VICE CHAIRMAN GRUENBERG: I'd like to call the hearing back to order.

We have a number of people who have given considerable thought to CRA to talk about emerging issues relating to the Community Reinvestment Act. And if I may, let me introduce them briefly.

Sarah Rosen Wartell is the Executive Vice President of the Center for American Progress.

Sarah Ludwig is the founder and Executive Director of the Neighborhood Economic Development Advocacy Project.

Lawrence White is a Professor at the New York University Stern School of Business.

Richard Marsico is a Professor at New York Law School.

Calvin Bradford is President of Calvin Bradford Associates, a consulting firm.

And Deborah Goldberg is Program Director for the National Fair Housing

Alliance.

Ms. Wartell, if you could begin? Thank you.

MS. WARTELL: Thank you very much.

Good afternoon. I am Sarah Wartell of the Center for American Progress Action Fund of the affiliate of CAP here today. My colleagues David Abramowitz and Janneke Ratcliffe, Senior Fellows at the Center.

And I thank you for the opportunity to offer this testimony.

We thought that our best contribution would be to put the CRA regulatory reform process in a larger context of the housing and energy challenges for low and moderate income families. At a risk of stating the obvious, this is a perilous time for many of our communities. If the wrong lessons were learned from the housing crises, communities already stripped of their limited equity and capital base could face further disinvestment. What's at stake, and I don't mean to be extreme here, but is no less than whether we will create a two tier society in which access to credit and financial services are a dividing line between growing and declining neighborhoods.

Will growing racial and ethnic minority communities be integrated into the economic mainstream of our society? Will all families have access to the building blocks of economic security and opportunity? Or will we continue to grow increasingly apart?

While CRA is not the only tool to address these enormous challenges, it is a key lever to bring the creative ecumene and capital of our financial institutions to bear in rebuilding sustainable communities.

Some would have you shy away from my more ambitiously stated objective. They argue that CRA itself and LMI lending were the primary drivers of the crises that we've experienced. We know that you financial regulators know better. Current and former regulators have been clear that these claims are false. The charges, however, make your task more difficult.

You have a unique responsibility and vantage point from which to say what works, so we urge you to continue to set the record straight. And let your record in this process show that contrary to popular myths we do in fact know a great deal about how to support LMI communities with products and services that simultaneously serve the best interests of financial institutions, their customers and their communities.

With investors and employees shaken by recent events, institutions will inevitably pull back beyond what is prudent or required. Nothing can be more important than for the regulators to support, showcase and disseminate successful models for serving underserved communities through the regulation and through your efforts like the hearings today.

In our full statement we explore three aspects of the current credit needs of the communities based on our own work, although there are others of import as well. We emphasize what we know.

I know discussion this morning also talked specifically about the quality and not just the quantity of lending, and that is tremendously important. But let me say that we worry a lot also about quantity right now because here is a constraint of credit for communities that we care about.

So first, regarding home ownership. We know we need a level playing field between lending channels, lest we recreate the race to the bottom in which bad money drove our bread. CRA must, hopefully, run us back into the devastated communities to do affordable home ownership right. I'm worried particularly about the lessons we learned about low down payment lending. It can work with the right terms and other ways to mitigate risk, as we detail. And we urge you to explore also shared equity and community land trust models. These models have been tested under the stress of the housing crises and have proven their performance and effectiveness, as we detail in the written statement.

Second, regarding rental housing. We face a decade of rental stock shortfalls and rising rent pressures thanks to demographics, foreclosures and recent low production. Multi-family finance alone will not close the gap between incomes and affordable rents. But it's a necessary condition for progress.

Five to 50 unit properties provide a third of all rental units, most are not subsidized so lenders can be unsure whether loans or investments for CRA consideration, even where LMI residents are clearly served. We urge clear affirmative guidance re: unsubsidized small properties and positive consideration for innovations in the multi-family area that encouraged the preservation of affordability over time.

Finally, we urge you to express and encourage support for leveraging NSP funds and as your rulemaking and other efforts are starting to do, for recapitalization and tenanting also for scattered sites single-family rental housing take foreclosed properties and reusing them. In many communities that will be the only viable model for stabilization.

Third, regarding the so called green CRA. We are worried that capital for clean energy investments will not reach the LMI communities and communities of color, leaving those who already pay disproportionately more for energy further behind. CRA must encourage loans, investments and services that reduce energy costs for these communities. Of course projects that exclusively serve LMI areas, consumers or landlords are likely already covered. But further guidance would clarify for hesitant institutions that CRA covers a plant offering lower cost energy to LMI residents in a LMI Census track even if the generating plant is located elsewhere.

We also need to think creatively how to account for projects that include LMI consumers, but benefit a blended service area so as to encourage inclusion of CRA target areas and larger projects without diluting the focus on LMI residents. You might consider rules that establish threshold or partial credit mechanisms to encourage inclusion and ensure that unserved communities are not left behind in the clean energy economy.

So let me conclude by just applauding you for taking on this effort and step back to emphasize its larger important. We face a serious risk of decades of decay in hard hit communities in the aftermath of the recent financial crises. CRA should be one of the strategies we use to help all our communities recover together.

Thank you.

VICE CHAIRMAN GRUENBERG: Thank you.

Ms. Ludwig?

MS. LUDWIG: Thank you. Good afternoon.

I appreciate the opportunity to testify at today's hearing. My name is Sarah Ludwig, and I'm Co-Director of the Neighborhood Economic Development Advocacy Project, better known as NEDAP, if known at all, a community economic justice organization based in New York City.

There's so much to say about the Community Reinvestment Act and how its regulations might be strengthened. I noticed in the hearing notice you asked the question whether and how, and I think we're way passed the whether it should be revised.

For today I'm going to focus on just a few areas that are important to us at

NEDAP, and we will submit much more detailed written comments by the comment period deadline of August 31st.

Also, much of what I came to say today has been covered has been covered by previous panelists. So I'm going my exposition on the structural changes that have taken place in the financial services world since NEDAP started working with community groups on CRA related matters more than 15 years ago, and the impact it's had on neighborhoods. But clearly this is high time that we revise CRA regulations, and there's so much at stake. As people have been talking today, what's become clear is that this process of revising these important regulations really are intertwined with many of the challenges we have around revitalizing so many neighbors that have been devastated by the practices that led up to the financial meltdown and the economic crises. And, you know what we've seen also working with groups in New York is that so much of the gains from CRA over the decades have been more than eroded in recent times. So what you do with these regulations has great consequences and serious, serious challenges

We're going to be dealing with these profound consequences in lower income neighbors and communities of colors for a very, very long time from the economic crises. And I just want to raise something that hasn't come up today just to kind of set a frame.

That something we are very preoccupied with at NEDAP is that the information in people's credit reports that is a reflection of credit practices in communities is more and more seeped into the economic and social lives of fabric of hiring and getting housing and so forth. So that the stakes for people of what's in their credit really go beyond even credit decisions. And we're seeing a lot of people getting systematically blocks from employment and so forth as a result of credit.

So, all of these issues have multiple layers of manifestations. But let me just talk about a few global recommendations that we have based on what we see as a dramatically changed environment and the problems that we have with the two tiered credit system that's emerged over the past 10 to 15 years.

So, our recommendations, I have five here on the page. When we do the written testimony there'll probably be a lot more. Maybe they'll be sharper; I don't know. And some of these will pick back up on the themes from this morning. So the reason I'm repeating them, because you'll see a lot of this crossed out in my testimony, what I'm repeating is to underscore what has been said, because I think it's important and maybe give a slightly different perspective.

Okay. First of all, the regulations and exam process need to underscore the C in CRA. We've heard a lot from previous panelists about why it's important that CRA remain local. It's not the LRA, it's the CRA. We need to be thinking about neighborhoods and a bank's performance should be considered at the community level. And I'm talking about blocks, streets, neighborhoods, not MSAs, not counties, not even arguably depending on like a city like New York, a sub-county.

In the more than 15 years since we've been working with groups on CRA issues in New York, the CRA regulatory lens has become less and less focused on discreet neighborhoods at the same time that clearly as we know banks are larger in scale and increasingly multi-state and national.

The bank examiners have actually told me that they cannot and will not exam banks at the neighborhood level, but would rather or look at them in terms of their aggregate performance so that when we raise issues about disparities or disparate lending in neighborhoods,, or disparate access to services they say "Well, yes, but we're looking at net balance across the whole metropolitan statistical area." For New York an MSA, our MSA consists of eight large counties, some of them by themselves are larger than most U.S. cities. An examiner should consider a bank's CRA performance, and here I'm just going to saying it again, at the neighborhood level to ascertain whether banks are fairly meeting community credit needs.

New York, like many other large cities, is hyper-segregated with neighborhood race and income demographics changing markedly from one neighborhood to the next. And examining bank's CRA performance by large geographies obscures the relevant analysis for CRA purposes of whether banks are indeed meeting community credit needs.

A sample mapping of CRA relevant data at the outset of a CRA exam would provide a more nuisance view than the aggregate approach now permits, and would raise flags if the bank is engaged in redlining of specific communities or reverse redlining.

And the new regulations we recommend should also ensure that examiners exchange community groups meaningfully in the CRA exam process. Regulators, some of them, have explained to us also that over the years, we've been hearing this for 15 years, that when they examine a bank they reach out to a number of community groups but they don't always tell the group which bank they're examining. So the input is there, but the group doesn't really know what's at stake. I mean, which lender they might be talking about or which financial institution.

And so we would say that the revised regulations need to include a process for incorporating community organizations explicitly in the exam.

Many people have picked up on the

idea that Barry Zigas raised this morning around the strategic plan. We think that's an intriguing idea, if only as a mechanism for making sure that the conversation around Community Reinvestment Act is localized. It's a way to kind of put out there what the bank is planning to do and its made transparent, which we obviously think it should be. It affords community organizations and the general public an opportunity to weigh in and make sure that that strategic plan is rooted in local neighborhoods.

Okay. And these will be much faster. Second, the CRA exam must consider banks in their totality. Under current CRA regulations we think it makes absolutely no sense for banks to receive favorable CRA ratings based on the performance of their insured depository, even though their affiliates are directly engaged in and responsible for practices that harm communities and serve them inequitably, such as through discriminatory tax reform anticipation lending and abusive credit card and debt collection practices.

We think that, as others have said this morning, that the CRA exam should identify not only a bank's affirmative activities but also their harmful practices by the banks themselves. So that's not a question of the affiliates. A prime example of this is what we see as the CRA examiners essentially ignoring bank's abusive overdraft practices, which has sapped billions and billions of dollars from the very communities that CRA is intended to address.

Our third point: Banks should not receive a satisfactory or better rating if there is evidence that they have discriminated against people or communities on the basis of race, color, national origin, gender or other protected classes. I really don't think that needs elaboration, but I'm happy to answer any questions on it.

The fourth one I'll also for sake of brevity assert, which is that the CRA assessment area definition needs to be updated. I'm hoping that I don't get questions on that.

And the last point is one that we heard Commissioner Mintz from New York City's Department of Consumer Affairs sort of allude to this morning when he talked about banks sort of, you know doing workshops and being engaged in various philanthropic ways in communities but not really responding to the need. We would say it that the bank's philanthropy should not be a substitute for community reinvestment. We would never discourage banks from engaging in charitable giving, we encourage it. But we believe that the CRA regulations should make clear that philanthropic giving is not a proxy for meeting community credit needs.

Before the market crashed, for example, as community groups sounded the alarm on abusive lending practicing that were devastating historic redlined neighborhoods, banks in response proudly touted their support for financial literacy programs as if they were antidote to predatory lending practices. Giving grants is easier for banks than finding ways to meet community credit needs and pound the pavement, get to understand what's at direct stake through direct lending services and investment and consideration of philanthropic activities should not figure into the CRA exam.

I would be very happy to answer any questions you might have, except about the assessment area. I'm kidding. And thank you for the opportunity to testify.

VICE CHAIRMAN GRUENBERG: Thank you.

Professor White?

MR. WHITE: Thank you.

My name is Lawrence J. White. I'm a Professor of Economics at the NYU Stern School of Business. I represent solely myself at this hearing.

Thank you for the opportunity to testify at this important hearing on the Community Reinvestment Act.

My views on the CRA surely differ from those of the other individuals who are testifying at today's hearing. I believe that despite the good intentions and worthwhile goals of CRA's advocates and of the CRA itself, the CRA is an inappropriate instrument for achieving those goals.

Fundamentally, the CRA is a regulatory effort to lean on banks and savings institutions in vague and subjective ways to make loans and investments that the CRA's proponents believe these depository institutions would not otherwise make. It's a continued effort to preserve old structures in the face of a modernizing financial economy. At base, it is a protectionist effort to force artificially a local focus for finance in an increasing competitive, increasingly electronic and ever widening realm of financial services.

Further, ironically, the burdens of the CRA may well discourage banks from setting up new locations in low income neighborhoods, and thus providing local residents with better priced alternatives to high cost check cashing and pay day lending establishments. And I would add to that list a high cost car title lending establishments, which I just read about this morning. It's on page 3 of this morning *Wall Street Journal*. Anybody who didn't know about these guys, I urge you to read page 3. They're part of that list.

Now, one problem with the CRA is that it doesn't ask why. It doesn't ask why aren't these loans being made? Is it because they are profitable, as the proponents believe, as the law says they're supposed to be. But some somehow they still aren't being made. Well, why not?

Are the banks and their employees ill-intended, are they discriminating, or are they lazy, just not getting out there? Why? Why are these loans otherwise profitable not being made? Or, are they unprofitable but, gee, if the banks would just coordinate among themselves a bit more, they would become profitable. Or, are they just socially worthwhile but not profitable, but somehow there's going to be some cross subsidy? Those questions aren't getting answered.

Now, despite the flaws of CRA, I think it's clear and it's already been mentioned responsibility for the housing bubble nd the subprime lending crises, that's not anything that CRA should be held responsible for. It's clear the bulk of the subprime lending was not being done by CRA covered depository institutions, the investing in the securities and the subsequent financial difficulties was primarily by non-CRA covered institutions. And there's econometrics work now, much of it done at the Federal Reserve, that will support exactly that position that CRA is not responsible.

There is a better way. First, to the extent that lending problems can be traced to discrimination against racial, or ethnic or other protected categories, the right tool is more vigorous enforcement of anti-discrimination laws, including the Equal Credit Opportunity Act of 1974 and the Fair Housing Act of 1968.

Second, vigorous enforcement of the anti-trust laws, especially with respect to mergers necessary to keep financial markets competitive so that banks and other lenders are constantly under competitive pressure to provide attractive services, you know not only lending, other financial services to their customers. If for some reason anti-trust is not sufficient, then we ought to be allowing other enterprises who have a business model that provides good value, good products and services to low and moderate income households. Let me enter housing. I think specifically of a company like Walmart that has tried to get into banking in numerous places and numerous ways in this country has had the doors slammed over and over again, from my perspective. And I'm not a consultant to Walmart, I own no stock in Walmart except as part of a diversified portfolio low cost index funds. I can think of nothing better than to see Walmart in providing financial services to low and moderate income households.

Third, to the extent that there are socially worthwhile lending opportunities that somehow are not being satisfied by existing lending institutions, these projects should be funded through the public fisc in a non-budget and transparent process. The Community Development and Financial Institute Fund, which you know was authorized by the Riegle Community Development and Regulatory

Improvement Act of 1994 managed by the U.S. Treasury is a good example of this kind of public funding. To the extent that there isn't enough of it done, let's do more, let's fund more, let's do what's needed.

Finally if public policy persists with something that resembles the CRA, the annual local obligations, especially lending obligations, should be explicitly quantified then these obligations could be traded among financial institutions so that a system could arise where the institutions that are best able to provide these services could do them. The idea is similar to the idea that underlay the cap and trade system that has proved so success for dealing with sulfur dioxide emissions in a low cost and efficient manner.

In sum, CRA is not a good public policy tool for achieving the goals of its advocates. There are better ways, and I urge anyone who is interested in good public policy to consider those alternatives.

Be happy to answer any questions from the panel.

VICE CHAIRMAN GRUENBERG: Thank you.

Professor Marsico?

MR. MARSICO: Thank you for this opportunity to testify. My testimony will focus on the purpose of the CRA, changes in the financial services market since it was passed, CRA standards and enforcement and these relate to proposals to amend the CRA regulations to expand the CRA assessment area include a bank's lending affiliates and its lending by race, and the bank's CRA evaluation to strengthen and standardize the CRA performance tests.

Congress passed the CRA in 1977 to end bank redlining. Congress placed an affirmative obligation on banks to help meet the credit needs of their local communities and require the federal banking regulators to evaluate a bank's record of meeting community credit needs, and to take that record into account hen considering bank expansion applications.

Much has changed since Congress passed the CRA. Banks are no longer the local unitary institutions they once were, but are frequently parts of multi-layered national and multi-national corporate entities. They share the consumer finance market with more competitors, including non-banked mortgage lenders and pay-day lenders.

Finally, although there is evidence that redlining continues, reverse redlining is now an equally if not more serious problem.

Despite these changes, two things remain consistent in CRA's enforcement. First, it is relatively easy for banks to receive satisfactory CRA grades. Second, the CRA regulations do not contain consistent objective criteria for defining satisfactory CRA performance. These two factors make it very difficult, if not impossible, for community groups to hold banks accountable for poor lending records.

Market changes and weak standards threaten the continued viability of the CRA. Unless the regulations are strengthened and updated, the CRA faces a future of irrelevance. This would be unfortunate, because the CRA has influenced banks to make more loans in low income communities than they would have without the CRA, and because loans covered by the CRA tend to be less risky than loans that are not covered.

The following three proposals to amend the CRA regulations would strengthen and update the CRA.

First, expand the CRA assessment area to include the areas in which banks make loans, and include affiliate lending in the bank's CRA performance evaluation.

The CRA contained two provisions that have reduced the percentage of home mortgage loans the CRA covers. First, the regulations define a bank's CRA assessment area as the metropolitan area in which the bank has it branches and makes its loans. As banks have grown and created loan distribution mechanism not dependent on branches, more and more of their loans have been outside areas in which they have branches, and thus fewer loans are covered by the CRA.

The regulations also allow a bank to choose whether to include the lending records of their non-banked lending affiliates as part of the bank's CRA evaluation. The assessment area and affiliate rules have reduced the percentage of loans subject to the CRA. As of 2006 only 26 percent of all home purchased loans were by banks in their CRA assessment areas, down from 36 percent in 1993. One negative consequence of this is that a bank can shift its risky lending or lending that might hurt its CRA record outside of regulatory scrutiny.

The assessment area and affiliate

rules defeat the purpose of the CRA should be changed. Affiliate lending should count as part of the CRA's record and a bank's assessment area should include, for example, the area in which its market share of loans or the percentage of all its loans meets a certain threshold.

Second, consider the bank's lending according to the race of the borrower and the racial composition of the community. Several studies have documented continued disproportionately low rates of home mortgage loans to African-Americans and Latino borrowers, and conversely disproportionately high rates of subprime lending to these same groups. It is difficult to reconcile this with the CRA obligations of banks and the regulations should be amended to evaluate a bank's record of lending to minority borrowers in predominately minority neighborhoods. At the very least, CRA evaluations should include a detailed analysis of the bank's lending by race including evidence of reverse redlining instead of the brief statements that now appear.

And finally, a third recommendation is adopt a consistent set of objective criteria and benchmarks for evaluating a bank's CRA lending. CRA regulations do not contain a consistent set of objective criteria for evaluating lending. This makes it difficult to hold banks accountable for poor lending records. Although there should be room for judgment in evaluating a bank's CRA record and the CRA regulations cannot allocate credit, these concerns should not displace the important goal of creating a clear set of objective standards consistently applied. The CRA regulations should require the agencies to consider bank lending compared with objective benchmarks and should state clearly how the bank's performance will be weighed in evaluating the bank's CRA record. Such criteria will put both banks and community groups on notice of what constitutes a satisfactory CRA performance and improve implementation of the CRA.

The CRA has increased safe and sound lending in low and moderate income neighborhoods. I urge you to expand its coverage and strengthen its enforcement to ensure it continues to do so.

Thank you once again for this opportunity to testify.

VICE CHAIRMAN GRUENBERG: Thank you.

Mr. Bradford?

MR. BRADFORD: Thank you.

For those of us who worked on reinvestment and fair lending over the past decades, we are very hopeful about this plan to revise the regulations. But quite honestly, we've got good reason I think to skeptical. Over the years the enforcement effort, which was not particularly aggressive in the first place, has deteriorated giving over 90 percent of all regulated institutions passing or outstanding rates when many of the most powerful of these institutions and/or affiliates together were selling the seeds of the destruction to the very communities they were supposed to be protecting. And, in the process I might add, they were dragging down a lot of the community banks that were doing a good job trying to invest in their communities.

I'll try and just limit my comments to extracting some things I think will be supportive of themes that have been brought up today and emphasize some particular points.

First of all, I think it's kind of interesting to hear the American Bankers Association tell us that the CRA has nothing to do with fair lending. I can recall when were drafting the CRA and Senator Proxmire and the staff were assuring everybody that we didn't have to flip the requirements of fair lending and the CRA because it was so obvious no one could miss it. Well, evidently since then the regulators and the bankers have missed that. So it seems to me that we should go back and require that there be no evidence of discrimination or you automatically fail the CRA period.

A second thing I would like to say is that people have talked about assessments, what you'd assess, and I would just add that we need to assess both positive and negative activities. But not just loans or not just a lack of providing certain services, we need to think in a broader range like the servicing that lenders do or their affiliates do. The servicing can be abusive or not responsive to people's communities needs. Some of the largest banks are actually mainline providers of credit lines to pay-day lenders, and those things need to be considered as well because the victims or the people in these neighborhoods are now being exploited by the pay-day lenders as they don't have any jobs and their neighborhoods have already declined. And we need to look a that in a broad scale.

I think, again, I'll support the inclusion of affiliates. I'd just like to say maybe a couple of different things about that.

I think probably one of the biggest challenges facing you in looking at all the affiliates of an institution that are involved in a particular type of lending is often times the affiliates of a holding company are actually regulated by different ones of your institutions. An affiliate may have a state charter bank, it may have a national bank, it may have different types of institution. And it seems to me that unless there is a single assessment of the whole holding company in that area, it's not useful because the issue we keep raising is that that one part of the affiliate may do one thing while the other part does something that may be destructive. And so you have to have an assessment for the whole holding company, there needs to be a process to figure how that's going to be done.

For geographic coverage of the assessments areas, I think one recommendation, I know there have been several made, I think that what banks do when they have bricks and mortar facilities is important. It's important to have a strategic plan. Believe me, they don't build those buildings out there for nothing when they could do the same activity without having those buildings. And I know in our community where we live people are fighting tooth and nail to open new branch banks all over the place. It's a fairly high income community. Farther away from where he lived in Virginia in Newport News and Norfolk and Virginia Beach they're not fighting so hard to build those branches and facilities in the old existing neighborhoods. So then I see a value in it.

I think if you just do those in the kind of traditional way of looking at assessment areas and what they do, that would be useful. And then what I would call a regional assessment area for the non-bank affiliates based on their share of the market, and then including all the affiliates of that holding company in that assessment area. And, of course, there have to be provisions for challenging what happens in those assessment regions as well as in these other areas. I think that's a process that needs to be thought through.

And then looking at the rating process, it really needs to be restructured. And I would add that I think there does need to be a separate community development provision, but I'd keep the investment provision. And the reason is what we've failed to do is sort of raised the bar for what reinvestment means. For large institutions, even investing in community development finance institutions is a routine practice in many ways. And that needs to be countered. And, indeed, if you do it as a regulator process, it needs to be required of an institution as a kind of a floor if that's a large institution and you have that capacity. But I think community reinvestment activities themselves out to have a separate category for much more creative ventures. And I think this would also help smaller banks. It would help to find a place for CRA agreements. It's a terrific place, I think, to require plans so you have a rationale for it and a rate of measure.

And the last thing I would comment on is public participation. We need to put the community back in community reinvestment. If you actually look at the history of all these models, even these development funds and nonprofit housing developers, they all came out of reinvestment agreements initially or out of community challenges or cooperative agreements with banks and local community people. And they've essentially been eliminated from the process. I think you need to have more of a role for comments, more of a role for challenges. You need to have a way for challenging an institution between performance evaluations since this time between those performances is so long.

And that's the end of my comments.

VICE CHAIRMAN GRUENBERG: Okay. Thank you.

Ms. Goldberg.

MS. GOLDBERG: Thank you.

My name is Debbie Goldberg. I'm a Project Director at the National Fair Housing Alliance. NFHA is a national nonprofit organization that focuses on ending housing discrimination and ending segregation in our country. We're the only national organization that focused solely on those goals. Our members include private fair housing centers in communities all across the country, as well as many other state and local officials who have fair housing enforcement responsibilities.

I want to thank you for the opportunity to testify here today.

It's been our view that the Community Reinvestment Act has been a very important tool for directing credit band bank services into underserved communities. And when I say "underserved communities" I mean both low and moderate income communities and communities of color. As I think a number of other witnesses have said today there's a kind of commonality of interests there and it's argued that CRA is needed to make sure that both of those sets of folks who are not always the same -- we tend often in our country to confuse race and income and to assume that all low income people are people of color and vice versa, and we know that's not really true. But it is true that low income communities and communities of color have both had problems getting access to credit. And the Community Reinvestment Act has been an important tool for overcoming that.

Unfortunately, CRA has not really kept pace with the changes in the financial services industry. And so as a result it was not nearly as helpful a tool as it could have been in preventing or curtailing the current financial crises. And we're going to need all of the tools that we have at our disposal, and some we haven't designed yet, to get us out of this hole we've dug ourselves into to get our communities and our country out of this crises. And so this is a particularly opportune time to take a fresh look at the Community Reinvestment Act and think about how it can be strengthened so that it's a better tool as a we move forward to help communities and individual recovery.

So we want to comment you for holding these hearings. And again, thank you for the opportunity to testify.

I also am going to try and not stick to my written comments that highlight a few things that I think maybe have not yet been said or add a little bit of emphasis that hasn't yet been said.

So I want to start with the assessment area question and the affiliates question. And when I think about those two issues what's important to me is that they are -- I'm sorry. I'm blanking on the word here. They are a phenomenon that reflect what's been a dual credit market in this country, a market in which some parts are regulated and some parts not regulated, and which the types of products that are offered and the prices at which they are offered as very different.

And what we've seen at the National Fair Housing Alliance is that the people who tend to end up in the unregulated part of that market, whether it's people who are getting the kinds of loans that banks feel that they can make outside their assessment where they don't have CRA scrutiny as compared to the ones they make inside, or the ones where their affiliates that are not doing the kind of safe and sound sustainable prime lending but instead have been doing subprime and other kinds of exotic lending operate.

So people of color, low and moderate income people have found themselves in that unregulated section of the market. It's worked to their detriment. And really, you know at a scale that was kind of hard to imagine even just a few years ago. So that many of the communities that have benefitted the most from CRA over the years now find themselves back at the starting point, maybe even back farther than the starting point in terms of the situations that the families in those communities and the communities as a whole find themselves.

I think it may take us generations for those people and those communities to be able to recovery. And that's something we can't really afford. We don't have that much time to put folks back on an equal footing and help them get back on their feet.

So, unless we can make sure that the whole market is regulated and that the regulations are enforced consistently across the market, I think we have to expect that we'll see in some form or fashion a reoccurrence of the kind of disparities that we've experienced at some point down the road.

The second issue that I wanted to speak to was the question of sustainability. Again, that's been mentioned by quite a few people here today. And I want to underscore the point that I think Cal just made about sustainability not being limited to looking at what you guys think of as the front end of a transaction. So in the loan context it's not just about origination, although clearly that's very important. We want to make sure that the loans that people have access to, the loans that are being made, are ones that can be sustained. But once that loan is made the question of sustainability hasn't necessarily been answered.

So, I think one thing that has come home very clearly to us in the current foreclosure crises is that the way that a loan servicer handles a borrower who has run into trouble can make the difference between that borrower is able to keep his or her home, or whether they lose that home. And I think that's an issue that CRA could be a tool to investigate in more detail. I

I think we need better data about servicing. But since many of the major servicers are, in fact, insured depository institutions that are covered by CRA, I think it gives us an opening to look at that aspect of credit sustainability.

The third thing I want to touch on is the question of assessing and pricing risk. We have something like 3 million people who have gone through foreclosure in the few years. We expect another 8 to 12 million people in this country to face foreclosure in the next three to five years. Something like

43 million people now have FICO scores of 599 or below, putting them in the highest risk category for credit. You know, the long term implications of these experiences for the people who have been affected are really profound.

As Sarah mentioned earlier, no it's not just a question of whether you get access to credit and how much you pay for it, although it clearly is that, but whether you can get insurance, whether you can get an apartment, whether you can get a job, whether you can get a cell phone may depend on your credit score. And so it's really critical that as we look at how people got into trouble, we understand what it was that really caused that problem.

I think our systems for assessing risk have focused really on borrower characteristics and have not effectively looked at the extent to which the loan product characteristics contributes to the loan performance. I think Josh Silver on an earlier panel referred to some research done by the UNC Center for Community Capital that took two sets of borrowers who were essentially very similar, some of whom got subprime loans, some of whom prime loans. And the results of that research showed that it's really the loan characteristic that explain the difference in loan performance. And we need to take that lesson and build that back into our risk assessment system. Our underwriting, you know credit scoring and automated underwriting systems don't do that right now. And if we can't get that right, then we're going to really prevent people from get access to not just credit, but many other related products and services moving forward.

And I want to take just a minute to talk about pricing as well. Because I think we've had the sense that we can evaluate risk very objectively, very scientifically, you know it's all been data driven and therefore, we can price that risk fairly. But I don't think that's been the experience either. So this is another important lesson I think we need to take away from this crises.

The *Wall Street Journal* a while ago did a study and found something like 60 percent of the people who were in subprime loans actually qualified for prime loans, yet they were given much higher costs, much riskier products. So, clearly, they weren't getting a product that was really priced for their risk. They were getting a product that someone could convince them that they should buy. And that's a distinction, again, I think we need to make going forward and make sure that people really do get the best credit that they're qualified for at the best price that they're qualified for.

Finally, I would be remise if I didn't make a comment about Fair Lending and Fair Lending enforcement. I completely support the comments made by my colleagues here that an institution that has been found to violate any of our Fair Lending laws should not be able to get a satisfactory or better rating under the Community Reinvestment Act.

I also want to say that Fair Lending enforcement has really lagged at all of the enforcement agencies in recent years. And so we really urge you to put more resources and more effort into looking for violations. We know they occur, but they too often are escaping notice and the enforcement actions that are needed are not being taken. So that's an aspect related to CRA that we think really needs to change.

With that, I will stop and welcome your questions.

VICE CHAIRMAN GRUENBERG: Thank you very much.

Governor Duke?

GOVERNOR DUKE: Thank you.

Boy, there's a lot to deal with in this. You're only going to give me so much time, aren't you?

Let me start with just asking your thoughts on how do we actually deal with the debris that's been left by this financial crises, by this housing crises? You know, the broken neighborhoods, the broken consumers, the broken businesses. You mentioned the number of consumers with subprime credit scores. Neighborhoods that have been devastated. And in the context of CRA how do you deal with that? That's the first part of my question.

The second part is, you know we're going to be asked to make some judgments on underwriting criteria, such things as loan to value and got the income and features that should and should not be allowed to exist in loan products. And while you can design products that would not be dangerous to anybody, those same products could very easily reduce the ability of a large segment of the population to qualify for credit. So how would we balance those?

MS. WARTELL: Well, first I would just encourage you to think consciously of rebuilding communities and the aftermath of the credit crises as a clear object of CRA and looking at all the different tests. And I think that the CRA is a very good beginning to doing that.

I also think you need to evaluate these challenges by really I think Debbie's comment at the end got to it, get behind what the data tells us and make sure that learning is well understand.

There were very big differences between borrowers who failed because they were high risk and borrowers who failed, you know they were really in a product that they shouldn't have really been in in the first place. And borrows who failed because of the consequences in the communities, such as the falling home values, the economy, et cetera. And we tend to -- I think as that last point about credit rating, this all gets lumped together. And if we aren't able to discern where risk is in the community and find new tools to measure risk and encourage institutions particularly when they're doing business in these communities to look harder and find ways to mitigate risk. That's why we mentioned shared equity and land trust models. There are ways to do low down payment lending right, and if we walk away from low down payment lending as a blanket matter, which some would have us do, we will just create barriers to access to capital for decades. But we need to find a much more refined understanding of when that kind of lending is appropriate for what kind of borrowers.

MR. BRADFORD: You know, again to pick up on what Debbie said and what our history has been is first to take the risk out of the loans. When you look at some people who are high risk, the solution usually has not been to make a high risk loan, the solution has been to figure out what created that risk and what kinds of things can mitigate it. And quite frankly, in some cases not to make loans.

I'll tell you, some people in the neighborhood are the most responsible people. And when they get on the board of some reinvestment programs, they're tougher than the bankers. Because if the loan goes bad in their neighborhood, their neighborhood suffers.

And again, I think I'm not just trying to politically correct. We need to ask the people in the neighborhoods and go around and look for the banks that are doing creative things.

I mean we're sort of starting from the top when we should be looking from the bottom. We have banks that have been really good at reinvestment in neighborhoods that have been under economic stress for two or three decades. And we need to look at those people and say "How did you work this out, how did you take the risk out of these loans?"

We've got lenders who are making small dollar value loans which helps get people out of pay-day lenders. You look at how that works, when it doesn't work, you know and take the lessons from the things that people can identify and be a little more open-minded about how to be a little more creative about the process.

And the second thing I say is we need to focus much more on business lending than we have in the past. In the long run, housing lending although it's complicated has been easier to do than business lending. And maintaining the businesses that are out there when that's at all possible and creating new jobs is probably the key thing. And we need to look harder for the people who have done that, because we have much less experience at that because we've been focusing way too much on just mortgage loans.

MR. MARSICO: I would just pick up on that and encourage you to consider expanding the small business lending disclosures that are required now to more HMDA-like disclosures, giving more information about the borrowers and the locations of the loans.

On the underwriting criteria issue there were some studies done of CRA loan programs, not subprime lending but CRA loan programs designed to meet the needs of the borrowers. And those studies documented many different sorts of programs and examined their lending criteria and evaluated the safety and the profitability of those loans. And these came out in the late '90s and earlier in the 2000s. And, you know perhaps going back to some of that literature might help in developing underwriting criteria.

MS. GOLDBERG: If I could jump in, just a couple of things.

One, and part of what I was trying

to say that I want to emphasize is we shouldn't be blaming the borrower for things that the borrower wasn't responsible for. And we need to really make sure moving forward that we don't blame borrowers for things that lenders really were responsible for. So we need to make sure that we place risk where it really belongs. And that will help people, I think, be able to get back on their feet, to get back into home ownership if that's something that they're interested in.

A second thing that I would just kind of warm about a little bit is what we're hearing about, which is wholesale purchases of foreclosed homes by investors who are looking to hold them for a while and then flip them. So that you have, you know, neighborhoods where there are absentee landlords controlling large numbers of properties in the hope that at some point down the road they're going to be able to make a profit. I don't think that's an activity that we want to be supporting.

You know, while I understand the attraction of large sales, you get it all done, its off your books. In terms of the long-term health of the neighborhoods I don't think that's going to get us where we want to be. And we ought to be looking at other vehicles for making sure that -- I mean, rental housing is a good use in many places, I think Sarah said that. But also there are people who, you know should be able to get back into a home ownership position and we want to use that inventory to accomplish that.

The third thing I would just say is a little bit perspective, maybe. But looking back at the option ARMs, which as I understand option ARMs were really designed to be a niche product for a very limited market. And so when we think about the products that we have going forward -- you know, option ARMs escaped that. You know, they're like an exotic invasive, right? They escaped the environment that they were designed for and ran rampant through many communities across the country creating havoc.

So I think we want to make sure that we have the controls and protections in place to make sure that we don't create or allow new products into the marketplace down the road with the idea that they'll be limited to a particular kind of subset of borrowers, and then let them escape in the same way that the option ARMs did with potentially damaging consequences.

GOVERNOR DUKE: Going back to the conversations we had a little while ago about trade-offs, you mentioned small business lending, you mentioned things like particular foreclosure mitigation and neighborhood stabilization activities and things that are not necessarily mortgage lending, which has been a lot of the focus of CRA. So as you start trading off those, as you start giving CRA credit, if you will, to those kinds of activities to the extent that that reduces lending, is that an issue or how would you balance that?

MS. LUDWIG: Well, could I actually respond by talking about mortgage lending? Because I think it's important to understand kind of, at least from where we sit, we had neighborhoods where there were credit vacuums, particularly communities of color at all income levels in the city where I come from, New York, and this pattern repeated itself clearly throughout the country. It's into those credit vacuums that stepped high cost and sort of abuse lenders, not just mortgage lenders but other forms of credit and financial services.

Now groups like ours are trying to look at what's happening in these same communities. Yes, there's been disproportionately high concentrations of foreclosures and people facing foreclosures. They don't actually end up losing their home. There's still tremendous instability and devastation in these communities.

NEDAP with six other organizations from around the country looked at seven cities, seven parts of the country and we wanted to examine prime lending access between 2006 and 2008 to see sort of leading up to the crash and then more recently what are the patterns. And what we saw was extremely disturbing, and I think fall squarely within your regulatory authority and the CRA, which is that although the origination of prime lending went down across the board, it went down much more markedly in neighborhoods that were predominately of color. And some lenders, we also looked at the top four lenders, we looked at lenders that had received TARP money. And we were able to show that some of the country's largest lenders actually increased their prime lending appreciable in predominately white neighborhoods while dramatically decreasing in the communities of colors.

So these are just real sort of classic CRA questions that need to be pursued by the regulators looking at neighborhoods that are the most devastated by the financial crises, by the foreclosure crises and so forth. What, are we back to sort of historic kind of classic redlining patterns and what are we going to do about it?

MR. BRADFORD: I think, too, you don't want to let the lending community decide as Fannie and Freddie tried to do about a year ago to say well these neighborhoods are higher risk, we're going to sort of write them off, it's okay not to lend there while we're doing these other things. You know, you need to be figuring out how to make loans in these neighborhoods, how to preserve what's there. So in terms of the trade-offs it also seems to me you have to look at what each particular lender does.

And one of the things I think I wanted to mention in terms of the rating is, you know the cookie cutter approach we have here doesn't work. And you have to tailor the way you look at a lender to what the lender can do, what their capacity is and particularly with affiliates, what their broad range of affiliates and skills are. And if someone's got a big servicing arm, then we should be looking a lot at the way they service these loans and what kind of loans they could save, and do they participate in these programs and are there complaints about the way they service, or are they doing a particularly good job that we could look at and tell other people how to do it.

And in other places, if they've got a skill in the past of making business loans or large loans where we need factories and things supported, you know we should be looking at those activities and how those skills could be best used.

But again, you know I think there's a tendency for people to say well the whole economy is hurting, but particularly these neighborhoods that we helped destroy are really bad now and we're not going to make any loans in those neighborhoods when the loans that were made there in the past 30 years, these $4 trillion, were basically loans people told us couldn't be made in 1978 when we started.

So, I think the first thing you put in your mind is don't let someone tell that they can't make a loan in this neighborhood. You may have to be creative, it may take a while, but CRA is about trillions of dollars of loans that couldn't be made.

MS. GOLDBERG: And I would add to that. You know, I don't see it as a trade-off. I think it's a both and, not an either or.

I agree with Cal, that different institutions have different strengths. Different communities have different needs. We should be looking at ways to try and serve both of those needs, not saying well if you do the business lending, then you can't do the mortgage lending or vice versa.

I would add though, that particularly in immigrant communities the two are often linked. Because there are many people who finance their business through their home. So, when they run into trouble, they're risking not only their home but also their business and their livelihood. And it makes that whole lost mitigation piece doubly important.

GOVERNOR DUKE: Thank you. And I'll stop there.

VICE CHAIRMAN GRUENBERG: Director Bowman?

ACTING DIRECTOR BOWMAN: Thank you.

I actually was tempted to ask a question about the assessment area, but I won't at this point.

Earlier today I asked one of the panels, and I think Comptroller Dugan followed up, quality of lending: Affordable, sustainable lending in communities, CRA credit. How do we as regulators go about performing that analysis? How do we go about ensuring appropriate credit to the institutions, the institutions are providing appropriate products to the communities?

Affordable you can test probably relatively easy for. Sustainable really is over a period of time, series of events, et cetera.

Suggestions: How do we determine that the loan at a particular time is affordable and sustainable?

MS. WARTELL: I don't want to suggest that this is overly easy, but I think that there is a great deal of learning over the last five years about what characteristics of borrowers make types of products appropriate. It does not mean that that borrower who looks like that could never get that loan. But if you see a flood of product that seem to have inappropriate characteristics for borrowers who have lower income or unsteady income, or various different sorts of patterns, then you can ask important questions.

So it does get to this, again, customized assessment of it's not an easy, you know do they pass this particular threshold. But what are the characteristics of the neighborhood that they're seeking to serve and what are the terms and conditions of the loans.

It gets also to the question of the quality of data that's available even under home loans and the ability to have richer information there. The community groups would be the ones to tell you in many cases, if we'd only listened earlier, what kinds of practices, whether the practices there are sustainable or not sustainable. So when people have commented before about opportunities for them to speak.

And you need to be empowered with information. So if they can test their subjective, what they're feeling is happening in the community with data that tells them about the nature of the characteristics of the kinds of loan being made, not simply dollar amounts but more about credit scores and terms and conditions, then they may be able to prove the proposition that unsustainable or less sustainable lending is being had.

But I grant you that it's not going to be an easy measure. But the focus, but asking the question differently than we've asked it before already would begin to bring out new information.

ACTING DIRECTOR BOWMAN: Others?

MS. GOLDBERG: I would put forward two things I think we've learned in the last three years.

One, you can't assume that housing prices are going to continue to rise indefinitely. And any loan that's based on the presumption that you're going to be able to refinance or sell down the road and you'll be able to get out of it because your house price will have appreciated, you know that's an assumption we should put to rest. It's kind of astonishing I think to most of us that that was an assumption anybody made, but we know now that that's not a valid one.

The second thing is if you have someone who has an income that you can't anticipate will rise, low and moderate income people, people who are retired, for example, or people who for other reasons have a fixed income, that a product that assumes that you're going to be able increasing payments over time is not going to be a sustainable product.

You know, in the work that I've done in the Gulf over the last five years we've seen an awful lot of people, like in many other parts of the country low and moderate income, elderly people in these loans that assumed that they would be able to handle an increase in their payments every six months after the two years, the 228 subprime adjustable rate mortgages. You know, how you could assume up front that someone who was on retirement income that was fixed was going to be able to handle that, you know that wasn't rocket science. That didn't take a Ph.D. in economics. Just a common sense.

So, I think a common sense approach would be a good starting point for assessing sustainability in the future.

ACTING DIRECTOR BOWMAN: But does that also lead to the conclusion that some loans should not be made?

MS. GOLDBERG: Yes.

MR. BRADFORD: Of course. Sure. Of course.

MS. GOLDBERG: Absolutely.

MR. BRADFORD: They're not entitled to a loan if they can't afford it.

MS. GOLDBERG: Some products

shouldn't be out there.

MR. BRADFORD: And some products--well, then that's part of our big mistake, right?

You know, when I looked at the underwriting standards for lenders, we have lenders who would make a loan to people who were in the middle of foreclosure. And that's really an absurd situation. And we also ignored renters in the process of the whole thing. We wanted everybody to become a homeowner. And that's not necessarily going to be the best solution for everyone either.

But I think just in sum what Debbie is saying is true, is any loan product that based part of its underwriting on speculation about the future is likely to be trouble. You're going to have to make loans based on current housing values and not assuming they're going to go up and on current situations. And on also the expenses that a person really has at the time. That's really sort of I think an over all rule for this stuff. Because almost all of those products were based on some form of speculation, the ones that got in trouble.

And then there's what happens when you get trouble, by the way. It's not just making a loan, it's what are you going to do it to service it? And if you looked at what happened in some of the NeigbhorWorks program, the Neighborhood Housing Services loans and where I worked with legal aid attorneys. They know exactly what do when someone gets in trouble early, you know they get at that person and some of the PMIs who were doing some successful things years ago. They got to that person in the first 30 days. Not like HUD that would get to them 120 days later; those loans were gone.

So, you have to have a servicing I think to back up these loans as well as making sure these loans are safe and sound we're making.

MR. MARSICO: There's been a term that's used is suitable requirement. There were some proposals to use include suitability data in the HMDA data looking at some of the laundry list of practices, asset-based lending and the like that contributed some of this could be ways of looking at loans that should be made and loans that shouldn't be made.

ACTING DIRECTOR BOWMAN: That's it.

COMPTROLLER DUGAN: Professor White, I noticed not many questions have been directed to you, so feeling bad for you up there. So let me raise a question with you.

If I understand the gist of your testimony it is that CRA is kind of an inefficient subsidy program but if you're going to do it, you should do it directly and transparently and it will be efficient to do it that way.

And I guess my question to you is I don't get the sense, or I should say I don't understand that from a lot of the community development projects that I've seen in meetings I've had, not just with community development groups but with bankers and banks, particularly this go-around from my service in Government as opposed to a number of years ago, I think there is a more shared notion that actually this has been a much more productive and efficient way to provide and to get some things done then what has been achieved through direct Government programs. And so I do not think that it's a universally held view in either the private or the public sector that it's inefficient and shouldn't be done, this ought to be more transparent. I'd just be curious about your response, or anybody else who has a comment.

MR. WHITE: No, it's not only about subsidy. You know, I think subsidy ought to be playing a role here, but no, it's not.

And I wasn't involved in banking back in 1977, but as many of you know, the banking world of 1977 was a very different world, as best I can tell. And a world where there was much more in the way of local monopoly, where banks and bankers are very likely to have been lazy, have had more opportunity to discriminate; all of the things that would go with communities, individuals not getting credit. But this is the year 2010. And, yes, we've just gone through just a horrible, horrible experience over these past three or four years. Something let's hope we never have to go through again.

But here in the year 2010 where a lot of those monopoly boundaries have been broken down, where we do see more competition, I come back to the fundamental question of: How come in the year 2010 the loans that people think ought to be made aren't getting made?

Clearly, many banks in many communities do find local lending worthwhile, they make their livings off it. Yet that doesn't seem to be what we're talking about here. We're talking about stuff that isn't getting made. And I don't get it. I don't understand.

If it's discrimination, let's go after them. If it is not enough competition; the hurdle rate is too high. Well, that to me is a statement about not enough competition. So let's get more competition in there, let's charter more institutions that want to make those loans and can do it profitable. Let's get nonfinancial institutions to be allowed to offer financial services where they can offer good value to low and moderate income households the way they do with their nonfinancial services now. That to me is the prime focus, and if still there isn't enough then, yes, let's get the public sector in.

COMPTROLLER DUGAN: Just to interrupt. I mean, I think that sounds like a premise of a world in where we weren't getting enough credit into particular areas. And as others have testified to, and I very firmly agree, I don't think that's been the issue. The issue has been that too much of the kind of credit that didn't work out so well, there's plenty of competition, plenty of credit being provided. Too much credit being provided and not just for people who didn't understand it, I think just credit had gotten too easy and too many people got loans that they couldn't afford and it was a problem.

So I don't think it was an issue so much about access to credit as it was, ironically the CRA lenders as you said in your own testimony were not the ones that were primarily providing this. It was the nonbank firms that were doing a bunch of this kind of lending that proved to be the worst performing as we went forward. So I'm not as clear.

MR. WHITE: In some ways it comes down to what I said earlier, think about the vagueness you've just described that many of my fellow testifiers here have been describing. It's all so vague. Somehow the right stuff isn't happening and it's very clear some of the wrong stuff was happening.

There were too many people who were getting into inappropriate products. They didn't understand it. They thought housing prices would always go up. They thought they would never lose their job. They thought they would never get sick. Whatever they were thinking, clearly too much of that.

I don't believe that's the primary reason for the crises. The primary reason was that too many lenders, as well as too many borrowers, thought that housing prices can only go up and somehow everybody bought into that and we are paying a huge, huge price for that.

But there's just this vagueness of the wrong stuff happened, the right stuff isn't happening and we've got to lean on the banks to make sure the right stuff happens. And I just think that's a crummy way to be running a regulatory system.

COMPTROLLER DUGAN: One more question. Professor Marsico, you made quite a p9oint, as others did, about really the need for objective data, objective metrics. And it's a little bit at odds with what we were hearing in the previous panel.

MR. MARSICO: Yes.

COMPTROLLER DUGAN: And I'm curious how you all would react to the notion that, gee, it's too quantitative. We must get a way to take complex but hard to evaluate loans and give it a lot more credit even though it's kind of hard to quantity. So how do you respond to that?

MR. MARSICO: Well, the one I was talking, a couple of things. They seem to require a lot of community development lending, I'm talking more about home mortgage, small business which of course that lending should meet community credit needs, it shouldn't count for a bank unless it is meeting those needs, but I don't think it has the layer of complexity that they were talking about.

I'm also coming at it from the perspective of a lawyer who has represented community groups in dealing with banks, especially in the context of bank mergers and in trying to make a case that a bank is not meeting community credit needs unable to make a case because there is no kind of standard set of criteria against which you can measure the bank's performance. And so you'll look at some of the criteria that are listed in the performance evaluations, you'll see the bank is not necessarily meeting the benchmarks, nevertheless the merger is approved. And so it gets very frustrating and it makes that whole enforcement process, which I think is one of the brilliant parts of the CRA that it gives community the opportunity to enforce it, it takes it away in many ways. Because you just can't make a case and you don't know whether the bank is really -- if it's not meeting these benchmarks, nevertheless it doesn't seem to matter. And I think it undermines the kind of enforcement from below that's such an important part of the CRA.

So, that's really where I'm coming from. You know, how to create a regulatory regime. And I understand there needs to be room for judgment and subjective judgments, and evaluations. But how do you create one that can be enforced from below, as I think it was designed to be. That's really what I'm looking for.

VICE CHAIRMAN GRUENBERG: If I might say, this has been a very helpful discussion.

A couple of people have alluded to this and I wanted to ask about it more explicitly in terms of going forward, the economic environment and credit market environment that we're going to be facing, particularly for the neighborhoods that CRA is concerned with. And I think CRA came into being largely in response to the so-called redlining issue where communities weren't getting access to credit.

And it's been remarked upon in this financial crises, the issue was in some measure the over extension of credit on an unsustainable basis built on poor underwriting, and in some sense we're now reaping the consequences of that activity.

So as we look at the circumstance going forward and in the aftermath of the financial crises and tightened credit markets coming out of a deep recession with continuing high unemployment and an ongoing foreclosure crises that really has not abated yet, what can we say in terms of the issues that CRA should be concerned with? As we look at CRA going forward, are we back to an access to credit kind of issue, in some sense coming full circle to the origins of CRA as opposed to the episode we've experienced over the last three or four years? And what does that say about CRA going forward? In particular people have remarked about focusing on small business lending more than we have in the past, and perhaps rental housing more than we have in the past. Are those issues we should pay more attention to as we go forward?

I'd just be interested in your reaction.

MS. WARTELL: If may, I think the answers we have to quality and access both. And quality of lending now means loans that are appropriate, meet the needs of communities and those needs are different and more complicated. They include rental, they include small business, I would argue they would include access to energy efficiency tools and strategies and other things that will help those communities lower their energy costs at the same rate as the rest of our society will be doing over the next few decades.

So, I think it's really important,

the last question got at this issue of why do we encourage institutions to do something that left on their own devices they wouldn't do anyway. And we know that there are profitable businesses that are in different rates of return within anyone institution's book of business. And there is a tendency to sometimes to want to go to the highest returns quickest. But if you can encourage an institution to learn how to serve new markets well, and they can only learn that by being engaged, they over time can get very good rates of return in new products and areas.

And so in some ways CRA is meant to be the kind of kick-start for the incentive to come in and we're not asking you to do more than you should be asked to do as a private institution, but to figure out how to do it there and get a little extra credit for something else that you care about so that you're willing to do the learning.

The regulators have a very

important role in accelerating that learning through best practices, through focusing these institutions on where those needs are greatest. But you also need to have their officers, their lending officers learning those communities well enough so that they can help. So it's quality, and it's access, and it's thinking about quality differently to meet the current needs of the community.

MR. WHITE: Sorry. I can't not jump in at this point. These guys must be the slowest learners on the earth. The CRA has been out there for 33 years and still we're talking about having to kick-start, having to -- you know, I couldn't hold my position as a professor if that was the kind of job I was doing in teaching my undergraduates and by MBAs. It just doesn't ring right that 33 years later we're still talking that these institutions have to learn. If they haven't learned by now, there's something more fundamentally wrong. And whether that wrong is not enough competition or that wrong is they're just still continuing discriminate and we just got to come down harder on them, or the wrong is these are socially worthwhile but they're privately not profitable and so we've got to figure out some way to use the public sector. But 33 years, sorry. The learning story just doesn't ring right.

And again, the hurdle rate story, that's really a competition story. If you think the hurdle rate is too high and that banks can make money off of lower hurdle rates, that's a story that you need more competition.

MS. LUDWIG: May I offer a more mundane response, please?

I mean, these questions are hugely complex, right? So the questions that you're asking and the issues that we're raising in a way that's oversimplified for purposes of brevity. Just to untangle a piece of what you asked and to sort of also point out, I mean you talked about the over extension of credit perhaps being the problem until recently.

What we observe is not an over extension of credit as much as something we would depict as an aggressive targeting and push-marketing of destructive credit. So over extension of credit is perhaps a polite way of saying something else, I understand that.

So, yes, we have to be I think really mindful of making sure that people have access to fair and affordable prime products and services in historically redlined neighborhoods which for us encapsulates also the locus of the reverse redlining; it's all the same neighborhoods over and over again, just different waves, different variations. And what we're seeing now ties in not just to sort of making sure there's affirmative practices and product in these communities and that they're not cut off, but also to look at the kind of aftermath of the foreclosure crises and the economic crises that we're in which is continuing to play out very pervasively and aggressively in low income neighborhoods and communities of color, and that is namely in the form of loan modification and foreclosure rescue scams that you can sort of juxtapose these abuse practices with the inadequacy of loan servicing by financial institutions.

You've got debt settlement abuses which now, I don't know if you listen to radio. AM radio for five minutes it's one of these you can't throw an auditory rock without hitting a debt settlement or a debt consolidation or some kind of scamy outfits to help people resolve their credit because there's a new federal program and all sorts of other misinformation and deceptive marketing.

You've got debt buyers that are engaged in all sorts of abusive debt collection practices, many of them publicly traded institutions and some of them subsidiaries and affiliates of large banks.

So they're on one hand putting out the credit through their credit card companies and on the other hand engage in abusive debt collection practices through their debt buying affiliates.

So these are complicated layered questions and issues, but they are really very concrete things that the regulators can and should be doing to deal with the, again, aftermath and consequences of this long term problems that we're going to continue to have. These are not in the past tense by any stretch.

MR. MARSICO: Looking perspectively, you know it also may just be that the whole notion of delivery of financial services in lower income communities has to be reexamined. It may not be enough to do it regulatorially, if that's a word.

I know that CRA was not part of the financial reform legislation, but I also know that organizations like NCRC has been pushing

CRA modernization statutes. Maybe that some of those provisions are also needed.

I mean, if you really think what I'm really talking about is more of a comprehensive regulation of lending practices. And it might be that CRA needs to be revisited statutorily as well.

MS. GOLDBERG: Can I just two things, really?

One is, I think I come back to one of the comments I made early on, which is that we set up these fractures in the financial services industry, these fragments in the financial services industry and the way that it's regulated. And moving forward in order to make sure that individuals and communities don' suffer the same way that they have in the last few years, we need to mend those. We need to make sure that there's a level playing field in the industry. And that no matter what channel you may encounter in the financial services company you're going to get treated fairly, you're going to be offered the same range of products and you're going to get priced fairly for the risk that you really represent.

And I don't take that as a given. I think that there is much, much more rhetoric about how this crises is, to a large degree, rests on the shoulders of people who over extended, who tried to gain the system. who took on loans that they couldn't really afford or who were very risky borrowers and were priced appropriately. And I don't think that's accurate. And I think we really have to tackle that, or people are going to be carrying that burden for a very long time going forward and it's going to be really hard to recover from this crises that we're in the midst of.

You know, one other comment I just was hoping to have an opportunity to put on the table is really for Governor Duke. Because I think there was some really interesting conversation over the course of today about the latitude that you all have to look at the activities of affiliates and to bring that kind of under the fold of CRA. And I think there was some good analysis about the latitude that in fact you do have. But my guess is you're going to take a little time to kind of think that through and trying to figure out what does the law allow you, what does the law prohibit you from doing.

One thing you could do tomorrow at the Federal Reserve Board is to take a different look at the convenience and needs factor that you apply to a bank holding company's application. You know, over the last 33 years somehow that convenience and needs factor has come to equal CRA. And the only thing that I've seen that I can remember be evaluated to assess the extent to which a bank holding company application serves the convenience and needs of the effected communities is the CRA performance of the institutions involved in the transaction. But there's as far as I know nowhere in the statute and nowhere in the Bank Holding Company Act regulations that says convenience and needs means community reinvestment as we have known it for the last 33 years.

And I think you have a lot of opportunity right there to make a much broader view of the impact of the performance of all of the affiliates of a bank holding company and the impact of an application to merge or whatever on the communities that would be served.

VICE CHAIRMAN GRUENBERG: Thank you.

Are there other questions?

I want to thank this panel. You all have been very helpful. Thank you.