Testimony before the

HOUSE FINANCIAL SERVICES COMMITTEE
Field Hearing on Mortgage Lending Discrimination

October 15, 2007

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I. Introduction

Good afternoon. Mr. Chairman and Members of the committee, thank you for this opportunity to discuss discrimination in mortgage lending. My name is Ginny Hamilton, and I am the Executive Director of the Fair Housing Center of Greater Boston. The Fair Housing Center works to eliminate housing discrimination and promote open communities throughout the greater Boston region. We serve the communities of Norfolk, Suffolk, Essex, Middlesex, and Plymouth counties in Eastern Massachusetts. The Fair Housing Center was founded in 1998 with funds from the Boston Foundation and more than 100 charter members. In 1999, we received a grant from the National Fair Housing Alliance (NFHA), which was in turn funded by HUD's Fair Housing Initiative Program (FHIP), to become a full service fair housing center offering: education and training, community outreach, case advocacy, testing, research, and policy advocacy. Today, we receive FHIP funding independently and remain an active member of the National Fair Housing Alliance.

I am here to speak with you today about our organization's use of paired testing to document racial discrimination in lending in Boston and eastern Massachusetts. Discriminatory lending practices are of particular concern in a region characterized by ongoing segregation, exorbitant housing prices, below national average homeownership rates for African American and Latino families, and an explosion of foreclosures disproportionately affecting homeowners of color and neighborhoods of color.

Commentary on the foreclosure crisis regularly includes statements about African American and Latino borrowers posing more of a credit risk to lenders than white borrowers. Therefore, the logic goes, these buyers are more likely to end up with a subprime and potentially risky loan. While this scenario may accurately describe one piece of the problem, it is not a complete accounting of the situation. Our testing shows evidence of discrimination based on race and national origin against homebuyers with good credit histories, sufficient savings, and solid income to secure a prime market loan.

II. Testing for Discrimination

Testing is a controlled method of measuring and documenting variations in the quality, quantity and content of information and services offered or given to various home seekers by housing providers. Quite simply, a test is designed to reveal differences in treatment and to isolate the causes of these differences by controlling for the desired factor. HUD's regulations to the federal Fair Housing Act read: "A person who receives the inaccurate or untrue information need not be an actual seeker of housing in order to be the victim of a discriminatory housing practice…." (24 CFR Part 14 et al. Implementation of the Fair Housing Amendments Act of 1988; Final Rule. Section 100.80.) The U.S. Supreme Court has also recognized testing as a tool to uncover housing discrimination. See *Havens Realty Corp v. Coleman*, 455 U.S. 363, 373-374 (1982).

A proven means for discovering the presence of discrimination, testing has become commonly accepted practice in several arenas. For enforcement purposes, the Department of Justice has its own testing program and the Department of Housing and Urban Development approves testing by fair housing organizations nationwide. Also, many corporations use "shopping services" to test a competitor's products as well as the performance of their own employees.

Testing is carried out by qualified fair housing organizations such as ours, both to provide systematic assessment of discrimination in the market and to investigate individual claims of discrimination. Fair housing organizations have a non-profit 501(c)3 status, so employees do not receive increases in salary or gifts as a result of any compensation that a victim of discrimination might receive after a settlement. Any claims or compensation for an occupant or applicant who has been the victim of discrimination goes to the complainant. Fair housing centers may also receive funds through a settlement or lawsuit, which is most often used to further fair housing by educating home seekers and housing providers about their legal rights and responsibilities.

III. Evidence of Lending Discrimination in Greater Boston

Since 2001, testing conducted by the Fair Housing Center of Greater Boston has shown that African Americans and Latinos experience discrimination in approximately half of their attempts to rent, purchase, or finance homes in the greater Boston region. Our testing data adds to a large body of evidence of housing discrimination from paired testing of providers of rental housing, from paired testing of real estate brokers who deal with potential home buyers, and from paired testing of mortgage lenders by seekers of home loans. (The amount of evidence is progressively smaller in each case because carrying out the tests is progressively more complex and expensive.)

Several national studies have presented evidence of racial and ethnic discrimination from paired testing of mortgage lenders. In the mid-1990s, NFHA conducted fair lending investigations that revealed discrimination based on race or national origin in two-thirds of almost 600 tests conducted in eight cities, including Boston. In two-thirds of the tests, whites were favored over African Americans and Latinos; in only 3 percent of the tests, African American and Latino testers were favored over white testers. In all cases, the African American and Latino testers were better qualified for the loans than their white counterparts.

Two more recent studies used testing to look at discriminatory treatment in the pre-application phase, and discriminatory behavior by mortgage brokers. The first was released in April 2002, the Urban Institute, *All Other Things Being Equal: A Paired Testing Study of Mortgage Lending Institutions*. The second, *Fair Lending Disparities: Stubborn and Persistent* was released in May 2006 by the National Community Reinvestment Coalition.

In May 2006, the Fair Housing Center of Greater Boston released our own mortgage testing audit report, *The Gap Persists: A Report on Racial and Ethnic Discrimination in the Greater Boston Home Mortgage Lending Market*. The rest of this section is a summary of that report.

During the four months from October 2005 to January 2006, the Fair Housing Center conducted an investigation to determine the extent and nature of discrimination by mortgage lenders in Greater Boston. The Fair Housing Center used trained volunteers to call and visit banks and mortgage offices and to report in detail on their experiences. Overall, the Fair Housing Center found differences in treatment which disadvantaged the homebuyer of color in nine of the twenty matched paired tests conducted, or 45 percent. In seven of these tests the differences in treatment were clearly large enough to form the basis for legal action, while the evidence in the remaining two tests may or may not have risen to that level. The chart below breaks down these test results by several different variables.

	Tests Conducted	Tests Showing Evidence of Discrimination	Percent of Tests that Show Evidence of Discrimination
All tests	20	9	45%
Good Credit	10	4	40%
Mediocre Credit	10	5	50%
African American/white pair	10	5	50%
Asian/white pair	4	2	50%
Latino/white pair	5	2	40%
Caribbean/white pair	1	0	0%

In all tests, the tester of color was better qualified than the white tester. Four of the tests with differences in treatment were conducted by pairs of testers with good credit scores, and five were done by pairs with mediocre credit scores. Of the ten tests pairing white and African American testers, there were five test pairs where the African American tester received disadvantageous treatment. Of the four tests pairing Asian and white testers, two showed evidence of discrimination. There were five tests pairing Latino and white testers, and in two the lender advantaged the white tester over the Latino tester. The one test pairing a Caribbean and white tester did not show evidence of discrimination. Summaries of each of the nine tests showing differences are provided in Appendix A at the end of this testimony.

Selection of Sites

Fair Housing Center staff worked with staff of the Massachusetts Affordable Housing Alliance (MAHA[1]) to discuss selection of sites and test methodology. MAHA provided the Fair Housing Center with the names of the 25 mortgage lenders that do the highest volume of lending in Boston. To this list, the Fair Housing Center added several companies who do a high volume of business in greater Boston and are reputed to have very low customer satisfaction rates. From this combined list, the Fair Housing Center tested ten banks and ten mortgage lending companies with offices located throughout Greater Boston.

Test Design

Fair Housing Center staff members provide all testers with HUD-approved standardized training that emphasizes the role of testers as objective fact finders. The Fair Housing Center paired testers and assigned both members of the pair near-identical incomes, credit ratings, and housing search locations, so that the major difference between the paired testers was the race or ethnicity of the loan seeker. Testers of color were assigned slightly higher credit scores and incomes, and

[1] The Massachusetts Affordable Housing Alliance (MAHA) is a statewide nonprofit group that works to encourage local and state government and businesses to invest more money in affordable housing. Known for their award winning homebuyer classes for consumers, MAHA also conducts research and organizes tenants and homeowners in support of affordable housing. www.mahahome.org

slightly lower debt compared to their white counterparts, such that in a discrimination-free environment, the tester of color would be slightly better qualified for the home loan.

From October 2005 to January 2006, the Fair Housing Center conducted twenty matched pair site visit tests for discrimination against African American, Latino, Asian, Caribbean loan seekers. The audit was designed for each tester to have similar experiences, with every effort to have testers contact the same person. During each test, the testers requested that the mortgage provider give them any information or quotes available but were instructed not to pursue the full application process. All testers inquired about a $475,000 mortgage with $25,000 down payment.

In MAHA's experience with first time homebuyers, homebuyers of color with mediocre credit are often turned away by mortgage providers, while the companies attempt to work with white homebuyers with similar credit to find ways to provide the loans. The Fair Housing Center sought to gather evidence as to whether such differences are occurring and therefore decided to include two levels of credit ratings. Ten pairs of testers had good credit, with assigned credit scores of approximately 750. Ten pairs of testers had mediocre credit, with assigned credit scores of approximately 650.

Test Implications

The results of these investigations are disturbing and reveal inconsistencies in the treatment of and services provided to testers of color when compared directly to white testers, including discouraging statements, higher quotes, or worse treatment of the tester of color or encouraging statements, lower quotes, or better treatment for the white tester. These differences serve to disadvantage loan seekers of color and advantage white loan seekers. Discriminatory behavior, often subtle, takes place from the beginning of the lending process. All the tests were pre-application phase, yet loan seekers of color were still disadvantaged in 45 percent of the tests.

Our investigation shows that lenders frequently give white loan seekers more information than loan seekers of color, creating a gap between white people's financial literacy and that of people of color. **In seven of the twenty tests conducted in this investigation, the white loan seeker received substantially more information from the lender** about different types of loans, either verbally or in writing (and often both), than the loan seeker of color, and not once did the person of color receive more information than his or her white counterpart. When a lender takes the time to describe the advantages and disadvantages of different loans, the loan seeker becomes an educated consumer. That loan seeker is now equipped with knowledge that will allow him or her to choose the right loan type and negotiate with lenders in the future. In contrast, when a lender simply tells a loan seeker "this is the loan for you, and it costs this much," the loan seeker has not gained any insight into how to choose the right loan or get a good interest rate. **Our investigation shows that it is not just the lender's style that determines how much information a home seeker receives, in too many cases it is the color of the loan seeker's skin.**

In four out of twenty tests, the lender contacted the white tester after their meeting to follow up, but did not contact the tester of color. Follow up comes in different forms, including additional information about loan products, a suggestion to pursue a loan with that lender, or a simple thank you card for the meeting. All of these sorts of contact send a message that the lender wants the loan seeker as a client. No lender in our study followed up with the tester of color and not with the white tester.

In five out of twenty tests, the white tester was offered a discount on closing costs which was not offered to the tester of color, or was quoted a substantially lower closing cost than the tester of color. The differences ranged from $500 to $3,600. We cannot assume that these preliminary numbers accurately reflect the final closing costs had our testers truly applied for a loan. However, at the first stages of shopping for a mortgage, quotes with high closing costs can discourage home seekers of color from pursuing home ownership at all. And lenders know that closing costs are a big factor in consumers' choice of lenders; that is why they offer specials like certificates for money off closing fees. If such specials are made available to white loan seekers but not loan seekers of color, the lender is pursuing white customers while allowing non-white potential customers to walk away.

If a loan seeker cannot detect these differences and avoid a lender who disadvantages mortgage seekers of his or her race, he or she may end up paying much more for a loan, either within a mainline lending institution or by turning to a subprime lender or a predatory lender who welcomes his or her business. When African Americans and Latinos must pay substantially more per month than similarly situated white people, these costs perpetuate the wealth gap between whites and other racial groups, despite the rising incomes and rates of homeownership among people of color. These higher costs also expose African American and Latino homeowners to higher risk of foreclosure than their white counterparts who were welcomed into the prime market.

The testing process directly reflects reality insofar as neither testers of color nor white testers were aware of their relative (dis)advantages. As in previous Fair Housing Center audits, no individuals were targets of outright hostility or subjected to overt discrimination. This simple fact underscores the need for and benefit of testing as a means of gauging discrimination in general, but particularly in a lending industry characterized by such large differences in outcomes.

My first set of recommendations concerns the necessity of lending testing in uncovering discrimination and enforcing fair lending laws and regulations.

- Federal government agencies and bank regulators should make much more aggressive and extensive use of paired testing in their own enforcement activities and investigations by contracting and working directly with qualified fair housing enforcement organizations.
- Federal government agencies and bank regulators should also support qualified fair housing organizations in carrying out greatly expanded paired testing.
- Congress should increase funding for the Fair Housing Initiatives Program (FHIP) to expanded lending testing by qualified fair housing organizations.
- Congress and federal agencies should provide an exemption to qualified fair housing organizations to allow mortgage lending testing beyond the pre-application phase of the mortgage lending process to enforce civil rights and anti-predatory lending laws. As mentioned above, discrimination occurs in every step of the loan process, but private groups are not currently able to test beyond pre-application because of form restrictions.

IV. Statistical Evidence of Lending Discrimination

Certainly, we believe the replication of actual home seeker experiences provided by testing is the most powerful tool we have to identify potential instances of lending discrimination. However, regulators and public officials have, in the past, used statistical data alone to conclude that lending discrimination occurs. Indeed, a study published by the Federal Reserve Bank of Boston in 1992 showed that the serious disparities between the loan denial rates of borrowers of color and white borrowers in Greater Boston reflected racial discrimination by lenders as well as other factors.[2]

In May 2006, the Center for Responsible Lending released *Unfair Lending: The Effect of Race and Ethnicity on the Price of Subprime Mortgages*. The authors matched records from HMDA data with records from a large proprietary database of subprime loans to so that the info available for each borrower included race/ethnicity; credit score; loan-to-value ratio; existence of prepayment penalties; and whether the loan was fixed- or adjustable-rate. Both simple cross tabulation and more sophisticated multiple regression analysis showed that, other things equal, Black and Latino borrowers were substantially more likely to receive higher-cost loans than white borrowers.[3]

Also in 2006, then-NY Attorney General Eliot Spitzer's settlement with Countrywide Home Loans indicates the Attorney General found evidence of higher prime loan pricing for African Americans and Latinos than for white borrowers who were equally risky. This agreement is found on line at:
www.oag.state.ny.us/press/2006/dec/Countrywide%20Assurance%20Final%20Signed%20PDF.pdf [The specific finding referenced here is paragraph #2.4 on page 3.]

V. Federal Regulators Do Not Sufficiently Oversee and Enforce Fair Lending Laws

Private lawsuits have historically been important to the effort to eliminate lending discrimination. Currently, most fair lending cases are brought by private fair housing organizations and individual attorneys. While these private efforts are very important, the full engagement of the responsible federal government agencies is an essential component of any serious effort to combat lending discrimination in all of its many, evolving forms.

Private organizations do not have the resources needed to undertake investigation, analysis and litigation of fair lending violations on a routine basis. This requires review and analysis of a wide range of documents related to marketing practices, underwriting and loan servicing policies, confidential personal data from actual loan files, and a variety of other information that lenders deem proprietary. While fair housing organizations provide a vital service in conducting testing and research activities to uncover fair lending violations, for both policy and practical reasons, the federal government must be an integral partner in fair lending enforcement efforts.

HUD, as the lead enforcement agency under the Fair Housing Act and the administrator of the Federal Housing Administration, has the authority to initiate investigations and enforcement actions. Historically, however, it has undertaken very little fair lending enforcement activity. I applaud Assistant Secretary Kim Kendrick's commitment to improving enforcement efforts at HUD and to reinvigorating the Secretary-initiated complaint process. This summer, HUD established its fair lending enforcement office and recently announced funding for fair lending enforcement by eight of its regional partners, including the Massachusetts Commission Against Discrimination. This new HUD office and its state and local affiliates should be given

[2] Federal Reserve Bank of Boston *Mortgage Lending in Boston: Interpreting HMDA Data* originally published in 1992, revised version in American Economic Review in 1996

[3] Unfair Lending: The Effect of Race and Ethnicity on the Price of Subprime Mortgages. Center for Responsible Lending. Debbie Gruenstien Bocian, Keith S. Ernst, and Wei Li. May 31, 2006. www.responsiblelending.org

appropriate resources, in depth training, and focus to proactively investigate fair lending violations.

We welcome this increased enforcement capacity locally and have begun conversations with staff at the MCAD and Attorney General's office to utilize testing to assist with their enforcement proceedings. While Massachusetts is at the forefront of the foreclosure crisis, state and local government are also at the forefront of efforts to remediate the problem. Governor Patrick, State Attorney General Coakley, Boston Mayor Menino, and the Boston City Council are all actively engaged with industry and community groups to enforce existing laws, strengthen oversight, and assist consumers and communities in duress. Congressional efforts to solve this problem nationally should not undermine efforts in states such as Massachusetts with greater consumer protection laws in effect.

Lending disparities occur not only between individuals, but between neighborhoods and communities divided along racial lines. African American and Latino borrowers have traditionally not had access to main stream and prime lenders. One mechanism by which racially disparate outcomes are generated is by branch location and/or marketing efforts that lead a corporation's African American and Latino borrowers to obtain loans primarily from a high-cost subprime affiliate while its white borrowers obtain their loans primarily from a low-cost prime lending affiliate. Traditional fair lending exams might determine that each of the two affiliates treats all its applicants fairly, even though the overall corporation's lending is highly unfair.

From a fair lending perspective, when examining a lending institution that makes both prime and subprime loans, it is critical to review the institution's marketing and application procedures to ensure that all applicants have equal access to all reasonable products for which they qualify. It is also critical to look at the lenders distribution system. Does the lender have retail brick and mortar operations in predominately white, suburban communities while not having brick and mortar retail operations in predominately African American and Latino neighborhoods? Does the lender, when considering its entire books of business, rely on mortgage brokers as its primary originators in predominately African American and Latino neighborhoods?

If the government fails to pursue such cases or does not engage in a competent effort to uncover lending discrimination by the lenders under its authority, then most lending discrimination will go unchecked. Indeed for the entire history of our country, it has. Lack of forceful federal enforcement actually provides a form of safe harbor for those in the industry engaging in discriminatory practices.

The federal agencies that regulate insured depository institutions, particularly the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC), the Office of Thrift Supervision (OTS), and the Federal Reserve Board (Fed), have the authority to conduct an effective process for fair lending examinations; however, their record of enforcement falls short of the mark and has not been effective at eliminating discrimination in the mortgage market. Disclosure is a valuable tool for the evaluation of lending practices, but it cannot replace forceful and effective enforcement activities undertaken by federal agencies. Financial regulatory agencies have referred some lending discrimination cases to the Department of Justice for enforcement actions; however, they are few in number.

During the 1990s, the Department of Justice was a leader among government agencies in fair lending enforcement. These DOJ investigations set in operation a process by which both HUD and the financial regulatory agencies could refer pattern and practice cases to DOJ for investigation and litigation. These cases set out legal strategies and formats for investigation and litigation in a wide range of lending issues from redlining to retail and wholesale pricing. Historically, the decade of the 1990s can be seen as the high point in federal enforcement efforts. There is little sign of enforcement activity in this decade. DOJ has the capacity to use paired testing as an investigative tool and should be compelled to utilize testing in its fair lending investigations.

The Federal Trade Commission has authority over non-regulated lenders under the Equal Credit Opportunity Act (ECOA), but it has pursued almost no lending discrimination cases, although the FTC had an enforcement plan as far back as 1978 (See Discrimination in Real Estate Finance: The Role of the FTC Enforcement – A Report to the Federal Trade Commission, Pottinger and Company, 1978).

It should be clear by now that racial/ethnic discrimination in mortgage lending exists and is a serious problem. If and when regulators make a serious attempt to find racial/ethnic discrimination in lending, they can and will find it, as at the Boston Fed more than a decade ago and at the New York Attorney General's office more recently. We at the Fair Housing Center, and my colleagues at the National Fair Housing Alliance, believe that the four bank regulators (OCC, OTS, FDIC, and the Fed) and the other regulatory agencies charged with enforcing the nation's fair housing laws (HUD, DOJ, FTC) must take immediate and far-reaching actions to identify and reduce racial/ethnic discrimination in mortgage lending.

Currently, no federal agency regulates independent mortgage companies for fair lending compliance. Yet, as testing shows, discrimination is as at least as common in these institutions as in regulated banks. To help alleviate the problems in the subprime market, the Federal Reserve should exercise its discretion as the agency with rule-making authority under the Home Ownership and Equity Protection Act (HOEPA) to limit the use of subprime exploding ARM mortgages. HOEPA provides broad authority to the Federal Reserve to prohibit unfair or deceptive mortgage lending practices and to address abusive refinancing practices on all mortgage loans, not only high-cost loans; [4] however, the Federal Reserve has yet to exercise this authority. Media reports indicate that the Fed is currently preparing such regulations. My hope that these regulations will be both broad and specific to ***ensure that all subprime mortgage loans in the country were subject to the same rules.*** Congress need not wait for the Fed, however, and we support your efforts, Chairman Frank, to create new legislation to protect borrowers to ensure that the Fed's regulations are meaningful.

These leads to my <u>second set of recommendations: The federal agencies and regulators tasked with fair housing and fair lending oversight must expand their fair lending enforcement efforts.</u> These agencies need assistance from both Congress, in the form of appropriations to fund these initiatives such as HUD's newly mortgage discrimination investigation unit, and from the Administration, in the form of political will.

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[4] (l) DISCRETIONARY REGULATORY AUTHORITY OF BOARD.--

> (2) PROHIBITIONS.--The Board, by regulation or order, shall prohibit acts or practices in connection with--
> (A) mortgage loans that the Board finds to be unfair, deceptive, or designed to evade the provisions of this section; and
> (B) refinancing of mortgage loans that the Board finds to be associated with abusive lending practices, or that are otherwise not in the interest of the borrower." 15 USC Section 1639(l)(2).

VI. Recommendations

Congress, the Administration, and federal agencies must use their authority to undertake much stronger fair lending activities, including investigations and enforcement. The following are recommendations that Congress should implement and/or oversee.

<u>Fair Housing and Fair Lending: Increased Appropriations and New Legislation</u>

- Congress should support and pass the Housing Fairness Act of 2007 (H.R. 2926) that contains the following provisions: doubling the authorization level for HUD's Fair Housing Initiatives Program to $52 million; a commitment of at least $20 million annually for fair lending and fair housing enforcement testing and actions; a commitment of at least $5 million annually to fund studies of the effects of housing segregation on our nation's communities. Representative Al Green and 44 other members of Congress currently co-sponsor this bill. The companion bill S. 1733 has been proposed in the Senate.
- Congress should support and pass legislation to protect borrowers from high cost loans, including the following provisions: ban pre-payment penalties, yield spread premiums, stated income loans, and low and no doc loans; create payment standards that assess the borrower's ability to repay at the maximum possible payment; require escrow for taxes and insurance; and require licensing and registration of all lenders. National legislation, however, should not undermine the ability of state governments to enforce stricter consumer protection standards.

<u>Aggressive Fair Lending Oversight and Enforcement</u>

- Congress should require federal government agencies, including HUD, DOJ, and the FTC, to undertake more aggressive, effective and expansive fair lending enforcement activities. These agencies should consult with experts in fair lending enforcement organizations so that the federal examination and enforcement programs reflect best practices and state of the art investigation techniques and litigation strategies.
- Congress should require that HUD improve the quality of its training programs to increase the capacity of its investigators and Fair Housing Assistance Program (FHAP) investigators to investigate lending complaints. HUD and FHAP fair lending programs should be encouraged to collaborate with qualified fair housing organizations to conduct fair lending testing.
- Congress should provide funding through HUD's Fair Housing Initiatives Program for qualified fair housing organizations to conduct activities specifically addressing fair lending issues, including paired testing investigations.
- Congress should require that federal agencies that regulate insured depository institutions, particularly the OCC, the FDIC, the OTS, and the Fed, use their authority to undertake stronger oversight and enforcement activities to eliminate discrimination from the mortgage market. They should also re-examine their use of HMDA data to assure maximum coverage of potential fair lending violations. Any cases that regulators resolve with lenders on behalf of a few consumers should also be referred to DOJ for a pattern and practice investigation, including paired testing as one investigative tool.

- Congress should move to regulate all financial institutions active in lending. To fill the vacuum of fair lending enforcement activity for non-depository institutions, the Fed should use its authority to ensure that these institutions are in compliance with the fair lending laws. If this authority is lacking, Congress should grant the needed authority.

Strengthening Regulations

- Regulators need to examine lending corporations as a whole, reviewing data from retail and wholesale divisions as well as prime and subprime divisions together. Traditional fair lending exams might determine that each of the two affiliates treats all its applicants fairly, even though the overall corporation's lending is highly unfair.
- Regulators should contract with private, qualified fair housing organizations to conduct comprehensive testing programs.
- Regulators need to run regression analyses on lender portfolios looking at origination, pricing, point of origination, costs, pre-payment penalty, and yield spread premium issues stratified by key protected class characteristics. Regulators are in a unique position to do this as they have access to full records and data.

Enhance HMDA Data

- HMDA data collection should be enhanced to include the identification of loans processed through mortgage brokers, as well as to defining separate high cost benchmarks for fixed rate and adjustable rate mortgages, loan-to-value ratio; factors used to measure borrower credit worthiness (such as credit score), and the total fees as a separate item.
- Federal regulators should work with civil rights and consumer organizations to determine new HMDA data classifications that reflect the complexity of brokered loans. These loans often involve counter-offers which are technically a rejection but which may, in some cases represent a better product or terms for the consumer.

Expand Sponsorship and Use of Paired Testing in Fair Lending Enforcement

- Federal government agencies and bank regulators should make much more aggressive and extensive use of paired testing in their own enforcement activities and investigations by contracting and working directly with qualified fair housing enforcement organizations.
- Federal government agencies and bank regulators should also support qualified fair housing organizations in carrying out greatly expanded paired testing.
- Congress and federal agencies should provide an exemption to qualified fair housing organizations to allow mortgage lending testing beyond the pre-application phase of the mortgage lending process to enforce civil rights and anti-predatory lending laws. As mentioned above, discrimination occurs in every step of the loan process, but private groups are not currently able to test beyond pre-application because of form restrictions.

Thank you once again for the opportunity to testify before this Committee. I am available to answer any questions and assist in any way that we can to assure that this Committee, Congress and the government as a whole fulfill their duties to enforce fair lending nationwide.

Appendix A: **Summaries of the nine tests showing differences in treatment** from *The Gap Persists: Racial and Ethnic Discrimination in the Greater Boston Home Mortgage Lending Market*. The Fair Housing Center of Greater Boston, May 2006. www.bostonfairhousing.org/publications.htm

An African American tester with a good credit score of 670 visited a bank to inquire about a mortgage. She was told that the closing fee would be $8,000 to $9,000, although other tests in this investigation indicated that average closing fee was $2,000-$3,000. The bank representative also told her that her credit score of 670 was below average; other tests indicated that credit score of 670 was well above average. Finally, the bank representative told her that the bank usually dealt with commercial lending, and did not really provide residential mortgages. In contrast, the white tester with a credit score of 640 who visited the same bank was told by two different loan officers that the bank provided home mortgage loans, and was not told that her credit score was below average.

An Asian American tester with credit score of 770 and a white tester with credit score of 740 visited a mortgage lending company. The Asian American tester received a referral to a realtor to help her find a home. The white tester was told about two realtors who in could provide her with discounts on fees as well as help her find a home. The white tester also received a $500 certificate towards closing fees; the Asian American tester received no certificate or offer of a discount.

A Latino tester with a credit score of 670 and a white tester with a credit score of 640 visited a mortgage lending company. The lender provided both with quotes on monthly payments, and the Latino loan seeker's quote was $254 per month more than the white loan seeker was told for a 30 year fixed loan, and $140 per month more for a blended loan[5]. The lender also told the Latino loan seeker that she would need private mortgage insurance (PMI), which would cost $309 per month. The lender did not bring up PMI to the white loan seeker. The lender did tell the white loan seeker about how to get a better loan product when your credit score is under 680, but did not discuss this with the Latino loan seeker, whose score was also below 680. Finally, the white loan seeker was given informational literature about different loan products and loan process, and received a follow up email from the lender. The Latino loan seeker did not receive any literature or follow up email.

An African American tester with a credit score of 770 and a white tester with a credit score of 740 inquired at a mortgage lending company. The lender gave the white homebuyer an explanation of six different types of mortgage loans, naming advantages and disadvantages of each. The white homebuyer asked about getting a blended loan to avoid PMI, and the lender replied that the second loan in the two-loan "blended loan" has high interest, so a blended loan is a bad idea. At the end of the meeting, the lender asked the white homebuyer for her address so that he could send a thank-you card. When the African American homebuyer visited, she was told about one loan product only: the blended loan. The lender did not mention the high interest on the second loan or any other loan products.

An African American tester with a credit score of 770 and a white tester with a credit score of 740 visited a bank. Their visits to the lender were comparable, but after the visit, only

[5] A blended loan is a mortgage product that consists of two parts, usually with different rates for different periods of time (with the second loan for a smaller amount at a higher rate). In this instance the blended loan was composed of a 30 year fixed for the first loan and 10 year fixed for the second loan.

the white tester received a follow up email with more information about different loan products and a $500 certificate toward the closing fee. The African American tester did not receive follow up contact or the $500 offer.

An Asian American tester with a credit score of 770 and a white tester with a credit score of 740 inquired at a bank. The lender recommended a 30 year fixed loan with 0.75 points to the Asian American, quoting a monthly payment of $3,350, not including tax and insurance. To the white home seeker, the lender recommended five year ARM with no points, with a monthly payment of $3,225, including tax and insurance. This means that the Asian American home seeker was quoted approximately $3,600 more for the closing fee because of the point and $125 plus tax and insurance per month more than her white counterpart. The lender told the white home seeker that an ARM was better choice than a 30 year fixed rate because most people who buy homes in the town she was considering refinance within five years. The Asian American home seeker was looking to buy a home in the same town. The lender gave the white home seeker numerous information sheets, including brochures about different types of loans, an ARM loan procedure worksheet, 2006 property tax information, and a pre-approval guidebook. The lender did not give any information sheets to the Asian American. While it is impossible to know exactly what product would have been better for either home seeker, the lender characterized the ARM a better choice by giving the white person an explanation and explanatory material while providing the person of color with neither to explain his recommendation for a fixed rate mortgage.

An African American tester with a credit score of 670 and a white tester with a credit score of 640 were sent to a bank without a prior appointment and inquired about mortgage products. The loan officer referred the African American tester to another loan specialist at a different branch without giving her any information about loan products. The African American tester had to make an appointment with the second officer and then meet with him to get information about loans. The white tester walked in to the same initial branch and the same lender met with the white tester on the spot and discussed loan products, rather than referring her to a different branch. The lender told the white tester that borrowers receive a $2,000 credit toward the closing fee if the borrower has an account with the bank. While the loan officer encouraged the African American tester to open an account to receive a discount on closing, he did not tell the tester how large the discount was. Lastly, the lender sent a follow up email to the white tester explaining all the loan products this bank offered and their rates and estimated monthly payments. The African American tester was not asked for her email address and received no follow up information.

An African American tester with a credit score of 670 and a white tester with a credit score of 640 visited a mortgage lending company. The lender provided informational pamphlets about mortgages to the white tester, but not the African American tester.

A Latino tester with a credit score of 670 and a white tester with a credit score of 640 inquired at a bank. Both were told about 30 year fixed and unspecified blended loans (that is, the lender did not tell either tester the specific terms of the blend), but the white home seeker was also told about an ARM loan. The white home seeker was encouraged to submit an application as soon as possible, while the lender did not talk about applying with the Latino home seeker. The white home seeker was given pamphlets about different mortgages, a guidebook about mortgages, a worksheet for the cost of mortgage, and an application; the Latino home seeker received none of these materials.