

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

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

7 Our witnesses are:

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

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

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

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

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

19 I would ask the witnesses to please
20 limit your oral statements to five minutes.
21 We will include the full text of your written
22 comments in the record.

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1 We do have a light system here and
2 the yellow light will come on when you have 30
3 seconds remaining.

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

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

14 Mr. Henderson, if you would please
15 speak now.

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

19 I'm Wade Henderson. I'm President
20 and CEO of the Leadership Conference on Civil
21 and Human Rights, the nation's leading civil
22 and human rights coalition with more than 200

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1 organizations working together to build an
2 America that's as good as its ideals.

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

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

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

21 Basic banking services are crucial
22 for the economic security of American

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1 families, yet 54 percent of African-American
2 households and 43 percent of Hispanic
3 households are unbanked or under banked.
4 These families pay more for their basic
5 services such as getting a check cashed. For
6 them credit is harder to get, and usually much
7 more expensive.

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

14 Well, first because the CRA has not
15 kept up with advances in technology and
16 changing markets, it is all too easy for banks
17 circumvent regulations and undermine the law's
18 intent. For example, when the CRA was enacted
19 it made sense to focus on how banks were
20 serving neighborhoods that were physically
21 located near them. Today, much banking is
22 conducted electronically and almost 60 percent

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1 of large bank lending occurs outside of the
2 areas that are assessed for CRA purposes.
3 Thus, many CRA assessments don't cover the
4 majority of a bank's service area.

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

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

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

20 First, CRA requirements should
21 apply to the broader geographic area that
22 banks actually serve recognizing that banks

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1 have extended their reach through new
2 technology and broadening assessment areas to
3 reflect the actual scope of bank activities.
4 For example, in any state where an institution
5 has at least \$10 million in loans or deposit
6 accounts, it should be required to serve all
7 communities within the state.

8 Second, the loophole that allows
9 bank's affiliates to evade CRA requirements
10 should be eliminated. As it stands today
11 depository institutions can appear to be in
12 compliance with CRA even while supporting
13 activities by affiliates that violate the law.

14 If banks are to be truly accountable, they
15 should not be allowed to exclude parts of
16 their operations from scrutiny.

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

21 And on that note, I understand that
22 Citigroup will be promoting or proposing today

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1 that savings accounts be counted for CRA
2 credit. I think this idea has merit if
3 accounts are structured in a way that make
4 them genuinely affordable and convenient for
5 consumers. And I look forward to more
6 discussion about the details.

7 Now, while we make these
8 recommendations to strengthen CRA, we are well
9 aware that powerful interests have tried for
10 years to weaken or abolish the law. In recent
11 years some opponents have even tried to blame
12 CRA for the subprime lending debacle and the
13 resulting foreclosure crises. Facts show that
14 that is simply absurd to blame the CRA.
15 According to a Federal Reserve analysis nearly
16 all subprime mortgages, that is 94 percent,
17 were made by institutions that were not
18 covered by the CRA. Contrary to the badly
19 misinformed claims of critics, subprime
20 lenders steered lower income borrowers away
21 from mainstream financial institutions covered
22 by the CRA.

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1 Now the banks were glad to shield
2 their subprime affiliates from regulatory
3 scrutiny, and at the same time they eagerly
4 invested in toxic mortgage securities. Now
5 the banks have been bailed out while the lower
6 income families continue to struggle with the
7 loss of their homes and scarcity of credit
8 triggered by high rolling bank practices.

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

20 I'll stop by testimony, Mr. Chair.

21 And thank you for the opportunity to be with
22 you today.

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1 VICE CHAIRMAN GRUENBERG: Thank
2 you.

3 Mr. Silver?

4 MR. SILVER: As Vice President of
5 the National Community Reinvestment Coalition,
6 I thank you for convening these hearings and
7 urge you to embark on a regulatory rulemaking
8 to strengthen the Community Reinvestment Act.

9 CRA is critical. NCRC's 600 community
10 organization members use CRA daily in
11 neighborhood development. Reforms to CRA will
12 promote economic recovery and create jobs by
13 increasing responsible lending, particularly
14 for small businesses.

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

20 Federal Reserve research revealed
21 that CRA has resulted in safe and sound
22 lending. Therefore, CRA would have reduced

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1 the severity of the foreclosure crises had it
2 covered a broader range of institutions.

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

11 Because of the current definition
12 of CRA assessment areas as geographical areas
13 containing bank branches, the share of all
14 home purchase loans made by banks operating in
15 their assessment areas has dropped to about 25
16 percent. Here in the Washington, D.C. metro
17 area, NCRC found that only six of the 16 banks
18 with the largest home loan market shares in
19 2008 had our metro area as an assessment area;
20 only six of 16.

21 Some will say it is difficult for
22 banks to comply with CRA where they do not

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1 have branches. But there are many methods to
2 serve modest income markets such as marketing
3 in local media, partnering with community
4 groups and placing loan offices in modest
5 income neighbors.

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

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

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1 reasonable manner.

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

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

19 Also, the agency should develop
20 better weighting systems so that routine
21 investments like purchasing loans in a
22 secondary market do not receive as much weight

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1 as more difficult investments such as equity
2 investments in small businesses.

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

15 Mergers are likely to decline in
16 frequency. Therefore, additional enforcement
17 mechanisms are needed. For example, banks
18 could be required to submit CRA improvement
19 plans subject to public comment when they
20 receive either a low rating overall or in any
21 assessment areas. CRA exams in merger
22 approval orders could include an expectation

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1 section that either mandates or recommends
2 improvements to specific weaknesses of CRA
3 performance.

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

7 In this critical discussion about
8 CRA we need more light and less heat. We need
9 actively to actually listen to each other and
10 develop ways to improve CRA because CRA
11 touches us and our families in profound ways.

12 Most of us in this room likely have parents
13 or grandparents that came to America and
14 started a small business and lived the
15 American dream. CRA is about building
16 neighborhoods and economic opportunity by
17 harnessing the resources of financial
18 institutions and meet community needs in
19 neighborhoods have been neglected for too
20 long. It is time to change that now.

21 Thank you very much.

22 VICE CHAIRMAN GRUENBERG: Thank

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1 you.

2 Mr. Zigas?

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

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

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

14 My own experience with CRA dates
15 back significantly further than my tenure at
16 CFA. From 1993 to 2006 I was a Vice President
17 and Senior Vice President at Fannie Mae where
18 I was in charge of new community products,
19 worked with lenders across the country to
20 develop acceptable secondary market executions
21 for community development and CRA lending, and
22 was a key partner with Self-Help Venture Fund

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1 in the creation of their community Vantage
2 Program, which has provided a secondary market
3 outlet for thousands of CRA loans.

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

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

15 I want to start by emphasizing, as
16 others have, the continuing importance of CRA
17 to ensure that communities receive their fair
18 share of credit. And I particularly want to
19 thank each of you and your institutions for
20 the acknowledgement and public rebuttals
21 you've given to the assertions that CRA was in
22 some way at the root of the subprime mortgage

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1 crises or in some way accelerated and
2 facilitated it. And we're very grateful for
3 you standing up to say that's not true.

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

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

19 Second, the activities of
20 affiliates in the CRA review are included at
21 the institution's discretion. But with
22 changes in the structure of the industry, a

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1 lender's decision not to include affiliates
2 can lead to a seriously incomplete picture of
3 its activities that undermines the purpose of
4 the statute. If reviews do not encompass all
5 aspects of affiliated companies, at least they
6 should consider the range and scope of
7 affiliates in the business lines in which they
8 engage as part of the review. It's not helpful
9 if institutions can choose to operate specific
10 lines of business through affiliates and
11 others through main institutions. This
12 doesn't yield the full picture of the business
13 strategies and likely community impacts that
14 the work is having.

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

18 On another item, though, I'd like
19 to emphasize the importance of strategic plans
20 and our sense that the role of these needs to
21 be emphasized. This is consistent with the
22 larger assessment areas, the concerns we have

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1 about affiliates and the importance of having
2 a complete view. The regulations currently
3 permit the use of such plans, but do not
4 require them. We'd suggest that further
5 thought be given to requiring institutions,
6 especially large institutions, to file such a
7 plan on a regular basis. As currently is
8 required, these plans should be available for
9 review and comment by the public before being
10 adopted, although we note the current rules
11 provide a review period that we believe ought
12 to be extended to a longer time.

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

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1 reinvestment lending.

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

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

20 I've submitted along with my
21 testimony a CRA press release summarizing my
22 colleague's recent review of overdraft fee

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1 policies. And while not going into the
2 details, I would just note that they are an
3 illustration of why CRA needs to take into
4 account the other business practices that
5 lenders undertake.

6 USAA, Citigroup and Bank of
7 America, for instance, all have decided not to
8 market opt-in coverage for overdraft coverage
9 for their consumers. We strongly support
10 this, and my colleague Martin Eakes called
11 this a game changer. Yet the survey shows
12 that many institutions are taking the opposite
13 tack and urging their customers to opt into
14 this coverage with its very high fees and
15 dubious benefits. Lenders that take the lead
16 in protecting consumers and putting their
17 interests first ought to generate favorable
18 credit under CRA, but the current system does
19 not necessarily encourage this. By not
20 discouraging bad behavior, CRA can reward some
21 initiatives while allowing other pernicious
22 practices to flourish.

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1 I look forward to the question and
2 answer, and appreciate the opportunity to
3 testify today.

4 VICE CHAIRMAN GRUENBERG: Thank
5 you.

6 Commissioner Anonakes?

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

13 I commend the agencies for
14 scheduling this timely and important hearing
15 on strengthening and expanding the Community
16 Reinvestment Act regulations. It'll take
17 years for many urban communities to recover
18 from the devastation of the ongoing
19 foreclosure crises. More so than ever before,
20 access to sustainable home ownership
21 opportunities in low and moderate income
22 neighborhoods will be essential.

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1 An argument has been advanced by
2 some that CRA is the root cause of the
3 economic crises in that it encouraged banks to
4 sacrifice underwriting standards to increase
5 home ownership opportunities. In my view,
6 this contention is completely without merit.

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

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

22 Second, large lenders and Wall

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1 Street firms did not develop later generations
2 of confusing and risky subprime mortgage loans
3 out of an altruistic need or sense of
4 obligation to meet the credit needs of low and
5 moderate income communities. They did so out
6 of greed.

7 Massachusetts efforts to ensure
8 banks serve their communities actually predate
9 the passage of the federal CRA in 1977. In
10 1982 Massachusetts broadened coverage of the
11 CRA to cover all credit unions. In November of
12 2007 Governor Deval Patrick signed
13 groundbreaking foreclosure prevention
14 legislation which extended CRA requirements to
15 non-bank mortgage companies.

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

22 First, require affiliate lending to

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

14 Increase review standards for the
15 largest institutions. Existing federal CRA
16 regulations define a large bank as having
17 assets over \$1 billion. Some of these
18 institutions are often in practice examined
19 every four to five years if they previously
20 received a CRA rating of outstanding or
21 satisfactory. However, as the banking
22 industry has further consolidated, the \$1

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1 billion asset threshold is becoming increasing
2 antiquated. The scope and frequency of CRA
3 examinations should be commensurate with a
4 bank's market share. A significantly more
5 robust annual examination process should be
6 undertaken for the top 20 bank lenders in the
7 country.

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

16 Mandate the evaluation of loan
17 modification efforts. Separately the agencies
18 have asked for comment on proposed changes to
19 evaluate a bank's loan modification efforts
20 similar to what Massachusetts has already
21 done. CRA should be utilized to measure the
22 pace, the number and the quality of loan

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1 modifications. This type of public scrutiny
2 would provide greater incentive for banks to
3 more aggressively act to avoid unnecessary
4 foreclosures.

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

20 And finally, encourage additional
21 access to banking services. Conversely, the
22 agencies should encourage banks to develop

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1 additional services targeted to low- and
2 moderate- income, underserved individuals and
3 communities. Massachusetts has a voluntary
4 basic banking program to provide affordable
5 checking and savings alternatives to people
6 with modest means. As a result, Massachusetts
7 has one of the nation's lowest under banked
8 populations.

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

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

17 VICE CHAIRMAN GRUENBERG: Thank
18 you.

19 Commissioner Mintz?

20 MR. MINTZ: Good morning. I'm
21 Jonathan Mintz, Commissioner of the New York
22 City Department of Consumer Affairs.

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1 I appreciate the opportunity to
2 offer recommendations for the next generation
3 of the Community Reinvestment Act rules on
4 behalf of Mayor Michael Bloomberg and the City
5 of New York.

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

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

22 In New York City getting CRA right

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1 really matters. It matters because there are
2 825,000 unbanked residents. And it matters
3 because the financial services sector is a
4 vital part of our local economy, accounting
5 for some 500,000 jobs. Without question, CRA
6 has brought about improvements in the
7 provision of financial services to the
8 underserved helping to address the credit
9 needs of low- and moderate-income communities.
10 However, and this is why we're all here, of
11 course, there's more that CRA can and ought to
12 accomplish.

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

21 The evidence is overwhelming that
22 what low- and moderate-income communities need

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1 is not just access to credit, but safe and
2 affordable banking products. As you all
3 understand, being unbanked not only results in
4 an increased cost for basic financial
5 services, but it also a strong predictor of
6 overall financial instability. By and large,
7 financial institutions have yet to focus on
8 those disenfranchised from the financial
9 mainstream.

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

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

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1 responsible and safe products.

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

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

21 By the way, it's also our position
22 that intermediate small banks easily could

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1 meet this same banking product expectations
2 through the community development test to
3 which they are subject.

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

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

18 The clarity of eligible products
19 will help banks reduce compliance costs,
20 regulators increase efficiencies of exams and
21 consumers gain access to products that they
22 can trust.

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1 Previously I proposed that the new
2 Consumer Financial Protection Bureau could
3 develop a rating system that could assess the
4 complexity and risk to consumers of financial
5 products, which could also serve as a powerful
6 tool in this regard. Product standards could
7 be translated into a simple nationally
8 recognized A through F letter grading system
9 or a green/yellow/red light system. Such
10 clear signals would then help determine which
11 products and services would earn CRA credit
12 under the service and community development
13 tests in addition to providing both valuable
14 and consumer friendly information.

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

18 Additionally, a consumer awareness
19 campaign to promote the rating system could
20 strengthen the public relations leverage on
21 under performing banks and CRA assessments and
22 at the same time assist higher performing

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1 financial institutions to use their success to
2 better compete in the marketplace.

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

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

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

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1 Thank you.

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

6 I'd like to begin by asking a broad
7 question to sort of frame our thinking on an
8 important issue. Is it fair to say that when
9 CRA was enacted in 1977, and even as recently
10 as 1995 when the last comprehensive review was
11 done, the operating assumption was looking at
12 the activities of the bank and its
13 headquarters and branch network? And can we
14 further say that was the operating assumption
15 around which the lending test was built as
16 well as the services test and, in fact, the
17 community development test? So now what we're
18 seeing today is a financial services industry,
19 particularly for the larger institutions,
20 that's moving away from the delivery of both
21 credit products and basic banking services,
22 exclusively relying on the branch network.

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1 And to a certain extent, we're thinking about
2 adapting CRA to a changing marketplace and
3 environment as a starting point for our
4 consideration.

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

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

17 The difficulty is that the
18 introduction of electronic opportunities which
19 have of course expanded opportunities, which
20 are tremendous, have worked on a special
21 hardship on the poor and lower income
22 families. We have millions of families today

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1 struggling to stay out of poverty. And the
2 problem that you've described reinforces a
3 structural inequality that drives these
4 individuals to use higher cost products that
5 cost far beyond what Americans in the middle
6 class pay using traditional banking services
7 and has steered them de facto into the arms of
8 individuals who choose to exploit them.

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

13 MR. SILVER: I would say that the
14 bank branches are still very important. Let's
15 talk about two large institutions in the
16 Washington, D.C. metropolitan area. Both
17 institutions have more than \$1 trillion in
18 assets. One institution made 11,000 loans in
19 Washington, D.C. in 2008 and did have an
20 assessment area that covered the Washington,
21 D.C. metropolitan area, because their branches
22 were here. Another institution also with \$1

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1 trillion made more than 10,000 loans in the
2 Washington, D.C. area but because it did not
3 have branches it was not examined in the
4 Washington, D.C. metropolitan area.

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

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

20 We see a positive relationship
21 between branches in particularly small
22 business lending. So we should not give up on

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1 bank branches, but we should also realize that
2 there are institutions making loans outside of
3 the branch network and they need to have CRA
4 exams when they're making lots of loans.

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

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

21 Second, in 1977 the big problem
22 that we were confronting and that CRA was

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1 designed to help address was a problem of too
2 little credit in certain communities that had
3 been traditionally denied access. Today I
4 think we can say, after the crisis we've been
5 through, that in many communities there has
6 been too much credit and too little CRA. Too
7 much free access to credit on unregulated
8 terms that has encouraged people to take on
9 unstable and ultimately unsustainable
10 mortgages.

11 The broader authorities that
12 lenders have now gained in terms of the
13 different businesses their holding companies
14 can engage in also presents conflicts that I
15 think Commissioner Antonakes very eloquently
16 described, which is you can get CRA credit by
17 giving certain kinds of loans through one part
18 of your enterprise and you can take away all
19 the wealth in the community through other
20 enterprises, either by funding their refund
21 anticipation loan and pay-day loan storefronts
22 or by offering other kinds of services through

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1 affiliates that you choose not to include.
2 And all of these things are just a function of
3 the complication of the system and why I think
4 CRA has to be modernized to try to address it.

5 The industry has outrun the assumptions of
6 the Act when it was adopted.

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

17 I think the realistic view here is
18 that the asset thresholds are antiquies. While
19 it sounds to laypeople like a large number, I
20 think we can all agree a billion dollar bank
21 is not a large institution by any means. And
22 those numbers should be substantially revised.

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1 And the tests, in terms of overall
2 measurement of compliance and how the
3 assessments areas should work, need to be
4 radically different for those institutions
5 that don't have a true traditional branch
6 network and rely on other delivery systems.

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

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

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1 important.

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

14 VICE CHAIRMAN GRUENBERG: Thank
15 you.

16 DIRECTOR BRAUNSTEIN: Thank you.

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

19 I heard some very consistent themes
20 here of, first of all, issues around the
21 assessment area, issues around affiliates,
22 issues around broader than just lending

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1 including deposit and other retail services.

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

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

21 So I'd like to know a little bit
22 more from you. If we were to do this, how

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1 would we? Is it primarily the mortgage
2 affiliates you're concerned about? How would
3 we structure this?

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

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

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

17 So we agree on that.

18 Certainly, I think we believe that
19 mortgage affiliates need special scrutiny, but
20 I would not limit it there. I mean, I think
21 truthfully CRA has an inherent flexibility
22 that allows you to examine the evolution and

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1 issuance of new products that have significant
2 implications for posing the same sort of
3 dilemma in other aspects of the banking world
4 that we've seen in the mortgage lending field.

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

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

16 MR. SILVER: Well historically,
17 Sandra, the concern has been revolving around
18 mortgage affiliates. And there are some
19 mortgage affiliates of large lending
20 institutions that are not out of business
21 because they were making problematic loans.
22 And it was inexcusable that a lot of these

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1 mortgage company affiliates were not on the
2 CRA exam because the responsible lending of
3 the bank was directly undercut by the
4 problematic lending of the mortgage affiliate.

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

14 You raise a very important point
15 about credit card affiliates and broker/dealer
16 affiliates. Banks, indeed, have gotten a lot
17 of power in the year since the Gramm-Leach-
18 Bliley Act passed. And that if they are truly
19 trying to be one-stop-shopping for all the
20 financial needs and they have these
21 broker/dealer affiliates and credit card
22 affiliates, my colleague can talk about credit

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1 card abuses more than I can, indeed, these
2 affiliates ought to be on CRA exams to make
3 sure there's no abuses and to make sure that
4 there is increased access to safe and sound
5 lending and other products.

6 And lastly, I want to say that I
7 agree with the Massachusetts Commissioner that
8 there ought to be super charged exams for the
9 banks that are hundreds of billions of dollars
10 and trillions of dollars in assets. A yearly
11 exam, I think that's a great idea. But I
12 would also say for the existing banks I want
13 to keep the exam schedule as it is: Once
14 every two years, once every two and a half
15 years. If you stretch out the exam period,
16 the banks will relax a little bit. Just think
17 if you were a student and you were examined
18 every four or five years, you won't work as
19 hard in year one and two, and maybe three, you
20 work a little harder in year four and five.
21 That's why I think the CRA exams are
22 reasonable and for all the banks except the

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1 biggest banks, they need to stay on the same
2 schedule. And for the biggest banks, they
3 need to be super charged.

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

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

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1 regulators.

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

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

14 MR. MINTZ: In some ways I wear two
15 hats. One is that hat which is the financial
16 empowerment hat where we open financial
17 empowerment centers to provide counseling and
18 we get a sense of where people have run into
19 trouble and where they need to help. And with
20 the other hat I have an enforcement squad that
21 is out there. And the points of intersection
22 that I think are relevant are centered around

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1 some very troublesome products like refund
2 anticipation loans and auto loans, and some of
3 the retail level lending that can go very
4 wrong and do a good deal damage. I think that
5 those are very relevant and I think you can't
6 ignore that type of lending activity,
7 particularly again when you're working
8 backward from the goal of assessing have you
9 done a good job of leveraging better services
10 across the board for the low income
11 communities.

12 DIRECTOR BRAUNSTEIN: Thank you.

13 COMPTROLLER DUGAN: Thank you.

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

20 And I think, in part, it was
21 deliberate. I mean, I think there was a
22 notion that regulation and supervision of

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1 depository institutions should be the most
2 significant, they have the most direct access
3 to federal benefits, and therefore they should
4 have the most obligations under the Community
5 Reinvestment Act, which of course is focused
6 on depository institutions.

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

17 I think that if you have the kinds
18 of bank permissible activities in an
19 organization and affiliates are engaging in
20 them, there ought to be much more regulating.

21 Not just with respect to CRA, but for
22 underwriting, for credit decisions generally.

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1 But I do have a question, and it comes back
2 to what you were saying, Mr. Zigas, about the
3 original intent of CRA being limited to credit
4 and aimed at redlining. And while I as a
5 policy matter agree with this thought about
6 affiliates, how much of this under the
7 current law would allow the focus to shift to
8 the entire organization as opposed to the
9 depository institution where the statute is
10 focused?

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

19 I think all of us here would
20 probably agree there are legislative changes
21 we'd like to see in the statute, and this
22 doesn't stop at the edge of regulation for us.

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1 But I do think the expansion of the
2 regulatory reviews to cover the intent of the
3 statute to make sure that we don't because of
4 kind of a slavish devotion to a 35 year old
5 conception find ourselves allowing financial
6 institutions to wreak havoc in our
7 communities.

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

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1 your customers is that?

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

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

17 Having said that, I think Barry
18 addressed a very important piece of the
19 analysis, there is nothing in the statute
20 itself given its brevity, given the way in
21 which it was drafted, which precludes you from
22 using the regulatory process to address issues

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1 not directly envisioned at the time the
2 statute was drafted. But certainly within the
3 penumbra, within the spirit of what the
4 statute does it's the same principle that
5 applies to constitutional interpretation on
6 issues not directly presented at the time the
7 Constitution was drafted, but the elasticity
8 of the document itself permits you to engage
9 in an analysis that advances its overall
10 goals.

11 And I think here, I mean you have
12 again the administrative procedure process.
13 You're not asking to implement something
14 unilaterally. You're putting it out for public
15 comment, you're allowing the public comment to
16 review it. If there is a problem of over
17 interpretation or extension of the statute,
18 Congress is certainly capable of entering into
19 that space to address the affirmative activity
20 that you've taken. But in the absence of a
21 direct prohibition against engaging in this
22 kind of examination, I think it would be

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1 absolutely unconscionable to limit the
2 analysis of CRA to the explicit provisions
3 that were adopted in 1977 that have cramped
4 the interpretation of the statute to date.

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

15 COMPTROLLER DUGAN: I appreciate
16 that. But I think people need to be mindful
17 of the limits that we operate under, and we
18 don't have a blank check here. And so I think
19 it would be helpful as you make these
20 recommendations, and I know this is not easy
21 but it's not easy for us either, to really
22 zone in on the things where we are acting on

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1 more solid ground and other places where you
2 really are trending toward a need for a
3 statutory change. Because it will be difficult
4 for us.

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

11 And just as an aside on this, and I
12 want to come back to this perhaps in a second
13 round, on geographic scope, while there are
14 many people who believe that it shouldn't be
15 limited to branches, although it's interesting
16 that we heard some mixed views, there are
17 other people that once you start talking about
18 a national test get quite concerned that the
19 very people who are most likely to be helped
20 by a branch test and are most in need of
21 things, might be the ones that have least
22 access to electronic services and be hurt the

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1 most by a different kind of test. And, you
2 know, that's the kind of thing -- and
3 honestly, we get these kinds of comments from
4 members of Congress and sorting that out is
5 quite important.

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

16 That's the assessment of your
17 statutory authority. You can examine in a
18 number of ways. You have general counsel, for
19 example, that can advise you on whether or not
20 your action goes beyond what is appropriate.
21 But I'm suggesting to you that the regulatory
22 process was structured for this very purpose:

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1 To solicit public comment, to take those into
2 account as you determine what your statutory
3 responsibility is, to have Congress as a
4 mechanism for oversight to the extent that
5 you've exceeded your authority.

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

13 COMPROLLER DUGAN: And I think we
14 agree on that point.

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

22 And as Mr. Henderson elegantly

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

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

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

18 If a lending institution is making
19 thousands of loans in the metropolitan area it
20 ought to have a CRA exam because it clearly
21 has the resources to be in that metropolitan
22 area or the rural counties of a state. It has

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1 invested a lot of resources to do a lot of
2 business, and it can clearly invest a lot of
3 resources to make sure that modest income
4 communities and underserved communities are
5 also being served.

6 Thank you.

7 VICE CHAIRMAN GRUENBERG: Any other
8 comment? John?

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

16 But I'd like to focus on, I think,
17 Mr. Antonakes, Commissioner Antonakes, you
18 talked about the quality of the lending. And
19 if I could ask all of you to respond, I would
20 have two questions which is number one, how
21 would we as regulators in a regulatory review
22 focus on whether an institution is making

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1 loans that are affordable and sustainable? .
2 And then number two, should legal but higher
3 cost loan features receive adverse
4 consideration as ratings are assigned?

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

7 MR. MINTZ: Yes, sure.

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

12 I think that affordability of the
13 product is always key. I think that by trying
14 to develop clear standards I think you can be
15 more aggressive. I think many times those that
16 are being regulated tend to push back. I see
17 this at a local level. Tend to push back, not
18 on the question of what it is you're
19 assessing, but how clearly you have laid out
20 the terms by which you will be making those
21 assessments. And so I think that leaves you a
22 lot more flexibility in taking a look, as you

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1 correctly point out, at what actually matters,
2 whether they are sustainable and affordable.

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

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

12 The thing that we haven't yet
13 talked much about is its possible role in
14 educating consumers. I think that when you
15 have clear signals it not only makes it easier
16 for banks to follow what they're going to be
17 assessed on and for regulators to do so in a
18 uniform manner, but it allows you to turn
19 around what you're doing in CRA and turn it
20 into a consumer education tool. Not just
21 about where they can find safe products and
22 services, but which are the institutions in

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1 their communities and for those of us making
2 municipal deposits as well, which of the
3 institutions in those communities are in fact
4 wracking up a bunch of green lights or higher
5 assessments.

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

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

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1 among protected classes is not necessarily a
2 bad thing.

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

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

22 So, no, I don't want to say across

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1 the board that all higher priced loans are bad
2 because I don't think they are. But I do think
3 that broader picture should be taken into
4 consideration.

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

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

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

22 And I would also say that I think

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

17 MR. SILVER: I would say that
18 absolutely abusive and illegal lending should
19 result in a failure on the CRA exam. And
20 Calvin Bradford will be testifying later, and
21 he has many examples in his testimony where
22 banks and thrifts kept passing even though

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1 they are being sued for discrimination and
2 settled with the Department of Justice.

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

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

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

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1 populations that have a lower default rate.

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

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

15 MR. HENDERSON: Thank you, Sir.

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

20 I think Commissioner Antonakes,
21 however, set out a principle which I think is
22 important. We live in a capitalist

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1 environment. We should not over regulate,
2 obviously, the interests that we want to
3 promote.

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

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

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

20 That where you have high cost loans
21 available that may well be within legal
22 limits, that there also be some oversight to

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1 determine whether those loans are being
2 offered only to a particular class of
3 individuals where you know they might
4 otherwise qualify for better terms.

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

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

22 VICE CHAIRMAN GRUENBERG: Thank

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1 you, gentlemen. I think we do have time for a
2 second round of questions.

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

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

12 I'd like to ask the other panelists
13 to respond to that issue. Is, it fair to say
14 that previously CRA has been viewed as
15 focusing principally on credit access and
16 that services, particularly affordable
17 transaction and savings accounts and other
18 financial services offered by banks, has been
19 less the focus and that as we go forward it
20 perhaps should be given more attention? I'd
21 be interested in the thoughts of the other
22 panelists on that.

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1 MR. HENDERSON: Just very briefly,
2 I think one of your Commissioners acknowledged
3 that in today's world access to credit is not
4 quite the problem that it once was when CRA
5 was enacted. And so, yes, there is access to
6 credit, but often in a way that works to the
7 disadvantage of the borrower for the reasons
8 that we've cited.

9 Service functions do deserve
10 greater consideration. And I think in revised
11 regulations it's important that you strike a
12 balance. I noted the Citibank proposal to
13 take into account savings programs. I think
14 that when banks and lenders engage in creating
15 new products that primarily are intended to
16 address the needs of the unbanked or the under
17 banked, those services are critically
18 important. And they should be considered, I
19 think, in any evaluation of CRA. So, yes, I
20 agree with Commissioner Mintz that there needs
21 to be a stronger balance struck between access
22 to credit and services provided.

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1 MR. SILVER: I think that since
2 we've seen modest income communities flooded
3 with fringe service providers, check cashiers,
4 pay-day lenders just being stripped of their
5 wealth, that the service issues are very
6 important. The unbanked and the under banked
7 issue that Wade Henderson and the New York
8 Commissioner talked about is very important.
9 But often times on the CRA exam you'll see a
10 description of an innovative program, like an
11 individual development account, and I applaud
12 Citibank for talking about that today. But
13 then often on the CRA exam you won't see any
14 quantity. You know, how many individual
15 development accounts are being offered? That
16 information is often pretty sparse on a CRA
17 exam.

18 So, I would say one very effective
19 way of addressing this issue is better data.
20 NCRC, we talk about it in our testimony, is we
21 recommend better data on deposits, deposit
22 accounts at least by Census tract, to know

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1 whether communities of color and working class
2 communities are receiving an adequate share of
3 deposits and how banks are competing against
4 each other in offering affordable deposits to
5 these communities. I think that's very
6 important.

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

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

14 MR. ANTONAKES: I would agree. I
15 think we can all recognize the advantages of
16 having more folks within the banking
17 mainstream. I'd suggest that problem is
18 changing, however, it's not just a low income
19 issue anymore. There's a lot of younger folks
20 that are choosing not to be within the banking
21 mainstream. We have to find the best way to
22 determine how to bring them in as well.

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1 The fact of the matter is the
2 ongoing success of competing entities, the
3 check cashiers, the pawnbrokers and the pay-
4 day lenders indicate that there are
5 substantial needs for not just deposit
6 products, but as the panelists have indicated
7 low dollar products as well. So to the extent
8 those continue to be assessed and dealt with,
9 I think would be beneficial.

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

13 You know I think, as I said, I mean
14 in New York and the numbers are proportional,
15 we have 825,000 people who are not accessing
16 mainstream banking. For them the question of
17 their lending opportunities is almost a
18 privilege question. I think that we have
19 used redlining to create a leveraging
20 mechanism and the beauty of CRA is that it has
21 seeped into the DNA of the financial
22 institutions and those that are looking to

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1 partner with the financial institutions, they
2 get that at some level it is about the way in
3 which they are serving these communities.

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

14 VICE CHAIRMAN GRUENBERG: Thank you
15 very much.

16 Sandra?

17 DIRECTOR BRAUNSTEIN: Yes. I have
18 a question to Barry Zigas. I was very
19 intrigued when you brought up the notion of
20 requiring strategic plans for financial
21 institutions. You know, as you mentioned,
22 it's been an option for quite a while and I

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1 could probably count on one hand the number of
2 banks that have actually taken up that option.

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

8 One of the things that occurs to me
9 is that I'm intrigued by it, I wouldn't want
10 it to become just kind of a paperwork
11 exercise, which is the kind of thing that in
12 1995 we were trying to get away from in many
13 respects when the rules changed more to
14 performance and away from paperwork.

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

17 MR. ZIGAS: Thank you. And I would
18 strongly agree having a strategic plan should
19 not be a substitute for performance-based
20 information about the results that are
21 generated. But the thought is with such a
22 broad range of activities, such a broad range

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1 sometimes of affiliates, it would be very
2 useful to have institutions, particularly very
3 large institutions, to mirror to the public
4 and to its regulators in this domain of
5 community reinvestment, exactly what I know
6 they're doing in their own executive suits,
7 which is creating strategic plans about how
8 they intend to penetrate markets, where they
9 tend to make their investments and what
10 results they're going to be judged upon for
11 their own compensation and success in the
12 company. And when you're trying to grapple
13 with the scale of the work that's going on
14 today, I would argue from my own experience in
15 business and other places that a strategic
16 plan would actually be a very essential part
17 for examiners and regulators to understand how
18 to think about the results that are being
19 generated. Because the alternative is simply
20 that we do look in these kind of silos and
21 cubbyholes about did you do this many here, or
22 did you do that many there. And the larger

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1 question of what is your approach to these low
2 income communities? Where do you think that
3 the areas of emphasis and focus that are most
4 important or most accessible to you are? Who
5 are your competitors and how are you planning
6 to address that? And what are the services
7 that are competing with the ones you're
8 planning offer?

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

22 MR. SILVER: I think it's a very

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1 interesting concept. Barry. And also, you'll
2 hear from Ellen Seidman about strategic plans
3 for community development activities. I'll
4 let her describe that during this CRA hearing
5 process.

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

16 And I would also ask the regulators
17 to think about strategic plans in the context
18 of mergers and acquisition. As you know, in
19 the early to mid-1990s there was a
20 proliferation of what was known as CRA
21 agreements. And I think of CRA agreements as
22 basically a strategic plan, planning exercise

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1 during the merger application process. That
2 during a merger application process these
3 institutions are going to undergo profound
4 institutional changes. Will an institution
5 that was headquarters in San Francisco and
6 will now be headquartered in Charlotte, North
7 Carolina, will the West Coast communities have
8 access to community development activities?
9 Where is the decision making for community
10 development financing going to occur? Is it
11 now going to occur in Charlotte and that the
12 West Coast will not have access to the
13 decision makers?

14 So a strategic plan in the context
15 of profound institutional changes is, I think,
16 very important. Critically important. And
17 in the strategic plan to say we will not cut
18 and slash lending and services to communities.

19 We're going to maintain and increase that
20 activity. And here are the hard data and the
21 hard numbers to show that we will increase our
22 activity.

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1 I think that would make the merger
2 application process a win/win for both banks
3 and communities.

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

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

20 MR. HENDERSON: I would agree it's
21 a great suggestion. I think the comments that
22 you've heard from my colleagues really

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1 reenforce the need to consider that as a part
2 of a future CRA evaluation.

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

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

22 And then, Mr. Zigas, you brought it

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

9 And I am struggling with how
10 regulators in the context of that could come
11 out and say okay, it's lawful. It's lawful
12 under a statute. It's been expressly
13 considered. It's lawful under a regulation.
14 Some people think it's a good thing, you think
15 it's a bad thing, but it's up to us to decide
16 what's good for CRA purposes and what's bad.
17 And I say it not just because it puts us in a,
18 I think, difficult position but there are
19 questions for the people who think, not just
20 this I'm not defending this one way or the
21 other, that you are substituting a regulatory
22 judgment for what kinds of market products are

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1 going to be delivered in a lawfully related
2 scheme. How do we deal with this?

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

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

14 I think, you know as my colleagues
15 have mentioned, there are some products that
16 for some are just right. But when you're
17 talking about addressing some of the core
18 needs, for example of the unbanked, there are
19 some products that are clearly more risky.
20 And I think that if you're looking at it from
21 the angle of how do consumers benefit from
22 better choices and the information that would

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1 help them to make better choices, I really
2 think there's a cross leveraging opportunity
3 here.

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

16 As I said in my testimony, it's
17 more about what banks are good at, which is
18 putting out products. That's their business
19 model. And I think what you want to leverage
20 through CRA, you want to leverage the offering
21 of those better products. I think that's the
22 way to do it, which is to give them credit for

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1 those that they're actually selling that are
2 less risky and more affordable.

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

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

14 COMPTROLLER DUGAN: Can I just stop
15 you there. If you take more risk and provide
16 more credit to people, you may have a higher
17 default rate. I mean, you can't do it to the
18 similarly situated people, that would be
19 unlawful. If you have judged people on default
20 rates, you may not get people taking chances
21 on marginal borrowers. So I'm not sure that's
22 how you would look at this.

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1 MR. SILVER: Well, I would say then
2 if anything, this current crisis maybe we
3 erred too much --

4 COMPTROLLER DUGAN: I totally
5 agree.

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

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

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1 should fail.

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

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

15 In this particular instance, let's
16 just stay with this overdraft question, it's
17 legal, people have a choice and so on. To me
18 the distinction is in a CRA review you're not
19 telling people you can't do this, right?
20 We're going to bar an activity that Congress
21 has authorized. But it seems to me this gets
22 back to the question of having more

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1 distinctions in the review criteria and in the
2 review ratings. And when 90 plus percent of
3 the banks are getting outstandings and
4 satisfactories, I don't think we're faced with
5 seeing too much discretion and too much
6 distinction, is to be able to say on balance
7 while the two different institutions are
8 engaging in equally legal behavior, you know
9 this one is more consumer friendly as a
10 default, this one is offering choices that
11 seem to offer consumers a quicker path, be it
12 building wealth or saving money. And we think
13 that deserves to be rewarded. It doesn't mean
14 we're going to ban the activities at the other
15 bank. It doesn't mean we're going to penalize
16 the other institutions. But we might reward
17 the one that exemplifies good behavior because
18 we want the rest of the industry to emulate
19 it.

20 MR. HENDERSON: But higher default
21 rates, and I would agree with Josh, they
22 should be a factor in your evaluation. Now,

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1 you don't necessarily have to regulate and
2 penalize a bank that has higher default rates
3 for the reasons that you've said. But
4 certainly higher default rates should trigger
5 greater scrutiny as to the nature of the
6 product that they are providing.

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

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

17 When a bank does not engage in that
18 activity, I'm looking for transparency. I
19 mean, if you're using products that you know
20 are going to pose a real problem, particularly
21 against for low income borrowers, working
22 class communities, when you know as in the

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1 overdraft situation you are costing consumers
2 enormous amounts of money that they can't
3 afford; and I'm just using a reasonable test.

4 You should be able to require that banks
5 engage in greater transparency in explaining
6 the cost implications of the products that
7 they're offering.

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

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

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

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1 as inconsistent quality of CRA examinations."

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

10 **MR. SILVER:** Well, I think that
11 over the years right now in the last number of
12 years, 90 percent of the institutions are
13 getting a satisfactory rating. When you have
14 90 percent of the institutions getting the
15 same rating, I think you have to ask yourself
16 are the ratings effectively making any
17 distinctions in performance? And I would
18 suggest to you that let's break up that 90
19 percent bucket.

20 NCRC is recommending a high
21 satisfactory, and I think you have the
22 statutory authority to do this because

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1 satisfactory is one of the statutory ratings.

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

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

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

22 One useful thing to think about is

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1 how students are graded, 1 to 100. And you
2 can think of percentiles, you know 90 percent
3 and above is an A. And you can 1 to 100 on
4 each of the component tests and then you can
5 have 1 to 100 on the final rating. And you
6 can still weight the component test
7 differently with a 1 to 100 scale.

8 So, thank you for asking that
9 question.

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

20 And I conducted CRA exams early in
21 my career, and I know the degree of judgment
22 that is warranted. And I don't know if you

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1 can set hard criteria because of the
2 difficulty of the aspect, but if I were to ask
3 each of you how many standard deviations below
4 aggregate does a bank's lending have to be in
5 order for it to be less than satisfactory, I'm
6 not sure I would get the same answer.

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

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

21 So while I think you want to be
22 able to give those signals as leverage, I

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1 think the real emphasis has to be on what is
2 that you're actually evaluating and,
3 therefore, encouraging.

4 VICE CHAIRMAN GRUENBERG: Thank you
5 very much.

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

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

14 Thank you all very much.

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

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