rejection may not be equally applied. Many applicants have flaws in their credit history. Often the bank examines those applicants further to see if there are mitigating factors.

And so the next step in our exam procedure development was what I would call the matched file approach. Here we would go in and look for two similar applicants -- one, for simplicity, white, and one black -- who, again, had otherwise similar characteristics. If the white applicant was accepted and the black applicant was not, given the otherwise similar characteristics, we looked for that as evidence of discrimination.

That I think worked to some extent, but we also found that perhaps the question was a little bit different than that. For example, suppose there were four applicants -- two white, two black. One white was accepted, and one was rejected; one black was accepted, one black was rejected. It would depend on which matched files you pulled at random whether you found discrimination or not.

And, in fact, if you looked at the entire set, it looked like there was a random event going on, not necessarily discrimination. So our thinking is continuing to evolve.

The step we're now at is to take the entire universe of applications and look at all variables from a statistical approach. We use what statisticians/economists call regression analysis, which is designed to take as many variables as possible into account, get a model, a statistical model of the decisionmaking process of a lending institution, and then look for individuals who would normally be approved by that process, meaning their probability of approval was more than 50 percent, but who turned out to be rejected. And then, go back to the matched file approach and see to what extent that might be justified by other characteristics.

The statistical regression approach at this stage is largely experimental. To date, and this is for roughly the last year, the Fed., which -- the Federal Bank of New York, established the model. We've been using it in all exams of banks of sufficient size where it becomes an interesting phenomenon.

What we have learned is that we're getting better, but we still may have some questions. For example, in some cases, what we're finding is individuals were rejected for specific loan programs, and this also turned out to be the case in the Boston Fed. study.

Sometimes they were rejected because they were too qualified for that loan program, they had too much income. And so in a simple statistical regression situation, you would get a false result. If someone was rejected who shouldn't have been, or the reason they were rejected is they were too qualified for the program that was targeted for specific lenders.

CHAIRPERSON BERRY: Is that like being too qualified for a job?

DR. LINDSEY: It's like being too qualified for a job, I suppose. Here, because obviously when -- for the Community Reinvestment Act, or what have you, you are targeting low and moderate income individuals. People may apply who are not low and moderate income, and they shouldn't get the money, I mean, under that program. I think that we'd all agree to that. So that's one of the problems that we're finding.

We're finding that credit history is sometimes a very difficult thing to condense into a variable that you can model easily, and we're working on those problems.

There's a third, and I think at the moment it's a theoretical problem, but it's one that we should confront as our statistics become more and more evolved. And that is, do we really want a purely statistical basis for deciding loan applications? I think it's a fair and open question.

To the extent we regulators use statistics to determine whether or not discrimination exists, we are creating incentives for lending institutions to use the same statistical type of approach in determining whether or not to approve those applications.

A purely statistical approach, we've learned in the past, tends to disadvantage individuals who do not have easily quantifiable incomes, easily quantifiable assets, or what have you. It will also tend to work against people who may have a lot of get up and go but not have started on the right side of the tracks in the race.

As a result, a purely statistical approach may inadvertently, if that's what we come to rely on, end up working against opportunity for those very individuals that we're trying to provide opportunity for. I think if we got that unintended consequence, it will be a loss for us all.

And so the bottom line of my testimony, Madame Chair, is that there is no obvious or easy approach for detecting discrimination. All we can do is continue to improve our methods, and in the process hope that we do not create so rigid a basis for assessing bank's performance that we end up creating an unintended consequence of relying too much on statistics, and, therefore, disadvantaging the very people that I think, on net, we want to have benefit from the program. That's where we stand.

CHAIRPERSON BERRY: Would any Commissioner like to ask Governor Lindsey a question? Yes, Commissioner Horner?

COMMISSIONER HORNER: Yes, I would. Thank you.

Last fall, the Commission put out a fair housing report, and during our deliberations on that report I raised a question, and I'd like to get your reaction. The report, as the staff drafted it, imputed credibility to the Boston Fed. study, and I was aware of the FDIC evaluation of the Boston Fed. study and of criticisms of that study, including the one you mentioned a few minutes ago, that applicants were too wealthy for a given low income program but were included as rejected; 20 applicants with a net worth of half a million dollars, and so on. Multiple absurdities and multiple statistical questions.

I wonder what you would like to say to us about that study, and should we be using it?

DR. LINDSEY: I'm a former academic, as you know, and I've done studies that involve large databases like the type of database Boston Fed. used. And the lesson from that is that no single academic work ever provides the truth. In fact, if we academics ever reached the truth, we'd put ourselves out of business. There would be no more work to do.

I think the process of academic research, and in this I am putting the Boston Fed. study in the field of academic research, is to do a good faith effort, do a first cut, and then back comes another set of studies, and we've seen those studies come forward but tend to pick it apart. And that's what we do, we iterate toward truth.

What I would say is the Boston Fed. study was a very competent first cut, it was the first. It was a seminal work. It was the first effort in this area, and I think that the authors did a very good faith effort in it.

There are obvious problems with it, and so I would not rely on any one study. In fact, what we're doing and what we -- is continuing our research on it. One of the questions that was left open by the Boston Fed. studies was not looking at it from the front end but looking at it from the back end.

What happens? What is the actual default experience of loans in the world in which there was no discrimination, and everyone got exactly the right treatment? On average, you would see the same default probabilities for all groups.

One of the problems we've had is that -- getting our handle on a data set to look at, and one of our -- our researchers did that and actually came to a different conclusion looking at that data. I would say the same thing about his work, even though we reached a completely opposite conclusion. It's not quite seminal. There have been similar studies in it, but each study has assumptions in it that you can look at and that you can -- and that you can quarrel with.

I think the fair conclusions that you can draw from the whole range of studies is that to the extent discrimination is going on, it is -- I'm going to use the word a limited practice, in that I don't mean to underestimate it. I mean to say that even if you take the Boston Fed. study at face value, you're talking about roughly six out of every 100 minority applicants being unfairly treated. I would say that probably puts an upper bound on what is happening.

The right number is zero, and, in fact, there is no acceptable number other than zero. But I think that puts a parameter on it.

Second, I think the real challenge goes back to identifying where in the lending process the problem is taking place. Is it the loan officer? Is it the body language of the loan officer? Is it something the loan officer writes down on paper? Is it the decision after the loan officer when he goes up to the Loan Committee?

And here I think we should give the financial institutions of the country a little bit of credit. What they've done recently is to try and, at least in the organizational chart, put second and third review processes in place, which will tend to take care of the Loan Committee part of the problem, and in a lot of cases increase sensitivity training for the loan officers.

Again, none of us know where problems are taking place, so I think what we have to do is -- the "Closing the Gap" book makes clear -- is here are places where they might be taking place. Why don't we address each of them? And that is the best prescription that I can give.

COMMISSIONER HORNER: Just one quick other question.

The study you referred to as a subsequent study that showed, other things being equal, no discrimination, are you referring to the November '94 study by the Fed. --

DR. LINDSEY: Yes.

COMMISSIONER HORNER: -- discrimination --

DR. LINDSEY: Canner.

COMMISSIONER HORNER: -- Canner --

DR. LINDSEY: Yes.

COMMISSIONER HORNER: Okay. Thank you.

CHAIRPERSON BERRY: I had a -- with the

indulgence of my colleagues, I had a couple of questions.

First of all, your last point about using statistics in your presentation, and the problems and how you're still working on that aspect of it. Many of the things that you said about the mortgage lending area are aspects that have been analyzed already in other contexts, whether it's employment or education in civil rights, and in trying to assess discrimination.

On the question of statistics, most people who work with this have already discovered that statistics can reinforce presumptions. That is, whether or not there might be discrimination, but that you also need to have information about practical aspects of what might be going on with individual people to sort of buttress and round out the statistics, but that statistics do serve a useful purpose in terms of trying to figure out presumptions. So maybe that is something that you could be looking at.

DR. LINDSEY: In the home mortgage area,

I think that's a fair description of what we're actually doing. We're using the regression model as step one to find particular loan applications to look at, and then going back and looking at those applications as you would an individual in the case of, say, labor law.

Quite frankly, we can't use that approach when it comes to business loans. The reason is the statistical analysis is going to break down. The number of variables in housing that we identified is like 35, which is a lot. When you think about business loans, you've got to worry about whether it's a shoe store or a hardware store. You've got to worry about its location. You've got how many competitors it has, and I can go on for a list of dozens of those variables.

And I have grave doubts that we would be able, ultimately, to use statistical regression there. I think where you have a relatively finite set of variables, and I think credit cards is one, I think housing is another, that it probably could.

CHAIRPERSON BERRY: Yeah. And the overall big question that I had for you is, in a period in which arguments that minimize the impact of discrimination on access for women and people of color in a lot of areas, in the housing area and in the mortgage lending area in general, there seems to be a consensus, or at least some agreement, that it is all right, one, to say that there may be discrimination, and, two, that it's all right to say people are working on it, and, three, that it is all right not to sort of poo-poo the idea that there might be any discrimination at all.

I have been impressed with how this is developing in the -- is there something special about what people drink or eat who are in the --

(Laughter.)

-- loan area that makes them more willing to discuss discrimination, or more willing to consider it might exist, more willing to say, "Well, we're working on it"? What is it about this area? I don't understand it, at a time when politically all through the '80's and into this period the effort has been on the part of many people to sort of minimize the impact of discrimination.

Do you folks eat something different or drink something different, or what is going on here?

DR. LINDSEY: Well, we're not -- I'm going to brag a bit for my institution, and I notice John Taylor is here, and he is not going to brag about my institution, so I am going to.

But during the '80s, as you pointed out, when certainly the political process was not oriented for this, we were conducting compliance and fair lending exams on a regular basis, every 18 months. And I think, in large part, it is -- we have a staff, separate staff, dedicated to this. And independence of the political process may help in that regard.

But I'll take what you said as a compliment. Maybe I should just leave it at that.

(Laughter.)

But I understand the process, and we are serious about it, and I hope -- I think we can do something about it.

CHAIRPERSON BERRY: All right.

MR. TAYLOR: Could I comment on that?

CHAIRPERSON BERRY: Sure, why not.

MR. TAYLOR: Because I think your point is correct. I think bankers -- and it's good news -- are taking this more seriously than they ever have and are willing to discuss discrimination, community reinvestment, fair lending.

And I do, contrary to my good friend, the Governor, I do think that the Fed. and the other regulatory agencies are taking CRA more seriously than they ever did, and I think the Justice Department, under the Bush administration, began taking fair lending laws more seriously by bringing the first case in 1992.

I think the Congress, when it took this veil of secrecy over what is happening in lending institutions by making HMDA data and other data available to the public, so we for the first time, just a few years ago, could get a look at what is happening in these institutions and in these communities.

It has all exploded, and I think at the same time the interest from journalists and the development of a real community reinvestment movement in the country, the new civil rights movement, if you will, talking about economic justice, so that now you go to cities -- five, six years ago you go to cities, you couldn't find CRA experts anywhere, with some exceptions. Now you go, you find a plethora of CRA experts and lenders, who are creating new programs, good programs to try to meet credit needs.

That's not to say we don't continue to have a real problem, but I think your analysis of "there's been a change" is very much accurate.

CHAIRPERSON BERRY: Well, with that -- yes? First, let me say that this was Mr. John Taylor speaking, who is the President and Chief Executive Officer of the National Community Reinvestment Coalition.

And now the Vice Chair, and then perhaps we'll let Mr. Taylor make his presentation and thank the Governor.

VICE CHAIR REYNOSO: Yes, thank you. Well, I have a question for the Governor -- a comment and a couple of questions.

The L.A. Times reports that in many parts of Orange County and Los Angeles County the greatest number of new home buyers are Latinos. The second largest number are Asian-Americans. I wonder, first, whether you've seen that as sort of a national pattern and, if so, why it's happening. That's one question.

The other question is completely different from that. In what you've described in the audit process, you normally go by what's in the file, and that makes sense in terms of an audit. Do you also have sort of independent investigations to check to see whether your audits more or less make sense in terms of another way of looking at?

So my two questions are quite unrelated. One, what is the pattern in terms of home buying? And if that report is correct, how come? And then, two, on the independent investigations.

DR. LINDSEY: On the home buying pattern, I think the numbers that you cited are consistent with what we saw, the overall HMDA statistics, that access -- loans granted to members of minority ethnic groups rose much quicker than loans granted to whites. I think that's --

VICE CHAIR REYNOSO: Is there something new in terms of requirement of down payments or something going on in the industry that has made that possible?

DR. LINDSEY: Well, I think it has become possible because of a lot of new creative products. Twenty percent down is the old traditional standard loan. We have a lot of five percent down loans, and less.

(Laughter.)

But often the three percent --

VICE CHAIR REYNOSO: I saw that. Indicate that the witness is putting three fingers up.

(Laughter.)

DR. LINDSEY: I think in many cases the three and two percent down loans are -- may tend to be assisted by other parties.

MS. HUTCHINSON: The two percent. But you can also now get a straight three percent.

DR. LINDSEY: A straight three percent, I'm going to give you a call.

(Laughter.)

See, I don't qualify.

MR. TAYLOR: No jumbo loans.

COMMISSIONER HORNER: You'll subsidize it.

(Laughter.)

DR. LINDSEY: I think this is all very good, and I think that what we were seeing in a lot of cases was that individuals could swing a mortgage for less than their rent. So from a cashflow point of view, it made sense for that person to be an owner. But they couldn't get the savings together to make the down payment.

In defending down payments -- I'm going to give it on the other hand, because I'm the economist. You're never going to get away with one hand from me. There is a lot of evidence, and we're going to have to see actually how this plays out -- that down payment is one of the key indicators in the long run of default.

Now, I am hopeful that these programs, and I -- and, again, I'm aware of many of them, and I think they have a lot of positive checks on them. I'm hopeful that these programs may turn out, because they are often accompanied by other types of home buyer assistance -- in particular, counseling -- will not repeat that data, so that we are able, actually, to give a three percent down and not have an increase in default.

Frankly, we're going to have to live through a whole business cycle to get a sense to the answer of that question. I think that's the only honest answer. But we will see.

I'm sorry. I forgot what the other question was.

VICE CHAIR REYNOSO: The second question is just whether you've had sort of independent investigative processes to try to make sure that what you find in the files is actually correct.

DR. LINDSEY: We know that what we find in the files -- well, as far as the data collection process goes, one of the great issues that we have is making sure that the data that's there is accurate, and, in fact, part of the audit process is devoted to that.

One of my great frustrations with the HMDA data is finding out the degree of error rates that exist in the HMDA data. There are a whole bunch of reasons why that's the case, and part of it has to do with the complexity of our regulations, which we're trying to clean up.

But I think it is fair -- if the bank was, say, not showing us all of its files or was lying in its files, the penalties for doing that, in general, are unthinkable from a bank's point of view, and that will be something that we regulators would really find totally inappropriate. They would probably lose their charter if they were doing that on a systematic basis. So that type of thing would be discovered by the audit process.

The other part of the independent investigation -- some have suggested applying tester-type approaches. We do not do that, but that has been -- there are a number of reasons for that, but that's a long answer, and I think I've addressed the question you asked.

CHAIRPERSON BERRY: Do you have it under

consideration?

DR. LINDSEY: We have it under consideration. We did before I got there, actually. The Board went through about a nine-month process of getting to the answer. I think the reason that I find most persuasive is that the number of -- if you're going to establish a statistical case that you can use for regulatory or enforcement purposes, the number of repeats, the number of data points you have to get is pretty large.

And there was a case in I think it was Louisville, Kentucky, where this was tried, and you had, remember, a matched pair -- a matched pair of people going in and applying for loans. The head of the bank branch finally said to these people, "Are you guys doing this for a school project?"

(Laughter.)

And, you know, it's -- by the time the fourth matched pair walks through the door, you've got to scratch your head.

Now, the OCC is actually conducting this, and I -- I think I know how they're doing it, and I'm going to await the results of their experiments. And maybe they can get around these and other problems. But if they can, I think it deserves another look.

But I think there are a number of reasons why, aside from the one I just mentioned, we do not use matched pairs.

CHAIRPERSON BERRY: We are going to have to move on to the next panelist in the interests of the time constraints, but I'll let you -- do you have a question for Governor Lindsey? So let's go briefly to that question and then move on.

COMMISSIONER WANG: Thank you.

Governor Lindsey, my question is more philosophical than real. I think the reason that banks make loans is for profit reasons. We see the pattern, particularly the international type of banks, would make loans to Latin America, to Mexico. I don't know how much billions they have lost so far. I guess then they'll come back, they'll write it off, one year or two, whatever. But they will not invest in our own country in the backyard.

What can we build in the profit motive for them to really take seriously to -- to make loans in our own backyard, in our own minority communities, as compared to the overseas countries?

DR. LINDSEY: I think you're asking a fair question. I think our examiners are out there looking for safety and soundness concerns on foreign loans as well as domestic loans. I would hesitate to get into the foreign policy history of the '70's where, for foreign policy reasons, the government encouraged lending to Third World countries.

That was before my time, and I don't want to even touch it. But I don't know, I think your concern is a real one. All I could answer is that I think that financial institutions have tremendously increased the creativity with which they are approaching intercity loans, loans to low and moderate income people for housing, community development loans in general.

There has been an explosion in lending in this area in the last five years, but I think it's a very positive sign. I think we want to encourage it.

COMMISSIONER WANG: Do you have the number of how much Chase actually lost in Mexico?

DR. LINDSEY: I don't have that in front of me, no.

COMMISSIONER WANG: Can you venture a guess?

DR. LINDSEY: I couldn't venture a guess. We'll have to see.

COMMISSIONER WANG: In comparison --

DR. LINDSEY: The number may be zero. We'll see. I don't know.

COMMISSIONER WANG: I would suggest that it's, I mean, billions and billions. But on the other hand, Chase has the worst record in giving community loans. So -- and how much loss they actually had in giving the loans in the community to kind of help them to decide how they will not give any more loans to the community.

DR. LINDSEY: Well, again, I don't have the data in front of me, so I -- I don't know if I could direct -- I don't know if I could directly answer your question.

CHAIRPERSON BERRY: But you think it's a

fair question to ask.

DR. LINDSEY: I think it's a fair question to ask, and I think that, again, there has been a tremendous improvement in evolution of thinking in financial institutions toward community development type lending. And I think that's positive, and I think our view should be toward encouraging that.

COMMISSIONER WANG: But if yo don't have policy to build in to encourage it, I mean, still they're not going to do it.

CHAIRPERSON BERRY: I hate to do this, but you have to --

COMMISSIONER WANG: I'm sorry.

COMMISSIONER GEORGE: Very quick clarification.

I take your point that there's a lot that we don't know, and it takes a lot of studies judged comprehensively to get any information. I just want to know what we don't know. Do we not know whether there is large-scale race discrimination in the mortgage lending business? Or do we know that there is, but we can't use this data to pinpoint where it is?

DR. LINDSEY: We certainly don't know the second. We certainly don't know where.

COMMISSIONER GEORGE: Do we know the first?

DR. LINDSEY: Well, I think the phrase you used was large scale, and there I think we don't know the scale. I think we -- I think we know it's impossible to say there is no discrimination occurring, and any discrimination is too large a scale.

On the other hand, even the upper bounds of the parameters I think some might argue about the largeness of the scale. Okay? So we know there is some; we don't know how much.

CHAIRPERSON BERRY: You don't know the size of the problem.

DR. LINDSEY: We don't know the size of the problem.

I thank you very much, Madame Chairperson.

CHAIRPERSON BERRY: Thank you very much. Thank you.

We want to move now to Ms. Suzanne Hutchinson, and we thank you for your indulgence. She is the Executive Vice President of Mortgage Insurance Companies of America, a position she has held since 1990. Before that, she was Staff Vice President and General Counsel. She has worked with Congress on the reform of the Federal Housing Administration and with the bank and its regulatory agencies in their development of capital guidelines for depository institutions.

Thank you, Ms. Hutchinson.

MS. HUTCHINSON: Thank you.

As you said, I am Executive Vice President of the Mortgage Insurance Companies of America, and we're the trade association for the entire private mortgage insurance industry, which at the moment consists of eight companies. It's a very capital-intensive business. It's about $4 billion in capital, but it only consists of eight companies.

CHAIRPERSON BERRY: What are their names? There are only eight of them.

COMMISSIONER WANG: There are only eight?

The association --

MS. HUTCHINSON: There's only eight.

COMMISSIONER WANG: -- is just eight companies? I mean, there are only eight companies in the trade association?

MS. HUTCHINSON: Correct. I can list them for you, if you'd like me to.

CHAIRPERSON BERRY: Sure. Since there are only eight of them.

(Laughter.)

MS. HUTCHINSON: GE Capital Mortgage Insurance, Mortgage Guaranty Insurance Corporation, Republic Mortgage Insurance Corporation, Commonwealth Mortgage Assurance Corporation, PMI Mortgage Corp., Ameron Mortgage Corp., Triad Mortgage Insurance Corp.

COMMISSIONER HORNER: What does PMI stand for?

MS. HUTCHINSON: It's just called PMI.

COMMISSIONER HORNER: Thank you.

MS. HUTCHINSON: How many am I up to?

VICE CHAIR REYNOSO: Seven.

CHAIRPERSON BERRY: You've forgotten one

of your youngsters.

(Laughter.)

That's all right. It will come to me. We will augment the record with that one.

MS. HUTCHINSON: Thank you.

Anyway, basically mortgage insurance is required, generally speaking, when a borrower puts down less than 20 percent. And that's because, as Governor Lindsey said, low down payments are the key indicators of default. And the lender or the investor in the mortgage experiences significant losses when a default or foreclosure occurs. Not only do they owe the investor and the mortgage, you know, timely payment of principal and interest, but there are costs in foreclosure. There is costs to maintain the property.

We provide the lender or the investor with approximately 20 to 30 percent insurance coverage -- that is, 20 to 30 percent of the loan amount. What we are not is credit life insurance, which people often think we are. In other words, we don't pay off the mortgage when the borrower dies, and we are not property and casualty insurance.

So in other words, it is -- we don't protect against theft or buyer. We are purely default insurance, and the proceeds of our insurance go to the lender or the holder of the mortgage. We basically act as review underwriters, and that is we never see the borrower. Most times, the borrower doesn't even know who their mortgage insurer is.

We receive a package of papers from the borrower -- from the lender, you know, which is the standard credit and income verifications, appraisals, etcetera, and usually within 24 hours we make a decision as to whether or not we will insure the loan.

And basically, in that capacity, we're on the same side of the transaction as the borrower because we both lose if the borrower ultimately goes to default. We're looking far beyond simply whether the borrower can afford the loan at closing. We want to make sure that the borrower can afford that loan far into the future, as long as they want to live in that house. And, obviously, if a default or foreclosure occurs, the borrowers not only lose their money invested, but obviously they go through the anguish of foreclosure, and we lose for having to pay a claim.

Now, you're interested in what we're doing and how we're working with other participants in the mortgage market to make loans more affordable, to reach out to the low income, sort of the underserved segment of the market. And we have really been active in doing that since the mid to late 1980's, sort of, you know, as you said, coinciding with why is it in the mortgage industry that, you know, people are sort of doing this.

And I guess I would flag, you know, really community groups. I mean, we have worked not -- I don't know specifically if my companies have worked with Mr. Taylor's organization, but we have worked extensively, for example, with Gail Sontada from National People's Action out of Chicago, ACORN, Neighborhood Reinvestment Corp.

These types of community groups, you know, as I said, seven, eight, nine years ago, came knocking at our door and said, "Not only do you need to do more, but most importantly, we can teach you how to do it better." Because, as Governor Lindsey indicated, some of the 1980-type experiments with sort of dumping money into low income neighborhoods resulted in very high foreclosure rates, which didn't help anybody, and that's what the community group said to us is, we want these families in the houses for the long term, not just for that family's sake but for the whole neighborhood's sake.

Now, if I listen to someone like Gail Sontada one more time talk about boarded up neighborhoods that -- you know, boarded up houses in her neighborhood that are a blight to her neighborhoods, that they destroy everybody's property values, they don't want to see that. At the same time, there are cultural or economic factors that make the lower income family different from the, you know, traditional suburban family.

And so what they basically said is, "We can teach you how to do this. You've got to, you know, change the headset a little, but we can teach you how to do it and do it right."

But for us it's a way to, you know, expand your market. And they said, you know, you'll be profitable, we'll get our families into neighborhoods. And so it was -- you know, it was a perfect little match up. And so we began with really demonstration programs.

And demonstrating with underwriting requirements that at the time seemed radical. Now it's kind of funny, because so many of them in those initial demonstration programs are now part, you know, of everyday underwriting. I mean, you know, for example, the idea that a person doesn't necessarily need a credit report.

That a lower income person probably doesn't have a MasterCard or -- you know, or a Nordstrom charge card, but they pay their rent on time and they've paid their utility bills, so they have a history of recognizing their credit obligations. So let's look at that rather than the fact -- oh, you don't have a credit rating or credit report so forget it.

So we began with those demonstration --

and I say we, these are obviously individual mortgage insurers going out, working with local lenders -- Fannie Mae and Freddie Mac or a state agency and a local community group to do these kinds of programs. And many of those programs -- the lessons that have been learned have been incorporated into the whole way we do business.

But today ongoing, there is ongoing experimentation and work in the affordable housing market. And affordable housing programs are now across the country as well as sort of national programs with standards that apply across the country. We've learned a couple of important things in terms of reaching out to this market.

First of all is to flexible. You have to go in and meet local community needs. And each community is different. I mean, you might go into one town -- you know, one city in a particular neighborhood is deteriorating, and -- well, what's a good way to build up a neighborhood? Let's encourage home ownership.

So you target X amount of money with

certain factors. You know, stretching ratios or guidelines to try to get people into that neighborhood to build up that neighborhood. You know, some programs are lease programs where the borrower can, you know, rent and a portion of their rent payment goes towards a down payment.

I mean, it's just -- you know, whole host of ways to do things. So flexibility number one. Number two is working with local community groups. Again, they learned in the very early, early experiments in the -- you know, that you just don't come in and put an ad in the paper for mortgage money.

You know, because you get the wrong kind of person thinking it's free money. But with local community groups who know the families in their communities, who know it's the appropriate people to work with. And third, the concept of risk sharing is vital.

And that is every party to the loan risks taking loss, losing money if that borrower defaults. So that every party to the transaction has a stake in it. That means the lender, the insurer, the investor, and the borrower. If everybody in the transaction is going to lose money if that loan goes to default, then they're going to up front make sure that borrower can afford the house, and then if the borrower went into trouble, they're going to work with that borrower.

So in this -- you know, we've also sort of changed some of the basic features of our product, so to speak, in the course of learning and working with community groups and attempting to reach out to the affordable market. For example, we developed extensive home buyer education programs.

And again, Governor Lindsey touched on that as being such a key factor. Many of my companies have programs where they go out and teach lenders or teach community groups how to counsel. We don't do it directly. We don't have direct contact with the borrower.

But that initial education -- because many of these people have been renters their whole life, so they have to understand that if the roof leaks, you don't call the landlord. It's your responsibility. You know, you have -- and even though it sounds simple, but for many people it's -- you have to know that.

Equally as important is what we call post purchase counseling or work outs. In other words, a lower income person if there's an illness, if there's an unexpected expense, they don't have the resources. And they perhaps don't have the cash on hand to meet that unexpected expense plus pay their mortgage.

Yet if they fall behind in their mortgage if they're paying for an illness, they don't have the resources to make up the payments. So they have to have a place to go like -- whoa, I'm in trouble here, something's happening. You know, maybe it's not some officer of a bank who they don't feel comfortable with, but it's the local community group.

So that that -- so that they can get in immediately and work with the borrower to see what can be done -- restructuring payments, advancing money. And again, we -- my members are very active in training and working and developing work out programs to help the borrower stay in a house. And it doesn't benefit us to foreclose or have the borrower foreclosed on.

We've also, as I indicated, lowered down payment requirements. The traditional program was a 5% down, and that was -- we were required by state law -- it was a minimum of 5% down. A year ago, several of my larger companies -- and they've all followed suit, introduced a 3% down payment program. We have to go out and change the law in about 20 to 30 states, I can't quite remember, to allow us to do this.

And it came on the heels of programs that we were involved with, which again the Governor mentioned -- 3/2 programs as we called them, where 3% of the down payment came from the borrower and 2% came from a community group so that we could have this 5%. Those proved to be so successful -- and again, pre and post purchase counseling was attached to those programs.

They were income targeted -- you know, not just anyone could get them, so to speak. They proved to be so successful that the 3% -- we decided to go forward with the 3% down. And so that now is a product out there offered, and Fannie Mae is purchasing those loans as well as S&L's, etc.

We also introduced -- it's been a couple of years now -- a monthly premium. Traditionally, mortgage insurance you pay a larger up front premium at closing in cash, and then a small premium is taken out of your payment every month. But again, the larger cash up front was a deterrent for lower income people who were busy saving every dime they could just to get the down payment and the other closing costs.

So the concept of a monthly premium was introduced where it's just paid monthly, so that you don't have to have the cash up front. And then of course, there continues to be demonstration programs with -- as they continue to push the risk envelope with underwriting requirements.

And again, the goal is not to go out wholesale so you create, you know, plywood jungles in some inner city, but to experiment to see if they work. And I mentioned alternative forms of credit verification. You know, there have also been experiments with larger debt to income ratios, often recognizing that lower income people spend a larger proportion of their income on housing.

And often, their rent is what they're new mortgage payment would be, even though it might be higher than the normal debt to income ratios. There's things like experimenting with alternative forms of savings. You know, the so called mattress money. Again, recognizing culturally that some borrowers don't use banks.

They either save at home or there are savings clubs or groups get together and save and one family gets to use that money, and then you know, the next family gets to. And again, the traditional underwriting would have said no, you had to have this money sitting in a bank for so long.

And so they're experimenting with that kind of all. And all different kinds -- employment issues, you know, the usual -- you have to be in your job for two years. Well again, recognizing lower income people often change jobs more quickly, so it's more consistency in employment rather than simply being in your job for so many years.

And those are really proving to be

successful in getting people into houses. We basically think the affordable market, so to speak, is good business. I mean, the risks that we're seeing now are within acceptable levels. You know, as Governor Lindsey pointed out, the cycle in a mortgage is a long one.

I mean, you set your underwriting, set your premium in day one -- you know, year one, and you don't know if you were right five to seven years down the line, and by then it's too late. It's not like you can adjust your premium. I mean, that's it. But the business that -- what we did in these initial demonstration programs is showing to be good business.

And so everybody's willing to push forward. Then just kind of from a general perspective, what the industry or the trained association is doing in an effort to see what else we can do to reach out to more people, we did two years ago volunteer to report the HMDA type data.

We're not required to do so by law, but we do -- we did volunteer to report it. And we report it to the FFIAC by company, just like lenders do. We've also -- and I didn't bring it with me either, but we also do a consumer brochure which we distribute through the consumer information service.

And in about the year that we've been doing this, about a 100,000 have been requested. So there's obviously a demand out there for information on low down payment mortgages. We've also recently done one in Spanish. The methods of distribution for that are not as easy as the consumer information service, but we have been doing that through home buying fairs and that kind of thing.

Most of the companies also have a senior executive whose sole job is affordable housing. You know, their executive vice president or senior vice president or vice president of affordable housing, and their job is to reach out to the community groups, to reach out on the local level to develop these affordable housing programs.

And it's really a very competitive issue within the industry. Everybody's grabbing to see who can do more of this kind of thing.

CHAIRPERSON BERRY: All right, well that's very interesting. So it's good business, and it's done because of pressure and because it's good business and it works?

MS. HUTCHINSON: Exactly.

CHAIRPERSON BERRY: Well, good news here. Yes, what I was going to do is if you are going to stay, I was going to go onto the other presenters. If not, I was going to take questions. Do you have time to wait until we see what Mr. Taylor has to --

MS. HUTCHINSON: I know he has to --

CHAIRPERSON BERRY: All right.

MS. HUTCHINSON: I know he has a plane to catch.

CHAIRPERSON BERRY: All right, why don't we do that. Why don't we do it the other -- short presentations, and then we can have questions and discussion. I've already introduced Mr. Taylor, President and Chief Executive Officer of National Community Reinvestment Coalition. Please proceed.

MR. TAYLOR: Thank you, Madame Chairwoman. I also thank the commission for taking me out of order. I think I was at the latter part of the day's events, and as you know, someone very close to me passed away and I have to attend their funeral.

My name is John Taylor. I am the President of the National Community Reinvestment Coalition which is the country's largest CRA trade association. We have 453 organizations, non-profit organizations, around the country, many who have in fact worked with MICA essentially trying to increase the flow of capital into traditionally under served neighborhoods.

Our organizations -- some of them are very large, traditional organizations like the NAACP, the National League of Cities, U.S. Conference of Mayors, the LISC, the Local Initiative Support Corporation, the Enterprise Foundation. But most of our members are community organizations who are very much on the front lines in communities trying to develop relationships with lenders and influence their decision making as it relates to loan products and services in traditionally under served neighborhoods.

I wish to thank you, Madame Chairwoman, and other members of the Civil Rights Commission for the opportunity to comment today on the issue of access to mortgage financing. One of the things that happens as you listen to the other speakers is you keep popping into your speech and crossing out things and writing other things, so -- and I did practice some of that as I listened to Suzanne and Governor Lindsey.

And one thing I want to make clear is that -- clearly you've heard from the Governor and from Suzanne -- indeed there are lenders who are doing some very good things. And I admit that and I applaud those lenders. And in fact, those lenders who are the most active in community reinvestment are the most supportive of community reinvestment.

Those who have a general ignorance of it are those who are most critical of fair lending and community reinvestment. But let me also say that the industry as a whole, as we sit here and listen to the good steps that are being taken on the secondary market and the lending institutions and in the variety of arenas that affect access to mortgages -- at the very time that we sit here and talk about that, you pick up today's American Banker, you'll see the Congressional apologist for the banking industry filing bills to weaken the community reinvestment act, and to take away the good work and the good efforts and the incentive that's been building to serve a lot of the credit needs.

So, I wanted to make no mistake -- no bones about that that's what we're dealing with. I didn't want any of the commissioners to be misled, that the banking industry has arrived and they're serving all the credit needs and everything is hunky dory. And I'm sure none of you had that impression, but I wanted to hammer it home anyway.

And the issue of access to mortgage financing, this is of course an issue of immense importance since home ownership for most Americans represents a ticket out of poverty. The home as an asset grows with the wealth of the overall community, and is used to leverage a college education, a small business loan, or some other activity which further stabilizes and enhances one's ability to economically progress.

Ladies and gentlemen, unlike a few of my colleagues, I have no problem identifying some of the real gains which has resulted from the Civil Rights Act and the Civil Rights Movement. Separate but equal approaches to education have been eliminated. African-Americans and Hispanics, women, others can sit wherever they wish on a bus, a lunch counter and the like.

Yet one inescapable conclusion surfaces when one looks more globally at the condition of many people of color in America today. Namely, that without economic justice, other civil rights can be negated. Without money for a decent education, you are subjected to substandard public educational facility without a choice to send your child to a private school.

Without money, you don't get on the bus. Without money, you don't sit at the lunch counter. And ladies and gentlemen, without access to credit, you will remain forever mired in poverty, struggling to rise up the economic ladder.

The statistics are indisputable. There is no disagreement from any circle that minority applicants for home mortgages are disproportionately denied mortgages in every urban, suburb and rural community at every income level -- high income, middle income, and low income.

In January of this year, the National Community Reinvestment Coalition, or NCRC, completed a major study on lending to minority, and that's a study which I've provided to this commission. The study was three years in the making, and looked at several variables associated with the Home Mortgage Disclosure Act and the data reported by America's lenders in the top 20 metropolitan environments over the last four years.

The results were clear. Minorities, and for that matter, working class Americans were disproportionately served by many of America's lenders. The Federal Reserve of Boston, as we talked about, did a similar study in 1992, and concluded that in the Boston area minorities with the same income levels as their white counterparts had a 60% greater chance of being denied a loan.

CHAIRPERSON BERRY: You heard what Governor Lindsey said about that?

MR. TAYLOR: I sure did.

CHAIRPERSON BERRY: That was just one of the study, and there's some more studies, and we can't rely on any of these studies apparently.

MR. TAYLOR: Maybe we should be talking about -- rather than talking about giraffes, we should be talking about ostriches. Aren't those the animals that stick their head in the sand? In any event, newspapers such as the Wall Street Journal and others have done annual studies showing disparate lending ratios between minorities and whites.

Most recently, the FFIAC, the Federal Financial Institution of Examination Council, of which the Federal Reserve is a member as are all the other bank regulatory agencies, took a look at the '93 HMDA data and compared it to the '92 HMDA data to see if improvements were made.

They found that there was a slightly lower denial rate for racially diverse populations. But the statistics remain alarming. African-Americans were denied at a rate of 34%. Hispanics, 25%. Native Americans, 28%, while whites were denied at a rate of 15%.

Again, there is no disagreement surrounding the data on actual lending. However, there is a disagreement about the root causes of these denial rates. The spectrum of arguments go from that the statistics prove outright racism and discrimination to even -- to the other end of the spectrum, where people say that banks are actually doing a good job in serving minorities.

I would like to suggest that a real discussion as to the root causes of disparate lending treatment lies not solely in the particulars of the individual loan applications of the prospective borrowers, but rather encompasses our historical pattern of treatment which we have imposed upon African-Americans, Hispanics, Native Americans, women and others.

The disproportionately high percentages of poor blacks, latinos and indians is directly connected to our country's consistent and documented history of abuse and denial. Why would African-Americans who for generations have been denied quality education, employment, a safe community and a sense of security and a whole lot more be in an equal opportunity and be in an equal position to acquire credit as are their white counterparts?

Let's look at this for example and how this situation manifests itself in lending. The average net worth of a white family in America is $45,000. The average net worth for African-Americans and Hispanics is closer to $4,900. Now consider what happens in both home mortgage lending and small business lending.

In the case of home mortgages as you've heard, there's this requirement of a 15 or a 20% down payment mortgage unless there's a special program that's created that pushes that down payment lower, which is not common. It's the exception to the typical lending -- home lending situation.

So right away, without any consideration of the creditworthiness of the average minority applicant, there's a disadvantage. In the case of the small business loan, the outcome is even more directly connected to the issue of net worth. Since lenders really don't make small business loans anymore, they simply make net worth loans, what are you worth?

What's your house worth? What have you got for savings? Your car, your boat, your stock. What's your net worth add up to? For the average white, that answer is $45,000. For the average black and hispanic, that's $4,900. The result is automatic denial, regardless of the business acumen of the prospective borrower, a soundness of the business plan, the need for the small business in a given community.

So what's to be done? First and foremost, we must move beyond the notion that the HMDA data unequivocally proves racial discrimination to answering the question of how we narrow this undisputed racial gap in lending. Academics would better serve all of us if they were to present solutions to narrowing the gap rather than being again apologist for the banking community.

Lender from across the country have

developed a plethora of lending programs that result in increased loans to minorities and working class Americans. And I think Suzanne and Governor Lindsey have done a good job in mentioning a number of those, including the low down payment programs which address the issue I raised earlier about the inability of minorities to acquire their first home.

Increasingly, lenders are dismantling their "cookie cutter" approach to creditworthiness. In the past, the absence of a credit card would result in your loan denial. For too many lenders, a solid and long history of consistent rent and utility payments had no relationship to credit. Without other factors, you were deemed to have no credit.

In small business lending, home ownership opportunities and in other areas, methods are being created that will enhance a minority borrower's opportunity to access credit. But at the same time, address the safe and sound lending, a bottom line requirement for all lenders, and including a bottom line requirement under the Community Reinvestment Act.

But essentially, ladies and gentlemen, I feel that there's a need to move away from a lot of the assumptions we have about working class people, about minorities. In fact, I remember MICA did a study not too long ago that took a look at default rates amongst working class Americans and determined that indeed, working class Americans did not -- as the presumption goes -- did not default at a higher rate than other folks.

Fair Isaacs and Company, which is the leading credit scoring company in America took a look at income and determined that income is negatively correlated in the credit assessment process and the creditworthy process. Meaning the higher your income -- and I don't mean to stress -- to distress some of the commissioners, but the higher your income, the higher the probability that you will default.

That's something I've learned from -- yeah, exactly, that was my reaction.

MS. HORNER: What's the parameter of that -- I mean, for everybody? For the country?

MS. HUTCHINSON: I can tell you what -- well, we did it -- we've done it by loan amount. And we've just broken it out -- I can't think of in what increments, but basically people purchasing homes -- I believe it's above $125,000 or $130,000 have substantially, substantially higher default rates than people purchasing homes in the sort of middle range.

I mean, the curve sort of goes like this. And above $200,000, it just takes off.

MS. HORNER: That's the function of monthly payment rather than income, isn't it?

MR. TAYLOR: It's a function of default.

MS. HUTCHINSON: This is claims rates, this is claims rates by -- presumably you know, your -- we did it by loan amount because that's the data that we have, and obviously your income -- the higher income, the higher priced house you're buying.

And the point is, people buying higher priced houses, putting very little down -- no, that's important because it was a 5% down loan -- default more than people buying those --

MR. TAYLOR: But that was MICA's study.

CHAIRPERSON BERRY: And they have a higher income, that's your point too, Mr. Taylor. They have a higher income because that's whey they're buying a $200,000 house.

MS. HUTCHINSON: Exactly. And our theory is that lower income people buy shelter. Higher income people buy for investment --

MR. TAYLOR: Exactly.

MS. HUTCHINSON: -- and they're more savvy. You know, the investment's failing so boom -- you know, I'm out of here.

CHAIRPERSON BERRY: We have to let --

MR. WANG: Donald Trump type -- (laughter) Donald Trump was in before.

CHAIRPERSON BERRY: Well, yeah, that --

MR. WANG: And the bank won't let him go down.

CHAIRPERSON BERRY: Mr. Taylor, we're going to ask you to finish up and let Mr. Kaplan get on the record before we ask questions.

MR. TAYLOR: Sure.

CHAIRPERSON BERRY: But let me just say quickly that what the two of you have said and what the intervention by my colleague -- is confirmed also randomly. My plumber tells me that he -- it's a big plumbing company here -- a lot of plumbing done. I have to have a lot of leaks.

But anyway, he told me that -- you know, he said, it's really funny. In the poor neighborhoods, people pay their plumbing bills. He said in these wealthier neighborhoods, we used to send out bills to people. And they're late paying, they never pay, so now we ask you to write a check right now, and then sometimes the checks bounce.

But he said it's amazing the folks in the poor neighborhoods pay their plumbing bills. Maybe it's like the shelter, whatever. But anyway, go ahead, Mr. Taylor.

MR. TAYLOR: Just one thing to Commissioner Horner on her question. I don't want you to be mislead about Suzanne's answer of -- but she looked at the 5% down program. Fair Isaacs looked at that how actual -- they looked empirically -- how mortgages and how loans actually performed as it relates to default on the market.

They took a look at what actually happened at all incomes and determined that income is just a negative correlation when considering whether or not to make a loan. Now, the point of all this of course, is that we're exploding myths about how people perform. Bankers have -- I didn't need Fair Isaacs or MICA for that matter to tell me what some of my friend bankers have told me over the years, that the safest loan they ever made were to working class people of all ethnicities and races when it came to a home.

Because the home, before anything else -- the kids go hungry, they don't wear the clothes they need to wear or whatever, but they meet the mortgage payment because they're not going to lose the home. The home is the center of their universe as opposed to -- as Suzanne has pointed out -- an investment property. Or where, you know, someone at a higher income knows -- hey, it's time to cut my losses, declare bankruptcy and move.

Anyway, to be sure and to continue -- some lenders have not commitment to serving some traditionally under served people. As in any industry, racism exists. In mortgage lending, it is more difficult to acquire the proverbial smoking gun because few bankers sit behind the teller windows dressed in white sheets saying no blacks need apply.

But I would suggest that the work of this commission in addressing the lending arena as needed, I'd like to encourage the commission to work more closely with the Justice Department, the bank regulatory agencies, HUD, and others to ferret out the individual instances of racial discrimination.

I would also like to suggest some good and not so good news. The good news, as we've talked about a little bit earlier, is that CRA and the Fair Lending laws are being taken more seriously by the Justice Department. And let's give -- again, on the Justice Department, let's give Republicans credit where it's due. Under the Bush administration, his people brought the first Fair Lending case in the history of this country.

And credit to the Clinton administration for continuing that President Bush pattern of finally bringing lenders and holding them accountable under the civil rights laws for unfair lending practices.

The regulators -- they've gotten a wake up call. You know, this seat that Governor Lindsey has now as the -- not only as a Board Governor, but he is the liaison to the Consumer Advisory Council with the Fed. which I sit on.

You know, that used to be where they sent the Board Governor that was the newest, and you know, what are we going to do with him -- and it usually was a him -- they've got a few "hers" there now. But you know, I must say that this guy has taken his job seriously. I certainly don't agree with him on everything, but compared to his predecessor, I think we do have more of a commitment from the Federal Reserve toward consumer issues and towards CRA.

And I wish he was here so he -- because contrary to his comment, I didn't come to beat on him. In any case, of course -- you're going to hear a lot from Peter Kaplan about what HUD is doing. And we applaud their efforts as well. I want to point out that in our study, America's Worst Lenders, we proved that CRA is working.

When one considers that 70% of the worst lenders in America that we identified are actually non-CRA regulated institutions -- mortgage companies. They argued that they're not covered by CRA, and therefore they target suburban and higher income markets.

Indeed, that's true. They are saying that they are not required to serve creditworthy, working class, urban and rural people, and they don't. Some mortgage companies are very clear in their marketing materials. I could name names if the commission wants to hear, but they specifically identify that we're going after the high income market, we're going to do the jumbo loans, and they're going to serve who they wish.

Clearly, in the high income market, they can't discriminate on the basis of color as that would trigger a Fair Lending violation. But with no CRA requirement, they can target areas that have a disproportionately high income, high white, non-working class, non-minority populations. And that's what they do -- that's who they choose to serve.

Now aside from the obvious problem of the lack of service to these communities that we're concerned about, the mortgage banking industry is now surpassed CRA regulated financial institutions in the volume of home loans, and now do a majority of the loans reports under the HMDA data.

These mortgage companies can cherry pick the high end wealthy borrowers and leave the working class and poorer borrowers to the exclusive domain of the banking industry. As time is short, I wish to make an informal and a formal request. The informal request is, I would like this commission to start having a dialogue -- and I think Commissioner Wang's question about our support for third world countries somewhat gets at this point.

But to have an open discussion about the need for a reparations like approach in lending. I mean, it has to do with the first point I was making. Everybody -- it's so cool today for everybody to say look, you know, let's just treat everybody equal. You know, let's have everybody come up equally and let's be colorblind. And let's all just get along and be nice to each other and so on.

Well the fact is, all people aren't equal. And historically, we've created conditions that make by race people who have less resources, less opportunities, less access to education and less access to a lot of things. And for us not to recognize that that condition exists as a result of our practices -- our past practices, is to ignore history.

And to not discuss how to make up for that -- I'm not just talking about affirmative action. And by the way, Community Reinvestment is not affirmative action, but maybe that's what we do need, is an affirmative action like approach to investment so that we can help. And I think these low down payment programs are a good example -- help boost people up the economic ladder so they're -- you're becoming more contributory taxpayers, so that they're communities as a whole, not just the individual, but the community as a whole are experiencing economic revitalization.

And I'd like to see this commission start to have that dialogue. What is it that the lending community needs to do? How is it that we can make up for some of the wrongs that have occurred historically? So that's the informal request. Now a formal request. First, I would request that you actively pursue involvement in ferreting out discrimination that does exist in the lending industry today. And that you support public and private efforts to address such discriminatory practices. Second, I would request that you publicly request the extension of CRA to cover mortgage companies and thereby level the lending playing field and increase the availability of credit for minority and working class Americans.

And finally, I ask that you support the proposal of the bank regulatory agencies -- Governor Lindsey and the other agencies' requests to move the CRA regulatory evaluation system from one based on process -- that is marketing and PR campaigns which is the current evaluative system under CRA, to one based on performance.

Is lending happening? Test for lending, that's what's been proposed, that's what the Congress a short time ago supported, that is what the four regulatory agencies has supported, that is what the President supported. It is what the banking industry has had a very strong hand on supporting.

Unfortunately, it is what those very same proposed regulations are now under attack by a minority of congressional leaders who are trying to discourage the moving of the evaluation system from one based on PR to one based on performance.

So I would encourage you to further encourage the regulators to include in their new rule the reporting of small business data with racial, gender, and income characteristics made available in HMDA. Right now it's not available. We have no idea what's happening in the lending community as it relates to lenders in making small business loans to minorities and women.

Thank you for the opportunity to comment. I am available for questions.

CHAIRPERSON BERRY: Mr. Kaplan, let's let you get in here. I seem to have not been imposing any discipline in this panel. Peter Kaplan is the Director of the Office of Regulatory Initiatives and

Federal Coordination in the Office of Fair Housing and Equal Opportunity at HUD.

He oversees the development of regulations, administration of executive orders, and the carrying out of innovative projects to involve constituents and other federal agencies in fair housing. He's been in civil rights positions at HUD since 1979. In 1988, former President Reagan bestowed on him the distinguished Presidential Rank Award for exceptional contributions to HUD's civil rights programs.

And in addition, Peter used to play a mean game of tennis. I don't know whether he does -- go ahead, Peter.

MR. KAPLAN: For the record, I should state that the Chair beat me a few times. Madame Chair, members of the commission, I am pleased to be here today. And I bring to you the regrets of Assistant Secretary Roberta Achtenberg who had hoped to be here this morning, but who unfortunately is on assignment with Secretary Cisneros and cannot appear.

But she's asked me if I would to deliver her statement, which I will summarize. I asked that the full text of it be made part of the record in the interest of time.

CHAIRPERSON BERRY: Yes, it will be, it will be.

MR. KAPLAN: And I do apologize that as a result, that may limit my ability to be able to respond to your questions. I would like to describe to you -- you've heard, I think, a good description of the nature of the problems in lending discrimination today, and I'd like to focus my remarks on what HUD, the agency -- the chief responsibility for enforcing the Fair Housing Act is doing to address those problems as Governor Lindsey did talk about what the Federal Reserve as a regulatory agency is doing.

As I think has been plain, this administration has given a high priority to the elimination of discrimination in mortgage lending and the importance of the issue, one witnessed by your discussion here today.

First and foremost, the President and his executive order issued January 15, 1994 committed the entire resources of the federal government to a renewed effort to end lending discrimination through proposed interagency cooperation on enforcement.

And he committed that there would be the issuance of a regulation that applies the Fair Housing Act to mortgage lending. HUD's revitalization of Fair Housing enforcement combined with the emphasis on home ownership by Secretary Cisneros has worked to make that eradication of discrimination in mortgage lending a very significant priority of the entire Department of Housing and Urban Development.

On April 15, 1995, for the first time in the history of Fair Lending laws, the federal regulatory agencies, HUD, and the Department of Justice join together in a statement which described Fair Lending policy. And finally, the Department of Justice, beginning as -- I think John was accurate in saying in the Bush administration, but with a much more torrid pace, I think in the past couple of years has devoted quite considerable resources to the prosecution of mortgage lending pattern and practice cases.

And has brought about some landmark settlements with major lenders that serve as guidance on the problem. We've heard testimony about the many studies and data that described this problem. I'd like to talk to you about HUD's addressing those problems. We're doing that basically in three ways, voluntary compliance, enforcement, and our regulatory initiatives.

Let me say first a few words about voluntary compliance, if I might. You all know, I think, from the work you've done with the Fair Housing Act over the many years that the Fair Housing Act speaks to voluntary compliance as a significant component of the law, and HUD had done much in that area.

In the mortgage lending arena, our voluntary efforts have taken a new form. They've taken the form of best practices agreements with lending institutions and with trade associations that are aimed at a set of commitments to policies and practices that are more than process -- that are aimed to remove discriminatory barriers in home ownership that are embedded in the mortgage lending process.

And that institute measures of effectiveness. Effectiveness that will assure that there are going to be meaningful results from these voluntary efforts. In September of 1994, we were pleased to announce the first of these voluntary compliance agreements, and it was with the Mortgage Bankers of America.

It was an agreement that was cooperatively reached, and much is due the President of the Mortgage Bankers Association who played a strong leadership role in this. And that agreement contains commitments by the MBA to self testing. And I should say that we think self testing can carry a lot of weight and do an awful lot of good with regard to identifying problems even where we don't know they exist.

One of the things about self testing is it can do that. It will ferret out the problems where they are. And that agreement called for outreach to brokers and community organizations and the usual education, training and recruitment, job opportunities, consumer education and outreach, training for mortgage lending staff, examination of underwriting standards, market analysis, and most important of all, support by the MBA for technical assistance to develop similar agreements with other MBA member companies.

We've also reached agreements with the country wide funding corporation, the community lending corporation -- agreements in principle with Mortgage Banker Association in the Mexico and Puerto Rico Bankers Associations, and with a company called Collateral Mortgage. Thank you, John.

I want to just spend a work on the Collateral Mortgage agreement because it's a good example of what these voluntary agreements can accomplish. Collateral and their effectiveness measures has agreed to a 7.5% increase in the number of purchase money loans be made to designated minorities as a measure of effectiveness of their efforts.

They've agreed to increase the number of loans to low income persons from 1993 to 1996. They've agreed to continue to administer second review programs, and to conduct self monitoring and corrective efforts to ensure Fair Lending compliance.

These are examples of the kinds of things that make the voluntary compliance effort of this administration real in terms of results. Let me turn quickly to enforcement. After all, that's the centerpiece of what HUD should be doing. And our program here has been focused on improved processing of individual complaints, of secretary initiated complaints, and also with cooperation with the bank regulators and the Department of Justice in the enforcement arena.

HUD's processed over 1,800 complaints since the 1988 amendments took effect. A third of these have been settled prior to a determination. The settlements have resulted in significant benefits, both to complainants -- and I think here is something important as well in the public interest.

For example, when we're talking here individual complaints, not pattern or practice, one settlement resulted in award of $175,000 to the complainants, hispanic female employed by a federal savings bank who was fired for making loans to minority borrowers, and a hispanic male who was denied a loan.

The lender agreed to advertise the availability of loans in minority media, to contribute $200,500 to a not for profit Fair Housing group, to appoint a loan officer to serve minority clients, and to make $250,000 available to low and moderate income borrowers as part of the settlement of an individual complaint, recognizing the outcomes of discrimination on their behalf.

Another settlement on behalf of a black developer who was denied financing resulted in compensation to the developer -- $68,000; a housing counseling fund of $500,000; mortgages for up to 250 qualified buyers of new homes worth an average of $70,000 each, for a total commitment of $17.5 million dollars.

HUD's systemic activity has taken the form of -- let me describe two lending complaints, one case still under investigation. Looking at the residential mortgage lending practices of a mortgage company, the other looking at bank officers who were alleged to have made discriminatory statements concerning refusals to make loans.

And we're using our capacity as well to increase the use of testing through grants made under the Fair Housing Initiatives program. We have found great success in testing, not just in lending, but in the insurance area as well. And we have a history of testing -- match pair testing by groups such as the National Fair Housing Alliance and fair housing groups around the country.

These are carefully trained testers who are quite successful in their work. And as you know, testing is a primary enforcement tool recognized by the Supreme Court in the Havens Case, and is a very critical element in Fair Housing enforcement. We think that testing deserves a good deal of support.

HUD is also required to ensure that the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation do not discriminate in their mortgage purchase activities, the secondary market which we haven't talked too, too much about today.

And that they submit data to the Secretary on -- to assist the Secretary in carrying out investigative activities under the act. And as you know, we have issued a proposed regulation that addresses those responsibilities on the 16th of February, and is out now for public comment.

That regulation would require each of the GSE's to conduct and to submit to the Secretary a business practices analysis looking at their underwriting standards and their appraisal practice and their repurchasing requirements. Pricing, fees, procedures and all the business practices that effect the purchase of mortgages for low and moderate income families that may yield disparate results on the basis of race or any of the areas covered by the Fair Housing Act.

That analysis has got a specified the revisions that will be made to promote affordable housing, and to promote fair lending. And if disparate results occur because of a business practice, the regulation would require the institution to demonstrate the business necessity for the practice or demonstrate what plans it would take to remedy the situation. So we're looking here at the application of additional Fair Housing law to the GSE's.

In addition, we've -- we have been working with the federal financial institutions, the FFIAC, which John described. And they have sent to us 524 complaints to HUD headquarters including 32 complaints alone from the federal reserve system. And HUD in return has referred information on 129 cases to bank regulators.

So we're seeing a great deal in the way of cooperative agreement here between HUD and the regulators and through joint lending investigations with the Department of Justice. We're working on a target lending investigation now -- something new in the way we carry out enforcement.

Let me close with a few remarks about the regulatory area. Secretary Cisneros has pledged to issue the regulation on mortgage lending that is long overdue since the passage of the original Fair Housing Act in 1968, and which is particularly urgent now that the enforcement of the 1988 act is up and the sanctions are real and the act is real.

The regulation is needed for several reasons. And I know that regulations are unpopular today, but I think it's important to speak about the reasons that these are so important and so special. First of course, HUD has to fulfil its statutory responsibility to define what practices are illegal under the law.

There should be no doubt in the minds of bank regulators -- and I don't think there is any on mortgage providers and home buyers that there is discrimination. But the question is, what constitutes discriminatory behavior? And without a regulation, we won't be able to speak with authority on that issue.

Second, the regulation can provide comprehensive guidance to the industry and to the public as opposed to policy developed and which would occur by the case law that develops very unevenly in the country. The resolution of important issues can be held hostage to whether the proper set of circumstances has arisen that allows the case to be brought when one party or another believes that discrimination has occurred and so important issues are retarded -- the answers to them are retarded when we have to await a case to bring them before the judicial system.

Third, a regulation is really crucial here to provide stability. Stability to an industry for whom stability is really crucial. Without a regulation, a practice can be deemed illegal in one part of the country but not in another. What may appear legal one year and illegal the next in these days of interstate banking and the like, this kind of situation obviously leaves mortgage providers subject to the vagaries of the development in case law.

It means competitors may be held to different standards. It means the company can be asked to operate one way in one state, and be asked to operate yet another way in another state. A difficult thing to expect to be done well and properly. And fourth, the regulation would assist the department and the courts in applying the Fair Housing Act to mortgage lending by doing what only a regulation can do.

And that is, by taking into account the characteristics of the mortgage lending process and considering such things as the role of the secondary mortgage and its underwriting criteria. Considering the nature of the risk assessment process and the principles of the Fair Housing Act and the complex character of the lending industry as a regulated industry.

Those things deserve the kind of careful attention and consideration that come with the development of a regulation that provides for public comment. In that regard, let me say that at HUD we are committed to an open and deliberative process in which all points of view -- the industry view including its broad spectrum of interest, Fair Housing advocacy groups and the public at large are expressed and considered in the promulgation of the rule.

I hope I've been successful in giving you an overview of our work -- a sense of the results. Let me just say as all of you have said here that lending discrimination prevents far too many Americans from achieving the quintessential American dream -- that dream that we all know is special about America, a home of their own.

And this administration and the Department of Housing and Urban Development are committed to rooting out discrimination in lending elsewhere and making it possible to for all to enjoy the freedom to live wherever their resources would permit. And I'll do whatever I can in answering questions.

CHAIRPERSON BERRY: All right, thank you very much. This panel has consumed a great deal of time and given us a great deal of information. But let me see if colleagues have any other urgent questions for any members of the panel. Yes?

MS. HORNER: The way the people who know the answers --

CHAIRPERSON BERRY: Sure, go ahead.

MS. HORNER: I would like to ask a question both of -- a question of Ms. Hutchinson and one of Mr. Kaplan, and they both relate to the same general issue. And the general issue is this: There is some discrimination. The question gets to how we overcome it and what price we are willing to pay in order to overcome it.

And with what transparency we're willing to pay the price. So my question to Ms. Hutchinson is this. If lower down payments or other new and creative methods of getting housing -- home ownership to people are a business risk as well as an opportunity -- because I think it's clear they're an opportunity.

But if they are also a business risk, usually when a business goes into risk, it either is willing to reduce its profits if the risk is not justified, or it levees a fee broadly on all consumers of the product in order to cover the cost of the risk. My question to you is, in going and ensuring 3% down payment or 5% down payment mortgages, if your members are indeed incurring some additional risk, are they eating the loss themselves, or are they raising fees broadly for insurance so that all people who get mortgages without knowing it are subsidizing the increased risk entailed in achieving this social goal?

MS. HUTCHINSON: Well, broadly speaking,

mortgage insurers base their prices on three factors. Down payment, type of mortgage -- and that is an ARM is more expensive than a fixed rate -- and level of coverage. In other words, 20% is cheaper than 30%. So a loan that would be -- I don't if there's such a thing as an ARM, it's a 97. I don't think probably anybody offers it, I'm not positive, but that's how they price.

And so yes, a 97 would be more expensive than a 90% LTV loan.

MS. HORNER: So who pays that additional cost? The general mortgage consumer or the --

MS. HUTCHINSON: The borrower. In other words, the borrower pays the premium. But in addition --

MS. HORNER: But not the low income. Are you charging the low income 3% down -- borrower a higher monthly premium for this --

MS. HUTCHINSON: In other words, the premium -- and I don't -- you know, premiums obviously that's something we never discuss. So I couldn't tell you precisely what the premium is, but I can tell you the factors upon which we price. Those three, they do not price based on any kind of other underwriting factor.

And that the industry, most of the companies are on a national basis, so that the whole -- everybody cross subsidizes everybody else. And I think it's geographies, it's types of loans, it's a huge pool.

MS. HORNER: The reason I'm asking is that my general approach to levying a tax, a fee, a consumer cost increase to meet a general national social goal is that we are better off in a transparent environment, where instead of passing it through invisibly to non-participating -- non-voluntarily participating consumers -- in this case, you must have mortgage insurance if you're going to get a mortgage.

It would be better for the federal government to say we wish to meet a certain social goal, we're subsidizing it directly. And that, I think -- I understand you're telling me that there is a cost, but you're not identifying particularly where it's being levied.

Mr. Kaplan, Chevy Chase Federal Savings and Loan consent decree involved a -- requiring Chevy Chase to subsidize loans in predominantly African-American communities. I believe $7 million dollars worth of loan, and/or to provide financing at either 1% below market rate or 1/2 a percent below market rate plus a grant to subsidize the down payment.

I assume that HUD supported this consent decree and approved its components. What I'd like to know is why is it -- since no discrimination was found -- no individual acts of discrimination were found against Chevy Chase Savings and Loan, why it would not be better to levy the broad social cost of subsidizing low income home ownership broadly through the system of taxation rather than levying it in a less visible way against a particular regulated industry?

MR. KAPLAN: Commissioner Horner and Madame Chair, I'd feel more comfortable if the questions that the commissions has for HUD were -- had the personal attention of the Assistant Secretary. And I'd be very pleased to secure answers for you on all of your questions and supply you with our answers

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MS. HORNER: Okay, that's fine.

MR. KAPLAN: -- in writing. I might comment by that on the -- regarding Chevy Chase, of course, on -- I would suspect that the better party to answer your question would be the Department of Justice. But let us see what we can -- if we can help you with that.

MS. HORNER: That's fine, I know we have time constraints.

CHAIRPERSON BERRY: Commissioner Wang?

MR. WANG: A short question for Ms. Hutchinson. If the insurance become a requirement applied to all loan applicants, would the loan be made more easier?

MS. HUTCHINSON: You mean people putting down 50% or people putting down --

MR. WANG: No, no. I mean the insurance part, right, your program have been made into a universal -- anyone who comes to get a mortgage, there will be an insurance attached to it with a premium that's a part of the monthly payment.

So in a sense, there's a universal coverage of every mortgage lender. So, will the bank then be more inclined because there's a guarantee? I'm asking the question the same way that, if I make a foreign investment, why shouldn't I guarantee my foreign investment. I will go to the third world anywhere to invest, even though I lost, I give the money back.

So if I go to the poor neighborhood with your program with me as a bank, would I be more inclined to make loans?

MS. HUTCHINSON: Sure. I mean, that's the nature of our product. If you go to an area where people have lower incomes and they can't afford to put a lot down, you're going to be more likely to make those loans if you know that a portion of your risk is -- yes, and that's what we're here to do.

MR. WANG: What would it take to have that happen?

MS. HUTCHINSON: Well, that's what we're doing now. In other words, our product exists so that people will make lower down payment loans. And as

I've tried to explain, we've attempted to reach out, you know, in the last seven or eight years to lenders groups, etc. in the types of neighborhoods that you're talking about.

You know, not that more shouldn't be done, and we keep trying, but that's what we're attempting to do.

CHAIRPERSON BERRY: Just quickly on the questions that Commissioner Horner asked you. I'm a little puzzled by your answer, Ms. Hutchinson, to the first question. Because when you were giving your prepared statement and we had a little exchange back and forth between you and Mr. Taylor and Commissioner Horner, and I've forgotten who else when I made the point about the plumbers -- you were saying that the -- there was a lower default rate for people who were low income.

And that these loans -- that this was a successful program, and you didn't seem to indicate that there were any costs that needed to be passed through to other people to make up for the fact that they were doing this. And then in the last exchange you gave, it sounded as if you were saying that there were some costs of this program, and the issue is then how do we account for them as a matter of social policy?

Should the government somehow -- so I'm confused.

MS. HUTCHINSON: Okay, in other words, lower income people -- you know, under our data, do not default more than higher income people. So that we do not -- and our pricing is not based. on underwriting factors, on income. Our pricing factors are based on the three factors that I mentioned to you. So there is no cost passed on to anyone else, but it's just the nature of the insurance business.

And I think it's -- you know, it's automobile insurance, it's any kind of insurance that you have a large pool of people. And that pool --

MS. HORNER: Are you saying there's no difference between a low income person who puts down 5% and one who puts down 20% in the rate of default? There's no price to be paid for the 5% down payment? I mean, that's wonderful news if it's true.

MS. HUTCHINSON: No, no, no, no. I don't want to confuse -- in other words, down payment is the key determinant of default.

MS. HORNER: So if you accept a loan with a 5% down payment, you're running a greater risk that if you accept a loan with a 20% down payment?

MS. HUTCHINSON: Much, much -- double if not triple defaults.

MS. HORNER: So there is a cost --

MS. HUTCHINSON: Yes.

MS. HORNER: -- imposed by this?

MS. HUTCHINSON: Down payment is the key determinant of default.

CHAIRPERSON BERRY: But I'm still confused because -- are you telling me -- just to be clear -- that if a low income buyer pays a 5% -- or anybody pays a 5% down payment, they are -- you are including the notion that they are more likely to default than someone who pays a 20% down payment?

MS. HUTCHINSON: Sure, yes.

CHAIRPERSON BERRY: And so what you were describing earlier about low income buyers have a lower default rate, --

MS. HUTCHINSON: If you take the universe of home buyers who put down 5%, --

CHAIRPERSON BERRY: All the people who paid out --

MS. HUTCHINSON: All the people who put down 5% --

MS. HORNER: Being second home purchases?

MR. WANG: No, a smaller home is cheaper home.

MS. HUTCHINSON: The less expensive homes default less than the more expensive homes.

MS. HORNER: Even for primary residences?

MS. HUTCHINSON: We don't do many investment homes.

CHAIRPERSON BERRY: So what you're really saying if I understand it, is that there are costs to be paid for your lenders or your insurers insuring loans where people pay 5% down because the likelihood of default is greater than if somebody pays 20% down.

MS. HUTCHINSON: If you put 20% down, you don't have to buy mortgage insurance.

CHAIRPERSON BERRY: Right.

MS. HUTCHINSON: It only exists for people who are putting down less.

CHAIRPERSON BERRY: I see. So that -- but 5% as compared to what -- 15%?

MS. HUTCHINSON: Fifteen percent.

CHAIRPERSON BERRY: That a 5% down payer is more likely generally to default than a 15%. But whatever costs there is involved, is not increased just because the person happens to be low income. That that's not the criteria, it's --

MS. HUTCHINSON: It's the amount of down payment, whether or not you're a billionaire or --

CHAIRPERSON BERRY: I see. Okay, maybe I understand, I'm not sure.

MR. REYNOSO: No, no. I'm sorry.

MS. HORNER: Fifteen percent down payment payer is subsidizing the 5% down payment payer, or the --

MS. HUTCHINSON: Subsidizing is the right word.

MS. HORNER: -- or the mortgage company is eating it by taking a reduced profit.

MS. HUTCHINSON: I don't under -- when you say subsidize, I don't --

MS. HORNER: Paying a higher -- relatively higher fee?

MS. HUTCHINSON: Yeah, the person putting 5% down will pay more than the person putting 15%.

MS. HORNER: Oh, so you're charging the low down payment person --

CHAIRPERSON BERRY: That's what we needed to know. They're getting -- they're paying for whatever that is.

MS. HORNER: I asked that and got a no.

CHAIRPERSON BERRY: They've got a no. Yeah, now we get a --

MR. REYNOSO: I'm sorry. Let me -- maybe I'm asking the same question again. Is it a fact that a person who puts 5% down will pay a higher insurance rate than a person who pays 20% down?

MS. HUTCHINSON: If you put 20% down, generally speaking you don't have to buy mortgage insurance period, --

MR. REYNOSO: I understand that.

MS. HUTCHINSON: -- so that whole fee doesn't exist.

MR. REYNOSO: So let's say 19.

MS. HUTCHINSON: The amount of the down payment if one of the factors in the price, correct.

MR. REYNOSO: Okay, in deciding what the insurance rate will be, so that a person who pays 5% down will normally pay more insurance than a person who's paid 19% down, is that correct?

MS. HUTCHINSON: Correct.

MR. REYNOSO: Therefore, as I understand it, there ends up being no subsidy, is that correct? At least --

CHAIRPERSON BERRY: And paying for it.

MR. REYNOSO: -- paying for it, yeah.

MS. HUTCHINSON: They're earning charge needs to accommodate the risk. And you're charging your members -- your members are charging --

MS. HORNER: The whole concept of the 19 --

MS. HUTCHINSON: Your members are charging the low income purchaser who puts only 5% down a higher premium, so that person is paying -- that low income person is paying to cover the enhanced risk.

MS. HORNER: But remember there's also upper income people who are putting 5% down and they're paying the same rate as -- the person's income has nothing --

CHAIRPERSON BERRY: So pricing takes into account the risk?

MS. HORNER: Exactly. Which is -- I don't think a --

CHAIRPERSON BERRY: We need to -- there are two other panels here, but go ahead.

MR. TAYLOR: I think it's important to the commission to realize that this issue of default performance or payment performance based on the amount of down payment is in dispute. MICA -- and I'd like to see the study, but from listening to Suzanne, it sounds like they've reached a conclusion that is not is dispute.

But I will tell you that academics are across the board on this issue as to the effect of down payment and the amount of that down payment, whether or not it does effect performance.

CHAIRPERSON BERRY: Okay, all right.

MR. TAYLOR: I just didn't want one experience, that is MICA's, to be the definitive of things.

CHAIRPERSON BERRY: All right. We will keep that in mind and we will get an answer from the Justice Department or whomever about the Chevy Chase case. But let me thank the panel. Thank you very much. Very informative. And could we call the next panel post haste, please?

Okay, let us thank this next panel. And we want to begin with Julie Gould who is Fannie Mae's Vice President for Community Lending. She is responsible for developing and implementing all single family community lending products and home buyer education services designed to meet Fannie Mae's $1 trillion dollar commitment showing America a new way home.

And I understand you also have a demonstration for us, but thank you very much, and could you proceed?

MS. GOULD: Yes, I will. And I want to say at the outset that it's a privilege and an honor for me to be here today to represent Fannie Mae. And I particularly want to thank Commissioner Horner for suggesting to our Vice Chairman, Frank Rains, that we do this presentation here today.

I know from my days of working under her guidance at OMB that she has a deep commitment to affordable housing. So I see it's reflected in her work here too.

MS. HORNER: Thank you.

MS. GOULD: What I'm going to do is present you with a brief overview of our trillion dollar initiative, and then turn to Carolyn Maddox to demonstrate it for you with the computer graphics here.

CHAIRPERSON BERRY: Okay.

MS. GOULD: Let me set the stage by telling you that Fannie Mae is not a candy company. I'm doing a --

MS. HORNER: More the pity since it's

lunch time.

(laughter)

MS. GOULD: No, and I'm doing a special assignment in Chicago these days, and Fannie Mae the candy company is headquartered in Chicago, so this is frequent problem for me to explain. In fact, we are the nation's largest investor in home mortgages. We're a privately owned company, and yet we have a congressional charter. We have HUD as a regulator, and we have private stockholders.

Our mission is to provide affordable housing for low, moderate and middle income Americans, but we don't make loans directly to the consumers. What we do is we buy residential mortgages from lenders, give them cash or securities in exchange, and then allow them to relend that money in their communities.

In good economic times and in bad economic times, mortgage money is always available in every city across the country in large part because of Fannie Mae. Nearly a year ago our chairman, Jim Johnson, launched a trillion dollar effort to really transform the nation's housing finance system into one that can be open and used by all Americans, particularly minorities, new Americans, low income and first time home buyers, those that live in under served communities, and those that have special housing needs.

By the end of the decade, this far reaching commitment which we call Showing America a New Way Home will reach ten million families. Now during the research phase of this effort, this massive effort last year, we uncovered four major barriers to home ownership. First, discrimination continues to exist, whether it's overt or covert, and it's preventing minority people and their neighborhoods from getting home loans.

Second, many low and moderate income families and new immigrants lack the knowledge needed to get through the home buying process. And language is also a barrier here, but navigating the system which is considered very mysterious and I would indeed say intimidating, is difficult to do.

Third, many rural and urban communities

have been shut out of the mortgage lending process and have been severely under served and still need to be revitalized. Fourth, the home buying process in itself is very inefficient. And I like to say that buying a home should not be like running the Boston marathon or climbing Mt. Everest.

You shouldn't have to have that amount of endurance in order to get your own home. Now Showing America is really an 11 point plan. And rather than going into all 11 points today, what we've done is hand you a packet that really describes this in more detail. If you could add that to the record, there's a particular fact sheet that go into each of the 11 initiatives.

But it's really an 11 point plan to address these barriers. So it's to eliminate discrimination, eliminate a lack of knowledge, eliminate under served areas, and eliminate an inefficient process. Now we also have detailed information in your packets about our community lending products, including the Fannie 97 which is the first nationwide 3% down payment loan.

Fannie Mae was the first to offer that. Now we can only hope to achieve these goals, particularly the trillion dollar goal, by working with partners. So our partners are lenders, they're non-profit community organizations, they're home buyer educators, they're the MI companies, and they're the public agencies at every level of government.

And fighting discrimination really is at the core and the heart of this Showing America plan. When I first joined Fannie Mae about seven years ago, one African-American community leader in Philadelphia told me that our communities are built on quicksand, and we need your help to find solid ground.

And that stuck with me all of these years, because in for us to find solid ground, to stabilize neighborhoods, to really raise the home ownership rates of African-Americans, Hispanics and Native Americans, we need to be a catalyst for others to make equally extraordinary commitments to both fight discrimination and increase home ownership opportunities.

Now one of the most far reaching

initiatives of this Showing America plan is called Home Path. And here we're working with home buyer education providers, primarily non-profits and lenders to put the groups that I spoke about earlier on paths to home ownership. The idea is to turn what might be a rejection -- a no, into a not yet.

Now you've all read and studied the troubling statistics revealed by the Home Mortgage Disclosure Act that African-Americans for example are rejected twice as often as whites for mortgage loans. Now take a look at the home ownership rate, for example, for African-Americans. Today that's hovering around 40% compared to 67% for whites, to 64% for the nation as a whole.

Home Path is about radically improving those numbers by giving those communities and the community groups that serve those communities and are trusted by those communities the tools that they need to get someone from thinking about getting into a home, thinking that it's possible to get into a home through community outreach, and actually linking them into the process so that they get into the home and stay in the home.

As I said, in the Ken Harney article that you also have and that Commissioner Horner read and brought to our attention -- and I must say I was quoted accurately in this article. If we can use technology to put Americans on the moon, then we should be able to use technology to help those who have been discriminated against and those where perhaps language is a barrier to help put them into homes.

And that's really what Desktop Home Counselor is about, and I'm going to ask Carolyn Maddox who developed this tool with us and who we got from Boeing Helicopter in Philadelphia to come and do this for us. Carolyn?

MS. MADDOX: Good morning. One of the 11 initiatives that Julie mentioned is technology. At Fannie Mae, we have a division that does MORNETPlus. That is the term we use for all of our technology products. So in addition to this counselor, we are also working on Desktop Originator and Desktop Underwriter which are two products for mortgage lenders, for the banks, for the origination companies to also help take the discrimination out of the home buyer process.

Now Desktop Home Counselor is targeted specifically for non-profit counseling centers. It's a tool that we developed to aid the counselors in the work that they do from day to day. Now the demonstration you're going to see right now is going to walk you through what a counseling session would be between a client and a counselor, and how Desktop Home Counselor can help.

Can everyone hear me now? On the first screen, we see that Janet Smith is our client. And Desktop Home Counselor helps in four specific areas. It allows the counselors to collect the client's financial profile. And as we see here, they are talking about Janet's living situation, her employment, her income, monthly debts.

And of course, Janet is thinking about being able to move into the home of her dreams. And through counseling and through Desktop Home Counselor, we're going to put her on what we call the path to home ownership. One of the second things the Desktop Home Counselor does is to help the counselor determine the client's affordability profile.

How much of home she can currently afford, what she can do or changes she can make to her current financial profile to afford more of a home. We also take a look at the client's credit report. By bringing that information in early in the counseling process, the counselor can help the client work through any credit issues they may have before they get to a lender.

And then the system will also provide information to the client to let them know what their path is and where they go from there. We're going to take a look at a few of the actual screens from the application. The first here is client data where the counselor can start inputting the client's financial profile.

Now we look at the client's employment information. We see our client is from the Boston area. Now there are also other screens in the system that will collect the client's assets, offer liabilities information, and something that you will not see in any other system, and it is the ability to add in other forms of down payment.

So that the client can indicate if they're getting a gift from a relative, a grant from a local community organization. But it shows them that they can bring other funds to the table. One of the things that you'll notice with the software is that it is very intuitive, and it's very easy for the counselors to work through.

We focused on a group that is not highly computer oriented. They did not use computers in their day to day world. So we made sure from our point of view from technology, that we are putting something in place that everyone can use very effectively. It fits directly into their day to day work, and it does not intrude in any way upon -- or in their counseling process.

Now as I mentioned before, we've seen the data collection screen so the counselor can input the client's financial profile, and now we'll move on to a couple of the other issues of collecting the client's -- or determining client's affordability analysis.

We allow the counselor to indicate the areas the client wants to live in. Of course, we know that different sections of the country have different housing requirements, they have different areas where the client will live, different affordability type analysis. We let the counselors build their own data base that contains that type of information.

And in our example here, our client Janet is planning on purchasing a home in the Roxbury area in the suburb of Boston. And for that area, the entry level sales price is $55,000. Now based on that sales price and also the monthly housing expenses for that area, we will start to determine her affordability analysis.

The software itself will help recommend a financing program that we feel is appropriate for that client. This has been a great aide to the counseling centers, because it includes all of Fannie Mae's community home buying programs which Julie made mention to. And they're also in your hand out kit.

The program we see right here is our 3/2 option, where 3% of the down payment comes from the home buyer directly, and the other 2% can be from a gift or a grant. You also see in the financing option the ratios that go along with that program. Now from there, the counselor can enter the interest rate and the estimated closing costs, and then we'll get the affordability analysis for client, Janet.

Now at present, Janet's current financial situation will not allow her to purchase a home in that area. But the software now goes forth to give her an analysis and put her on the path to home ownership by telling her if she could reduce her monthly debt, this is what she will be able to afford.

Now if she reduces to $125 a month, she will then be able to look at a 95LTV mortgage and be able to afford a home at the entry level sales price in the Roxbury area. It also goes forward to tell her how much she will need estimated for closing costs, for down payment, and the amount that she will need to save which is $1,800.

Now the counselor can go forth and start doing what if analysis. And with the counseling centers that we have been working forth in our pilot, they've basically been our teaming partners in the development of this application, they've told us this is one of the wonderful things that they like about the software.

They can now go and theorize what would happen when Janet receives a 10% raise and a $500 bonus. So they can make adjustments to her income, to her amount of down payment funds, and then very quickly redo the analysis. One of the things that we saw while researching this product was counselors that had huge files with pieces of paper just falling out of them because each time they wanted to tell the client if you were able to reduce your debt, if you were able to save more funds for your down payment, you would be able to afford more of a home.

And then they have to by hand calculate how much more of a home they could afford. But using the software, within seconds they'll be able to show the client exactly how much more they can afford. Based on the two areas that we just changed, the client would only have to reduce her debt to $206 a month, and then she would be looking at a higher LTV ratio and need to save less for her down payment.

So basically, as you can see, she's one step closer to home ownership. We also produce a letter to the client which translates the information from the counseling session into something they can take with them that shows them what their goals are and what their path is going to be.

Now we'll move onto one of the other sections which is the credit. Now Desktop Home Counselor accesses one of the third party credit reporting agencies that pulls in a three and file merge credit report. This allows the counselors to get information from all of the major repositories and provide that information to their client.

This helps them sit down with them and determine areas where they may have some issues. This is one of the most popular screens in our software for the counselors. Before, they got their client's credit report, and then they matched it by basically matching two pieces of paper against the information that the client gave them on their intake forms.

Now the software will match the client's financial information and their credit report and basically point out areas where there may be some errors on the credit report. It might be a loan that belongs to a father or a son or someone else and has somehow appeared on their credit report. We can see the situation here.

This also points out that our client, Janet Smith, has three credit items that are currently showing in delinquency, and these are items that of course she's going to have to get cleared up and provide explanations for when she's ready to go forth and apply for a mortgage.

There's also some additional facilities for the counselors themselves such as the case notes which allows them to keep a running diary of all of their sessions with the client and anything they need to follow up with them on. The software has been in pilot for approximately four months with a group of non-profit agencies across the country.

We actually went into production last

week. The software is free and available to all non-profits in the country. We are also happy to say that during our pilot with the non-profit agencies, almost 400 families were helped with the counseling centers using this software and are now in homes. So thank you.

MS. GOULD: Okay. That concludes our presentation, and I'd be happy to take questions.

CHAIRPERSON BERRY: All right, thank you very much. We will now go on to the other -- to presenters. Paul Mondor is Associate Director for Regulatory Compliance with the Mortgage Bankers Association. He keeps track of and participates in MBA policy formation with respect to regulatory compliance issues. Mr. Mondor?

MR. MONDOR: Thank you, Madame Chair. MBA appreciates the chance to be here, and I particularly appreciate the chance to MBA's representative. I had not seen the desktop counsellor demonstrated before. And that's just one of the many pieces of information I'm picking up.

MBA has somewhere in the rage of 2,500 to

3,000 members, most of which are regular members, which is people who make loans. So I'm afraid I can't list all our members for you, and please don't ask me to try.

Let me start by pointing out, I am a lawyer by training, not an academic, not an econometrician. And I'll leave that to George Galster.

But as a lawyer, I tend to belabor fine distinctions, sometimes to the annoyance of others. And I think I'm going to start with something along that line.

The letter inviting us to be part of this briefing called it a briefing on efforts to end discrimination in mortgage lending. In the same paragraph, it also said the focus would be on current initiatives to make home ownership more achievable.

Now I call the former fair lending, and I call the latter affordable housing, and I do distinguish between the two, although I acknowledge a major degree of overlap and correlation between them.

So I guess I'm here to discuss MBA's initiatives and policies and activities with respect to both. And of course, our current linchpin in both areas really is the HUD-MBA agreement that Peter Kaplan referred to earlier, at least in terms of our current activities.

But first before I go into that and other activities, the reason I made that distinction is to focus for a minute on fair lending, per se, even though most of our activities are in the other area, or arguably.

Ending discrimination, and in this I want to be very narrow in terms of clear, blatant, intentional and unambiguous discrimination in the mortgage lending, is obviously a high priority for us.

There's really only one permanent piece in place when it comes to that narrow kind of discrimination on the MBA's part. And that is canon 7 of MBA's canons of ethics and standards of practice, which is a set of canons that every MBA member is subject to, and it reads verbatim, "Members conduct their business without regard to the race, color, sex, religion, marital status, national origin or age of the persons with whom they deal."

I won't go into the procedural aspects of how it happens, but I'll tell you the bottom-line result of a failure to adhere to this or any of the canons, is expulsion from the association.

Now that really is all the power and authority that, as an association, we have over our members. It is clearly, on its face, limited to deliberate, intentional, blatant discrimination.

That's one of the three conventionally recognized forms of discrimination, again in the legal framework that we deal in.

Besides blatant, there's what are referred to as disparate treatment and disparate impact, and other speakers have alluded to these and I won't go into detail about -- suffices to say that they pretty much mean what they sound like.

I think that is where all the overlap and correlation takes place between what is -- maybe is or maybe is not discrimination in the legal sense, and the imperative of furthering affordable housing without regard to whether there is a legal transgression going on.

And the happy thing about most of our initiatives is that we don't really have to worry about whether there is a legal discriminatory act going on in order to pursue them.

So let me talk about some of the MBA initiatives in that second area outside of blatant discrimination.

The fall of '93 was probably when the foundation of what is our modern set of efforts took place or was laid, and that was the five-point plan we came to call it on the staff.

It was announced by then-incoming, now immediate past, president, Steve Ashley of our association. And he basically -- Peter Kaplan referred to the leadership that he provided, and I second that. And it may be impolitic of a staffer to speak this well of a past president, but I agree the leadership he provided in that year on this was very, very important, and it led to this five-point plan as well as the agreement with HUD that I'm going to talk about in a minute.

The five-point plan has obviously five points, at least three of which are done and completed.

VICE CHAIRPERSON REYNOSO: It's a very loyally approach.

MR. MONDOR: Thank you.

(Laughter)

MR. MONDOR: I hope you don't think you're insulting me.

(Laughter)

VICE CHAIRPERSON REYNOSO: I'm speaking from one lawyer to another.

MR. MONDOR: Thank you. Between lawyers, it's a compliment.

(Laughter)

MR. MONDOR: I want to skip over pretty quickly the three that are pretty much completed now. There was a survey that we chartered through the Gallup Organization. It gave rise to information that was quite surprising as to the ignorant impressions that prevail out among the general public about what it's like to get a mortgage, how difficult it is or is not to get a mortgage, etc.

We held six community homebuying fairs in urban centers around the country. They were an immense success. They put all kinds of people out of the camp that thinks they can't afford a mortgage and put them into the class that realizes it is possible. And that's obviously the very first step.

And we held, at one time, a very, very high profile, fair lending forum over a year ago now, in February of '94, that brought together many players. And I hear Julie nodding or um-mm'ing because Fannie Mae was one of the many participants.

And it was very, very widely attended technologically because we used a satellite uplink to -- it was held physically on the campus of Howard University here, but it was beamed back down to hundreds of other locations and many, many people listening to a general airing of the issue, the state of the issue at the time, and a dialogue among people from every -- coming from every direction on the topic all at once in one place.

There are two other elements that are still ongoing, and really were always intended to be permanently ongoing. And this is really the reason that I'm bringing it up.

Under the auspices of MBA's Diversity Committee is called, I guess for lack of any other better name, employment opportunities or business opportunities or both. It's intended to enhance diversity in the rank and file of employees in the industry, and to enhance opportunities in the industry for what we came to call minority and women-owned business enterprises, or MBEs for short.

And I'm going to nod to Julie again because under that initiative, together with Fannie Mae, we have a program called Partners in Progress. And what that does is, in effect Fannie Mae, as you know, approves lenders to be seller services contractually with Fannie Mae.

MBEs can be approved under easier qualification standards including the all-important net worth requirement if they are part of this program, which entails, as the prerequisite, a mentor, which is an established seller servicer, and that volunteers to act as the mentor for this new business; to show them the ropes basically of how to do mortgage banking, and especially how to do mortgage banking with Fannie Mae.

And I can only say that we've have dozens of inquiries from our regular members, established members, who want to get in line to be mentors under this program. And so I thin it's proving to be a success and -- and, go on.

COMMISSIONER GEORGE: I can give you the exact figures.

MR. MONDOR: Great.

COMMISSIONER GEORGE: We signed up 13 mentor, mentees last year after just a couple of months experience. And this year so far we have 17 more. So if I add that correctly, that's 30 altogether after four months of activity.

So it's a very high priority of both the MBA and Fannie Mae.

MR. MONDOR: That's not inaccurate,

several dozens. The fifth point, education and training, and obviously it's something that's just a perpetual project of MBA in all areas, not just fair lending. But several things that arose directly out of the so-called five-point plan were training dedicated to personnel in the industry that have direct contact with the homebuyer/borrower.

One of them is called fair and equal cultural diversity training. This is a video-based two to four hour workshop type of training package. It's designed for lenders to run in-house with their front-line personnel.

And it teaches the participants not so much exactly what their respective individual kind of privately held prejudices are, but rather just that they have them as an asserted and unchallengeable fact.

And the point is to make them realize that as everyone in life has these, they have more power over your individual behavior towards other s when you leave them unconscious and unexamined. And if this workshop has its proper effect, it forces people to go back on their own time, examine what are my prejudices, think about them, render them conscious, and therefore relatively powerless to influence their day-to-day behavior towards others.

Another one is the successful homeownership seminar kit. This is in development still, but what it's meant to do is to teach industry personnel how to conduct homeownership seminars, not unlike the homebuying fairs that we put on. And we're drawing on that experience to help put this together.

Another one is a little small pamphlet that's directed to the membership. It's called "Understanding the Changing Consumer." And it's focus is on the fact that there is growing diversity in a less population. And it basically just emphasizes that the industry cannot afford a market that is approaching one-third of the total population of the country.

And it makes that point somewhat implicitly just by laying out the demographics and leaves it to the individual mortgage banking company, its leadership, to draw the inference, the appropriate inference.

There are also a lot of other products and things that -- obviously we maintain an arsenal of training products and so forth, not all of which are expressly driven by the five-point plan; some of which are spin-offs caused by the five-point plan, but not directly the -- an example of that is the Mortgage Sense video.

This is about a 20-minute video tape that we also produced, and it's designed to counteract the misimpressions that that Gallup survey told us existed. And so it actually picks them up and it attacks them in very direct terms.

One that our current president, Joe Pickett, likes to single out as an example because it's so hilarious, is that in a focus group, which was another thing done as a follow-up to the survey, a real, living person actually said, "I know somebody who was denied a mortgage because he was late returning tapes to Erols."

And I'm here to tell you that you won't be denied for a mortgage by even the most stringent underwriting standards for failing to return video tapes. But this was a misimipression that somebody actually had. And that can stop people from going, even beginning the process, if they believe that sort of thing.

Another example is that, what we call the Fair Lending Resource Guide. This is a full-blown one or two-day program for teaching in-house personnel, whoever the company wants to subject to it, everything there is to know about Fair Lending: the law, the status, especially the law and the legal pitfalls so that they know that there's a hammer out there if they mis-step.

Plenty of other compliance-oriented publications, as I mentioned; consumer-oriented things as well. We have a whole series of pamphlets directed at consumers to explain to them their rights, to explain to them the process so they're not intimidated or confused by it, and this includes Spanish-language versions because there's such a big additional need for that.

And one that I'd be remiss if I didn't

mention because it's my personal project, annually we have a national Fair Lending conference. This is a day and a half-long conference. And actually, I should mention there are brochures for it because this year's is taking place in three weeks from yesterday.

And that has panels and sessions on everything from concrete -- information from people who know for members to learn how to develop an outreach marketing plan to the state of the law for the in-house legal heads who want to know what new case did what to our position in the industry.

This brings me to what I introduced as the linchpin. The centerpiece of our current initiatives is that agreement with HUD, the Fair Lending and Best Practices Agreement.

Now this was very controversial, and this is why Peter and I both emphasize the leadership of Steve Ashley in bringing this thing about can't be exaggerated.

There was even, within the membership, a lot of controversy over entering into this thing. There were complaints that this constituted the voluntary creation of new, additional regulations, something that no industry ever voluntarily goes for; that it constituted handing information free over to the government to be used against us in future actions; that the benchmarks, the performance targets that Peter referred to, the one that -- the largest to date was collateral mortgages, 7.5 percent increase.

That was very controversial because there were some who called that simply lending by quota, plain and simple.

Let me emphasize that they're targets, not quotas, and you don't go to jail for failing to meet them. You simply are reciting when you enter into one of these that it is the target that you are agreeing to undertake, attempt to meet.

Needless to say, we stand by it, and the Board of Governors, the elected leadership of our association, adopted it, and we continue to work. One of the major undertakings of MBA under it, as Peter mentioned, is for us, as the association, to encourage and assist our members in entering into individual agreements under this umbrella master agreement.

And we continue to do so. In fact, the conference that I mentioned that's taking place is going to include certain aspects designed to do just that.

We really think that we benefit from having this close of a relationship with HUD, if for no other reason, it enhances our public image for the industry. And we think that's good, and we are constantly looking for additional ways to expand on that and continue to earn that. Because if you don't keep earning an image, it goes away.

The bottom line is that we are working very closely with HUD, this is just one illustration of that, in an effort to be part of the solution and not a part of the problem, to use an often-quoted catch phrase.

CHAIRPERSON BERRY: Could you wind up please?

MR. MONDOR: I won't belabor the details of the agreement. I think it's pretty famous. There are also copies of it, probably about ten copies, back there if anybody really wants to know every syllable.

But it has two parts. Part one is the undertakings of MBA. Part two is the model that we're seeking to have members enter into as an individual agreement underneath it.

And rather than go into that in detail, I'll field questions if there are any. And otherwise, I'll stop there. Thank you very much.

CHAIRPERSON BERRY: Thank you very much. We really appreciate it. Next, we have George Galster, who is one of the leading researchers on these issues of fair lending, affordable housing, and the like, from his perch at the Urban Institute, if I might put it that way --

(Laughter)

CHAIRPERSON BERRY: -- and has done everything that's important to do on the subject, or at least been involved in it.

So we're very, very eager to hear from you and very grateful that you came today.

DR. GALSTER: Thank you for the very kind introduction, Madame Chairwoman. I'm not sure if my perch means that I'm a vulture or --

(Laughter)

DR. GALSTER: -- eagle, but we'll let this talk speak for itself.

Thank you for the opportunity to come and talk to the Commission today on recent studies related to the issue of differential treatment, mortgage discrimination.

Let me tell you my punch-line up front. I think there's four different kinds of studies that one has to look at to get the comprehensive answer to that question.

First of all, there's studies based on HMDA data; secondly, studies based on paired testing; third, studies that are based on analysis of the accept/reject loan files of individual institutions; and finally looking at the loan performance of individual institutions or groups of institutions such as examining default rates.

And when we take these four different pieces of evidence, my view of them are as follows. First of all, the HMDA evidence suggests that there might be some problems, but isn't very definitive about whether they are or not.

Secondly, the evidence about testers is provocatively suggestive that there are problems, but very incomplete.

Third, the evidence based on analysis of reject decisions, I think, is more convincing than recent critiques would lead you to believe, and third --

SPEAKER: Fourth.

DR. GALSTER: -- the very recent and very controversial studies that have looked at default rates and have claimed not to find discrimination, I think are (1) misquoted, and (2) fundamentally flawed.

And so if I could briefly tell you my reasoning on each of these four points, that would constitute my testimony this afternoon.

CHAIRPERSON BERRY: Okay.

DR. GALSTER: First of all, the HMDA studies. There's a longstanding tradition of looking at these publicly available data and either in terms of presenting tables of statistics or, as we saw at this Commission several months ago, beautifully color-coded maps, of where lending activity happens and where rejections happen across different raçial categories.

Those kinds of studies, as we all know, are equivalent to the medical metaphor of taking a patient's temperature. They are like thermometers. They can tell you if the patient has a fever, but it's not a very good diagnostic tool by and large.

And I think everyone has come to recognize that HMDA data can't point the fingers very convincingly about why the patterns that they reveal are what they are.

So we have tried in the last couple of years especially to develop new techniques for understating this issue that get us to a more definitive answer to this important question: Is there differential treatment discrimination?

And these other three techniques consist of first of all, the paired testing technique.

As Governor LIndsey mentioned, this is where two people pose as mortgage purchasers and are matched as much as possible on the characteristics and they go and approach a lender, separated certifically by a couple hours of time, and see how they are treated.

Now Governor Lindsey correctly got a laugh with his vignette about testing. But let's recall that that laugh had to do with a very preliminary study that suggested that testing of small lending institutions may not be feasible for an exam process. And I think that's right.

But here we're talking about what these preliminary test revealed in terms of the underlying problem. And here, it was nothing laughable. Because in the Louisville study and later in the Chicago study, these first-round paired tests did indeed reveal lots of vignettes of differential treatment.

Most frequently, the type of differential treatment that was observed is when intake officers would provide additional help and offer more tricks of the trade and advice to majority applicants than to non-majority applicants.

Now the limitation of this evidence is

that it's only based on a few pilot studies and that we've only tried to push this test process to the pre-application stage. These folks did not file bona fide applications, so we couldn't trace them very far through the process at all.

But nevertheless, I think it's an area that, as I mentioned before, has revealed something which is suspicious and worrisome, but I cannot claim that the evidence looks definitive yet.

The next forum is a type of statistical analysis that the Governor referred to as multiple regression analysis, which tries to analyze large samples of records of individual lenders to try to see if there is any pattern between accept/reject decisions and characteristics of those applicants to see whether if you're controlling for all the characteristics that you can think of, does race or ethnicity matter in addition?

And the most famous example of that kind of technique is, of course, the Boston Fed. Study. It has, indeed, been challenged by many reputable scholars and econometricians. Those have generated subsequent rounds of debate.

My reading of that debate is that despite those attacks, substantial consensus remains that that study shows a problem. I will simply cite two pieces of evidence to back up this claim about substantial consensus.

First of all, Fannie Mae's Office of Housing Policy Research subjected the Boston Fed. Study to a variety of tests in an attempt to see if you changed a variety of features of this test, would you replicate the basic finding. They found that it did.

And last week in a private meeting where Glenn Canner of the Federal Reserve Board and other academicians met to discuss not only his study, but the Boston Fed. Study. Glenn admitted that after his attempts to pick apart the Boston Fed. Study, he found the results basically held as well.

So I think that that approach, although it's certainly not fool-proof, is considerably more definitive than Governor Lindsey was willing to admit this morning.

I am not that agnostic about what the world of research is telling us right now. But that brings us to the fourth and most publicized piece of recent research. That's the default study.

Again, this has been most recently brought to bear in the Glenn Canner et al. Federal Reserve sponsored study of FHA defaults.

The fundamental logic of a default study is very seductive in it's appeal. It's also very wrong. Here's the fundamental logic: it says if there were lots of prejudice folks out there in the mortgage lending industry, they would make it the case that in order for you as a minority to qualify for that loan, you'd have to be much better qualified than some other white folks, against whom you're not prejudiced.

So if that were true, and then after the fact you looked at the performance of minority and majority borrowers after they got their loan, because the minorities had to jump over a higher hurdle, they're probably overall better borrowers and thus you should see lower default rates for them. Sounds persuasive.

But not quite, because even though it may be the case that it takes more for that minority person to have in terms of credit worthiness to get into that pool of accepted borrowers, it doesn't mean that on average all accepted minority borrowers are more credit-worthy than all on average majority borrowers.

There are lots of other factors that could impinge on minority borrowers that would make them, as a group, still more likely to default than whites. One could be instability of income. Nobody knows what you're income is going to be in the future, but we know traditionally that minorities have last-hired and first-fired.

That means that in a down-turn in the future, even if two people come in and they have the same income right now, minorities systematically are more likely to suffer down-turns in that income in the future. And that might be translating into higher default rates.

They still might get the loan, but overall they still might be more likely to default on that loan later on.

To make this challenge to the underlying logic of the default method clearer, allow me, if I may, to use a metaphor from the baseball industry. I think there's still a baseball industry.

The analogy of what they're arguing is that if all major league baseball discriminated against black ballplayers, that in order to get to the major leagues, instead of being just a .250 hitter, which you could make it if you were white, you'd have to be a, let's say, .275 batting average player if you were black.

So therefore, they say on average we should see black ballplayers with higher batting averages than white ballplayers. Not true. What if black ballplayers all, granted, get a .275 average, but none of them hit over .300. And there are lots of white ballplayers that also were hitting .250, but some of them were also hitting .300.

You could easily imagine a situation where, on average, whites would still have higher batting averages than blacks, even though blacks were, in fact, being discriminated against. And that's the same challenge that goes here.

You could still have a situation where blacks, as a group, default more than whites, which several studies have found, and yet that does not imply that there's no discrimination going on in that market.

So there's a fundamental flaw in this default logic and I'm a firm believer that any kind of statistical analysis of default behavior, minority versus majority, is not going to be able to reveal anything clear-cut about the existence or absence of discrimination in this market.

But even if you don't buy that there's a logical flaw here, the most important thing at the meeting is forgetting that the Canner study is widely misquoted.

Glenn and his colleagues are very scholarly, very careful analysts. And they, in their paper, right up front said, "The only thing that this paper is even trying to test for is the existence of discrimination in lending that might be motivated by racial prejudice, by animus. We say, the authors of this study, recognize that our approach cannot say anything about discrimination based on profit motivations"; what has been called in the industry statistical discrimination, a kind of discrimination where lenders might be encouraged to discriminate against minorities if they believe that they really are going to be less credit-worthy than whites; maybe for the reason that I just cited: they're likely to have more unstable incomes.

So right up-front, the Canner team admits that it's a very limited test. It's a test of discrimination based on prejudice, not profit motives.

So even when they come to their conclusion that we didn't find any discrimination based on prejudice, that is not a conclusion that says there's no discrimination out there, friends. But yet trade after trade magazine will report, "Fed. Studies finds no discrimination." That is a mis-quote.

So to conclude, I think the bulk of the

evidence is much more clear than Governor Lindsey does today. I think that there is clear evidence that there is discrimination out there at various stages.

I wold agree with the Governor that we don't have the ability yet to pinpoint exactly regions where it's more intense, steps in the mortgage process where it's more intense. But I think we do know that we have a reasonably severe problem out there. Thank you.

CHAIRPERSON BERRY: Thank you, and we would ask the staff to get us a copy of the confidential and secret report from the meeting of scholars that took place the other day.

(Laughter)

CHAIRPERSON BERRY: I'm only kidding. If it's a private meeting, I guess we can't get the report. But we thank you very much. And does any Commissioner have any question for any --

DR. GALSTER: As a point of information, Madame Chairman, on that last point, HUD is going to put out in their housing newsletter a summary transcript of that meeting.

CHAIRPERSON BERRY: Oh good.

DR. GALSTER: So it should be available to the public. I did not mean that this was a hush-hush meeting.

CHAIRPERSON BERRY: Oh, all right. That will be very interesting and we'll look for it. Could you see to it that we get it, those of us who want to read it? Yes?

VICE CHAIRPERSON REYNOSO: I just have a question of Mr. Mondor pertaining to the industry targets, which some folk would call goals. Is there -- do you sense within the industry any move to reassess the wisdom of having targets? I know politically speaking in Congress and in Sacramento where I come from, there's a great deal of soul-searching -- that's not quite right.

There's a great deal of direct attack on --

(Laughter)

VICE CHAIRPERSON REYNOSO: -- the notion of goals with the Governor of California having announced that he's going to, by Executive Order, undo all goals in terms of affirmative action and targets and so on. So we seem to have a new political environment.

I just wanted to put that the industry has been insulated from that because it is a private group.

MR. MONDOR: Well, no. The industry is not insulated from that. The political winds have clearly shifted, and there is a component of mortgage banking industry that I would say their belief is mistakenly, but is so far as to think the entire issue of fair lending was repealed on November the eighth of '94.

If you speak to some of them about it, their first response is well, can't we forget about this area now? The Republicans took over Congress.

My usual response is yes, but the people in charge of the White House, the Department of Justice and the Department of HUD are still the same.

And this has by no means gone away. And I should add that that's just a component of the industry. There are others in the industry that see it the way I do. That election didn't change so much.

There are a great deal of members in the industry and Will Ratliff, the president of Collateral Mortgage in Birmingham, is a great example. Peter mentioned the newest agreement is with Collateral Mortgage who believe that the -- it's just morally right, and we don't care who's in charge of the Congress.

There's also another factor going on. There was a lot of apprehension about the targets before -- you know, this was signed in September of '94, the master agreement. It was not known what would happen in the elections.

But it was known that the mortgage banking industry was well into a down-turn in business. And many members who are in good faith about the issue generally still questioned how can we commit to increase any kind of origination when we know full well our origination across the border are going down over the next year or two years.

And they did know that and it's been true so far. Nevertheless, that -- and there is a -- you know, it's difficult to tease apart which of those two factors is at work: the idea that the issue has just gone away now, or the idea that it's difficult to commit to future origination when the industry is going downward.

But both are at work, and to what extent I really don't know. There still are plenty of lenders -- and in fact, Peter understated by half the number of completed agreements they have. I think he mentioned only two. There are actually four fully done-deals with individual lenders.

That doesn't sound like a lot, but there are dozens who have asked to start talks and are literally waiting in holding patterns for HUD's understaffed department to get to them. And that's the only thing holding them up.

CHAIRPERSON BERRY: Any other questions from any other Commissioner? Commissioner Horner?

COMMISSIONER HORNER: Mr. Galster, I found your presentation extremely helpful, kind of understanding but just structurally. But there was the terminology that you used that is new to me.

You, I think, used the term discrimination on the basis of profits or something like that. Do you mean by that an African-American comes into a bank and some agent says to himself, "This is an African-American. She'll probably default. Therefore, I'll be especially tough on this loan", or do you mean a review of the legitimate information, whatever that is, suggests a real probability of default?

DR. GALSTER: It is -- in a situation where a discriminator, under this motivation --

COMMISSIONER HORNER: Yes.

DR. GALSTER: -- would associate something, per se, with race --

COMMISSIONER HORNER: Yes.

DR. GALSTER: -- that would affect future loan performance. And that could be something that has to do with a simple stereotype of blacks never repay loans.

COMMISSIONER HORNER: Oh, okay.

DR. GALSTER: Or it could be something to do with a more empirically based well, on average, I've found in my experience that black borrowers have had, let's say, a more unstable income in the future, and therefore, I will subject that person to greater scrutiny.

COMMISSIONER HORNER: Okay.

DR. GALSTER: But the motivation in either case which distinguishes the two theories, the statistical discrimination, which I've just been explaining, is motivated not because I just don't like blacks out of some --

COMMISSIONER HORNER: Yes, I see.

DR. GALSTER: -- basic prejudice against people of a different race or ethnic identity, but that I'm really trying to do the profit maximizing and bidding of my organization in a cold, calculating, profit-maximizing way.

COMMISSIONER HORNER: And I think you're suggesting that there are times when unmodified focus on profit is morally acceptable and times when it's not. In other words --

DR. GALSTER: Not when it comes to discrimination, I wasn't saying that.

COMMISSIONER HORNER: No, that's what I

mean.

DR. GALSTER: Okay.

COMMISSIONER HORNER: In other words, you're saying it's okay, for instance -- I'm trying to think of an example. It would be okay for someone to say, "I'm going to start selling avocados in my grocery store, in my upscale grocery store, because although they're expensive, people will pay a lot of money for them and buy them." And so they put avocados into that grocery store.

But by the same token, I think differently. I think you're saying it's not okay to say I'm not going to put a branch office in an area where people don't have much money because I won't make much money.

DR. GALSTER: Well, I'm saying --

COMMISSIONER HORNER: Would you consider that prejudice?

DR. GALSTER: Well, let's distinguish sound business considerations from arbitrary ones.

COMMISSIONER HORNER: Yes.

DR. GALSTER: But then within sound

business consideration --

COMMISSIONER HORNER: Yes, that's what I'm getting at.

DR. GALSTER: -- there are those who are -- there are certain sound business considerations which are also projective classes by law.

COMMISSIONER HORNER: Yes.

DR. GALSTER: And so all I'm suggesting in the statistical discrimination theory, which is a theory of why discrimination might happen, is that there could be from the perspective of loan officers, sound business rationale for denying a loan to a minority, that's particularly associated with being a minority status.

In other words, looking at LTV and everything else, there might be something else in particular associated with minority status that they think makes this prospective borrower less credit-worthy.

Now that might be a sound business decision from this person's perspective. But because the decision is being made on the basis of race, that is an illegal act.

COMMISSIONER HORNER: But the thing occurs in the lender's mind. It's not an objectifiable -- if it's based on race, it's not objectifiable because there are African-Americans who have good middle incomes, who have high incomes and who have low incomes, and ditto assets.

DR. GALSTER: It could be based on, shall we say, statistical averages of the performance of minorities in general, or in the particular history experience of this lending officer.

COMMISSIONER HORNER: And lenders are accustomed to using statistical averages in other, in non-racial terms?

DR. GALSTER: Sure, because on average, high LTV people might --

COMMISSIONER HORNER: What's "LTV"?

DR. GALSTER: Sorry, loan to value --

COMMISSIONER HORNER: Yes.

DR. GALSTER: People who borrow it at very low down payments, on average, might default more. And that was the basis of some of the discussion we heard this morning.

So sure, every underwriting criterion is based on statistical evidence.

COMMISSIONER HORNER: So the solution is to force individually-tailored decision making, a greater level of individual decision making to overcome the race-based stereotypical decision making.

DR. GALSTER: I'm not sure what you mean by "individual".

COMMISSIONER HORNER: I mean instead of saying this person is an African-American or lives in X zip code, and therefore if I want to maximize profits, I'll avoid that person, the solution is to -- for the business entity to force itself to ignore those aggregated judgements and make highly individualized judgements about the loan seeker.

DR. GALSTER: Well, I'm not sure that that offers much practically in the sense that they're already making very individualized decisions I would think in as much as all sorts of objective data for that individual are being analyzed.

COMMISSIONER HORNER: Okay. And so the

objective data is, as suggests, that profit would not be maximized in a given loan.

DR. GALSTER: No, I'm sorry.

COMMISSIONER HORNER: I don't want to take any more on time on this, so maybe I could talk to you afterward.

COMMISSIONER GEORGE: Well, does race count? Can I just ask if race is counting as an objective datum? Is that in that conversation?

DR. GALSTER: It potentially could in the minds of a discriminator. That is to say --

COMMISSIONER HORNER: But not logically.

DR. GALSTER: Well, no I'm saying it could be logical. It could be quite logical for some potential loan officer to say "I observe an objective datum about your race and ethnicity."

COMMISSIONER HORNER: It's an efficient decision making practice which is sometimes wrong.

DR. GALSTER: Well, it's always wrong legally.

COMMISSIONER HORNER: It's always wrong legally, but from this point of view, it's only sometimes wrong.

DR. GALSTER: It may be and it may not be.

COMMISSIONER HORNER: But we've heard a lot of testimony that it's very frequently wrong. And my question is if people want to make money, why will they not overcome this error, if it's an error of judgement, about the capability of low income people to sustain mortgage payments?

DR. GALSTER: Well, my fundamental response to that would be that a variety of studies that have looked at default behavior and other aspects of loan performance, that have tried very hard to analyze all the factors that go into why different loans perform differently, have concluded that there seems to be a racial difference in performance, even after everything else has been made equal.

And so I would like to raise the provocative, if discouraging, possibility that there really might be a logical, business rationale for discriminating against minority borrowers.

I didn't say that's justified on moral grounds. I said it could be that it's justified on business grounds. And if that is true actuarially, that is a tremendous challenge for enforcement agencies because they're bucking not irrational behavior, but rationale behavior.

COMMISSIONER HORNER: Rational behavior, which other things being equal, would be admirable; that is, if it were not --

DR. GALSTER: Well, it's profit improving.

CHAIRPERSON BERRY: I'll let you in just a second. Let me just try this. The Commission did a study in Baltimore once looking at social and economic problems in the African-American community, in particular entrepreneurship. And we had before us some black construction contractors who were trying to get contracts or bid projects or something.

And they complained about bonding, not being able to get bonding, construction bonding. And we had before us the CEO of the largest bonding company in the United States. And it was a hearing so they were under oath, not that it made any difference.

But in any case, the man who was the

president of this company, and it's in one of our reports, in the testimony, he was asked whether blacks had to pay more for bonding, all other things being equal to get a construction bond.

They must have a performance bond in order to get a contract apparently. It's like the mortgage insurance business. And he said that yes, but that most black contractors were given only high performance bonds, which cost more than the regular bonds. You have to pay more for them.

And then we had some testimony that black construction contractors were more likely to complete their projects on time and under budget in this particular environment than others or that they were not less likely. And therefore, their track records seemed to be about the same.

So then we asked him, well why do you charge them more money for a high performance bond? And he thought and thought and thought. And finally he just said, "Well, I don't know. We've just always done that." And that he'd have to go away and think about that.

It just never -- it was just routinely, if you saw a black contractor come in, you immediately got the papers out for the high performance bond. And then they had to pay for it, and then you looked and later on that well, they performed. So why are we still charging that?

And he said he just never thought about it. But is that a similar thing or not?

DR. GALSTER: Well, it certainly relates to the same issue. I think that would be an illustration of what Commissioner Horner would talk about as an irrational business decision.

And when that word got out, there should be firms that would come in and compete away this irrational decision.

But if in fact, as I was suggesting, it may not be an irrational decision for an industry to behave this way, then it's tough because the demands of fair lending directly would contradict the demands of profit maximizing lending. And then that's a tough policy issue.

COMMISSIONER HORNER: You've identified a very big question.

CHAIRPERSON BERRY: A big problem, yes. Okay, thank you very much, panel. We really appreciate this, very informative, and I particularly liked the video and the desktop analysis. It was great. A computer, I guess, it was not the -- whatever it was.

Now could the last panel please come forward? Okay, thank you very much. You've been very patiently waiting here.

VICE CHAIRPERSON REYNOSO: This is the hungry panel.

CHAIRPERSON BERRY: This is the hungry panel.

(Laughter)

CHAIRPERSON BERRY: That's right, the hungry Commissioners. We want to thank all three of you for being patient and waiting and for appearing before us today to inform us about this subject.

The first panelist is Marina Wang, who is President and Chief Executive Officer of First Public Savings Bank in Los Angeles. She came from Los

Angeles to be with us today, in Chinatown, Los Angeles' Chinatown.

She is a member of the Executive and Senior Loan Committees and oversees finance, accounting and human resources and develops businesses.

Thank you very much and could you please proceed?

MS. WANG: I would like believe that those who work harder and are the people of success. However, unfortunately, that is not always true despite all the attempts of last year's Commission on Civil Rights report concluded that enforcement of the 1988 Fair Housing Act were improved, but still needed strengthened, implemented fully the intent of the law as indicated by the HUD Director, Mr. Kaplan, and also John Taylor and we'll also hear just the panel comment about it, some of the unfair lending situations.

Thank you very much for inviting me here today. I'm honored to speak before Chairperson Berry and the members of the Commission and the distinguished panelists here with me.

My experience has been -- with the West Coast Savings and Loan industry. I'm speaking with that perspective. I have been in the business for more than some 20 years with auditors to do savings and loan audits; and then later on with East West Federal was first chartered.

And there's no savings and loan, Chinese savings and loan, in there to fulfill needs and that's where I have an opportunity of being associated with.

I would say during the 1960's and even up to the 1980's, by and large the Asian-American people in California was, by and large, a school color (phonetic) and very, very difficult for them to obtaining home mortgage loans.

There are times when people have to pool their resources from families together and then using cash to buy a house. It's very, very difficult. And for that particular reason, there -- these Chinese-American savings and loans or banks have formed to fulfill those needs and to put everybody's efforts because this is a community. We're all there, we pledge out our funds, and therefore, whoever needs the help, we give them the loan.

We understand them. If they don't -- I have to say with the ten years experience first with East West, we don't even use credit reports because when you run the credit report, it's blank. They never use credit cards. There is no credit.

When you go to any mainstream shops, you couldn't get a loan because there's no credit. But we understand them. They are all diligent. We never have people racial.

And the first loan people was a loan -- I have to say it's no prejudice on who was giving caucasian lawyer. He learned how to use the system to the last minute and it's an experience we have.

So contrary to a lot of --, they think Asian as all wealthy. That's not true. There are two parts. New immigration back in 1960's and all, they're coming here as the hard workers. They're really working very hard and trying to fulfill their home dream, having a house. So they saved maybe a life savings and put a huge down payment, trying to make the payment as little as possible so they were able to keep the house.

They come recently, particularly the last I would say eight years, the Pacific Rim, having really created a lot of wealthy people overseas. They're coming here because they want their kids' education here. So they buy investment properties. So the wife and the kids will stay here. The income will keep for them and they rent those apartments, but their business in overseas.

There are two types of things. So sometimes you will hear all the Asian is sort of buying huge properties and making large down payments, but that's not all true as I indicated.

Again, as part of the testify wanted me say is what kind of a profile of a typical mortgage seekers coming to our community to looking for loans.

I would say basically they are looking for single-family housing. The average income depends because there are times, I think most we would see application was with maybe two applications. But in Asian community, you will see applications sometimes four of them or six of them, which is father, mother, sister, brother. So a loan may be group income $40,000 to $60,000 to qualify to buying house.

But nevertheless, these are the things you have to consider. It's not just a husband and wife to buying house. They are a family buying house.

And the profile of the typical mortgage lender in the Asian community are niche based the community. They are like Korean. They have Korean bankers. Hispanic used to have Hispanic banks to serve their community. And the Japanese banks, they have savings and loans in their community, so as the Chinese.

Excuse me, fine now. So they are more as a niche group. And as a mortgage lender in the primary Asian-American community, I have some concerns. In the past, it was always the belief that the community who helped themselves is what got them into trying to helping them. And this is why we are coming out to breech the needs for the community.

But through all these efforts right now, we have been buy the CR regulator examiners is called the reverse discrimination. They're saying how come the overall population here in your community being caucasian, maybe 54 percent, Asian is 20 percent, and Hispanic and all the other groups is maybe another 40 percent.

But your total loan ratios to the Asian is higher than your ratio to the caucasians. And in that concerned a lot of us. The Asian community banker is very frustrated because we feel we're helping this community because they couldn't get mainstream assistance.

That's how we formed. We're helping them if they don't have the credit report, but we know they're diligent. And if they doing -- large down payment, they're willing to put $30, $40 down payment and to getting their house, and maybe three family -- not really three family, but just share the house, why it's wrong for this -- finance institute being criticizing not providing loans to the other people in the community.

I think that is something we wanted to make sure the community understand, the regulator understand. These are not because we don't help. I have examiner even in our shop and doing the examination. I just chat with him. I said -- he said, "If there isn't --, there is a First Industry Bank and also a First Public Bank." If he want to go to deposit money, he'll go to --. He'll definitely feel that is comfortable because he speak the language, he will be able to do it.

But it contradicts the immigrants, the first generation peoples, they don't quite understand the language or the documents or the rules. They will comfortable to go to niche shop where they feel if they have more questions, nobody will fee embarrassed explaining things to them.

That's okay. If you are working, moonlighting, in a restaurant or doing two jobs, it's able to be considered in how we do things for you.

So these are something I wanted to share with the Commissioner to comment about what we feel in our community is very, very important to help the economy in the West Coast side. On top of that, I do applause for Fannie Mae and Freddie Mac for giving the -- we call the five percent goal programs, which is you have to only have three percent of your payments, and the two percent can come from your family or relatives to share as a down payment.

But because of the -- rate, we were talking about risk. So we only honor these type of program to low income housing, because a person is wealth enough wants to buy a large house for half a million dollars, I'm not going to give you five percent down payment. You've got to come with 30 percent.

(Laughter)

MS. WANG: You don't need it to be subsidized. For low income housing, and we do workshop. We even have Hispanic and, of course, go to different community within our delineated areas to share with them, to educated them using different language to teach them, ask them.

The only thing is, no matter what we have been -- what efforts, I know we have comment a lot of saying, you know, efforts is not the only thing concerned. You have to have performance. But we do put lot of efforts, but still not too many different ethnic group people coming here to asking for loans.

The other way we have used is we have formed some consortium. We have family saving and broadway savings. They're in the black community. They're very well aware of their own community, so they're generating loans. We buy their loans from them so the capital will go in there again to be shared with their community.

Rather than here, I will go there personally and -- and pull them to come to my shop to do the loans. And sometimes they were even -- what's going on here?

But nevertheless, in conclusion, I wanted to tell -- wanted to say is we are there. We are put all efforts to fair lending in our regulator's examination report. We are complying and without any -- last year, we only had two denied loans. One is Chinese, one is Hispanic, purely based on derogatorive credit report.

But nevertheless, when you first look at the statistic, if I only have four person Hispanic apply, I have one denied loans, you will see 25 percent deny ratio.

If I have ten percent Asian coming to apply, I deny one loan, they say ah, you're deny ratio is ten percent, so that means you're not fair.

But I wanted to say as everything should be on an equal base, they are judging by their efforts, they're judging by their credit worth. It's not saying artificially fair. That conclude my presentation.

CHAIRPERSON BERRY: Thank you very much, Ms. Wang. That was very informative. We will next go to Ms. Judy Browne. Judy Browne is the -- is one of the Assistant Counsel at the NAACP Legal Defense and Educational Fund, and she's the Co-chair of the Fair Housing Task Force with the leadership counsel on civil rights.

She's a litigator and she also helps to monitor for those organizations the enforcement at HUD and at the Department of Justice. Welcome, Ms. Browne.

MS. BROWNE: Thank you. Thank you for this opportunity to address you on the pervasive problem of mortgage lending discrimination. I address you not only as an attorney who is currently involved in a mortgage lending discrimination case, but also as a former banker.

There are a few issues I would like to address this afternoon that fall into two broad categories: first, how discrimination occurs in mortgage lending, who discriminates and why? They might be elementary questions, but I think that it is something that we all need to understand.

Second, the enforcement of anti-discrimination laws in the area of fair lending. And as a wrap-up, I'll give some recommendations about how this problem may be addressed.

Discrimination in mortgage lending manifests itself in man;y ways and in different steps in the process. Some examples: it can happen as early on as the applicant going into the office and attempting to get an application for a specific program. And the person is first of all provided no information. Secondly, he could be told about a different program or a conventional loan; or third, told they are not qualified. That's what we often refer to as "pre-screening".

Second, a credit check could be run and the person doesn't get an application as a result of the credit.

One of the problems with credit checks is that often we find that applicants are rejected right away, and African-Americans, Latinos, and other people in protected classes might have problems on their credit reports, but lenders do not give them advice on how to clear up these problems.

I -- this experience from looking of thousands of loans files in my mortgage lending case and seeing letters that explain credit problems, explanations that are unbelievable, but they are explanations that got whites through the process.

The same explanations or similar explanations did not work for African-Americans.

The third thing that could happen is once the applicant -- one the person gets an application, an appraisal happens. At the appraisal step, there are a lot of problems. The lender might find that the collateral is not sufficient.

This may occur because an appraiser under-values a home based upon his own judgements about that particular neighborhood, or coverts could be used such as pride of ownership, high crime area or well-maintained neighborhood, or desirable neighborhood or exclusive area.

Another thing that could happen is that the lender just does not accept the appraised value. The lender says, "I know that area. I don't think the value is -- the house is worth that value" and decides that the loan has to be restructured.

In many cases, the lenders do not even try to restructure a loan, but just say the collateral is not sufficient and we won't make the loan.

The other example of how it can happen is that a lender may not stretch flexible underwriting guidelines as far for members of protected classes as they do for white applicants. For example, the debt to income ratios, the credit histories, employment histories, and what they call compensating factors, which are the things -- if you look at the whole picture of an individual and say, well this person has worked as a Colonel in the United States Army and this person has okay credit. But we think that there are some other things going on here.

The person is nice. I've seen applications where there have actually been notes from underwriters saying, "These are good folks, please approve this loan."

Those are things that should not enter into the process. Lending is subjective. If there is one thing that I have learned as a banker, it is that if you want to make a loan, you can. Lending often incorporates into it value judgements, which leaves room for discrimination.

For example, as the appraiser, the appraiser going out and saying that this neighborhood, a house valued at $200,000 in this black neighborhood, and is worth $400,000 in this white neighborhood. A mobile home in one area might reduce the value, and in another area it might not reduce the value of a properly.

An underwriter might believe that two

people can earn the same amount of money, but two years as an underpaid attorney is better than 12 years as a bus driver. Because no two applicants are the same, rigid standards can't be used.

You understood that was a reference to me, underpaid attorney?

(Laughter)

MS. BROWNE: Because no two applicants are the same, rigid standards can't be used. But we must understand that unfortunately, the end result is often that judgements are made that adversely affect applicants who are members of protected classes.

Who engages in it? There are so many players in the industry that engage in discrimination. It could be the appraisers. It could be the mortgage companies. It could be the mortgage brokers. It could be the secondary market.

One of the things that I have learned from this case that I am involved in is that there is such a complex structure going on with mortgage lending discrimination.

In my particular case, it involves a

correspondent of a mortgage lender. And what happened in this particular case is that an African-American couple went into an office at a local brokerage company and asked for an application, filled out the application and that company sent -- that brokerage company sent that loan onto a bank out of state, in another state, that has what they call a correspondent lending business.

This bank is the largest seller of loans to Fannie Mae in the State of Georgia. And the bank accepts loans, buys loans from throughout the United States. So one of the things that happens with this structure is that some banks get through the regulatory holes. They fall through the cracks.

This bank is in Gainsville, Georgia, which does not fit into an MSA. Therefore, they don't have to report HMDA data.

They also -- they have escaped so much of the regulatory controls. They also do business. What they do is they buy loans, for instance, in Nashville, which might be in an MSA. But the mortgage company in Nashville has to report HMDA, but then they don't.

Then they also have this, what they call satellite offices, which are offices opened in their own name in another state, in perhaps a city that's in an MSA, and they accept applications there. The applications are forwarded to the bank in Gainsville, Georgia, no HMDA data. We don't have to report it. It's a satellite office. It's not a branch.

The other thing they do is that they have loan production officers. This particular bank has a loan production office in Atlanta, which is clearly in an MSA.

They originate applications in that office. That office sends the applications right over to the bank, not in an MSA. We're in Gainsville, Georgia. We don't have to report a thing.

And one of the things that we have found is that even though, you know, HMDA might be a good starting point to see if there is discrimination or not, one of the things that happens is when the regulatory agencies go in; for example in our case, the OCC, when they go in to look at a bank and do compliance with Fair Lending laws, they rely on HMDA a lot.

And so if you don't report HMDA, then they have to go through a full compliance of looking at loan files. And looking at loan files, and I have to say this because I had a meeting at the OCC yesterday, and got so frustrated at what they weren't doing for these banks that are falling through the cracks, that it is impossible to know what these banks are doing.

This particular bank, you do a compliance review, you have no HMDA data, you have to look at the loan file.

If you look at the loan files, it depends on how many compliance review people we have available to look at files. Maybe we'll look at ten. Maybe we'll look at 20. Do we have the resources to do the compliance review?

And if you can't do a full compliance review, then you can't really tell the bank what is going on at that particular lender.

Why does it happen? It happens because banks are interested in collateral and profit. There are value judgements about collateral.

If I had to foreclose on a loan, would I want to own that home in Southeast in that particular neighborhood? Is it easier to sell a home in a white neighborhood than in a black neighborhood? Is a $200,000 in the black neighborhood really worth that amount of money?

Is there going to be another black buyer to come along with $200,000 to buy the house?

Discrimination is bad business, and adversely affects the collective economic wealth of all Americans.

In the area of enforcement, mortgage lending discrimination is covert. It can happen in so many ways, and so many times, despite race-neutral written policies. Each player points the finger at the other player. For example in my particular case, the mortgage lending company in Alabama is saying, "Oh, they did the discrimination." The bank is saying, "Oh no, they did the discrimination." But in fact, the bank in Georgia was the decision maker.

But the mortgage company in Alabama didn't say, "Let's appeal this loan" like they do to white loans. They didn't say "Let's offer them a different program. Let's offer them different terms. Maybe we can make this particular loan." They didn't go the extra step that they would have for white Americans.

One of the problems in doing these cases is that the industry is very secretive and is protective. They are protected by others in the industry. For example, it's very difficult to get experts in these cases because you can't get someone that works for a bank, used to work for a bank, or works for a regulator agency or used to work for a regulator agency, because they all know each other.

No one wants to be the snitch. You can't get law firms to take these cases. Every law firm has a bank as a client, and no law firm wants to go up against a bank because it's bad business for them.

They're protected by the regulatory agencies. I had a horrible meeting at the OCC yesterday, horrible. And the OCC is supposed to be the one that's out in front. They're not. I mean, it's all relative, I guess, but they are not trying to enforce Fair Lending.

When I sit down with a Fair Lending Specialist and he tells me, "Well, I'm trying to get general information about what goes on in compliance reviews", not what went on in a particular compliance review because that's actually protected.

There's a clause in the law that makes it confidential information, so I can't get it. So he then tells me I want general information and he tells me that he is not sympathetic to my questions about policies, whether or not the OCC collects the policies of a bank and looks at that in determining whether a bank has complied with Fair Lending.

And he says he's not sympathetic because that's not relevant in a discrimination case. And I said to him -- and then he tells me, "And also in that particular compliance review, your client's name wasn't mentioned."

That has nothing to do with anything. And for him to tell me what is relevant in proving my case is absolutely ludicrous.

CHAIRPERSON BERRY: Okay Judy, move on.

(Laughter)

MS. BROWNE: Enforcement by the governemnt is important. Of course, we need DOJ to do cases. We need HUD to do the investigation. But we need bank regulators to take this issue seriously. We need to end the chummy relationships with lenders and protect Americans from housing discrimination.

Agencies need fair lending specialists that believe in fair lending and understand the complexities of discrimination cases.

We also need the industry to crack down -- the industry itself to crack down on discrimination. We need Fannie Mae and Freddie Mac to take the lead.

They are in a unique position to control this market and to require that their sellers are not engaging in discrimination. They can do much more in the way of training their staff and the sellers of -- and their sellers about fair lending issues.

They should insist on fair lending practices and closely monitor their seller's performances.

Litigation involving mortgage lending discrimination will continue to occur. However, it's a slow and expensive process. If we relied upon it, we would never see an end to mortgage lending discrimination, and we would never see Americans who are qualified for mortgage loans to realize their dreams of owning a home.

Thus, we need the assistance of all players in this market, and the United States Government, to make this American dream a reality. Thank you.

CHAIRPERSON BERRY: Thank you, Ms. Brown. Our last presenter is Manuel MIrabal, who is the President and CEO of the National Puerto Rican Coalition. Thank you very much, and please proceed.

COMMISSIONER HORNER: Madame Chair, I wanted to apologize to Mr. Mirabal. I will get a full briefing on what you have to say and --

MR. MIRABAL: In the interest of time and because I know that many of you may have had to leave, I wanted to start off my comments with the recommendations I had at the end. And if you could stay for those, I would appreciate it.

COMMISSIONER HORNER: Okay.

MR. MIRABAL: I am the President and CEO of the largest organization serving a coalition of 350 Puerto Rican organizations in the United States and in Puerto Rico. And we have just recently been funded by HUD to undertake a major fair housing initiative in Puerto Rican communities.

And I waned to begin by thanking the Commission for allowing me to testify today, and begin by giving you my recommendations for things that the Commission should be looking to do to address our particular problems, which I will then go into a little more detail.

One, I think the Commission needs to support special efforts to study the problems faced by the Puerto Rican and Hispanic community in fair housing, fair lending discriminatory issues. It's very clear that more needs to be done in this area because there are unique problems in our community.

Two, the Commission needs to support a higher level of discriminatory educational initiatives in our community. The current ones are just not reaching us and are not making the kind of difference that they should be making.

Three, the Commission needs to support institutionalizing educational initiatives by the mortgage and lending organizations, many of whom have testified here today. And that in their initiatives, they should include culturally relevant and specific types of initiatives that again reach our community because of its special and unique situation.

And lastly, I would like to recommend that one of the most important things that the Commission could do is to be clear and firm in its resolve to help organizations like ours and others, like the NAACP, who are working in this area of fair housing.

And I think the Commission needs to support and promote an understanding that we are very far from being able to say that adequate remedies and solutions have been developed to deal with the issue of fair housing and fair lending and the discrimination that goes on in our communities.

And those were my recommendations, and I appreciate your staying --

COMMISSIONER HORNER: Thank you, and I

will get --

MR. MIRABAL: -- for that part of it. And you will receive the rest of my testimony later. And the book that you're walking away with is a major and extensive study of the social and demographics of the Puerto Rican community. It's the first and most significant study released of its nature in the last 20 years.

It's based on census data and tracks income, housing and many other issues, education, that affect our community. And we'd be glad to get you additional information if you need it.

I happen to have worked in the area of housing for much of my life. I was a Commissioner for Housing Development in New York City for about ten years. And I was fortunate enough to be able to work with many of the lending programs while I was the Commissioner for Development. I did about $6 billion worth of housing work in New York.

One of the major new initiatives which I was responsible for undertaking was the institution of New York's single family, low-income program, which to date, while I was there, had constructed 5,000 units. And it's upwards now of 35,000 units.

And also as someone who is Puerto Rican and Hispanic, I was able to deal specifically with some of the issues of our community. The report that I have handed to the members of the Commission deals specifically on page 81 with some of the housing conditions as an example of where the Puerto Rican community is in terms of home ownership right now.

It tracks 25 major cities, our population there, its income, its housing conditions, its employment conditions. It says some significant things, which I'd like to make note to the Commission today. But very specifically, in terms of housing ownership, it shows that in New York, where the largest Puerto Rican community continues to reside, 890,000 Puerto Ricans as compared to the other ethnic communities and the white communities, Puerto Ricans -- only 14 percent of Puerto Ricans own their homes as compared to close to 30 percent for African-Americans and 64 percent for whites.

And in an area where our largest community exists, clearly we are being very underserved by the ability of lending institutions to get our families who are capable of affording these loans into that system of owning their own home and their dream.

The other things that report indicates, which is completely new and documented data, is that the Puerto Rican community, on the whole, managed to increase its per capita income during the last ten years, the period studied by the census, by almost 30 percent.

However, because the Puerto Rican community had come from an average per capita income of so low, the increase, although remarkable, when compared to the overall national standard of 7.3 percent increase in per capita income, still leaves us in a situation where most of our community is slightly above the poverty level. And a good 70 percent of it is, at one point or another, below or at the poverty level.

The study also indicates that certain sectors of our community have made remarkable progress. Women in our community have had an increase in their income of almost 20 percent, of working women who are Puerto Rican.

It puts them at almost the same average per capita income as the working white and average women. Our Puerto Rican women are now earning $13,900 a year, as compared to the national average of $14,300, and are the highest earners per group of all the Hispanic community.

Yet, we find in housing and lending that we are struggling with severe problems. Combined with the fact that many of our families are two-earner families, you find that many of our families can afford a mortgage. Many of our families do look forward to owning their own home.

And contrary to popular belief and myth, the report shows that many of our families have been here for a very long time, and are probably not going to go back to Puerto Rican as had been the myth in the 70's. We have a high rate of mobility.

Almost 50 percent of our community, in fact, has moved in the period of five years during the study. But it's moved within the United States. Many of them have moved to southern states and have, in fact, had a little bit better ability to purchase homes there, but have found themselves having to rent because of mortgage discrimination.

And it is uniquely relevant at this time for us that you are holding this hearing because we are just beginning our contract with the Department of Housing and Urban Development to develop a multimedia educational campaign nationally within our Puerto Rican communities to deal with this issue.

And I would just like to briefly read a shortened version of our statement --

CHAIRPERSON BERRY: Sure, go right ahead.

MR. MIRABAL: -- that gets to that point. As part of our overall goal to improve housing and neighborhood revitalization opportunities for Puerto Ricans and other Latinos, NPRC is using the grant provided by HUD to address fair housing and fair lending concerns within its constituency base.

NPRC will develop, implement and coordinate education and outreach activities designed to inform Puerto Ricans in the 50 states of their rights and responsibilities under the provisions of the Fair Housing Laws.

Although housing and lending discrimination run rampant in Puerto Rican neighborhoods, individuals have historically been reluctant to come forward and complain due to fear, mistrust or inability to communicate in English.

There is a pressing need for Spanish language fair housing, fair lending initiatives aimed at low income Latinos and provided by Latino community-based organizations which are familiar and respected problem-solvers in our communities.

As a foremost advocate for Puerto Rican communities on the national level, NPRC will effectively implement bilingual and culturally relevant activities to increase awareness about fair housing, fair lending issues affecting Puerto Ricans.

NPRC will also produce informative and culturally relevant bilingual instructional materials on fair housing rights, responsibilities, bilingual specialized educational materials for specific sub-groups, such as the elderly, families with children, handicapped and HIV-infected individuals.

Bilingual public service announcements in Puerto Rican on fair housing rights and responsibilities and educational seminars and working sessions in four regional Puerto Rican fair housing seminars, which we will undertake this year. This will heighten the awareness of individuals of their rights and responsibilities and will be coupled with a capacity-building effort at the community based level to set institutional fair housing, fair lending agendas and prepare the CBO, community based network, for ongoing roles as Puerto Rican enforcement agencies.

Four regional fair housing committees and one fair housing committee on a national level are being established as part of this effort to ensure the awareness of fair housing and fair lending issues.

The councils which will represent the northern, southern, midwestern and western United States, and will hold regional conferences in June of this year. Two have already been established and the second one is in Chicago, and the other one is in Los

Angeles in June, I believe, at the end of Los Angeles -- at the end of June, the 28th.

And these will culminate in October with a national Puerto Rican fair housing, fair lending conference in New York City.

I think through these initiatives, we begin to address some of the problems which have historically affected the ability of the Puerto Rican and Latino community to get a piece of the American dream, which is owning their home. And we are working to provide some culturally sensitive type of information which begins to allow our families to understand that they have rights.

Lastly, I want to say that one of the more innovative types of approaches that we're undertaking in this effort, because it is a media-based effort, is that we have a listing -- the family in Chicago which recently won its major lawsuit against a family which was harassing them, the Ramos family in Chicago who was successful in reaching a settlement where the family next door was ordered to sell their home to pay for the damages that the court awarded the Ramos family.

And the Ramos family is classic. They are a black Puerto Rican-headed household. Mr. Isadore Ramos happens to have been a police office in Chicago for many, many years, contributor to his community, law-abiding citizen, taxpaying individual. And yet found that after going through the problem of getting a mortgage and owning his home, he continued to have problems, which was systemic of what we deal with.

And we are using the Ramos family as a national focal point to show our communities that you can exercise your rights to file a complaint and that there is redress, and you can receive some satisfactory culmination of your complaint, which is one of the things that is a systemic problem in our community.

Many of our Puerto Rican citizens of the United States and other Hispanic citizens of the United States feel that they can't fight City Hall, and that they can't expect justice.

And our effort is all about that. And as I said at the beginning, my recommendations to the

Commission, I think, are to the point. The Commission needs, as the entity that it is and as the entity that has been fighting for civil rights for so many years, not to ignore the fact that the Puerto Rican and the Hispanic community needs some special attention, and that its problems are much more severe.

And support from this body is very important to getting people to understand that they have rights and that they can succeed.

Thank you very much.

CHAIRPERSON BERRY: Doe any Commissioner have any question for any of the panelists? Vice Chair?

VICE CHAIRPERSON REYNOSO: Ms. Browne, I was struck by the language that you used in describing the problems that you've run into. You used the term "pervasive discrimination". And Mr. Mirabal, in a different sort of language, was saying the same thing in terms of the Puerto Rican community.

But you were here when all the previous panels --

MS. BROWNE: I was here only for the one

prior to mine.

VICE CHAIRPERSON REYNOSO: The basic message we got from the prior panels is that there probably is some discrimination. It's very hard to quantify. One of the studies indicates that the upper limit of discrimination might be six percent of, say, African-Americans being discriminated against. But it's very difficult to quantify.

And while it wasn't quite said in this way, I think that the implication was that there were no figures that indicate there is not discrimination, but I think the implication was that maybe much of the showing of discrimination is either anecdotal or unspecific discrimination charges.

I just wonder what you could tell us to -- in support of the very strong testimony that you presented that discrimination is pervasive. And I know you indicated you come from the industry, and you're a new lawyer, so you shouldn't get paid very much.

(Laughter)

MS. BROWNE: I beg to differ with that.

CHAIRPERSON BERRY: She was looking at what, 10,000 files?

MS. BROWNE: That's right.

VICE CHAIRPERSON REYNOSO: Yes, and I take it that your testimony comes from going through those files and all that. But I just wonder, you know, what you could tell us about that. I daresay that in the political environment now, most Americans would say you're wrong. That type of discrimination doesn't happen anymore.

The laws that were passed in the 60's and 70's took care of all those problems.

MS. BROWNE: It's very difficult to measure how often it happens because of the complexity of the process and how it could happen along the steps of the process; and also because people don't recognize it for what it is.

One of the examples that I have -- and I mean, this is anecdotal evidence, is that there was an individual who applied for a loan in Atlanta who applied to this loan in Gainsville. And he applies for the loan and he goes through and he's told that he's rejected for credit reasons.

Yet, the evidence on the record in the file shows that, in fact, they did not reject him for that reason. They said he had some problems, and he had tried to clear them up.

But there's a note in that particular file that says it wasn't that reason. It's really the area of Atlanta. He lives in Fulton County, which is a predominantly black section of Atlanta.

And the ironic thing is that in that same area of Atlanta, that man was rejected -- well, he was really rejected for what they call "unacceptable property", which is a term that fails to have any logic to it, but unacceptable property.

In that same area of Atlanta where there are many very wealthy African-Americans, there's an individual who's an OB/GYN. That individual is rejected for a loan for the same reasons.

He is someone who makes lots of money, okay? Has a house that is beautiful that is in a gated community where there are only three houses, two acres of land. And who sold him the land? Hank Aaron who lives next door to him.

He's rejected for unacceptable property. It's these kinds of things -- and he didn't know what the reason for his rejection was either. He had no idea. He, in fact, did not -- you're supposed to receive an adverse action notice. He didn't receive one.

So it's very hard to quantify it, but it's going on.

VICE CHAIRPERSON REYNOSO: Okay, but your testimony that it's pervasive, is that because based on your investigation you see it cropping up over and over again?

MS. BROWNE: Based on my investigation, based on the many calls that we get into our office about mortgage lending discrimination, based on my interaction with the leadership conference on civil rights.

You know, a lot of it is anecdotal, but we keep getting the complaints, keep getting them.

VICE CHAIRPERSON REYNOSO: Mr. Mirabal, was your testimony on the same basis or -- of course, you gave us some pretty tough statistical information. Is your -- was your testimony based on that type of anecdotal information, or was it based on the 14 percent Puerto Rican ownership as compared to 30 and 64 or --

MR. MIRABAL: Well, for the Puerto Rican, Latino community, I think it's a little different. I think we are more susceptible to what might be considered the turn-off in actually considering even going in for a loan.

Certainly the mood of the country today places persons who are Spanish speaking in a situation where they don't know how long they're going to be supported by this country; 187 in California sent a terrible message all over the country.

People were concerned about whether they had rights. Some of them didn't understand that this only applied to California and many didn't understand even after the Supreme Court handed down its decision that it was reversed in part.

But clearly the air, the turn-off for our Latino community, is much more significant a factor in this whole situation.

That's why one of the main concerns that we, in the advocacy field, have is obtaining support from commissions like this about who has rights and what your rights are.

But more specifically, we work with a network of, at this point, over 40 housing agencies whose day-to-day responsibilities are working on rental housing and homeownership issues. And as a result of our work throughout the years, and we've been doing this -- NPRC has been in business about 14 years now.

And in the last five years, we have been actively working as HUD contractors with local community-based housing organizations. The information that we've been receiving back is that it is pervasive in our communities; that the applicants for loans have two ways to go.

If there's a local Latino community organization which is co-sponsoring a particular housing or lending initiative in that community, we can guarantee that we will get a fair share.

If there is not, we can guarantee that we probably won't even show up in the numbers.

And it's clear that this, the Latino community, because of its particular language barriers, because of especially now the pervasiveness of the negative air of being Latino, is much more -- is in a much more critical stage in this situation.

So that report that we've documented some pretty hard statistics on just supports what we've known has been going on for a very, very long time. And we're now, as you should be aware, in the process of doing a set of follow-up studies, research in various areas.

And the report of one of them is the housing and lending area to go further than just the main cities as Chicago, New York, and Philadelphia and Hartford. We're going into about 20 cities and attempting to research where we are.

And i think in another year we'll have much more critical data, which again will support where we believe we know we are right now. We're last to get in and first to be refused.

CHAIRPERSON BERRY: Commissioner?

COMMISSIONER WANG: I know -- I just have one question for Ms. Wang. In New York, we have a very similar situation where we have many community-based banks in the midst of some of the largest bank's branches.

And the branches from the larger banks, international banks, take a lot of deposits. People tend to deposit in those banks because they have a much better known and also people are a little bit concerned about a community bank. We've had a couple of failures in the community.

Actually, OCC came in and closed one of our banks in New York and it created quite a commotion. So people want to deposit in a safer place, but then they don't get any loans from them.

So still, most of the loans are actually given by the Chinese-owned communities banks. But I'm just curious, is that similar in LA?

MS. WANG: That's the similar situation. That's where we're saying because normally a community bank is whoever you deposit with and then you give loans out for people willing to work with you together.

And that's where I was commenting about where we feel a little bit of reverse discriminating -- out because in 1960, we had the same treatment probably. It was just demonstrated by what the group was talking about. We can hardly get loans and they don't trust you and you don't speak the language and all those things.

So everybody just pooled their resources together to help their community, and we started this in -- the first bank was Cathay Bank and was chartered in 1962. And then East West Federal was 1972.

After those two were very successful, demonstrated those people even though it doesn't show in the income, doesn't have credit, but they are good perspective, hard-worker, American and they can fulfill their home dreams.

And then flourished with now almost 30, you know, savings and loan and bankers in the MSA/LA county area. And that is demonstrated as the need. But now with the regulators saying hey now, your community, you have caucasians. Why didn't you loan to caucasians?

And we said we have flyer. We go to direct mails. They don't come because they feel far more comfortable if they go to the bank that they are familiar with and they don't come to you.

That I -- you know, that's where I wanted to be able to incentive to those people willing to help themselves and to do things. But what I really like is the Fannie Mae and Freddie Mac. They have the low income housing programs.

They are giving those general guidelines so that we can participate in soliciting and doing those types of things, to answer Ms. Wang's question.

MR. MIRABAL: I'd just like to point out that the proof of the success of what you're doing shows that because they're doing that, in New York for instance, 42 percent of the Asian community is in home ownership.

They own their own homes. And they've been very successful in providing loans to their community which would not have otherwise have been made. And that by itself has to show that there's something wrong with the system that we have. And those are documented facts where Puerto Ricans, only 14 percent of our families own homes. Asians are far ahead of the African-American community at 42 percent.

VICE CHAIRPERSON REYNOSO: Madame Chair, these institutions seem to be caught up in sort of the national debate pertaining, for example, to black colleges.

Should there even be black colleges now? Should they be forced to integrate by the federal government? And you see -- and obviously your testimony is that there's a special niche that you have served traditionally and continue to serve in bringing home ownership to the folk that you serve, particularly Asians.

What would you suggest to the federal regulators as to how they ought to approach this problem because I think they have sort of a picture that every bank ought to do the same thing, I think. And so they want to apply the same rules, if you will, to every bank.

And you seem to be saying but wait, if we have a special niche where we've been successful and it's needed, maybe that ought not to be true. Am I -- is my impression wrong about what the regulators are trying to do?

MS. WANG: No, I am not -- I think they serve the needs to enforce the fair lending. But in the way bound to -- they're using statistics or HMDA reports and as you say, sometimes the ratio, they only base it on the ratio, percentage-wise, and without looking, seeking, is this are the area of people who really want to have houses?

Some of them is because they are moving around to different places. They prefer renting places. If you can also have federal government giving -- for multi-family loans and giving them, people can getting rental subsidized in that way probably will fulfill some other needs to.

But I think fair lending is more broader than just saying we have -- people -- even I would say five percent is a very nice down payment for getting a house. If those persons were given the incentive and later on couldn't possibly fulfill their payments, and they're also jeopardizing some of their savings, which is hard working results.

So I think it has to be -- incentive is doing -- to giving person affordable, able to do those things. It's not saying even you don't -- you cannot afford it, but because I want to fulfill those regulations, so I come over. I'm just giving you the loan data. I don't think it's a fair lending. That's where --

CHAIRPERSON BERRY: Sounds like what you're saying is in answer to the Vice Chair's question, if I understand your question, is that the regulation, and I don't even know what the regulation is, that it does not presume, it does not understand that banks that are trying to meet the need of the Asian community are responding to a lack of access, a pre-existing lack of access or constraints on access of the kind you talked about, and that it's a remedy for a problem.

MR. MIRABAL: Yes, that's correct.

CHAIRPERSON BERRY: They're simply saying well, we're just talking about banks. So all banks will just figure out whether you have a certain percentage. And so you're saying that they should take -- perhaps take that into account.

COMMISSIONER WANG: So the example that I was trying to allude to is city bank -- Regional National Bank, they have three branches in Chinatown New York, and they absorb a lot of deposits. But they don't give loans.

CHAIRPERSON BERRY: Any loans, yes.

COMMISSIONER WANG: And then their report to --, their report looks fine because they're giving loans in some other part. So then the community bank was left holding the bag making loans to the local merchants and individuals, and the merchants are being called for -- I mean saying, not open to every group.

CHAIRPERSON BERRY: Well, I want to thank the panel. We have learned a great deal today and than you very much for your participation. We will -- without objection, we will adjourn.

(Whereupon, the proceedings were concluded at 2:28 p.m.)

CERTIFICATE

This is to certify that the foregoing transcript in the matter of: Meeting

Before: U.S. Commission on Civil Rights

Date: March 3, 1995

Place: Washington, DC

represents the full and complete proceedings of the aforementioned matter, as reported and reduced to typewriting.