If I may, I would now like to ask the first panel of witnesses to come forward and please take a seat at the witness table.

Our first panel includes community, consumer, and state and local government perspectives.

Our witnesses are:

Wade Henderson, President and CEO of the Leadership Conference on Civil Rights;

Josh Silver, the Vice President for Research and Policy for the National Community Reinvestment Coalition;

Barry Zigas, Director of Housing Policy for Consumer Federation of America;

Steven Antonakes, Commissioner of the Massachusetts Division of Banks, and;

Jonathan Mintz, Commissioner of the New York City Department of Consumer Affairs.

I would ask the witnesses to please limit your oral statements to five minutes. We will include the full text of your written comments in the record.
We do have a light system here and the yellow light will come on when you have 30 seconds remaining.

And following your statements, there will be five minute rounds of questions from each of the agency representatives here.

I should note that this hearing will be videostreamed live through the FDIC's website and there is as well a link from the website of the Federal Financial Institutions Examination Council. The video will then be posted on the website with a transcript after the conclusion of the hearing.

Mr. Henderson, if you would please speak now.

MR. HENDERSON: Mr. Gruenberg and the panel, good morning. And thank you for the opportunity to join you.

I'm Wade Henderson. I'm President and CEO of the Leadership Conference on Civil and Human Rights, the nation's leading civil and human rights coalition with more than 200
organizations working together to build an America that's as good as its ideals.

I'm also the Joseph Raugh Professor of Public Interest Law at the University of the District of Columbia.

And again, I want to thank you for the opportunity to discuss the need for modernization of the Community Reinvestment Act of 1977.

Now, when Congress first enacted the CRA, Americans lived in a very different world. Personal computers and cell phones were still largely theoretical and no one had ever heard of the World Wide Web. Few people envisioned a banking system that would depend more on wireless electronics and less on bricks and mortar. But while much has changed since 1977, the conditions that first prompted the passage of the CRA are still very much with us today.

Basic banking services are crucial for the economic security of American
families, yet 54 percent of African-American households and 43 percent of Hispanic households are unbanked or under banked. These families pay more for their basic services such as getting a check cashed. For them credit is harder to get, and usually much more expensive.

The crux of my testimony today is that more than ever America needs a strong CRA with vigorous enforcement. But the law as currently administered is woefully inadequate in reflecting today's realities. Now what are some of those realities?

Well, first because the CRA has not kept up with advances in technology and changing markets, it is all too easy for banks circumvent regulations and undermine the law's intent. For example, when the CRA was enacted it made sense to focus on how banks were serving neighborhoods that were physically located near them. Today, much banking is conducted electronically and almost 60 percent
of large bank lending occurs outside of the areas that are assessed for CRA purposes. Thus, many CRA assessments don't cover the majority of a bank's service area.

Second, when the CRA was enacted the geographic scope of bank operations has expanded dramatically. In fact, in 1977 there were no nationwide depository institutions. Today most of the top 25 institutions operate nationwide.

And finally, and not surprisingly, studies show that institutions subject to CRA requirements make better loans in areas that are subject to examination.

Now, with these realities in mind, my written testimony includes a number of recommendations to update and strength the CRA. In the interest of time, I will mention three.

First, CRA requirements should apply to the broader geographic area that banks actually serve recognizing that banks
have extended their reach through new technology and broadening assessment areas to reflect the actual scope of bank activities. For example, in any state where an institution has at least $10 million in loans or deposit accounts, it should be required to serve all communities within the state.

Second, the loophole that allows bank’s affiliates to evade CRA requirements should be eliminated. As it stands today depository institutions can appear to be in compliance with CRA even while supporting activities by affiliates that violate the law. If banks are to be truly accountable, they should not be allowed to exclude parts of their operations from scrutiny.

And third, regulations should target the needs of unbanked and under banked consumers and promote affordable transaction and savings account to help build assets.

And on that note, I understand that Citigroup will be promoting or proposing today
that savings accounts be counted for CRA credit. I think this idea has merit if accounts are structured in a way that make them genuinely affordable and convenient for consumers. And I look forward to more discussion about the details.

Now, while we make these recommendations to strengthen CRA, we are well aware that powerful interests have tried for years to weaken or abolish the law. In recent years some opponents have even tried to blame CRA for the subprime lending debacle and the resulting foreclosure crises. Facts show that that is simply absurd to blame the CRA. According to a Federal Reserve analysis nearly all subprime mortgages, that is 94 percent, were made by institutions that were not covered by the CRA. Contrary to the badly misinformed claims of critics, subprime lenders steered lower income borrowers away from mainstream financial institutions covered by the CRA.
Now the banks were glad to shield their subprime affiliates from regulatory scrutiny, and at the same time they eagerly invested in toxic mortgage securities. Now the banks have been bailed out while the lower income families continue to struggle with the loss of their homes and scarcity of credit triggered by high rolling bank practices.

I should also point out that African-Americans and Latinos in the subprime mortgage foreclosure crises represented the single greatest loss, at least one of the greatest losses of wealth ever documented for these communities. So at the very least, appropriate updating of CRA requirements to meet today's economic realities are arguably the best way for banks to give back to the communities that have been devastated by the gambles made in recent years.

I'll stop by testimony, Mr. Chair.

And thank you for the opportunity to be with you today.
VICE CHAIRMAN GRUENBERG: Thank you.

Mr. Silver?

MR. SILVER: As Vice President of the National Community Reinvestment Coalition, I thank you for convening these hearings and urge you to embark on a regulatory rulemaking to strengthen the Community Reinvestment Act. CRA is critical. NCRC’s 600 community organization members use CRA daily in neighborhood development. Reforms to CRA will promote economic recovery and create jobs by increasing responsible lending, particularly for small businesses.

While we applaud your intentions to improve CRA, Congress also needs to apply CRA broadly throughout the financial industry in order to maximize safe and sound lending and investment in community.

Federal Reserve research revealed that CRA has resulted in safe and sound lending. Therefore, CRA would have reduced
the severity of the foreclosure crises had it covered a broader range of institutions.

In addition, CRA small business and community development lending exceeded $1 trillion for America's neighborhoods from 1996 through 2008. Although CRA has been instrumental in boosting lending and investing, CRA has not realized its full potential. The following are suggested reforms.

Because of the current definition of CRA assessment areas as geographical areas containing bank branches, the share of all home purchase loans made by banks operating in their assessment areas has dropped to about 25 percent. Here in the Washington, D.C. metro area, NCRC found that only six of the 16 banks with the largest home loan market shares in 2008 had our metro area as an assessment area; only six of 16.

Some will say it is difficult for banks to comply with CRA where they do not
have branches. But there are many methods to serve modest income markets such as marketing in local media, partnering with community groups and placing loan offices in modest income neighbors.

Assessment areas must cover the great majority of bank loans. This is tremendous important. Banks are more likely to meet community needs in geographical areas where they examined.

Affiliates must be included on CRA exams. In the next hearing site of Atlanta, NCRC found that only one of six mortgage company affiliates of banks that were the top lenders in the area were included on CRA exams. Only one of six. Banks attempted to include affiliates on CRA exams if the affiliates performed well, but will opt against inclusion if the affiliates are engaged in problematic lending. Such gaming thwarts CRA's purpose to ensure that the institution is meeting credit needs in a
reasonable manner.

CRA exams must explicitly examine lending and services to minority borrowers and communities. Everyone knows, and research has confirmed, that the subprime fiasco and the foreclosure crisis had a disproportionate and devastating impact on minority communities. Overall, it is likely that including minorities on CRA exams would lessen the racial disparities by encouraging banks to increase their lending and services in communities of color.

The current four ratings do not provide meaningful distinctions in performance and has resulted in a 99 percent pass rate. The agency should introduce low and high satisfactory as possible ratings in addition to the four existing ratings.

Also, the agency should develop better weighting systems so that routine investments like purchasing loans in a secondary market do not receive as much weight
as more difficult investments such as equity investments in small businesses.

Some commentators would favor incentives. We would be supportive of exploring programmatic methods to increase tax credits under the loan from housing tax credits or new markets tax credit for institutions receiving outstanding ratings. But we are opposed to exemptions from CRA review on merger applications or decreasing the frequency of CRA exams for institutions with outstanding ratings. CRA performance is likely to decline when institutions receive less frequent exams and public scrutiny.

Mergers are likely to decline in frequency. Therefore, additional enforcement mechanisms are needed. For example, banks could be required to submit CRA improvement plans subject to public comment when they receive either a low rating overall or in any assessment areas. CRA exams in merger approval orders could include an expectation
section that either mandates or recommends improvements to specific weaknesses of CRA performance.

I hope during the Q&A we also talk about data enhancements and the important topic of community development.

In this critical discussion about CRA we need more light and less heat. We need actively to actually listen to each other and develop ways to improve CRA because CRA touches us and our families in profound ways. Most of us in this room likely have parents or grandparents that came to America and started a small business and lived the American dream. CRA is about building neighborhoods and economic opportunity by harnessing the resources of financial institutions and meet community needs in neighborhoods have been neglected for too long. It is time to change that now.

Thank you very much.

VICE CHAIRMAN GRUENBERG: Thank
Mr. Zigas?

MR. ZIGAS: Thank you very much, Mr. Chairman and other members of the panel. It's a pleasure to be here today.

My name is Barry Zigas. I'm Director of Housing Policy at Consumer Federation of America.

Consumer Federation represents 280 state and local consumer organizations, advocacy and governance organizations around a number of policy issues here in Washington, including financial services for consumers.

My own experience with CRA dates back significantly further than my tenure at CFA. From 1993 to 2006 I was a Vice President and Senior Vice President at Fannie Mae where I was in charge of new community products, worked with lenders across the country to develop acceptable secondary market executions for community development and CRA lending, and was a key partner with Self-Help Venture Fund
in the creation of their community Vantage Program, which has provided a secondary market outlet for thousands of CRA loans.

Dating back to 1976 to '79 when I was with the U.S. Conference of Mayors I authored the first set of guide books that helped local government officials understand how to use the CRA and Home Mortgage Disclosure Act to foster more targeted investment in their communities.

I will thank you for the opportunity to participate and share our views. My written testimony covers my main points.

I want to start by emphasizing, as others have, the continuing importance of CRA to ensure that communities receive their fair share of credit. And I particularly want to thank each of you and your institutions for the acknowledgement and public rebuttals you've given to the assertions that CRA was in some way at the root of the subprime mortgage
crises or in some way accelerated and facilitated it. And we're very grateful for you standing up to say that's not true.

My points echo those of others on the panel, and I'm sure throughout the day and the rest of the hearings. I'll try to be brief.

First, assessment areas clearly need to be reassessed in light of the scope of today's financial services institutions. It's much less local, it's become nationwide. And retention of focus on certain communities certainly is reasonable, but the current system of establishing them and approving them and ignoring other activities by these institutions needs to be revised to develop more reasonable coverage of very large institutions.

Second, the activities of affiliates in the CRA review are included at the institution's discretion. But with changes in the structure of the industry, a
lender's decision not to include affiliates can lead to a seriously incomplete picture of its activities that undermines the purpose of the statute. If reviews do not encompass all aspects of affiliated companies, at least they should consider the range and scope of affiliates in the business lines in which they engage as part of the review. It's not helpful if institutions can choose to operate specific lines of business through affiliates and others through main institutions. This doesn't yield the full picture of the business strategies and likely community impacts that the work is having.

Others have spoken about the assessment grades. I'll just say what they said.

On another item, though, I'd like to emphasize the importance of strategic plans and our sense that the role of these needs to be emphasized. This is consistent with the larger assessment areas, the concerns we have
about affiliates and the importance of having a complete view. The regulations currently permit the use of such plans, but do not require them. We'd suggest that further thought be given to requiring institutions, especially large institutions, to file such a plan on a regular basis. As currently is required, these plans should be available for review and comment by the public before being adopted, although we note the current rules provide a review period that we believe ought to be extended to a longer time.

The value of requiring such plans is to put institutions on record in advance of the areas they plan to emphasize, the obstacles they believe they face and the actions they plan to take to overcome them. This is simple business planning. Every institution is doing this for their internal use. We think it would be very helpful to require them to do so with relationship to their community development, community
reinvestment lending.

The FHFA, I might note, has recently proposed a draft rule for a similar set of plans for the duty to serve requirement for the GSEs. And I would urge consideration of the model they've used. While imperfect, I thin it is a helpful step.

In terms of access to credit, low- and moderate-income consumers continue to face shortages and affordable retail banking services and savings plans, as others have noted. We support the decision to give CRA credit to experiments that encourage low cost savings accounts and other steps, but suggest that CRA reviews need to take into account not only the positive steps lenders may take, but also the potentially negative impacts of their business model that may surely disadvantage low and moderate income consumers.

I've submitted along with my testimony a CRA press release summarizing my colleague's recent review of overdraft fee
policies. And while not going into the
details, I would just note that they are an
illustration of why CRA needs to take into
account the other business practices that
lenders undertake.

USAA, Citigroup and Bank of
America, for instance, all have decided not to
market opt-in coverage for overdraft coverage
for their consumers. We strongly support
this, and my colleague Martin Eakes called
this a game changer. Yet the survey shows
that many institutions are taking the opposite
tac and urging their customers to opt into
this coverage with its very high fees and
dubious benefits. Lenders that take the lead
in protecting consumers and putting their
interests first ought to generate favorable
credit under CRA, but the current system does
not necessarily encourage this. By not
discouraging bad behavior, CRA can reward some
initiatives while allowing other pernicious
practices to flourish.
I look forward to the question and answer, and appreciate the opportunity to testify today.

VICE CHAIRMAN GRUENBERG: Thank you.

Commissioner Anonakes?

MR. ANTONAKES: Good morning, Vice Chairman Gruenberg, Comptroller Dugan, Acting Director Bowman and Director Braunstein. My name is Steven Antonakes, and I serve as the Commissioner of Banks for the Commonwealth of Massachusetts.

I commend the agencies for scheduling this timely and important hearing on strengthening and expanding the Community Reinvestment Act regulations. It'll take years for many urban communities to recover from the devastation of the ongoing foreclosure crises. More so than ever before, access to sustainable home ownership opportunities in low and moderate income neighborhoods will be essential.
An argument has been advanced by some that CRA is the root cause of the economic crises in that it encouraged banks to sacrifice underwriting standards to increase home ownership opportunities. In my view, this contention is completely without merit.

First, while CRA requires banks to serve their entire communities, the Act and regulations specifically prohibit banks from making unsafe and unsound loans. The drafters of CRA recognized that unsustainable loans are even more harmful to consumers and communities than an absence of credit.

CRA covered lenders that engaged in high risk lending, most notably Fremont Investment and Loan, Countrywide, National City, IndyMac, and Washington Mutual among others should have been strongly criticized by federal regulators in terms of CRA compliance for originating or purchasing mortgage loans that borrowers could not afford.

Second, large lenders and Wall
Street firms did not develop later generations of confusing and risky subprime mortgage loans out of an altruistic need or sense of obligation to meet the credit needs of low and moderate income communities. They did so out of greed.

Massachusetts efforts to ensure banks serve their communities actually predate the passage of the federal CRA in 1977. In 1982 Massachusetts broadened coverage of the CRA to cover all credit unions. In November of 2007 Governor Deval Patrick signed groundbreaking foreclosure prevention legislation which extended CRA requirements to non-bank mortgage companies.

Given today's changing landscape, it is the appropriate to consider how the CRA regulations can be modernized to make them even more effective in the years ahead. I encourage the agencies to consider the following suggestions.

First, require affiliate lending to
be reviewed. Some of the largest banks in the country were either directly or indirectly involved in the subprime and non-traditional mortgage markets, and yet in nearly every case the largest banks consistently received satisfactory or outstanding CRA ratings. Current CRA regulations allow banks to have only their good loans considered and can shield their bad loans in an affiliated institution. This loophole should be closed and all lending by affiliates should be included in the review of a bank's CRA performance.

Increase review standards for the largest institutions. Existing federal CRA regulations define a large bank as having assets over $1 billion. Some of these institutions are often in practice examined every four to five years if they previously received a CRA rating of outstanding or satisfactory. However, as the banking industry has further consolidated, the $1
billion asset threshold is becoming increasingly antiquated. The scope and frequency of CRA examinations should be commensurate with a bank's market share. A significantly more robust annual examination process should be undertaken for the top 20 bank lenders in the country.

Downgrade banks that originate unsustainable home mortgage loans. Massachusetts had adopted a suitability standard when reviewing mortgage lenders' CRA performance. The agencies should similarly amend the regulations so that the origination of unsustainable loans has an adverse impact on a bank's CRA rating.

Mandate the evaluation of loan modification efforts. Separately the agencies have asked for comment on proposed changes to evaluate a bank's loan modification efforts similar to what Massachusetts has already done. CRA should be utilized to measure the pace, the number and the quality of loan
modifications. This type of public scrutiny would provide greater incentive for banks to more aggressively act to avoid unnecessary foreclosures.

Downgrade banks whose partnerships harm the under banked. Banks should be held accountable for the activities that harm under banked or unbanked consumers. The spirit of CRA embodies an accessible banking industry which promotes savings and increased credit opportunities and in order to promote upward economic mobility. Practices of some banks that partner with third parties to offer high cost refinance participation loans or costly check cashing services are reprehensible. These partnerships should be banned. Until they are, CRA should at least be utilized to strongly criticize participating institutions to engaging in these activities.

And finally, encourage additional access to banking services. Conversely, the agencies should encourage banks to develop
additional services targeted to low- and moderate-income, underserved individuals and communities. Massachusetts has a voluntary basic banking program to provide affordable checking and savings alternatives to people with modest means. As a result, Massachusetts has one of the nation's lowest under banked populations.

Additional consideration should be given for programs serving the underserved including small dollar and short term loan programs like the ones recently studied by the FDIC.

I thank you for the opportunity to testify this morning and look forward to your questions.

VICE CHAIRMAN GRUENBERG: Thank you.

Commissioner Mintz?

MR. MINTZ: Good morning. I'm Jonathan Mintz, Commissioner of the New York City Department of Consumer Affairs.
I appreciate the opportunity to offer recommendations for the next generation of the Community Reinvestment Act rules on behalf of Mayor Michael Bloomberg and the City of New York.

It really is a genuine pleasure to be here today to be able to speak with committed public officials from the FDIC, and the Federal Reserve, the OCC and the OTS.

I've submitted separate written testimony which details the aggressive work of the city's Department of Consumers Affairs, particularly in the financial services marketplace and our banking access initiatives. I'm going to spare you all the brochure this morning, save to note that we have successfully leveraged voluntary, but tangible, partnerships with both local and national banks and credit unions to help connect unbanked New Yorkers to safe and affordable products.

In New York City getting CRA right
really matters. It matters because there are 825,000 unbanked residents. And it matters because the financial services sector is a vital part of our local economy, accounting for some 500,000 jobs. Without question, CRA has brought about improvements in the provision of financial services to the underserved helping to address the credit needs of low- and moderate-income communities. However, and this is why we're all here, of course, there's more that CRA can and ought to accomplish.

While there are multiple ways to improve CRA, I'm here to talk about just one: Amending the service and community development tests to address the retail banking needs of low- and moderate-income communities. I believe that this is the key area where CRA can make innovative and enormous strides in the realistic near future.

The evidence is overwhelming that what low- and moderate-income communities need
is not just access to credit, but safe and affordable banking products. As you all understand, being unbanked not only results in an increased cost for basic financial services, but it also a strong predictor of overall financial instability. By and large, financial institutions have yet to focus on those disenfranchised from the financial mainstream.

Over three-quarters of banks surveyed by the FDIC in 2008 reported that they had conducted no market research in regard to expanding services to the unbanked or under banked consumers in their CRA assessment areas.

CRA has focused its signals in this regard on branch presence. Yet our published research shows that at least in New York branch presence has become essentially irrelevant to whether or not a person is or isn't banked. The supply issue isn't just a brick and mortar building, it's affordable,
responsible and safe products.

Therefore, based upon on these concerns and what we've been able to accomplish even on a local level, we recommend that the CRA service test focus on retail banking products. Current CRA rules are overly broad, inadvertently inflating the value of activities such as Board participation, volunteering or workshops that have only marginal impact on the community. Financial institutions themselves find this approach problematic. Widely varying interpretations of this test have driven many banks to devote tremendous resources to activities that are not in their core business interests or strengths.

CRA should encourage and reward banks to focus on what they do best: Deliver financial services. In other words, makes the service test win/win.

By the way, it's also our position that intermediate small banks easily could
meet this same banking product expectations through the community development test to which they are subject.

So, how would this recommendation work? To effectively assess bank performance in offering safe and affordable banking products, the agencies should first clearly define appropriate and therefore eligible products and services. To ensure consistency and uniform implementation, we propose that regulatory agencies develop standards for safe and affordable products and services that would be eligible for CRA credit.

The FDIC's recently proposed checking and savings account templates could serve as excellent models for clear yet flexible definitions.

The clarity of eligible products will help banks reduce compliance costs, regulators increase efficiencies of exams and consumers gain access to products that they can trust.
Previously I proposed that the new Consumer Financial Protection Bureau could develop a rating system that could assess the complexity and risk to consumers of financial products, which could also serve as a powerful tool in this regard. Product standards could be translated into a simple nationally recognized A through F letter grading system or a green/yellow/red light system. Such clear signals would then help determine which products and services would earn CRA credit under the service and community development tests in addition to providing both valuable and consumer friendly information.

We encourage the agencies to coordinate with the CFPB to establish and promote such a ratings framework.

Additionally, a consumer awareness campaign to promote the rating system could strengthen the public relations leverage on under performing banks and CRA assessments and at the same time assist higher performing
financial institutions to use their success to better compete in the marketplace.

With standards for CRA eligible products and services in place, the agencies should then systematically evaluate both the promotion and the uptake of such products.

Just one more moment. I just have to say that the mere existence of appropriate products is not enough. A disappointing experience in New York State where the provision of a safe banking account is actually mandated by law has proven largely unsuccessful. People don't know the accounts are there, people aren't selling the accounts, people aren't buying the accounts.

If I leave you with one thought today, let it just be this: That the service test really should not evaluate whether financial institutions are themselves good corporate citizens. Instead, it should be whether they are serving the actual financial product and service needs of their citizenry.
Thank you.

VICE CHAIRMAN GRUENBERG: Thank you very much. And I really thank you all for your very thoughtful testimony giving us some excellent background for the record here.

I'd like to begin by asking a broad question to sort of frame our thinking on an important issue. Is it fair to say that when CRA was enacted in 1977, and even as recently as 1995 when the last comprehensive review was done, the operating assumption was looking at the activities of the bank and its headquarters and branch network? And can we further say that was the operating assumption around which the lending test was built as well as the services test and, in fact, the community development test? So now what we're seeing today is a financial services industry, particularly for the larger institutions, that's moving away from the delivery of both credit products and basic banking services, exclusively relying on the branch network.
And to a certain extent, we're thinking about adapting CRA to a changing marketplace and environment as a starting point for our consideration.

I'd be interested if I could just go down the row and get people's reaction to that premise. Is that a fair way to think about it?

MR. HENDERSON: Well, Mr. Chairman, I think you accurately described the problem of today. I think you've seen a consensus, at least among those of us who have spoken to the issue of the assessment area of today's CRA, that it has been limited artificially to a world that in effect no longer exists for banking products and services.

The difficulty is that the introduction of electronic opportunities which have of course expanded opportunities, which are tremendous, have worked on a special hardship on the poor and lower income families. We have millions of families today...
struggling to stay out of poverty. And the problem that you've described reinforces a structural inequality that drives these individuals to use higher cost products that cost far beyond what Americans in the middle class pay using traditional banking services and has steered them de facto into the arms of individuals who choose to exploit them.

So in the subprime crises or pay day lending, the unbanked and under banked pay a dear price that, in part, is reinforced by the very problem that you've described.

MR. SILVER: I would say that the bank branches are still very important. Let's talk about two large institutions in the Washington, D.C. metropolitan area. Both institutions have more than $1 trillion in assets. One institution made 11,000 loans in Washington, D.C. in 2008 and did have an assessment area that covered the Washington, D.C. metropolitan area, because their branches were here. Another institution also with $1
trillion made more than 10,000 loans in the Washington, D.C. area but because it did not have branches it was not examined in the Washington, D.C. metropolitan area.

Two banks, more than $1 trillion, one had a CRA exam here in Washington, D.C. and one did not. I think that needs to change. That's just incorrect. CRA does need to evolve with the changes in the financial industry. And both these institutions are clearly market leaders and should have similar responsibilities in the Washington, D.C. area.

But before we talk about the death of bank branches, I also want to say that the service test should encourage bank branches and should encourage the deposits that the New York Commissioner was talking about as well. And we need better data on bank branches and deposits.

We see a positive relationship between branches in particularly small business lending. So we should not give up on
bank branches, but we should also realize that there are institutions making loans outside of the branch network and they need to have CRA exams when they're making lots of loans.

MR. ZIGAS: Mr. Chairman, I think you summarized it very well. I'd just make a few quick additional points.

One, in 1977 when the Act was adopted the entire industry was a significantly different industry in terms of the activities it can undertake, the scale of the businesses they can engage in, and the degree of regulation they were subject to in terms of the services and products they could offer. Today, we're really talking about diversified financial services companies, not really banks, depository institutions as we thought of them then. And I think that's a huge difference on why the regulations have to be modernized as we've described.

Second, in 1977 the big problem that we were confronting and that CRA was
designed to help address was a problem of too little credit in certain communities that had been traditionally denied access. Today I think we can say, after the crisis we've been through, that in many communities there has been too much credit and too little CRA. Too much free access to credit on unregulated terms that has encouraged people to take on unstable and ultimately unsustainable mortgages.

The broader authorities that lenders have now gained in terms of the different businesses their holding companies can engage in also presents conflicts that I think Commissioner Antonakes very eloquently described, which is you can get CRA credit by giving certain kinds of loans through one part of your enterprise and you can take away all the wealth in the community through other enterprises, either by funding their refund anticipation loan and pay-day loan storefronts or by offering other kinds of services through
affiliates that you choose not to include. And all of these things are just a function of the complication of the system and why I think CRA has to be modernized to try to address it. The industry has outrun the assumptions of the Act when it was adopted.

MR. ANTONAKES: Mr. Chairman, I think we have to recognize the distinction that exists in the banking industry today. We have very large institutions and we still have your traditional community banks. And I think that the majority of community banks, the existing geographic model still works. They still rely on their branch network and local contacts to drive the deposits and where they're making most of their credit decisions.

I think the realistic view here is that the asset thresholds are antiques. While it sounds to laypeople like a large number, I think we can all agree a billion dollar bank is not a large institution by any means. And those numbers should be substantially revised.
And the tests, in terms of overall measurement of compliance and how the assessments areas should work, need to be radically different for those institutions that don't have a true traditional branch network and rely on other delivery systems.

MR. MINTZ: I would just add briefly that I think, when asking these questions, we should start from the goals and work backward rather than thinking about how big of a change one is contemplating.

I think if the goal is to assess whether a financial institution is meeting the lending and product and service needs, and other needs, of a community, then I think branch presence is only part of it. I think affiliates, compliance with relevant regulations is only part of it. It's one thing to be offering the right kind of products, it's another to be offering them appropriately. Living up to existing and potentially new consumer regulations is
important.

At the same time, I think that by expanding broadly what it is we are evaluating, you're also giving financial institutions the opportunity to get credit for the good work that they're doing as well. And I think that has to be part of the picture. I think it's critical to how you leverage those kinds of partnerships. At the end of the day, CRA really is about leveraging those choices that they make rather than requiring strict compliance. So I think that has to be part of the mix as well.

VICE CHAIRMAN GRUENBERG: Thank you.

DIRECTOR BRAUNSTEIN: Thank you.

And thank you all for your testimony today. It's been very interesting.

I heard some very consistent themes here of, first of all, issues around the assessment area, issues around affiliates, issues around broader than just lending
including deposit and other retail services.

I know there's a lot to discuss on the assessment area, but I'd like to turn to the affiliate issue that several of you talked about. Currently, as you know, banks have a choice as to whether or not to include the lending of their affiliates in their CRA assessment. And what I'm hearing from the panelists today is that that choice should not be a choice anymore, that it should be mandatory.

I'd like to talk a little bit about that, and hear some more from you. So when we're talking about affiliates are we just talking about mortgage affiliates? Because banks have affiliates for all kinds of different things: they have credit card affiliates and they have affiliated broker/dealers. They have all kinds of affiliates.

So I'd like to know a little bit more from you. If we were to do this, how
would we? Is it primarily the mortgage affiliates you're concerned about? How would we structure this?

And whoever wants to come in, can start. Mr. Henderson and work down.

MR. HENDERSON: Well, thank you Director Braunstein. I think you've posed a very interesting and potentially challenging question.

I think you have heard consistently among those who have spoken to it that the affiliate issue needs to be addressed and banks should no longer have the option of shielding affiliates and themselves, by separating their activities in a way that creates a fiction that there are two entities.

So we agree on that.

Certainly, I think we believe that mortgage affiliates need special scrutiny, but I would not limit it there. I mean, I think truthfully CRA has an inherent flexibility that allows you to examine the evolution and
issuance of new products that have significant implications for posing the same sort of dilemma in other aspects of the banking world that we've seen in the mortgage lending field.

So, I do believe that credit card expenses which impose burdensome costs on families who can often least afford it need to be included in the assessment area.

And I think these new products propose a challenge, but I think the regulatory process that you have set up for reviewing what would be appropriate is the way to handle the issue. I think that's the APA, the Administrative Procedure Act contemplates in a situation like this.

MR. SILVER: Well historically, Sandra, the concern has been revolving around mortgage affiliates. And there are some mortgage affiliates of large lending institutions that are not out of business because they were making problematic loans. And it was inexcusable that a lot of these
mortgage company affiliates were not on the CRA exam because the responsible lending of the bank was directly undercut by the problematic lending of the mortgage affiliate.

So we applaud the regulatory agencies in thinking about this very important topic. And you have taken a step that you now examine the activities of the affiliates in the assessment area to make sure that they're not illegal or discriminatory. And we applaud that step, and we think that step is an important precedent for just requiring that affiliates be on CRA exams.

You raise a very important point about credit card affiliates and broker/dealer affiliates. Banks, indeed, have gotten a lot of power in the year since the Gramm-Leach-Bliley Act passed. And that if they are truly trying to be one-stop-shopping for all the financial needs and they have these broker/dealer affiliates and credit card affiliates, my colleague can talk about credit
card abuses more than I can, indeed, these affiliates ought to be on CRA exams to make sure there's no abuses and to make sure that there is increased access to safe and sound lending and other products.

And lastly, I want to say that I agree with the Massachusetts Commissioner that there ought to be super charged exams for the banks that are hundreds of billions of dollars and trillions of dollars in assets. A yearly exam, I think that's a great idea. But I would also say for the existing banks I want to keep the exam schedule as it is: Once every two years, once every two and a half years. If you stretch out the exam period, the banks will relax a little bit. Just think if you were a student and you were examined every four or five years, you won't work as hard in year one and two, and maybe three, you work a little harder in year four and five. That's why I think the CRA exams are reasonable and for all the banks except the
biggest banks, they need to stay on the same schedule. And for the biggest banks, they need to be super charged.

MR. ZIGAS: I would simply say you've asked the right question. I think this is probably likely to breakdown by the size of banks and the scope of their activities. Not every bank has affiliates like this, and as the Commissioner noted, many small banks operate pretty straightforward enterprises. But increasingly Americans are turning to these super financial institutions for a full range of services. And I would argue that if it's a consumer facing product that's offering credit for consumers, it ought to come under the ambit of the review.

I think there's all kinds of ways affiliates could be included. But I don't think allowing banks to develop business strategies that rely upon the advantages affiliates give them to arbitrage regulatory coverage is fair to consumers or sensible for
regulators.

MR. ANTONAKES: Director Braunstein, it's a pleasure to testify before you for the second time in four days.

But, yes, I would agree with the panelists. I don't think necessarily every affiliate has to be reviewed, but I think it’s the deposit and credit affiliates that bear special attention. And like anything, like a typical CRA exam you're going to primarily focus where the majority of the business is, but I don't think you should limit the review to mortgage affiliates solely.

MR. MINTZ: In some ways I wear two hats. One is that hat which is the financial empowerment hat where we open financial empowerment centers to provide counseling and we get a sense of where people have run into trouble and where they need to help. And with the other hat I have an enforcement squad that is out there. And the points of intersection that I think are relevant are centered around
some very troublesome products like refund anticipation loans and auto loans, and some of the retail level lending that can go very wrong and do a good deal damage. I think that those are very relevant and I think you can't ignore that type of lending activity, particularly again when you're working backward from the goal of assessing have you done a good job of leveraging better services across the board for the low income communities.

DIRECTOR BRAUNSTEIN: Thank you.

COMPTROLLER DUGAN: Thank you.

I'd like to stick with this affiliate thought for a little bit. Because it was a troubling thing during the crisis when we went back and looked at mortgage lending. There were differential standards, and I don't think there's any doubt about that.

And I think, in part, it was deliberate. I mean, I think there was a notion that regulation and supervision of
depository institutions should be the most significant, they have the most direct access to federal benefits, and therefore they should have the most obligations under the Community Reinvestment Act, which of course is focused on depository institutions.

Under the notion that affiliates should be somehow more outside of that direct regulatory sphere, and I think that proved to be an illusion. I think the recently passed legislation has changed that paradigm because it now requires affiliates that engage in lending activities to be examined and supervised the same way that they would be examined as if they were a bank. And I think this is the right thought.

I think that if you have the kinds of bank permissible activities in an organization and affiliates are engaging in them, there ought to be much more regulating. Not just with respect to CRA, but for underwriting, for credit decisions generally.
But I do have a question, and it comes back to what you were saying, Mr. Zigas, about the original intent of CRA being limited to credit and aimed at redlining. And while I as a policy matter agree with this thought about affiliates, how much of this under the current law would allow the focus to shift to the entire organization as opposed to the depository institution where the statute is focused?

MR. ZIGAS: Well, I'm not a lawyer, although I sometimes play one in settings like this, so I won't wade into the legalities of it. But I would say I think one of the things that distinguishes the CRA statute is its brevity and compactness which has allowed a great deal of regulatory discretion to adapt it to changing times and circumstances.

I think all of us here would probably agree there are legislative changes we'd like to see in the statute, and this doesn't stop at the edge of regulation for us.
But I do think the expansion of the regulatory reviews to cover the intent of the statute to make sure that we don't because of kind of a slavish devotion to a 35 year old conception find ourselves allowing financial institutions to wreak havoc in our communities.

A great example of this, to get back to Director Braunstein, is in the mortgage modification space where we've spent a lot of time. I've asked a number of lenders when do you have the meetings where the different parts of the company that have a dog in the fight get down to decide who is going to give up the first dollar? Let's say you've got the mortgage, you've got an auto loan, you've got a second, you've got the credit card and it's all going south. So how do you guys figure out which one of those things goes down first? And the answer is we don't have meetings like that. I mean, that's astounding to me. I mean, what kind of a way to address
your customers is that?

And I think this is an example of why it's so important for institutions to know that it's not acceptable for the left hand to be demonstrating success in CRA through targeted products or boutique activities and for the right hand to be taking all of the equity out of the community because it doesn't have good standardized practices that benefit consumers.

MR. HENDERSON: Mr. Dugan, I think you have asked a question which often comes up in the discussion about how to modernize CRA, and some members of Congress have posed that same question, so I think it's a legitimate issue.

Having said that, I think Barry addressed a very important piece of the analysis, there is nothing in the statute itself given its brevity, given the way in which it was drafted, which precludes you from using the regulatory process to address issues
not directly envisioned at the time the statute was drafted. But certainly within the penumbra, within the spirit of what the statute does it's the same principle that applies to constitutional interpretation on issues not directly presented at the time the Constitution was drafted, but the elasticity of the document itself permits you to engage in an analysis that advances its overall goals.

And I think here, I mean you have again the administrative procedure process. You're not asking to implement something unilaterally. You're putting it out for public comment, you're allowing the public comment to review it. If there is a problem of over interpretation or extension of the statute, Congress is certainly capable of entering into that space to address the affirmative activity that you've taken. But in the absence of a direct prohibition against engaging in this kind of examination, I think it would be
absolutely unconscionable to limit the analysis of CRA to the explicit provisions that were adopted in 1977 that have cramped the interpretation of the statute to date.

And by your own admission, I mean the failure to address issues like the assessment area have created havoc within the economy. That's a terrific hindsight assessment. But looking forward if we were to limit our effort only to that area, we would be fighting the last battle. The future is what is now currently under debate and not regulated by CRA. So I think your action is on sound ground.

COMPTROLLER DUGAN: I appreciate that. But I think people need to be mindful of the limits that we operate under, and we don't have a blank check here. And so I think it would be helpful as you make these recommendations, and I know this is not easy but it's not easy for us either, to really zone in on the things where we are acting on
more solid ground and other places where you really are trending toward a need for a statutory change. Because it will be difficult for us.

And I think it would be helpful for us to have a clearer sense of how the legal discretion, even with the flexibility that it comes with, and I'm very familiar with the statute, how it should be implemented given that.

And just as an aside on this, and I want to come back to this perhaps in a second round, on geographic scope, while there are many people who believe that it shouldn't be limited to branches, although it's interesting that we heard some mixed views, there are other people that once you start talking about a national test get quite concerned that the very people who are most likely to be helped by a branch test and are most in need of things, might be the ones that have least access to electronic services and be hurt the
most by a different kind of test. And, you
know, that's the kind of thing -- and
honestly, we get these kinds of comments from
members of Congress and sorting that out is
quite important.

MR. HENDERSON: Look, not to make
this a personal dialogue between us, let me
just suggest however that I think given the
magnitude of the problem we are facing now
with areas of a failure to regulate -- I mean,
let me suggest to you this is not a problem of
over regulation. It's a problem of a failure
to regulate in areas that conceivably could
have been foreseen in advance as significant
problems which in fact have come to best.

That's the assessment of your
statutory authority. You can examine in a
number of ways. You have general counsel, for
example, that can advise you on whether or not
your action goes beyond what is appropriate.
But I'm suggesting to you that the regulatory
process was structured for this very purpose:
To solicit public comment, to take those into account as you determine what your statutory responsibility is, to have Congress as a mechanism for oversight to the extent that you've exceeded your authority.

My only point is that you should not be frozen in place to allow the same problems to occur in another area, like credit card examination, that have recently occurred in the mortgage industry. And a failure to see CRA as having the elasticity to address those issues I think is a real --

COMPTROLLER DUGAN: And I think we agree on that point.

MR. SILVER: I would just like to commend Mr. Henderson for a very eloquent discussion of that. And I think it's clear that when an activity of the affiliate is directly subverting the responsible lending of a bank, then the CRA statute's purpose and intent is being subverted.

And as Mr. Henderson elegantly
said, there's nothing in CRA that would prohibit you from requiring that the affiliate be included on the test. And you have ample precedent. You have taken important steps to do that. And I think all of you recognize the damage that has been done if affiliates can remain outside a CRA exam.

To the question of national tests versus tests where there are branches; that's a very important topic. And I look forward to the views on that topic during these hearings.

We think at NCRC that you have your test where your branches are, and you also have the CRA exam where there are significant business operations of the lending institution, even if the lending institution does not have a branch in that area.

If a lending institution is making thousands of loans in the metropolitan area it ought to have a CRA exam because it clearly has the resources to be in that metropolitan area or the rural counties of a state. It has
invested a lot of resources to do a lot of business, and it can clearly invest a lot of resources to make sure that modest income communities and underserved communities are also being served.

Thank you.

VICE CHAIRMAN GRUENBERG: Any other comment? John?

ACTING DIRECTOR BOWMAN: As a witness on a number of panels like this, I find five minutes to be an incredibly long period of time. But as a questioner it's very, very short. So I hope you do have time for a second round of questions, because I have a number of them.

But I'd like to focus on, I think, Mr. Antonakes, Commissioner Antonakes, you talked about the quality of the lending. And if I could ask all of you to respond, I would have two questions which is number one, how would we as regulators in a regulatory review focus on whether an institution is making
loans that are affordable and sustainable? And then number two, should legal but higher cost loan features receive adverse consideration as ratings are assigned?

So with those two, Commissioner Mintz, could I start with your or shall I --

MR. MINTZ: Yes, sure.

While I didn't focus my testimony on the question of quality of lending, we're very retail focused in our office at the moment.

I think that affordability of the product is always key. I think that by trying to develop clear standards I think you can be more aggressive. I think many times those that are being regulated tend to push back. I see this at a local level. Tend to push back, not on the question of what it is you're assessing, but how clearly you have laid out the terms by which you will be making those assessments. And so I think that leaves you a lot more flexibility in taking a look, as you
correctly point out, at what actually matters, whether they are sustainable and affordable.

ACTING DIRECTOR BOWMAN: How about as to a higher cost but still legal loans, should CRA ratings consider those?

MR. MINTZ: Well, I believe that you want to create incentives and disincentives. And I think that by using a rating system that would acknowledge the difference in affordability and risk you do several things, and by doing it clearly.

The thing that we haven't yet talked much about is its possible role in educating consumers. I think that when you have clear signals it not only makes it easier for banks to follow what they're going to be assessed on and for regulators to do so in a uniform manner, but it allows you to turn around what you're doing in CRA and turn it into a consumer education tool. Not just about where they can find safe products and services, but which are the institutions in
their communities and for those of us making municipal deposits as well, which of the institutions in those communities are in fact wracking up a bunch of green lights or higher assessments.

I also would add one other quick point. I think that the beauty of rating on affordability and risk rather than having a yes/no type list, but making those ratings also allows for innovation. And I think that can be very important for financial institutions looking to live up to these assessments but at the same time distinguishing themselves from their competitors.

MR. ANTONAKES: Director Bowman, no, I don't think all high cost lending should be bad per se. Unfortunately, the subprime market actually worked for a period of time, until the later generations of loans came about. Lending that is appropriately risk-based and where there's no disparate treatment...
among protected classes is not necessarily a bad thing.

I think what is of concern with the later generations of loans that were clearly unaffordable, the 3/27s, the 2/28s and somewhere along the line stated income loans which, you know, at one point in time were a niche product for the wealthy became the product for first time home buyers, which was entirely inappropriate.

I think early payment defaults is something that should be reviewed. Because certainly if a consumer can't make the first or the second payment, there is something wrong: it's either fraud or a sustainability issue. I think some of the other products that I talked about; they were loans that are clearly written above usury rates. Refund anticipation loans, other short term loans, payday loans are something that should be considered as well.

So, no, I don't want to say across
the board that all higher priced loans are bad because I don't think they are. But I do think that broader picture should be taken into consideration.

MR. ZIGAS: This session seems to be lasting forever.

No. Very, very quickly. I endorse both the other statements. I'll just make a couple of other quick distinctions.

One, I think to the extent that you review activity and banks are underwriting to the ability of consumers to pay for standard, durable products, the recent legislation has a qualified mortgage description which we think is pretty useful. And where higher cost loans are transparently priced and consumers are offered, in every case, the best product for which they are qualified, then I think there is a role for some higher priced finance because some people's risk profile is simply too high.

And I would also say that I think
an important part of this, as I noted before, is to be able to distinguish between good behaviors where lenders may actually leave cash on the table by deciding not to engage in certain practices or not to market certain products to consumers, as is in the case for instance, in the overdraft opt-in or no overdraft discussion. It seems unreasonable to me that lenders who choose to give up the potential of a substantial amount of fee income because they think it's the right thing to do for consumers don't receive any additional credit versus those who go out and actively market those products to consumers that we know are going to cost, some of them, a significant amount of money.

MR. SILVER: I would say that absolutely abusive and illegal lending should result in a failure on the CRA exam. And Calvin Bradford will be testifying later, and he has many examples in his testimony where banks and thrifts kept passing even though
they are being sued for discrimination and settled with the Department of Justice.

In addition to illegal and abusive lending, unsafe and unsound lending or secondary market activities should also be severely penalized on CRA exams. I bring to your attention an FDIC exam one of the industrial loan company CIT Group. CIT Group failed its CRA exam because it was purchasing abusive loans where the borrower could not afford to repay.

In addition to that, I do think that there should be thought developed, you should think carefully about a weighting system on the lending test that does give more credit for more affordable loans.

You should look, there'll be new loan performance data that's required by the bill that will be signed the President this week. And if a lender has a higher default rate, that lender should not score as well on the lending test as another lender to the same
populations that have a lower default rate.

The University of North Carolina did a very interesting study where they compared borrowers with a similar credit profile. One group of borrowers are being offered basically a prime loan and another group of borrowers are being offered subprime loans. And the subprime loans had much higher default rates and the prime loans were performing well to this group of borrowers, much lower default rates.

That type of activity ought to be rewarded on CRA exams. Again, more weight for more affordable loans.

MR. HENDERSON: Thank you, Sir.

I think my colleagues have spoken to this issue quite effectively and eloquently. I agree with the recommendations of all of them.

I think Commissioner Antonakes, however, set out a principle which I think is important. We live in a capitalist
environment. We should not over regulate, obviously, the interests that we want to promote.

Having said that, depository institutions have a special obligation commensurate with the benefits they get from the public and being chartered and the advantages that come with that.

I think all that is being asked is that in instances where we have had clear problems that there be some attempt at oversight. Not over regulation, but certainly to ensure:

(1) That the quality of lending meets a certain minimal standard, that individuals are actually able to repay the loans that they are being given, and that there be some independent assessment to determine that's true.

That where you have high cost loans available that may well be within legal limits, that there also be some oversight to
determine whether those loans are being offered only to a particular class of individuals where you know they might otherwise qualify for better terms.

Our interests are protecting primarily lower income families, communities of color who have been seriously disadvantaged and then all consumers who want the best product available to them at a reasonable price.

I don't think there's anything wrong with the regulatory institutions that have been set up having a responsibility to make that determination independently. And I think everything consistently that's been said by my colleagues is pretty consistent with that. And I think it presents a regime that when taken together by your four institutions could be very effective in creating a marketplace that works for consumers as well as those who live in that area.

VICE CHAIRMAN GRUENBERG: Thank
you, gentlemen. I think we do have time for a second round of questions.

I would ask our timekeeper to make the rounds four minutes rather than five, to stay within that limit.

I'd like to ask, Commissioner Mintz, you focused your testimony really on the issue of the services test and using CRA more effectively to expand access to basic banking services on an affordable and responsible basis.

I'd like to ask the other panelists to respond to that issue. Is, it fair to say that previously CRA has been viewed as focusing principally on credit access and that services, particularly affordable transaction and savings accounts and other financial services offered by banks, has been less the focus and that as we go forward it perhaps should be given more attention? I'd be interested in the thoughts of the other panelists on that.
MR. HENDERSON: Just very briefly, I think one of your Commissioners acknowledged that in today's world access to credit is not quite the problem that it once was when CRA was enacted. And so, yes, there is access to credit, but often in a way that works to the disadvantage of the borrower for the reasons that we've cited.

Service functions do deserve greater consideration. And I think in revised regulations it's important that you strike a balance. I noted the Citibank proposal to take into account savings programs. I think that when banks and lenders engage in creating new products that primarily are intended to address the needs of the unbanked or the underbanked, those services are critically important. And they should be considered, I think, in any evaluation of CRA. So, yes, I agree with Commissioner Mintz that there needs to be a stronger balance struck between access to credit and services provided.
MR. SILVER: I think that since we've seen modest income communities flooded with fringe service providers, check cashiers, pay-day lenders just being stripped of their wealth, that the service issues are very important. The unbanked and the under banked issue that Wade Henderson and the New York Commissioner talked about is very important. But often times on the CRA exam you'll see a description of an innovative program, like an individual development account, and I applaud Citibank for talking about that today. But then often on the CRA exam you won't see any quantity. You know, how many individual development accounts are being offered? That information is often pretty sparse on a CRA exam.

So, I would say one very effective way of addressing this issue is better data. NCRC, we talk about it in our testimony, is we recommend better data on deposits, deposit accounts at least by Census tract, to know
whether communities of color and working class communities are receiving an adequate share of deposits and how banks are competing against each other in offering affordable deposits to these communities. I think that's very important.

And I also will note that the regulatory agencies ask the questions about consumer data. Small consumer loans. I think that is also very important to think about collecting that data as well.

MR. ZIGAS: In the interest of brevity, I'll simply say yes.

MR. ANTONAKES: I would agree. I think we can all recognize the advantages of having more folks within the banking mainstream. I'd suggest that problem is changing, however, it's not just a low income issue anymore. There's a lot of younger folks that are choosing not to be within the banking mainstream. We have to find the best way to determine how to bring them in as well.
The fact of the matter is the ongoing success of competing entities, the check cashiers, the pawnbrokers and the payday lenders indicate that there are substantial needs for not just deposit products, but as the panelists have indicated low dollar products as well. So to the extent those continue to be assessed and dealt with, I think would be beneficial.

MR. MINTZ:  I just want to add I think I was very smart in what I said. Thank you. Just to see if anyone's listening.

You know I think, as I said, I mean in New York and the numbers are proportional, we have 825,000 people who are not accessing mainstream banking. For them the question of their lending opportunities is almost a privilege question. I think that we have used redlining to create a leveraging mechanism and the beauty of CRA is that it has seeped into the DNA of the financial institutions and those that are looking to
partner with the financial institutions, they get that at some level it is about the way in which they are serving these communities.

I think that with all respect to the people I adore on some of our advisory boards and those that have been philanthropically very generous, at the end of the day it's the 825,000 people that are forever being marginalized and spending more, and finding increased instability of their family. To me, those are the genuine priorities. And I think CRA is a perfect vehicle.

VICE CHAIRMAN GRUENBERG: Thank you very much.

Sandra?

DIRECTOR BRAUNSTEIN: Yes. I have a question to Barry Zigas. I was very intrigued when you brought up the notion of requiring strategic plans for financial institutions. You know, as you mentioned, it's been an option for quite a while and I
could probably count on one hand the number of banks that have actually taken up that option.

So I just was going to ask if you could comment a little bit more about that. And then I don't think people have to be compelled to, but if any others on the panel want to make a comment about that, please do.

One of the things that occurs to me is that I'm intrigued by it, I wouldn't want it to become just kind of a paperwork exercise, which is the kind of thing that in 1995 we were trying to get away from in many respects when the rules changed more to performance and away from paperwork.

So, I was wondering in light of all that if you could comment more?

MR. ZIGAS: Thank you. And I would strongly agree having a strategic plan should not be a substitute for performance-based information about the results that are generated. But the thought is with such a broad range of activities, such a broad range
sometimes of affiliates, it would be very useful to have institutions, particularly very large institutions, to mirror to the public and to its regulators in this domain of community reinvestment, exactly what I know they're doing in their own executive suits, which is creating strategic plans about how they intend to penetrate markets, where they tend to make their investments and what results they're going to be judged upon for their own compensation and success in the company. And when you're trying to grapple with the scale of the work that's going on today, I would argue from my own experience in business and other places that a strategic plan would actually be a very essential part for examiners and regulators to understand how to think about the results that are being generated. Because the alternative is simply that we do look in these kind of silos and cubbyholes about did you do this many here, or did you do that many there. And the larger
question of what is your approach to these low
income communities? Where do you think that
the areas of emphasis and focus that are most
important or most accessible to you are? Who
are your competitors and how are you planning
to address that? And what are the services
that are competing with the ones you're
planning offer?

Personally, I think could be both a
very helpful process for the regulators so
you'd have more of a roadmap. It could be a
topic that would be subject to public comment
and opinion, which would also allow some
airing and transparency around the plans the
banks have. And it would allow you to track
back. Did what they say get done, done? If
it didn't, what were the obstacles, what were
the reasons? It puts a context around the
results you're trying to generate, but it is
not a substitute for the results, I've got to
add.

MR. SILVER: I think it's a very
interesting concept. Barry. And also, you'll hear from Ellen Seidman about strategic plans for community development activities. I'll let her describe that during this CRA hearing process.

One thing I would add about strategic plans is that they be verifiable. That a strategic plan doesn't just say $4 billion to low and moderate income people, and it doesn't define what types of lending that it's talking about or what geographical areas will receive those loans. A strategic plan should be verifiable to anyone using publicly available data would know: Okay. that's what you mean, those are the geographical areas.

And I would also ask the regulators to think about strategic plans in the context of mergers and acquisition. As you know, in the early to mid-1990s there was a proliferation of what was known as CRA agreements. And I think of CRA agreements as basically a strategic plan, planning exercise
during the merger application process. That during a merger application process these institutions are going to undergo profound institutional changes. Will an institution that was headquarters in San Francisco and will now be headquartered in Charlotte, North Carolina, will the West Coast communities have access to community development activities? Where is the decision making for community development financing going to occur? Is it now going to occur in Charlotte and that the West Coast will not have access to the decision makers?

So a strategic plan in the context of profound institutional changes is, I think, very important. Critically important. And in the strategic plan to say we will not cut and slash lending and services to communities. We're going to maintain and increase that activity. And here are the hard data and the hard numbers to show that we will increase our activity.
I think that would make the merger application process a win/win for both banks and communities.

MR. MINTZ: I think if you're going to increase the role that public relations-type leverage can play, particularly is the role that merger approvals continues to decline, I think that there is a significant role that strategic planning can serve in regard to that sense of public accountability.

I also would say that the ability to get some credit for more complex longer term planning might lead to more effective innovations from your financial institution partners at the same time. And I think that can be very important, particularly when you're talking more, again from the service test point of view, than one-offs that's something more sustained and broader in scale.

MR. HENDERSON: I would agree it's a great suggestion. I think the comments that you've heard from my colleagues really
reenforce the need to consider that as a part of a future CRA evaluation.

MR. ZIGAS: I just would add one other item, which is to say that it's my experience when the indicia of success in what you might call these mission driven parts of companies is allowed to be segregated into small buckets or distinct buckets, it can become marginalized in the larger business planning of the organization. And I think one of the advantages of having a more complete understanding of the strategy a company is pursuing to meet those goals elevates it in importance and focus within an institution.

COMPTROLLER DUGAN: I want to come back to this question that Director Bowman raised about lawful products that -- and I think you raised it, Mr. Mintz, on the question of regulators ranking about ones that are good and ones that are not good for CRA purposes in some kind of scale.

And then, Mr. Zigas, you brought it
up too in the context of the overdraft thing. And I think it's an interesting question because here you have a situation where Congress considered something and prohibited some things and allowed some others. There's a rulemaking, put some things out and there are practices that are permitted and practices that institutions choose not to do.

And I am struggling with how regulators in the context of that could come out and say okay, it's lawful. It's lawful under a statute. It's been expressly considered. It's lawful under a regulation. Some people think it's a good thing, you think it's a bad thing, but it's up to us to decide what's good for CRA purposes and what's bad. And I say it not just because it puts us in a, I think, difficult position but there are questions for the people who think, not just this I'm not defending this one way or the other, that you are substituting a regulatory judgment for what kinds of market products are
going to be delivered in a lawfully related scheme. How do we deal with this?

And also, you know do we really again have the legal authority to go down this path, let alone whether we should be doing it?

MR. MINTZ: Yes, I just want to clarify real quickly. I agree that the mythical world of good versus not good or the regulatory approach of good versus not good is not the way to go. I think that you need to be able to assess the risk and the affordability of products and services, and to be able to give clear signals about that.

I think, you know as my colleagues have mentioned, there are some products that for some are just right. But when you're talking about addressing some of the core needs, for example of the unbanked, there are some products that are clearly more risky. And I think that if you're looking at it from the angle of how do consumers benefit from better choices and the information that would
help them to make better choices, I really think there's a cross leveraging opportunity here.

I know the FDIC recently spent a whole day talking about how would you go about making these risk assessments. And that's an interesting conversation, but I think that you can make risk assessments. And I think that by providing some sort of sliding scale signals you will make it much easier for the banks to think about where they need to focus, where they don't have enough of those products not just being offered, but more importantly being sold. And I think that it gives regulators something to hone in on.

As I said in my testimony, it's more about what banks are good at, which is putting out products. That's their business model. And I think what you want to leverage through CRA, you want to leverage the offering of those better products. I think that's the way to do it, which is to give them credit for
those that they're actually selling that are
less risky and more affordable.

I think that is doable in a way
that doesn't mandate plain vanilla versus not
plain vanilla. It doesn't mandate anything.
It merely gives credit for the good work.

MR. SILVER: I think logged
performance data is one way to really think
about this very important question. Because
if you bank that has a default rate that's
much higher than the average, is that bank
really meeting the community needs consistent
with safety and soundness.

COMPTROLLER DUGAN: Can I just stop
you there. If you take more risk and provide
more credit to people, you may have a higher
default rate. I mean, you can't do it to the
similarly situated people, that would be
unlawful. If you have judged people on default
rates, you may not get people taking chances
on marginal borrowers. So I'm not sure that's
how you would look at this.
MR. SILVER: Well, I would say then if anything, this current crisis maybe we erred too much --

COMPTROLLER DUGAN: I totally agree.

MR. SILVER: -- in tolerating high default rates.

And I do think, again I will cite that University of North Carolina study, and I highly recommend it I think it's a really good read. Because you had borrowers of similar credit profiles, one that had a community product that was prime and one that had another group of borrowers that had subprime product. Same ground of borrowers and the prime product performed much better and was also profitable for banks. So I do think that loan performance data can be very useful, and I do think that high default rates should get penalized through a lower rating. It doesn't mean the bank fails, but it does mean a lower rating. And if it's really extreme, the bank
should fail.

In loan performance, not only for home lending but think about paying your credit cards on time. You have loan performance data I think for credit card lending and for small business lending too. And I encourage you all to look at that very carefully.

MR. ZIGAS: First of all, I completely understand the question. I think it's an excellent question and I realize regulators have to grapple with these questions all the time, so I appreciate your raising it.

In this particular instance, let's just stay with this overdraft question, it's legal, people have a choice and so on. To me the distinction is in a CRA review you're not telling people you can't do this, right? We're going to bar an activity that Congress has authorized. But it seems to me this gets back to the question of having more
distinctions in the review criteria and in the review ratings. And when 90 plus percent of the banks are getting outstandings and satisfactories, I don't think we're faced with seeing too much discretion and too much distinction, is to be able to say on balance while the two different institutions are engaging in equally legal behavior, you know this one is more consumer friendly as a default, this one is offering choices that seem to offer consumers a quicker path, be it building wealth or saving money. And we think that deserves to be rewarded. It doesn't mean we're going to ban the activities at the other bank. It doesn't mean we're going to penalize the other institutions. But we might reward the one that exemplifies good behavior because we want the rest of the industry to emulate it.

MR. HENDERSON: But higher default rates, and I would agree with Josh, they should be a factor in your evaluation. Now,
you don't necessarily have to regulate and penalize a bank that has higher default rates for the reasons that you've said. But certainly higher default rates should trigger greater scrutiny as to the nature of the product that they are providing.

Legal products should be made lawful. I mean, obviously cigarettes for example, we know to be a health hazard yet it is a legal product and Congress has authorized that it be sold on the market.

The only point that I thought Mr. Mintz made very well is that you reward institutions that engage in consumer friendly activity with no impact on their bottom line, and obviously you take that into account.

When a bank does not engage in that activity, I'm looking for transparency. I mean, if you're using products that you know are going to pose a real problem, particularly against for low income borrowers, working class communities, when you know as in the
overdraft situation you are costing consumers enormous amounts of money that they can't afford; and I'm just using a reasonable test. You should be able to require that banks engage in greater transparency in explaining the cost implications of the products that they're offering.

In so many instances consumers buy into what appears to be a convenience that has an extraordinary cost associated with it, far beyond anything that they're aware of. And that's where I think the shift has to be made to make sure that there is great transparency in explaining it.

But I agree with what my colleagues, and especially Josh has said.

ACTING DIRECTOR BOWMAN: Quick question. Mr. Silver, in your testimony you say, and I quote, "The rigor of CRA exams is also a critical issue in unleashing the full potential of CRA. Unfortunately the evidence to date points to CRA grade inflation as well
as inconsistent quality of CRA examinations."

I would focus on the "grade inflation," and I'd ask you two questions. Are there metrics that you could imagine that we as regulators could use to assess whether our distribution of CRA ratings is appropriate, number one? And what distribution of ratings would reflect the absence of rating inflation in your mind?

MR. SILVER: Well, I think that over the years right now in the last number of years, 90 percent of the institutions are getting a satisfactory rating. When you have 90 percent of the institutions getting the same rating, I think you have to ask yourself are the ratings effectively making any distinctions in performance? And I would suggest to you that let's break up that 90 percent bucket.

NCRC is recommending a high satisfactory, and I think you have the statutory authority to do this because
satisfactory is one of the statutory ratings.

You can include a high satisfactory, a satisfactory, and a low satisfactory. And I think you would split up that bucket a little bit. And there are clearly distinctions in performance.

When people do data analysis on a metropolitan level and you look at banks and the percentage of their loans to low and moderate income people and say look at prime lending, you will see distinctions of performance. And it is not the case that 90 percent of the institutions will be in one bucket. And you can do the same exercise with small business lending, consumer lending and investing and you can take quality into consideration as well.

We also recommend that you consider revision to the point system. Right now it's one to 24 on a CRA exam, and that doesn't seem to have any room for distinctions.

One useful thing to think about is
how students are graded, 1 to 100. And you can think of percentiles, you know 90 percent and above is an A. And you can 1 to 100 on each of the component tests and then you can have 1 to 100 on the final rating. And you can still weight the component test differently with a 1 to 100 scale.

So, thank you for asking that question.

MR. ANTONAKES: Director Bowman, I would just add on that, you know it's been years since the CRA regulations were revised. And our changes in Massachusetts reflect the changes that were done by the federal agencies. And the goal was to recognize performance over documentation back 15 years ago. So a fair question to ask in self-analysis, I guess, is did it work? And frankly, I'm not sure it did.

And I conducted CRA exams early in my career, and I know the degree of judgment that is warranted. And I don't know if you
can set hard criteria because of the difficulty of the aspect, but if I were to ask each of you how many standard deviations below aggregate does a bank's lending have to be in order for it to be less than satisfactory, I'm not sure I would get the same answer.

MR. MINTZ: I was a law professor for a while, and my favorite grade was a B minus/C plus. So I am a great believer in a wealth of opportunities to send signals, and in particular the ability to have a middle as opposed to just high and low, essentially.

But I think more important honestly than the grading system is what it is we're actually beefing up that we're grading. Because, of course, theoretically what we would love is that the leveraging of CRA would be so successful that in fact everyone would agree that there was this wealth of financial institutions that were performing so highly.

So while I think you want to be able to give those signals as leverage, I
think the real emphasis has to be on what is that you're actually evaluating and, therefore, encouraging.

VICE CHAIRMAN GRUENBERG: Thank you very much.

I think this concludes the testimony of our first panel. I want to thank all of our witnesses really for their exceptionally thoughtful presentations and responses.

And if we could, in order to stay on schedule go directly to the next panel, if they would please come forward.

Thank you all very much.

(Whereupon at 10:51 a.m. off the record until 10:56 a.m.)