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# *Public Hearing*

before

## SENATE COMMERCE COMMITTEE

*“Predatory financial practices in New Jersey”*

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**LOCATION:** Committee Room 1  
State House Annex  
Trenton, New Jersey

**DATE:** February 8, 2001  
10:00 a.m.

**MEMBERS OF COMMITTEE PRESENT:**

Senator Gerald Cardinale, Chairman  
Senator Robert W. Singer, Vice-Chairman  
Senator Peter A. Inverso  
Senator Garry J. Furnari



**ALSO PRESENT:**

Dale C. Davis Jr.  
*Office of Legislative Services*  
*Committee Aide*

Laurine Purola  
*Senate Majority*  
*Committee Aide*

*Hearing Recorded and Transcribed by*  
The Office of Legislative Services, Public Information Office,  
Hearing Unit, State House Annex, PO 068, Trenton, New Jersey

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**SENATOR GERALD CARDINALE (Chairman):** The first witness is going to be Commissioner Suter.

SENATOR INVERSO: Mr. Chair, can I make some comments?

SENATOR CARDINALE: Sure.

Do you want comments before?

SENATOR INVERSO: Now, yeah.

SENATOR CARDINALE: Thank you, Commissioner.

I'd just like to briefly state what we are about. The Committee is aware that you held hearings last year on this topic, and we've been given copies of those. We've had an opportunity to peruse those. And we would like, hopefully, that you would highlight for us the findings and any suggestions that you may have with respect to legislation or other practices that you will engage in to deal with the outcome of your hearings.

Senator Inverso would like an opportunity to make a statement at this time before--

SENATOR INVERSO: Thank you, Mr. Chairman.

I want to thank you for agreeing to have this hearing today at my request. I asked for this hearing, because I have met with individuals in the community who have expressed concerns about practices that they construe to be what's commonly referred to as predatory lending practices. This is not something that is -- been focused on here in New Jersey. It's actually being-- It's looked at nationwide. Federal regulators have been looking at this issue for a number of years. I thought it was incumbent upon us to ask the Department of Banking and Insurance to appear before us today to provide us with what

they have concluded, as a result of the three public hearings that they've held on this issue.

My hope is that they can not only advise us of their conclusions, but let us know whether or not there are any changes, modifications to their regulations, or if indeed that may need to be put into statute that might better enable them to deal with the issue of predatory lending, if that issue is persistent and pervasive. Also, whether or not they have in place the appropriate enforcement mechanisms to allow them to deal with issues that are abuses of current regulations or current laws that we have, such as the Consumer Fraud Law, and whether that enforcement mechanism that they have is appropriate and whether they need to have additional resources to deal with that.

So I'm grateful that they're here today. I know that this issue of predatory lending is -- received a lot of debate and comment, and maybe we can put to rest some of the anecdotal aspects of it, if that's what it is, and deal with some of the factual matters that relate to whether predatory lending exists, whether it's a matter of deceptiveness, whether it's a matter of abuse of the regulations and the laws that we currently have.

Also, I'd like the Department to focus on what I consider a very important ancillary issue here, and that is the issue of consumer financial education. I think this is an area that has to be dealt with by the Legislature, by the administration. It has to be dealt with, in my opinion, at the core curriculum level and even into the level of secondary education. So, with that as a kind of a framework of why I thought it important for us to have this hearing today, I've asked you to proceed on with the hearing.

Thank you, Mr. Chairman.

SENATOR CARDINALE: Thank you.

Commissioner.

**COMMISSIONER KAREN L. SUTER:** Thank you.

Can you hear me?

SENATOR CARDINALE: I think you need to press one of those buttons. (referring to PA microphone)

COMMISSIONER SUTER: Okay. There we go. Thank you.

Thank you, Mr. Chairman. I know Vice-Chair Singer was here a moment ago, and Senator Inverso, thank you, and--

SENATOR CARDINALE: He's still here. He's still here.

COMMISSIONER SUTER: --other members of the Commerce Committee for your invitation to testify this morning on an important topic for us, that's predatory financial practices.

This has been an important issue for our Department. As you know, and as Senator Inverso indicated, in the fall I held public hearings on the issue, and I'm in the process of reviewing three areas -- education, enforcement, and regulatory changes -- to see what more we can do to address the problem of predatory financial practices. I will address the Department's efforts in a few minutes, but first I'd like to introduce another member of my staff who is with me this morning.

I have asked Mr. Nicholas Ketcha to join us. Mr. Ketcha is our Director of the Division of Banking, and as such, he oversees the Division and its many responsibilities. However, Director Ketcha has also served 33 years with the FDIC, starting as an examiner trainee and rising to become the

Director of the Division of Supervision for the entire country. He has also served as a consultant for the People's Bank of China and for the National Bank of the Ukraine. We are very fortunate to have Director Ketcha on our staff.

I asked Director Ketcha and some other members of my staff, who are also here this morning, to join us so that you have the benefit of the experience and the knowledge and the resources that I have available to me in the Department in responding to questions that you may have of us this morning.

Mr. Chairman and Senator Inverso, I'd like to offer some observations on the Department's experience to date with predatory financial practices and the responses that we've taken to what we know.

There has been, as you indicate, a lot of concern about predatory lending across the nation in recent months and indeed last year. As you know, North Carolina and New York have enacted fairly elaborate statutes or regulations on this topic. Other states and even municipalities are considering additional measures, and still other measures have been proposed by the various regulatory agencies and by members of Congress.

The New Jersey Department of Banking and Insurance, as a part of its oversight responsibilities, has been watching and responding to predatory activities for years. Unfortunately, there is a strain of greed on the part of some, and one way that reveals itself is in predatory financial practices. But fortunately, we have not seen a pervasive or sustained pattern of predatory financial practices in New Jersey through either our examinations of financial institutions or through our complaints that we receive. However, where we

have learned of predatory activities, we have proceeded to seek enforcement, and those lenders are now out of business.

Because of the nationwide concern with predatory lending, I wanted to make sure that we were not missing predatory practices even though our exams or our complaints did not reveal a pervasive or a sustained pattern. Therefore, I held three public hearings last fall in Newark, Toms River, and Bridgeton. And I wanted to give the public and the industry a chance to speak directly with me about any predatory financial practices they had encountered. And I was fortunate enough to have Senator Singer at the Toms River hearing as well, and I thank him for his participation.

It was a valuable process for us, and we learned a lot, although sometimes in unexpected ways. First, there was testimony about certain home repair contractors, and many of those instances reported that there was a quality of repair rather than a financing problem. But there was mentioned about financing of home repairs, and that was an issue of interest to us, as well as there were other allegations about financial predatory practices as well.

In response to what we heard at those hearings, we formed a task force with the Division of Consumer Affairs to investigate home repair contracting issues. Through sharing information and resources, the two agencies identified contractors and lenders that have engaged in suspicious activities. We are currently conducting an in-depth examination of those entities, and we will perform a statistically sufficient sample of customers with regard to those sales practices, which we then can use as a basis for enforcement activities.



I note that the Chairman's bill, S-831, requiring registration of home repair contractors -- that this bill has passed the Senate and has been conformed to legislation in the other House and is now in the Assembly Appropriations Committee. I commend Senator Cardinale for his sponsorship of this important legislation.

We also received other important and interesting information from those who testified at our three public hearings. However, it was at best anecdotal. We received no direct or comprehensive statistical evidence on predatory loans supporting the notion that there is a widespread abuse in New Jersey. But when I say we have not encountered predatory financial practices on a widespread basis, I want to be very clear. I am not saying that there is no predatory financial practices in this state. Unfortunately, there has been a small percentage of lenders who have taken advantage, or tried to take advantage, of their customers. And as I said earlier, where we have encountered such predatory practices, we have acted and with good results.

We have learned several important lessons from our experiences. First and foremost, prompt and effective enforcement is crucial to protecting the public. Thus far, we have done well with cases we have encountered, but we need to continue to be vigilant.

The second lesson, reinforced by the hearings, is the importance of financial education on the part of the public. And I just cannot stress this enough. In many of the cases, consumers did not understand the financial services that were being offered, and they did not know how to pick the services that best fit their needs. Once our consumers are at the point of considering whether to purchase a particular financial product, they need to

understand the terms fully and how those terms compare with other competing products on the market.

Our Department has taken a number of steps to improve financial education in New Jersey. First, we have produced a series of consumer pamphlets on a variety of subjects, including getting a mortgage and protecting yourself from frauds and scams and how to file a complaint. And I have brought a sample of those with me this morning. The one in the front (indicating) is *Protecting Yourself Against Predatory Lending*, and in each of these, there is information about how to file a complaint and how to contact our Department. If consumers would read and follow the advice in these pamphlets, I think there would be less fraud against our citizens. The bottom line is, generally, if it sounds too good to be true, chances are that's right.

Second, we're working with the Department of Education to promote financial education within the school system. We will be working with the Department of Education and Rutgers Extension Service to offer in-service days for teachers, to give them materials and other information they need to teach financial education to our students.

Third, we formed and we chair the New Jersey Coalition for Financial Education, a group of governmental and private persons who are interested in promoting financial education. The Coalition has succeeded in getting financial education mentioned in the core curriculum standards for social studies as an indicator of satisfying those standards, although financial education still is not a requirement of the core curriculum.

Fourth, the Department continues to make presentations across the state to senior citizen groups to warn them about frauds and scams. We

have produced a series of videotapes that depict various insurance and financial scams, and we are using those in interactive workshops, where they are conducted for senior citizens by trained investigators from our Department.

Fifth, we have recently appointed a financial education officer with the full-time task of improving the level of financial education in the state. This allocation of our resources shows the importance that the Department places on improving the public's knowledge about financial matters.

I also want to note our recent *Consumer Guide to Bank and Credit Union Fees* that our Department has produced. While that guide does not directly address predatory practices, it is certainly an example of a good effort to educate consumers about financial services. The response to our guide has been overwhelmingly positive.

We are now identifying whether there is a need for changes to statutes or regulations to combat future predatory financial practices in New Jersey. It is a compliment to the Legislature that you have already provided us with an impressive body of law to address predatory practices. Fraud and deceit, of course, are already illegal, as are unworthy acts by licensed lenders. In addition, civil fraud and criminal fraud laws are still very much in place, as is the Consumer Fraud Law itself. Finally, unconscionability is still available as a legal tool for reforming unduly harsh contracts.

Overall, our approach to predatory financial practices should be balanced. It should recognize the important and beneficial role played by subprime lending; that is, fairly priced loans to higher-risk borrowers, those who do not have perfect credit ratings. Subprime lending is commonly the

only way that higher-risk borrowers can obtain the credit that they need. The challenge then that our Department faces -- other government agencies across the country and this Legislature as well -- is to preserve this subprime market while curtailing predatory practices, those that prey on consumers.

Thank you for the opportunity to testify this morning. We will be happy to respond to any questions that you may have.

SENATOR CARDINALE: Are there any questions from the members of the Committee?

SENATOR INVERSO: Yes, Mr. Chairman, if I might?

SENATOR CARDINALE: Senator Inverso.

SENATOR INVERSO: Commissioner, could you give us some sense of the law that was enacted in North Carolina and the efficacy of that law in terms of what it's done to abate or to eliminate predatory practices? Also, the regulation that was recently adopted in New York, Reg 40 -- was it 41? -- I believe.

COMMISSIONER SUTER: Right.

SENATOR INVERSO: What's that done? And should we be considering some modifications to either our regulations or our statutes that might reflect some of the actions that have been taken in those two states?

COMMISSIONER SUTER: There has been a law that was enacted in North Carolina last year. As a matter of fact, it was in July of last year. And I think that's a state where we're beginning to see some experience arise from it. Others who will be testifying from the mortgage industry may be more attuned to what those changes are. But recently, I read, for instance, that

a large lender -- a countrywide credit corporation -- is considering withdrawing from North Carolina because of the restrictions that that law has imposed.

The New York regulation, which has similar restrictions -- I call them restrictions, and I'm going to let Director Ketcha address what the actual provisions are in there -- but the New York regulation is a little bit newer, and I think that the experience there is still yet to be revealed. The North Carolina approach was to set forth, in statute, some of the provisions that they actually consider to be predatory and the question that this Legislature needs to deal with is whether or not that really doesn't address the subprime market, as opposed to activities that prey on consumers, and that's, of course, the activity that we want to address.

I'd ask Director Ketcha whether or not he can go through, for this Committee, some of the specific provisions of the North Carolina law and the New York regulation.

**NICHOLAS J. KETCHA JR.:** Thank you, Commissioner.

Basically, what New York and North Carolina and several cities have done is focused on higher rates, and they've set threshold levels that are above a -- some index that are there. And if an institution makes loans above this, they're subject to a series of other restrictions or other disclosures that place, in some cases, a pretty heavy burden on the lenders.

For example, they might require additional counseling. Another one that they may have to certify, that the person can pay the loan off, and many of these things are judgment calls. That at least what we're hearing anecdotally, again, in some of those states is that the lenders are pulling back from the subprime market, because they are making those loans at higher rates

than the indexes are, but aren't in a position to say that every loan will be paid off or that the particular customer would be there. Our concern in looking at it is, as the Commissioner testified, is that through our examinations, through our review of the complaints, and through the three hearings that we had, is we didn't see any widespread pattern of predatory practices or predatory lending.

We did see individual cases, and again, the bulk of those focused around the sales practices -- what we people were led to believe they had or were cleverly steered away from understanding what the loans are. That's why our emphasis is not then trying to set limits on what rates can be charged on a loan or balances that -- fees that would be charged, but rather making sure that the disclosures are there, that people understand what it is, and that the sales practices are clear. That's one of the difficulties, I guess, we've seen in this area, is people define predatory lending in different ways.

For example, one of the cities that passed to -- Chicago defines a predatory loan, and I'll read it off, that -- is one that has prepayment penalties that either charge more than 3 percent than the first year, more than 2 percent in the second year, and more than 1 percent in the third year. Well, under that definition, virtually every lender in this state that's either a Federal savings bank or makes a variable-rate loan -- that even though we ban prepayment penalties in this state, under Federal preemptions can charge prepayment penalties -- would by definition be a predatory lender. And that's the difficulty with some of these rate settings.

So we have not, from the evidence we have seen, taken the approach of going with what I'd call a blunderbuss type of approach and

hitting everything, but focusing on the sales practices and making the consumers educated in an awareness way that would be there.

SENATOR INVERSO: I just saw some specific aspects of what some would construe to be a kind of a predatory lending framework. For instance, refinancings. Should there be some attention to the number of refinancings that can occur? Balloon payments is an area where some people feel it's a predatory practice to provide balloon payments. I know there are loans that are made that have balloon payments, and many times a borrower needs that kind of loan. But is there a way to identify a balloon-payment arrangement which, in and of itself-- You know, I know it when I see it. I know that this is a predatory-type loan. The issue of single-premium life insurance, credit insurance, I guess it is. There are some that say that that is a predatory aspect of a lending arrangement. There are probably others, but could you comment on those, specifically, as what your view is as a Department, as to those specific issues, how you deal with them?

COMMISSIONER SUTER: Sure.

DIRECTOR KETCHA: Well, you know, on the first, on the refinancing or the loan flipping, we certainly think that there is probably room for some tightening up there as to where a lender will entice, particularly the same lender, will entice the borrower to come in for a second and third loan borrowing the same amounts, charging the interest and points on the same fee in a very short period of time. And that if there is a restriction, that's one of the ones that we'd look at that would be a possibility that's in there, recognizing a case that sometimes consumers do want to do some restructuring of their debt themselves.

With regard to the single-payment premium life insurance, certainly some of the testimony we've heard and some of the cases we've looked at is that that would be an area that we would look for some room for some tightening up there, i.e., should someone really pay an up-front fee for 30 years or 15 years on a loan that has an average life of 5 to 7 years? And even if they did get a rebate, it was done on the 78s method, where they virtually get nothing back. So that's one of the areas that we would look at -- some tightening on that.

SENATOR INVERSO: All right. So there--

COMMISSIONER SUTER: We would look forward to working with this Committee on suggested legislative changes, as well, in the future.

SENATOR INVERSO: Okay. Certainly, we would have to get together on that, and whether we do it by statute or by regulation, probably statute might be the way to do it.

I'm just curious. The Federal regulatory agencies have looked at this, and recently the -- there has been a proposed modification to Reg C and Reg Z. But in their findings, the Federal Reserve Board concluded -- and this is what I found a little surprising -- that they believe that predatory lending is more anecdotal than actual or factual. And from what you're telling me from the hearings that you've had, it bears that out.

And yet, we have cases-- I mean, you look at the file, you say, my God, this is abuse. I guess what we need to hone in on is, is it an abuse because of the practice itself, or is it abuse because it's a-- There are other things that are volitive of consumer fraud laws or other regulations that you have, and how do we kind of, like Solomon, make that kind of determination



so we can focus on the remedies that should be appropriate without stifling credit access, the availability of people who find that the subprime market is their marketplace, because of credit risk and other issues, because the subprime market does exist to provide people an opportunity for home ownership and home improvements and other financial needs. In and of itself, it's not bad, and no one here is suggesting, and no one has said it to this point, that it's the subprime market that's the culprit in all of this, because that market serves a purpose in this complex credit structure that we have.

So I guess where I'm trying to lead in terms of my judgment on this is, is it abusive? Is it deceit? And is that where we have to focus, as well as tweaking some of these things that we mentioned here? Should we leave it? Should we follow the Federal regulators in this regard? Should we be paralleling them? Should we be doing things that are different from them?

COMMISSIONER SUTER: We certainly agree in our-- What we learned at the hearings was that the evidence of it was anecdotal. In other words, we did not find a widespread pattern, and that's what I've indicated. That's the reason that in my comments I was focusing on three things, but primarily two things, and that is enforcement, which is clearly-- There are individual cases. And the theme that underlies them is fraud, deceit, misrepresentation, and on the consumer's part, a lack of understanding. So it's both. It's fraud, deceit, misrepresentation, and it's a consumer who is willing to sign up for terms that sound too good to be true and simply doesn't understand.

So the primary themes that we have emphasized over the last several months is enforcement. We must enforce against those who are

committing fraud, who are misrepresenting, who are taking advantage of consumers. And there's no better way to do it than to team up with the Division of Consumer Affairs and share our resources and our information. That's number one. Because when you get the word out that those sorts of practices will not be tolerated, then that sends a message to those who would engage in those practices.

But the second theme, and very important component, is to educate consumers to-- It's-- For whatever reason when it comes to finance or money, either people do not have the basic skills to understand or just simply it's beyond their ability to understand. But, in fact, with basic financial education, what appears to be complex transactions can be made fairly understandable and simple for consumers. So the second really important component is to educate our consumers. That begins at the elementary school level and continues through high school. It continues into college, where kids are bombarded with credit applications, and it continues all the way through your working life until you're a senior citizen. So it's a cradle-to-grave issue to make sure that consumers have available to them information to understand basic financial concepts.

And then there is a tweaking, I think, of the law that we certainly are looking at and want to work with this Committee. One instance may be on the insurance side, where we have an insurance producer who has engaged in bad practices or we believe has done that. We have the ability to suspend and then for a limited period of time -- and then conduct a hearing and so forth; you know, provide all the rights that are necessary. We don't have that ability with respect to licensed lenders, and that's something that I think we

would be coming back to say is, you know -- let's have both sides of the Houses have the same type of powers when it comes to enforcement. So that's the type of recommendation that we would be making to you.

SENATOR INVERSO: I applaud the aspect of the educational outreach effort that you're looking at. I think that perhaps you could extend that into faith-based organizations in the urbanized areas of our state, where a lot of these abuses seem to go on. But we've got to reach out. And the other is, how do we get people to come forward and raise the prospect that perhaps they've been subjected to a lending practice that we would all agree is illegal and is wrong? Somehow that outreach effort has to have a mechanism for people to get to us, to apprise us of the problem they were encountering, and then for you, from an enforcement standpoint, go out there and determine what's occurred, so that we don't have one brush painting all.

COMMISSIONER SUTER: Right.

SENATOR INVERSO: Right now it's kind of nebulous. We talk about predatory lending, and the banks say, "Well, gee, you know, we're not guilty of that," and the thrifts say, "We're not guilty of that," and they're probably not. And the subprime market, "we're not guilty of that," and maybe, for the most part maybe they're not, but there are some that are, and that guilt is either because they've been deceitful or, as we've indicated, or there is a threshold or a parameter which we would all agree someone should not be borrowing in excess of those parameters. You know, like ability to pay to repay.

COMMISSIONER SUTER: Well, that was one of the reasons, and we held the hearings. Even though we had-- Through our examinations

and complaints, I did not have a widespread pattern of predatory financial problems. However, we held the hearings, because it may be the case that-- And I certainly heard that from the consumers who came before me, that they were embarrassed by the circumstances that they found them in. And it cuts across all educational levels, all urban-- That's why we held the hearings in the urban areas and the senior centers and the more rural areas, that the lack of the understanding of basic financial concepts is through and through. And people have to understand that it's all right to say what circumstances they find themselves in to complain to us. We'll take action if there's a lender or someone who is preying on the citizens of the state.

SENATOR INVERSO: Thank you.

DIRECTOR KETCHA: Senator, one of the things we're doing on our examination side now is -- we've started it with the task force that the Commissioner mentioned, but we're also incorporating into our examinations of licensed lenders, mortgage bankers -- and that is direct verifications. And not just direct verifications of balances and fees and interest rates, but also on sales practices. Because whether we talk about balloon payments or loan flipping or that, it's not those practices -- or those features that are in the loan. It's how they were presented to the consumer.

So we've devised a series of sales practice surveys that we'll be doing as part of our examination, that will go out to the customers that took out loans in the period between our exams and trying to get that outreach where we'll maybe get some more reports back if there were problems there and through those establish a pattern or practice that we could take enforcement actions.

SENATOR SINGER: Mr. Chairman, may I just ask--

SENATOR CARDINALE: Go ahead.

SENATOR SINGER: I'm sorry.

Commissioner, it's good seeing you again.

Just a couple of quick comments, because I know there are other people to testify, and we all have other agendas today. You know, when I testified in front of you in Toms River, I shared some concerns that I think are very valid. There are a few things that I find where the casino industries and the bankers have merged together. And one is, the way they establish credit.

If I go down to one casino in the State of New Jersey and they give me a \$10,000 credit line, I can go to all the casinos and get the same \$10,000 credit line. None of them share information. And that's the same problem I have with the institution. If I'm able to pay back and use a \$10,000 credit card, I get bombarded by 50 credit cards, which would be \$50,000 or \$80,000 or \$100,000. No one would share information, and therefore we actually force the situation of credit card debt amongst people, including young people.

And you know, there is a moral obligation in this. If I go to buy a car, they do a credit check and say, "You have three cars, that you can't afford a fourth." But if I have a credit card with a \$10,000 line and that's really what I can afford to pay back, I can have 10 credit cards, 20 credit cards. And you know what they do, they flip back and forth. There really should be some regulation to think about is -- that if I'm using that to pay off your other credit card debt because they've given you of a line to do so, what is your actual credit card ability to pay back?

Because people who are in trouble financially, what they do is, as you know, they max out the cards, then they find their credit card comes to them and says, "Pay off your credit card debt, get the lower rates." They borrow that. Then they go to the next one, next one. At some point where that just doesn't -- the flipping stops, they go bankrupt. But I'm saying there should be some obligation when they take out the loan to pay off other credit card debt from a credit card, that that bank or something has to take a look at their financial status. Looks like we're saying why do we have to manage people's money. The problem is, we have to prevent people from getting into trouble.

The other side of that same situation really is -- that bothers me as a consumer is when we talk about home equity loans. Pay off your car debt, pay off your credit card debt, but nowhere in that advertisement is saying, "By the way, stop using your credit cards." What it basically says is you got into trouble because you did things you shouldn't have. And I'm not talking about someone that borrowed that to do a minor improvement in their house or a major improvement or borrowed the money to send a kid to college. I'm talking about people who have spent on vacations and credit cards debt for household things and all kinds of other things, but nowhere in that second mortgage or that debt, which it basically is, but it's not, is a home equity loan.

It sounds better, by the way. We changed the name. It's a home equity loan, which, by the way, takes away the future of that consumer to have that money for their future. And it doesn't say to them, "And by the way, understand you're going to have to drastically change your buying habits, or otherwise you're going to be back in this situation five years from now, and

you won't have that equity in your house to do this again." And I know that that puts a lot of onus on the institutions, but that's part and parcel to doing business.

You know, I know on the Federal level they were talking about, they didn't want people to misuse their credit cards in the last, per se, months before they went bankrupt, that they were still responsible for it. And the answer is well, if you had checked them out before, this wouldn't be happening. I'm just saying is, we are seeing-- And now we start to see a change in the economy and where people are in that tough position. Because you look what the average credit card debt is, it's a little frightening to people. I really believe we have to take a firm look at how we're offering home equity loans, and the truth of it is, yes, but you also have to take counseling on to what to do with it. And 110 percent of the value of your house sometimes is a little bit-- I don't understand that rationale.

But I also think with issuing credit cards-- I realize they're all not issued in-state or -- like that, but I also have to tell you that there is a moral obligation missing in this entire thing.

COMMISSIONER SUTER: I think that perhaps when some of the industry representatives testify, they can, as they were testifying before me, talk about some of their self-policing activities and how they are addressing some of the issues that you just indicated. Of course, one of the hallmarks of predatory lending is equity stripping, where the loan is designed not for the consumer to pay it back, but to capture, if you will, strip away the equity from the consumer. And that's one of those practices that crosses the line to predatory, as opposed to subprime. That it's the line drawing that becomes so

difficult to allow the subprime market to be able to help consumers who do not have perfect credit actually be able to borrow and at the same time protect those from these types of practices that strip their equity and otherwise take advantage of them.

SENATOR CARDINALE: Commissioner, as I read some of the testimony in your prior hearings, one of the items that I thought had some merit was the thought of issuing a statement prior to the closing so that people going to the closing would have some idea of what to expect. It then occurred to me that the description in those cases was that there was a great deal of pressure on the consumer at the closing to, in fact, close the loan, and if it had been changed from that prestatement, those pressures would still exist just as they would have before. And it occurred to me that in some parts of the law in New Jersey we have established an opt-out period.

Now, I thought that that might be a problem in first mortgages, but in first mortgages there's generally an attorney present for each party, and that's going to protect the interest of the consumer. But in these home equity loans or in these home improvement loans, there very well may not be an attorney representing the consumer, and they are faced-- I can understand. They're being faced with the pressures of wanting to close and wanting to get on with it and accepting something that came out of left field that they frankly did not anticipate. So it occurred to me that perhaps we could establish, and I'd like your reaction, a sort of an opt-out period on this type of loan, where for a certain number of days after the closing, the consumer would have an opportunity to opt out before anything became final.



COMMISSIONER SUTER: If I could, just for a second. You're referring to-- For instance, in the real estate area where you have a few -- attorney review.

SENATOR CARDINALE: Right.

COMMISSIONER SUTER: In first mortgages, you know, you may not have an attorney with you, particularly in the South Jersey area. It may be more prevalent in other parts of the state. So you may have that situation you're talking about not just for home equity loans, but for others as well.

I'm going to let Director Ketcha, who has been very interested in this issue and has talked to me extensively about it, address it, because I know it's an area where he's got some ideas and where he shares some of your concerns.

DIRECTOR KETCHA: Senator, one of the issues that was looked at is what type of disclosures are there now. And for anyone that's gone to a home mortgage closing or even a second equity, there's a stack of papers. And what we saw in the sales practices, at least on the cases that have been reported, or some of the places that we had a lot of business, was that when the disclosure forms were presented, everything was there when we looked at our examinations afterwards. Everything was disclosed. But what happened at the closing was, hey, those regulators or the government bureaucrats forced us to do all these papers. If you want to read them, fine, but, you know, here's what your monthly payment is. This is what it is. And then it's only after a child, a nephew, a niece, looks at it and, "Mom, dad, what did you do?" So we started thinking about how could we make this a smoother--

And one of the things we kicked around, we floated it with representatives from the industry, and certainly the Commissioner and I have talked at length on it, was adding to the disclosures, but adding what we'd call an oral disclosure. That three days, a week before the closing, because it can't be done at the closing-- People are under the pressure at the closing then; even if they do it, you know, they feel that pressure on it. But then if you have to send documents out or that someplace ahead we would come up -- and we've been working on this now -- with a simple disclosure form that would be written out, but it would be a narrative that any of the things that is clear -- whether there's a balloon in there, whether there's points, whether it's that -- would all be scripted out in simple English, and it would be -- have to be orally read to the consumer several days before that loan was going to closing.

So the consumer would have that time to think about it, plus the three-day rescission period that they would normally have afterwards. And that they would have signed that that was read to me and I understood the terms at such and such a time.

We've floated that with a number of industry people, and at least the bulk of them that said -- said, well, there would be some burden there, but if that gets the bad guys out, that they would support it. And that's one of the directions we're going in as a response, but it's clearly that some people even reading it, if they did it, they'd hear things better, and what we're trying to do is address it on that point. But it is a valid concern.

SENATOR CARDINALE: You see, my reaction to that would be that I think it's wonderful in many instances, and certainly where you're dealing with an ethical lending institution. I think that solves the problem of

real misunderstandings. But I would think that if you're dealing with one of these bad guys, so to speak, you'd come to the closing after that, and there would be a distinct possibility that they would say, "Oh, we left something out," and by the way, "You have to take this insurance." I mean, that was one of the examples out of your hearing. "You have to take this insurance," and that's going to be *X* dollars more. And now that throws you over, but you're at the pressure of the closing. And, "By the way, you know, we just have to change this form that we gave you three days ago or five days ago, and here's a new one, but we're just going to backdate that, you know, just so that we solved-- Don't worry about all of this, this is--" And I think that we would have created a solution that would maybe act very well if we're dealing with some of our major financial institutions, but it would not solve the whole problem.

Whereas, if you had a period of time after the closing where the consumer could then bring these documents to the niece or the nephew, or whoever else would be looking at this and reading it quietly, and discover something in it that they didn't really know or that they -- maybe they knew at the time of the closing, but they signed because of the pressures of the moment, that would seem to me to be a better -- a more fail-safe system. Because now you have the closing documents. They are now written in stone, but you've got a certain period of time.

Let me give you an example. My son sold an apartment. And he sold it, and he was-- And when I say he sold it, he signed a contract of sale, but the broker had sort of told him this is the best deal you're going to get and do this and do this and do this. And he called me up a few hours later, and he

said, "Dad, you know, I did this, and I have three days. I think there's a three-day period to opt out of it." And I didn't realize that this and this and this was going to happen. And I said, well, you've got the three days -- opt out. Don't wait for the end of the three days, opt out now. Now you realize what's going on.

That system seems to work fairly well. I know I haven't had complaints from anyone that that system is not working out well. And perhaps we could put that into effect some way here. I know that there would be problems. It's not as simple as when you have a contract of sale where you are closing, maybe you're going to have to suspend payment of various things for a certain period of time, but have the closing physically and then have-- And I'm not in the financial business, so I don't see the problems perhaps that you might see.

DIRECTOR KETCHA: That's required under the Federal RESPA, the Real Estate Settlement Protection Act. The three-day period is required on anything where your property is put up as collateral.

SENATOR CARDINALE: Oh, it is. We have that already.

COMMISSIONER SUTER: It is in RESPA. Right. It is with property, but I mean your concern, I think, was home equity loans.

SENATOR CARDINALE: Home equity loans, yes.

COMMISSIONER SUTER: I think we would be glad to explore and see what legal or other policy or regulatory concerns that raises. We would be glad to do that and correspond with you further. And with respect to that real estate broker or salesperson, since we do regulate the Division of Real Estate, if there were specific concerns that you thought you wanted to raise

with me, feel free to do that, since we do license salespersons and brokers in this state.

SENATOR CARDINALE: That's a while ago--

COMMISSIONER SUTER: Okay.

SENATOR CARDINALE: --but I just used it as an example--

COMMISSIONER SUTER: Just in case.

SENATOR CARDINALE: --not to get into whatever -- bring up personal problems to you.

Senator Furnari, do you have any questions or comments?

SENATOR FURNARI: No.

SENATOR CARDINALE: Thank you very much, Commissioner.

Senator Inverso, do you have--

SENATOR INVERSO: At this point, nothing.

SENATOR CARDINALE: Good.

Thank you very much.

COMMISSIONER SUTER: Thank you.

SENATOR CARDINALE: I'm going to alter the order of the witnesses. There's a certain degree of senatorial courtesy that we extend, and I see Senator Bryant is sitting here. He's No. 6 on the list, but, Senator, I'm going to put you as No. 2.

**SENATOR WAYNE R. BRYANT:** Thank you, Mr. Chairman, and to the members of the Committee, and let me commend you on raising these important issues on predatory lending. After hearing the Commissioner of Banking and Insurance and the questions that were posed by this Committee, I think you have hit what I call some of the numbing problems

that happen out there. And I don't think that it's pervasive, either, in the state. And part of it is that should not, I think, stop this Committee or this Legislature from moving forward. Pervasiveness in our economy, I think, has a lot to do with the economics. Being the second richest state, I think you have a much more enlightened and a much better educated population. And therefore, you're really talking about a very small part of the population that might be subject to predatory lending.

Let me at least suggest to the Committee that as you go through-- It is not just on the lending side that you should look at it. I commend the Chairman in his Registration Act, in terms of home improvements, because I think that's an important linkage. And we ought to look at a linkage between lending and other activities. And a reason I go into home improvements, because in my district, we often -- and I have gotten several. And why the Commissioner might not have heard of some of these when they-- The actual lending of the dollars to the individual was not the problem. It is that there is no connection between the lending and the actual services.

Example, if you're building a brand new home, there was no way possible a bank or a lending institution, saving and loan company, would not have a whole list of things. And at the end of the day, they'd ask for a CO. If you can't get the CO from the -- Certificate of Occupancy -- they would not lend you the money. In home improvements, absolutely as long as you basically have equity in your home, they will lend the money. They don't even ask that you have a person who is going to qualify to even have permission to build. And it seems to me that is a fundamental thing that we could end up requiring.

If you're telling me you're coming for a home improvement and you want a porch redone, it seems to me that one ought to say that you ought to -- before I lend you the money -- you ought to have -- at least have the necessary documents from the township to do the porch. And what you might end up having at the back end of the loan is that it has to be completed. So that, in essence, you now have the services done for the mortgage that you've done.

Also, as we look through it, we ought to look at some of the unscrupulous home improvement individuals and where they're referring people. The lending itself could be in the subprime, above board, not gouging people or anything, but it is a steady stream of individuals that are being taken to certain lenders. And in essence, what I'm saying is, those lenders now have blinders. He said, "It's not my fault. You showed me this person owns a house outright. They want \$15,000. Here's your \$15,000. Go do whatever you say, put a new roof, put a new chimney." The chimney's not done right. There's never been a building permit for the chimney. There's never been an inspection as the chimney was done. I think those basic things, even if it's anecdotal, if we improve our laws in order to make sure that as that money is lent, we take the responsibility where there's connections between certain types of activities and what we know are supposed to be the procedural ways in which things are done, and have the lending institutions require at least those minimal things be done, like having a permit so that you can build or you can do the repairs--

So what I wanted to lend to you in this Committee is, is that even though it might not be something that we can say in New Jersey is rampant,

if we can put safeguards when people are putting-- Nine times out of ten in any secondary markets, the most -- the only possession they have, the small home. It happens to seniors. It happens to a lot of low-income people who need that subprime. And it's not that the lender always is bad, but it is the combination of the two: The lender putting his blinders on, and the home improvement person not performing. So therefore, if you ask a question -- did you get a bad loan -- they might not say no. The loan was fine. Somebody loaned me \$15,000, you know, paid over time, but I never got any of the work done. Why? The person never had a permit to do it. No one ever came back to find out whether they ever did it right, and that in itself -- they end up losing their home.

*The Bergen Record* said it best, I guess, back in, I think it was around July 10, where this person borrowed about \$5000 for a porch. They ended up, at the end of the day, only \$259, and the porch was never done, never had a building permit for it, so--

My thought to the Committee is even though we might not, as I said, find it as something that is prevalent, something that is rampant in New Jersey, if it's happening at all and we can do something without overly burdening the lending institutions-- I don't want to dry up the markets, because you need the subprime markets, because there are actual individuals who have problems. But if we can have some connection, almost like when we have building a new home. Those connections between you lending and asking for at least the basic things that ought to be done in that lending, that being demonstrated prior to the moneys being issued and maybe prior to the final payment, I think would go a long way in helping some of those who are the



most vulnerable, which would be our seniors, and some of them in a very tight market.

Thank you, Mr. Chairman.

SENATOR CARDINALE: Thank you very much, Senator.

Any questions? (no response)

Phyllis Kaye.

**PHYLLIS SALOWE - KAYE:** My name is Phyllis Salowe-Kaye. I am the Executive Director of the New Jersey Citizen Action, the State's largest consumer watchdog organization, with more than 60,000 members and over 90 affiliated organizations. Testifying with me today is Leila Amirhamzeh, who is our Seniors Community Reinvestment Staff Organizer.

For over-- And I'm going to give you some background, and she's going to give you some cases. And some of them are anecdotal, but they're all real. For over 17 years, we've been working--

SENATOR CARDINALE: Phyllis, I'm just going to interrupt for one moment. I'm going to let Senator Inverso take over the meeting. I have to leave for a few minutes.

MS. SALOWE-KAYE: Sure.

SENATOR CARDINALE: But Senator Inverso is in charge.

MS. SALOWE-KAYE: For over 17 years, we have been working to increase fair and equal access to credit, capital, and banking services to traditionally underserved populations, specifically the low- and moderate-income minorities living in New Jersey's urban areas. We support long-term solutions that provide resources, knowledge, and skills necessary to build community and individual wealth.

I'd like to thank the Committee for giving us this opportunity to testify on the subject of predatory lending today. We made no attempt to turn out the hundreds of people who have contacted us about problems concerning predatory lenders. We realize that there was a very short amount of time being given for the hearing today, but we do have a bulk of people who -- when and if there is legislation, will be out to speak. We also wish to express our appreciation to you for calling the hearing to explore the threat that abusive and unscrupulous mortgage lending practices pose to the economic well-being of low and minority and elderly individuals, families, and communities.

We do agree that subprime lenders play a role in the marketplace. And then, in order for some consumers to gain access to capital, they must be prepared to pay more than others -- pay more for more than for other lenders. It should be made clear, however, that subprime is not synonymous with predatory. However, while subprime lending does play a role in expanding access to credit for those with blemished credit records, a growing portion of this industry is responsible for the balkanization of credit, whereby vulnerable, low- and moderate-income minorities and elderlies are targeted by predatory lenders whose only intent it is, is to deceive and dispossess those individuals of their property and their wealth.

Some industry observers maintain that the subprime lending market has been responsible for significant increases in lending to minorities and low- and moderate-income borrowers. The threat of Countywide mortgage moving out of North Carolina hasn't happened. But we in New Jersey have heard the threat of insurance companies -- auto insurance companies -- who said that they were going to move out when you tried to regulate them and

tried to make them behave properly, and we didn't see any mass exodus in New Jersey.

We believe that the claims that the subprime lenders are providing so much of the mortgages are exaggerated. The largest increase in home mortgage lending for underserved borrowers happened between 1993 and 1995, when lending increased 21 percent for low- and moderate-income borrowers, and 58 percent for Black and Hispanic families. During this period of time, subprime lending was in its infancy. The widespread introduction of affordable, but conventional, mortgage products drove most of the increase in lending for traditionally underserved borrowers in those years. Renewed attention on the Community Reinvestment Act prodded lenders to work in partnership with organizations like Citizen Action to design and implement affordable mortgage products. Since 1995, lending levels to minorities have increased, but they haven't soared as much as they did in '93 to the '95 period.

I do wish to point out a study that was released by the Department of Treasury that indicates that New Jersey is among the top states in terms of CRA lenders increasing their market share in metropolitan areas. From 1993 to 1998, lenders covered by CRA increased their market share of loans by 9 percent on the average in New Jersey. We believe this is directly responsible to the 28 CRA agreements that we have signed with New Jersey banks, worth over \$10 billion in reinvestment dollars for consumers.

Now these loans, I would mention, are for people who have poor credit. Only one good year of credit is required to get these mortgages and these home improvement loans. And all the loans that I'm speaking about are discounted below market rate, and they are readily available for consumers.

And every bank that we have a signed contract with has more than exceeded their pledge for lending in this area.

We are concerned that the law in New Jersey needs a lot more than a little bit of tweaking. We have 40 families in Essex County who have been scammed by a predatory lender. We have the FBI, the Essex County Prosecutor and the Monmouth County Prosecutor involved. The people cannot get an attorney to represent them, because there's a question of whether there is money to be gotten out of the people that scammed them now. So legal access is not necessarily available for people who have been victims of predatory lending.

The typical predatory mortgage practice includes a variety of things, not just one thing here and one thing here. And I'll just mention some of those: Packing loans with unnecessary and costly fees and the inclusion of unnecessary insurance policies, which was spoken about before; frequently refinancing loans and flipping them with absolutely no benefit to the borrower except higher monthly cost; using high-pressure and sometimes fraudulent sales tactics, steering borrowers to high-cost loans with home improvement scams and charging borrowers outrageous pre-penalty payments; and knowingly lending money to borrowers when you know they will have no ability to repay the loan. A person whose income is \$1200 a month and whose monthly mortgage payment is over \$1200 is not going to be able to repay that loan. Those are the homes that are going to be foreclosed on.

We heard mentioned before that a lot of companies have been discovered, and when they're found guilty they're put out of business in New Jersey. Unfortunately, a lot of the companies that you're going to hear about

today from Leila are companies who are operating in New Jersey, New York, and scores of other states, that have histories of predatory lending, have signed agreements to pay back money to the people that they've hurt, and they continue to practice their practices in New Jersey.

We are concerned that at a national level some of these companies have made very large campaign contributions, and I'll just mention some of the companies, because they're all doing business in New Jersey. Advanta Finance, \$101,000; Ameriquest, \$42,000; Beneficial Corporation, \$250,000; Champion Mortgage, \$3800; Delta Funding, \$15,000, made contributions to legislators at a Federal level. We are concerned that these high campaign contributions will perhaps hinder or delay the Federal Government from acting on this problem, so we look to you to solve it either through legislation or regulation.

Several years ago, when Fleet bought Nat West Bank through discovery, not through any publicly available information, we discovered that there were over 1000 loans made to people with a higher than 22 percent interest rate, with more than 10 points charged. Nine hundred of the people lost their homes due to foreclosure. We were able to negotiate a settlement with Fleet in which we identified the borrowers who had received these loans, and there were offers to refinance at a CRA level, and in fact, for people who had paid off their loans, there were monetary repayments to some of those people.

Our problem has been identifying the information that is needed. In the Essex County situation, the 42 families have paper after paper that they received when they made their loans. Half of the papers are unsigned. Half of the papers are in names of multiple companies, and now the company-- We

just have -- has closed up shop in Montclair and opened up under a different name in Orange. So these companies are still operating in New Jersey, and we need your help in stopping the practices while whoever is supposed to police them will close down the company.

Education is essential. Our financial education center speaks to thousands of people a year on the issue. We're speaking not to children, not to high school kids, but we're speaking to adults, seniors, low-income people. We have a full staff of folks who move throughout the state trying to train people on the problems of predatory loans. So we agree with the Banking Commissioner that education is necessary.

However, I'm going to turn it over to Leila, and I'm going to let her just talk a little bit about the actual real people who have come to us. We are not a complaint bureau. We don't have any ability to go after these people. We're not Consumer Affairs. We're not the Banking Commissioner. And frankly, many of the people who we reach are incredibly reluctant to use either of those State agencies for whatever reasons. So I'm going to just let Leila talk about the folks.

SENATOR INVERSO: Phyllis, excuse me.

Before Leila begins, I'm going to call for a five-minute rest break.

Senator Furnari, did you want to raise a question?

SENATOR FURNARI: I do have some questions of Phyllis. Maybe we can take the five-minute break first, then come back.

SENATOR INVERSO: Okay. Let's take a five-minute break, and we'll be right back, okay.

**(RECESS)**

**AFTER RECESS:**

SENATOR INVERSO: Okay, we'll start the transcript now, okay.

SENATOR FURNARI: If I--

SENATOR INVERSO: Oh, yeah. I'm sorry. Senator Furnari, that's right, you had a question.

MS. SALOWE-KAYE: Oh, you had questions.

SENATOR INVERSO: My apologies.

SENATOR FURNARI: Phyllis, Ms. Salowe-Kaye, I'd like to thank you for coming here today to provide testimony for some of us to hear that there are people who think this is an important meeting, that things aren't as okay as the Department has testified to. I would be interested in hearing the possibilities of what kinds of tools might be out there. For example, some of the things that you say is, you know, that there's no attorney out there willing to take a case, because there's no ability, one, to get a fee at the end, and also, to really get anything for your client because somebody's able to get over. Those are the things that concern me. For those people that we've come across and I've come across in the practice of law who seem to be more unscrupulous, are those people that find a million ways to, you know, disappear with one corporation, pop up at something else.

And I'd be interested in, if you know of other states that have come up with ways, you know, for self-help, whether that's some way of getting

attorneys' fees, is it an approach that the industry as a whole-- You know, when they're unscrupulous attorneys, there's the client security fund. Is there that kind of fund that's out there for others?

MS. SALOWE-KAYE: I'm not an attorney. So I'm not as well versed as actually one of the following speakers that I know is going to speak. There is the Consumer Fraud Act, which if consumer fraud is proven and you can get triple damages and attorneys' fees -- and I know that that exists. The problem with, for instance, the 42 families that we're dealing with in Essex County right now, some of them are low-income and will qualify for the Rutgers Urban Legal Clinic, and they will represent some of those people. For people who are over the income limit, there is nobody for those people. I know of no attorneys--

Often, for instance, the prosecutor's position was, we will go after -- maybe? -- we will go after the people that are doing this, but there is nothing at the end that says these folks are going to get any money back. And then some of the people that we're dealing with at this point don't expect a cent back. They would just like their homes made repaired, the ones that are maggot infested. Not one of these 42 families has a C of O. C of Os were mentioned before. Not one house has a C of O. Sales took place from a week after people were contacted at a bus stop, tapped on the shoulder, and said, "Do you see this house over here? You want to buy it? It can be yours in a week?" Closing took place within a week, and there were promises made for repairs that never happened.

I don't know all the legal resources that are out there. We've worked with Seton Hall. We've worked with Rutgers, and we work with legal



services. Legal services is so overwhelmed with cases, and you're going to hear about, later, one of the cases that has been taken. So I'm the wrong person to give you a listing of what's out there. We know that these 42 families were trying to get legal representation for-- But in the end, if we can get just shut-- The guy is still selling houses today. If we can just shut him down-- He was thrown out of Monmouth County, and now he's operating in Essex County. So I can't-- I'm not the person to ask about that, but there are other people, I think, today that can answer the legal question.

SENATOR FURNARI: I mean, that issue of the C of O has come up. I know some municipalities will actually pursue, if you close without a CO, if they've got an ordinance that provides for that.

MS. SALOWE-KAYE: But these people don't want their homes condemned, and most of the--

SENATOR FURNARI: Right.

MS. SALOWE-KAYE: --homes would be condemned--

SENATOR FURNARI: The problem--

MS. SALOWE-KAYE: --if somebody came in now. If their names were made public and the addresses were made public, those municipalities would shut these-- The ones that have maggots throughout them and no plumbing--

SENATOR FURNARI: Right.

MS. SALOWE-KAYE: --and no heating are big-- Some are being foreclosed on.

SENATOR FURNARI: Well, I think the problem--

SENATOR INVERSO: Yeah, excuse me, but--

SENATOR FURNARI: Excuse me. The problem is once the person who sells it, who had the obligation to get the CO, is gone from the place. You know, our code enforcement rules and the like only allow us to go after the property and maybe the person who's the victim. Maybe there's a potential of a tail that we could put on those people on the CO issue. If you closed without a CO, you know, that there might be a way that we -- either you follow -- the attorney would do the closing or somebody who was, you know, the previous owner of record, you know. I'm not sure.

MS. SALOWE-KAYE: I just want to tell you just a couple other things about these people and let Leila-- None of them had attorneys -- were all told that the seller would provide the attorney. One of them had an attorney who was locked out of the building when he tried to enter to be present at the closing. Another person thought something was so wrong that she videotaped her closing, but she went through with it anyway. And you talk about education, and what you're faced with is a bunch of people who are approached and given what somebody said before, an opportunity that is actually too good to be true. And they take a chance on it, and then later on they're hurt.

Some of them have actually done fraudulent things, recommended by the seller, in order to get the house. So some of those people are now afraid that if they pursue their legal action, they're going -- somebody is going to come back to them for falsifying their income or having had the seller pay off some of their debts independently. There's a whole lot of things that are operating here. So a C of O might help, but it -- the problem to me is so much

larger -- the fact that two different prosecutors are currently investigating the guy, so is the FBI, and he's still selling homes and advertising in Essex County.

SENATOR INVERSO: You know, but a lot of this goes beyond what we're looking at in terms of predatory practices. I mean, they're aligned, but we have to start looking at this thing in terms of, you know, fractionalizing what is deceit, what is abuse, what's a violation of existing law, and what is a predatory lending practice.

MS. SALOWE-KAYE: Well, I think--

SENATOR INVERSO: I realize that many times they're entwined, Phyllis, but I think we have to make sure that we don't start expanding what we're considering as predatory lending--

MS. SALOWE-KAYE: I think what--

SENATOR INVERSO: --and getting into areas that are -- have to be dealt with other -- from other aspects.

MS. SALOWE-KAYE: I think what Leila is going to do is take each one of the characteristics that we've identified as -- some of them as a predatory characteristic and give you some real people and real names that are affected.

SENATOR INVERSO: Now, a question. Have these cases been forwarded on to the Department of Banking and Insurance or Consumers Group?

MS. SALOWE-KAYE: No.

SENATOR INVERSO: Well, if you feel-- Okay, we'll look at them, but I ask the question, why not?

MS. SALOWE-KAYE: I actually-- Because most of the people-- Well, first of all, most of the people have chosen not to, and we--

SENATOR INVERSO: Well--

MS. SALOWE-KAYE: --tell people to do that. Some of them have done that and have cases that they haven't heard back from years on from the Department.

SENATOR INVERSO: Can you supply me with that?

MS. SALOWE-KAYE: If they allow us to.

SENATOR INVERSO: Can you supply me with that? I want to know specifically which cases you've sent to the Department--

**LEILA AMIRHAMZEH:** I actually have written responses from the Department.

SENATOR INVERSO: Oh, you have responses?

MS. AMIRHAMZEH: Uh-huh.

SENATOR INVERSO: Oh, I thought you didn't have responses.

MS. AMIRHAMZEH: No.

MS. SALOWE-KAYE: Of turning down the case or not examining the case due to lack of resources.

SENATOR INVERSO: Based upon their findings of?

MS. SALOWE-KAYE: Lack of resources.

MS. AMIRHAMZEH: Lack of resources.

SENATOR INVERSO: A lack of resources. I raised that issue this morning. I mean, in my opening comments--

MS. SALOWE-KAYE: These are letters to us.

SENATOR INVERSO: Can I see-- I'll see those letters. I can discuss them with the Commissioner.

MS. AMIRHAMZEH: I don't have them with me, but yeah.

SENATOR INVERSO: Resource is another issue.

SENATOR FURNARI: Senator, I just have one more question, if I might?

Phyllis, the-- And I just throw this out. The statements earlier dealt with education as being the main way to combat this, but it has been my experience in life that people who are most susceptible to a predatory practice aren't there because they weren't educated not to be there. They were there because they're there for a variety of reasons. Their credit got bad, and they're placed into a position of I've got to go here or I, you know, or feeling that there are no other alternatives. So I just throw that out as a question is, you know-- It seems to me that it's -- that there needs to be more. There needs to be more of a deterrent than just a simple idea of, we'll tell everybody not to, you know -- to try to avoid those kinds of scams.

MS. SALOWE-KAYE: Two answers. We close, through our organization, about 1000 loans -- about 1000 closings take place at Citizen Action every year through our mortgage and credit counseling. Those people have all worked with counselors, received education, and none of them have received a predatory loan, and 90 percent of them came in with poor credit. So there is education that can prevent it.

I just want to give you a brief story. I'm Ms. Mortgage, Ms. Education, Ms. Citizen Action. About three years ago, or whenever refinancing was the thing that people should be doing, I told my husband, we

got to refinance our house. But I don't want to go to a bank, because I really didn't want to have any bank that I'm dealing with have our financial information. So I went to a mortgage company, one of the ones that advertises on television, and I was all set to have my closing. My husband met me there at 5:00, and we'd go in and it was just-- We weren't taking money out. We were just getting a lower rate, lower monthly payment. And it was just out of the clear blue that I said something to the mortgage guy-- I had never gotten a piece of paper from them till the night we went to close, not one written thing. And I said, well, you have the address of where I live to pay my taxes, and he said, "Oh, your taxes aren't included in this loan." And now I thought I knew everything, you know. It turned out when you added my taxes in I was going to be paying more than I was paying before I refinanced. We walked out. Was I educated? I thought I was. I mean, it was just per chance that I asked that question. You know, they give you 100 papers to sign that night. I had not gotten one thing before.

So, yes, I think there needs to be more education, but I think that there needs to be some teeth put in the laws. There is no law about multiple refinancing with no benefit to the buyer. There is no law, and you're going to hear about people who've been refinanced five and six times.

SENATOR INVERSO: All right. Let's hear it.

MS. AMIRHAMZEH: Okay.

SENATOR INVERSO: Yeah. Because now we have six case histories, right?

MS. AMIRHAMZEH: I can just read it.

SENATOR INVERSO: Five and yours?

MS. SALOWE-KAYE: Well, mine is an embarrassment.  
(laughter) We don't want to talk about mine.

MS. AMIRHAMZEH: My name is Leila Amirhamzeh. I am the Community Reinvestment Organizer for New Jersey Citizen Action. I would also like to thank you for giving us the opportunity to speak before you today. We look at this hearing as an opportunity to explain how easily, under current regulations and legislation, it is for consumers to fall victim to predatory mortgage practices. As Phyllis mentioned, Citizen Action is the State's largest consumer watchdog organization. We are not a consumer complaint bureau.

Recently, however, we have been swamped with horror stories from victims of abusive mortgage lending practices looking to us for help. During the summer, some of these individuals appeared before the New Jersey Department of Banking and Insurance at its hearings on predatory lending, sharing their experiences as victims of abusive lending practices. Some of their stories will be shared here today, but again, these are only a few of the hundreds that we've been hearing.

As previously mentioned, much research throughout the country has proven that predatory lenders systematically target senior citizens, minorities, and low-income individuals. The case histories that I will share today only further prove that predatory lending affects consumers throughout New Jersey and is not merely an isolated experience for these individuals.

The first case history involves Deborah and Robert Ruscus. The Ruscuses are a married couple with three children living in Howell, New Jersey, in Monmouth County. At the time of their loan application with Ameriquest, the couple was struggling to pay their monthly bills. After explaining their

financial situation to Ameriquest employees, the Ruscuses refinanced with Ameriquest in an effort to consolidate their debts, assured that their new monthly payments would be lower than their current payments and that their refinanced loan would have a lower interest rate than that of their current FHA insured loan. After the initial loan application was made, the couple was told that Ameriquest could not finance the whole amount and that it had contacted another company, Beneficial, to make a second mortgage.

As months passed, the couple's financial situation worsened rather than improved, mostly because the payments that they were making were, in fact, higher, not lower than what their monthly payments were prior to their refinance. Previously, they had a monthly housing payment of \$910 for their FHA insured loan and a fixed interest rate of 8.5 percent. After their loan to refinance, part of the loan was made at an interest rate of 10.5 percent, and another part was made at a rate of nearly 25 percent. Their total monthly housing payment increased from \$910 to \$1325. And moreover, the couple had paid a total of \$10,550 in up-front points and fees.

Although the couple was led to believe that their property taxes were being paid, neither their property taxes nor their homeowner's insurance were included in their monthly payments. The Ruscuses' total monthly debt before the refinance, which included their credit card debt and a home improvement loan from The Money Store, was lower than their monthly debt after the refinance. And while the equity of their home was valued at \$29,000 before the refinance, after the loan with Ameriquest, their equity had been stripped to \$12,700. If the Ruscuses tried to refinance within the first five



years of this loan, they would be responsible for a prepayment penalty of nearly \$6000.

So, in that case, one of the major tactics would be the prepayment penalties which force borrowers who fall victim to predatory loans to stay into that high-cost loan, instead of trying to make their payments lower or get a better interest rate.

The second case history involves Mr. and Mrs. M., who chose to remain nameless. This couple is an elderly couple living in Elmer, New Jersey, located in Salem County. Mrs. M. is 73 years old, her husband is 71, and both live on a fixed monthly income of approximately \$1147. The couple was initially referred to the Associates by their home repair contractor in 1990, when they were in the process of having siding installed on their home. The total cost of the repairs was approximately \$2000, and yet, the Associates financed them with an amount of \$6636 at a rate of 15.95, almost 16 percent, for a total amount of \$12,500 with interest and included an unnecessary credit life insurance policy and up-front fees. And that was just for a \$2000 siding job.

Since their initial financing, Associates contacted them again and again, urging them to refinance their loan. And in July of 1993, the couple did refinance their loan with Associates at a variable rate in order to consolidate their debts, borrowing a total of \$16,000, as opposed to their initial \$6600, with an additional \$2400 in up-front points and fees.

In February of 1995, the couple was once again contacted by Associates, and once again they refinanced. The couple refinanced at a

variable rate, this time borrowing \$25,697, or a total of \$45,000 with interest, paying an additional \$2500 in up-front points and fees.

In December of 1995 during that same year, Associates approached the couple for a fourth time, and the couple refinanced once again. This time they refinanced the amount of \$33,854 at an interest rate of 13.9, almost 14 percent, for a total loan amount of \$81,000 with interest. And again, this is all originating from their \$2000 siding job. The up-front points and fees for this loan was an additional \$2700. Unlike the other settlements, the couple was also presented with a second closing packet for a fixed rate with a balloon payment of \$26,630 after 10 years.

In April of 1997, Associates approached the couple a fifth time, again offering to refinance their loan. This time the couple borrowed \$57,000 with a fixed rate of 12.6 percent. And unbeknownst to the couple, this loan contained a balloon payment of \$50,000 after 10 years, and the up-front points and fees for this loan amounted to \$4200.

This case is a prime example of the practice of flipping or repeatedly refinancing a loan with no benefit to the borrower. The monthly payment for the couple's initial loan with Associates was \$116. After the second loan, their monthly payments increased to \$250. The third loan increased their monthly payments to \$450. The fourth to \$488, and their final loan in 1997 increased their monthly payments to -- from the original loan of \$116 to \$650. And unfortunately, because the couple was on their fixed monthly income, they were unable to make their monthly payments, and currently they're facing foreclosure.

And that's just one of the things that I wanted to mention with regard to the practice of flipping and why it is necessary to have some kind of legislation or regulation that deals with that practice, is that by refinancing subprime loans over and over again, lenders are just stripping borrowers of their equity in the form of high fees each time without providing the borrower with any kind of net tangible benefit. Some lenders provide adjustable rate mortgages only to inform the borrowers of this fact soon after closing to convince them to get a new loan, like in this case, that will pay off the entire balance at a fixed rate. Others require borrowers to refinance in order to catch up if the loan goes delinquent. So that's just one reason why there needs to be some kind of a law that deals with the practice of flipping.

In the third case history -- and this case actually did go before the Department of Banking at their second hearing at Toms River -- it involved Joe and Joan Bakanowsky. Mr. and Mrs. Bakanowsky are a married couple living in Wildwood, New Jersey, located in Cape May County. In 1991, the Bakanowskys took out a home equity loan with Champion Mortgage. The monthly payments for this loan amounted to \$223. In 1993, the loan was rolled over to Ford Consumer Finance, and shortly thereafter, due to injury, the Bakanowskys had missed a couple of payments. And at that point, Ford contacted the couple, notifying them that unless they refinance their loans they would foreclose on their home. The couple did refinance with a total loan amount of \$30,000 and approximately \$6000 in up-front points and fees, including a \$2500 payment for a credit life insurance policy. Consequently, their monthly payments had nearly doubled from \$223 to \$440.

In October of 1994, Mr. Bakanowsky was seriously injured, leaving him with a permanent disability. And due to enormous medical expenses, they were once again struggling to make their monthly payments. According to their insurance policy, the missed payments should have been covered by the insurance company. And although the couple was assured by Ford that their payments were, in fact, covered by this policy, Mr. Bakanowsky was told that his signature would be necessary on a couple of documents -- and this was while he was in the hospital -- in order to speed up the payments by the insurance company. And within a few months, the Bakanowskys received notification from Ford that they were delinquent, that their payments had been delinquent for the past four months.

Mr. Bakanowsky then found out that his disability insurance policy had been canceled in March of 1995, shortly after his injury. Despite the Bakanowskys' protests, Ford issued foreclosure notices on their home in 1996, and they were forced to declare bankruptcy. Thereafter, they continued to try and make mortgage payments up until 1999. And at that point, their checks and money orders were returned to them stating that Ford was no longer at that address. In the meantime, due to the delay in payments, Ford once again began foreclosure proceedings, and this is where the couple is today. They're facing the possibility of losing their home.

SENATOR INVERSO: But you gave this to the Department? You gave this case to the Department?

MS. AMIRHAMZEH: I'm sorry. Oh, they appeared before the Department of Banking at the second hearing, and their testimony is in there--

SENATOR INVERSO: In the record.

MS. AMIRHAMZEH: --on the record.

SENATOR INVERSO: Okay.

MS. AMIRHAMZEH: And he was actually one of the individuals who had submitted, on numerous occasions, complaints to the Department, and he got several responses back indicating--

SENATOR INVERSO: Could I ask you just to do one more, and we have the others here that we could read--

MS. AMIRHAMZEH: Sure. Sure.

SENATOR INVERSO: --in the sake of interest of time. Just the one that you think is the most egregious, if that's possible, from your perspective.

MS. AMIRHAMZEH: Okay.

The fourth case history involves an elderly women, Dequilla Robinson, who is an 83-year-old woman living in Essex County. The first mortgage on her house was completely paid off. However, in November of 1999, because she wanted to make some improvements on her home, she was contacted by Delta Mortgage Company -- and this just shows the example of how consumers are often steered into high-cost loans through home improvement scams -- and ultimately, she wound up signing a 30-year mortgage for \$53,000, even though her first mortgage was completely paid off.

The funds were supposed to be used to pay off debt that she had accrued, as well as cover the costs of the repairs to her basement, to the three upper floors of her home, siding of her house, and there were also disparities in the Truth in Lending Act disclosures that she had signed indicating a different amount, \$48,000, as opposed to \$53,000. And once you added in

all the interest, her debt would be \$165,000, and the total amount that she would have to repay to Delta was \$213,000.

She only received checks totaling \$24,800, payable to her creditors from Delta, and only a small amount of the work was ever completed on her home. She never received the remaining \$28,000, nor a contract indicating what other work needed to be done on her home or who had been paid, who hadn't been paid. There were no receipts or records of this.

And in December of 1999, she became ill and was only able to continue making payments through January. The lender sent her documents requiring her signature that supposedly stated that if she were to become ill, the payments would be delayed, similar to the Bakanowskys' case. And what actually happened was that the documents she signed and returned to Delta didn't do that for her. She returned to the hospital again and was again sent notification that she was behind in her mortgage payments. And finally, because she was behind in her mortgage by a total of \$4500, she received a summons and complaint for foreclosure on July 31, 2000. That's where she is at the present time as well.

SENATOR INVERSO: This one's been referred to the Department of Banking and Insurance?

MS. AMIRHAMZEH: I don't believe that she ever--

SENATOR INVERSO: Consumer Fraud?

MS. AMIRHAMZEH: No.

SENATOR INVERSO: I mean, this has the makings of a real case with Consumer Fraud. I mean, we have-- Would you say that we have laws

in place that would deal with this, based upon your knowledge of our Consumer Fraud laws?

MS. AMIRHAMZEH: I think we have laws in place for the contractor who promised the work and didn't do the work. Do we have laws in place that prevented the overfinancing of the property and that would require her to have the ability to pay back the loan? No.

SENATOR INVERSO: Well, they violated the Truth in-- According to this, they violated the Truth in Lending Act disclosures, putting in one amount versus another. I mean, there are a number of violations here.

MS. AMIRHAMZEH: A lot of times it becomes like he said, she said, you know, where--

SENATOR INVERSO: But the Truth in Lending -- there's a document there.

MS. SALOWE-KAYE: Well, all I can tell you is that the 42 families in Essex County, the documents that they got back from the seller -- none of them are signed, none of them have truth in lending-- They're just-- They're not getting information.

SENATOR INVERSO: They're all violations. They're all violations which should be dealt with. Now, the question is enforcement. I mean, if-- And if it's an issue of the resources, that's an area we've got to focus in on. I mean, I'm not disagreeing with you, I'm just trying--

MS. SALOWE-KAYE: Well, it's also getting-- These are the people that came to us, because we wrote op-ed letters--

SENATOR INVERSO: Right.

MS. SALOWE-KAYE: --to newspapers and put our phone number out there, because we have slips of paper that we hand out at every meeting we go to. And it's a question do people know to go to--

SENATOR INVERSO: Right.

MS. SALOWE-KAYE: --Consumer Affairs? Do they feel like they're being properly dealt with?

SENATOR INVERSO: Well, that's why I think your organization plays a vital role.

MS. SALOWE-KAYE: Well, that's not our role.

SENATOR INVERSO: I would just-- Well, no, no. They come to you. They come to you with these issues so--

MS. SALOWE-KAYE: And we can always tell them to go there. What the problem--

SENATOR INVERSO: What I'm saying is-- What I'm saying is-- I'm sorry, Phyllis.

MS. SALOWE-KAYE: Okay.

SENATOR INVERSO: What I'm saying is, is that you play a vital role in this, because they're coming to you. What we need to see is that there's a linkage with the Department and the enforcement people so that, working together with the documentation that you have in place, we can get to the root of this, you know. I'm not saying we can't -- we shouldn't look at flipping, we shouldn't look at the single-premium life insurance. Those are issues that I raised earlier. But some of these, it seems to me, it's a matter of coordination between the community organization, if you will, like you, that's getting there--



You're in the forefront of this and locking in with the regulators and the enforcement people. We got to work together.

MS. SALOWE-KAYE: Our concern is that -- is that at the end, people feel like we sent them someplace where something is getting resolved.

SENATOR INVERSO: Right.

MS. SALOWE-KAYE: And that's my concern.

SENATOR INVERSO: And you think--

MS. SALOWE-KAYE: To be perfectly--

SENATOR INVERSO: --it's not getting resolved?

MS. SALOWE-KAYE: --honest with you, we have questions about that.

SENATOR INVERSO: Well, we have to deal with that. They are legitimate questions. I think we got to deal with that.

MS. SALOWE-KAYE: So we don't want to set up-- And we're not-- I mean, we tried to do it--

SENATOR INVERSO: Right.

MS. SALOWE-KAYE: --with ticket scalping, and it--

SENATOR INVERSO: Right.

MS. SALOWE-KAYE: --didn't get done.

SENATOR INVERSO: It will.

MS. SALOWE-KAYE: I mean, we're not a State agency. We're also not a complaint bureau, and we don't encourage people to complain.

SENATOR INVERSO: Right. I understand that. But they are coming to you. They are coming to you.

MS. SALOWE-KAYE: So I don't have the resources to do that.

SENATOR INVERSO: Right. No. I agree with you, and that's where we need to step in there, and that's why this is good, because it helps with this -- what I see as the linkage that's required, Phyllis.

MS. SALOWE-KAYE: Okay.

SENATOR INVERSO: Okay. Thanks very much.

Phyllis, thank you.

Ken Zimmerman. Ken. The New Jersey Institute for Social Justice.

**K E N Z I M M E R M A N:** I was going to start out by saying good morning, but it's now good afternoon.

SENATOR INVERSO: Yeah. Almost well into it.

MR. ZIMMERMAN: Thank you, Senator Inverso and Senator Cardinale, for inviting me here to testify on this topic. My name is Ken Zimmerman, and I'm the Executive Director of a recently established group called the New Jersey Institute for Social Justice. It was established by Alan Lowenstein, the partner of Lowenstein-Sandler, who was very committed to establishing an urban advocacy and research center that is taking on a variety of issues of importance to urban New Jersey, including the school construction issue, including the loss of housing units. And one of the issues that we've also been looking at is this issue of predatory lending.

Just so you know a little bit about my own background, I've got over a decade of national experience in fair housing and fair lending work, initially as a lawyer for the Civil Rights Division of the Department of Justice and most recently as a Deputy Assistant Secretary at HUD overseeing much of the fair housing and fair lending activities of that Department.

Today, particularly in light of how long the hearing has gone on, I really want to make just three points. I have provided -- or I will provide copies of the testimony that I gave to Commissioner Suter. In light of the late notification, I did not provide separate testimony here, but would be happy to if you would like. And here is a copy of the testimony that I gave Commissioner Suter.

The three points that I want to make, very briefly, are ones that, to some extent, have been made by others. The first is that there is significant practices that are widely viewed as predatory, that are not currently prohibited by New Jersey law.

The second point that I want to make, and I'll explain in a little bit more detail, is that the significant increase in subprime lending that has occurred is a significant new phenomenon for two fundamental reasons. First, it's disproportionately felt by vulnerable populations, particularly the elderly, minority populations, and those that are financially unsophisticated, and second, because this new industry is less regulated than the traditional lending institutions that are subject to the efforts of the Commissioner and the national regulatory agencies.

Third, I just want to make some comments based on Commissioner Suter's testimony this morning, in part about what I view as a somewhat different slant on the North Carolina legislation and other steps that have previously been taken.

Starting off, let me just-- I know that a number of examples have been given, and I don't want to reiterate a lengthy list, but if I could ask your indulgence to go over two that are actually included in the material that I've

got here, approximately 10 to 12 pages, and there's something that's entitled Exhibit C. And the first example was a woman named Geraldine Cammarano. And this is a single woman in her 50s who exemplifies some of the practices that I view as being most significant and potentially most harmful to the vulnerable borrowers that you've heard a fair amount about.

This woman received three different loans from the Associates over an 18-month period of time, and the chart there (indicating) reflects the fact that her total loan amount increased from 28,000 to over \$56,000 in that period of time. And she received only \$3000 cashing out that loan transaction.

The two pieces that I would direct your attention to are, first of all, the fact that she was paying single-premium credit life insurance for each transaction as it occurred. So that of the \$28,000 increase, almost \$13,000 of that were loan premiums that were paid. And the single-premium credit life insurance is, as you know -- and I've got some more materials in here about it -- is a product that offers no benefit to the consumer. I don't think any of us have any objection to the idea of getting insurance in order to provide for a payoff of a loan, but the idea of financing it is simply equity skipping, plain and simple.

The second point is the point that you raised yourself, Senator Inverso, about the idea of the flipping of loans. The idea that three different loan transactions within an 18-month period in which there is no evidence that she received any benefit, or any of it, is a matter of great concern. And both this issue of single-premium credit life insurance and this matter of flipping are not currently addressed by New Jersey law. And thus, as long as there was no fraudulent inducement here, there is nothing that would suggest that this

woman was in any way, shape, or form, affected in a way that would violate current law.

The second transaction that I would refer you to very briefly is two pages further on and refers to a woman by the name of Mrs. Troup. I should say, in interest of full disclosure, that the New Jersey Institute for Social Justice did file an amicus brief in the New Jersey Supreme Court addressing some of the legal issues that were raised here. And I just very briefly want to address her situation, because it gets to the heart of some of the concerns that I've heard expressed here about the extent to which the current legal protections are sufficient to protect people who potentially have been affected by practices that some call predatory.

Ms. Troup, who is in her mid-70s, African-American, resident of Newark, engaged in the situation that is now all too familiar -- being approached by a home repair contractor, and in conjunction with her son, was convinced to take out a home repair loan. The contractor himself was the one who got her in touch with the private mortgage company who provided financing for it. Unfortunately, she entered into a loan transaction that was just atrocious, a 12 percent loan, will pay 4 points, a \$2600 yield-spread premium. The work that was done was woefully insufficient and perhaps, worst of all, there was a \$41,000 balloon payment that she would be obligated for 15 years after she continued making payments on it. Unfortunately, she is now in the midst of foreclosure proceedings.

And the problem here is that, because she was unaware of any potential legal remedies she might have, until she ended up in financial difficulty, she did not even begin to approach any potential attorneys until

almost three years had elapsed. That three years is a very significant time period, because under Federal law, a fraudulent or unconscionable loan or a violation of TILA, the Truth in Lending Act, can actually lead to rescission in that three-year time period. And she simply, like many people in this situation, was unaware of the fact that there might be legal recourse for certain actions that were undertaken. In this case, there were also allegations that the particular private mortgage company involved with that was targeting elderly minority homeowners. And she attempted to raise, through her attorney, some of these claims in the context of the foreclosure proceeding and was unable to, because the statute of limitations on those grounds had run as well.

I make the general point that part of the problem that we see is the difficulty of consumers, particularly those who are financially unsophisticated to begin with, of recognizing the potential that they have, even if there were legal resources available. And based on the analysis that we started to undertake, as Phyllis indicated, Legal Services is overwhelmed in terms of their foreclosure defense proceedings, and there's simply an insufficient number of attorneys who take on cases that can be exceedingly time consuming, simply to get to the bottom of the facts that are involved. There are a whole series of other problems having to do with class action limitations, the idea that mandatory arbitration provisions can very much limit the ability of any of these consumers to access the court in the event they were able to prove that there was a legal violation.

But I think these do illustrate some of the real difficulties that consumers have under the current legal regime that exists. In terms of the more general point, however, about the nature of the subprime industry and

how its massive increase is a matter of, I think, significant public policy debating analysis, as a threshold matter, I agree with many of the others here who have said that the subprime industry should not be viewed as per se predatory in any way, shape, or form. In significant measure, it can provide a benefit to consumers. Having said that, though, there are certain characteristics of the subprime industry that suggests that it does need to be examined in a different way than perhaps the more traditional lending industry has.

By way of general background, I mean, this is a new industry. From '93 to '98, we saw an explosion nationally from a \$20 billion industry to a \$150 billion industry. That's been mirrored here in New Jersey. There's been a 400 percent increase in subprime refinancings in the past three years, '95 to '98, whereas conventional refinancings have only doubled in size. But more importantly, it is geographically concentrated in areas that are disproportionately elderly, minority, and low income. And geographic disparities in terms of where the subprime industry is occurring suggests that people in those industries are going to be disproportionately subject to subprime lenders in a different way.

And if I could, let me just show you a couple of the charts that we've had developed in conjunction with researchers at Rutgers University. These charts are actually copied in the materials that I've given you, but this is a chart of subprime refinancing that occurred in the period of '95 to '98. And on this side reflects the percentage of the overall refinancing market that is held by the subprime industry. And once again, this side reflects the percentage of the population that is African-American, and there is a general

correlation, not exact, but a general correlation that the areas in which the subprime market is most pronounced are those that are predominately minority, elderly, or in some other ways are fiscally disadvantaged.

I won't take the time to go through some of the other charts that break it down on a regional basis, but I think it does reflect the fact that this industry is occurring disproportionately in certain areas.

Going back to the point that this does provide a benefit to some people, it also raises a number of concerns. First of all, as a general matter, a large number of the subprime borrowers appear to qualify for conventional loans. Fannie Mae came out with a report recently that suggests upwards of 50 percent of those who are in the subprime industry should actually be getting conventional loans.

A second concern, and one I think that's of greater importance, is that there's less regulation of nondepository subprime lenders than there are of conventional banks. Of the 10 largest subprime lenders active here in New Jersey, for example, 6 out of 10 of those are nondepository institutions unaffiliated with lending institutions, and thus, are regulated by HUD to the extent that HUD performs any regulation in this industry. And for those of you familiar with it, that means that they are not subject to the type of intensive examination, to the CRA requirements, and much of the other regulatory framework that guides depository institutions to provide greater security that predatory practices would be uncovered in a prompt fashion.

And the third matter of concern is that there's national data that suggests that subprime lending is linked to foreclosures. One of the questions that I would have for Commissioner Suter is the extent to which the work that



she's done has begun to analyze here in New Jersey similar types of analysis, because I think there's a great degree of open questions with regard to what the nature of the subprime presence in New Jersey is in terms of its consequences in these areas.

I know Commissioner Suter has left. I know some of her staff members are here, but just to give you -- this is my last bit of comment -- some reactions to what she said. I mean, the most prominent, obviously -- without having seen a report or having heard much about her conclusions prior to today, it's very difficult to react. She indicated, for example, that there was some form of statistical analysis that she was in the midst of undertaking in order to analyze the degree of pervasiveness, and I would be very interested in trying to look at that myself to understand exactly what it is that she undertook. Because one of the great problems in this area is the lack of reliable statistical data that would allow one to reach general conclusions about the nature of what is or isn't going on.

Having said that, though, there are a couple of principles that I agree with. First, that education, financial literacy, is key, as you yourself started off, Senator Inverso. At the same time, however, I think it's a more challenging undertaking that might be readily established, since many of the so-called predatory practices are really occurring in the refinance or home equity stage. And most of the housing counseling programs address first-time home buyers, in other words, people in a very different situation than in so-called predatory practices are occurring. And the idea of how we've reached out to people who are being bombarded with these efforts to undertake home

repair loans is a very difficult one. It's going to require, I think, a different type of approach than has historically been tried.

Second was the proposal that Assistant Commissioner Ketcha, I believe, identified about the importance of industry self-policing. I think there's widespread agreement here that there are some bad apples out there who are engaged in it. The responsible lenders, like many advocates, feel that they are being tainted by the ills that a relatively small number of lenders are engaging in. And I think the idea of developing best practices ensuring that the kind of work is done to ensure industries' self-policing is taking place is critical.

As to the final point, though, that predatory lending is or is not a pervasive practice here in New Jersey, I was concerned to some extent to hear her say that the evidence was simply anecdotal. Once again, without knowing the full extent of what her report is going to look like, it's difficult to completely comment on it. But the cases that at least I've been made aware of in my evaluation of it are in some instances very extensive, so that you may be aware of the national class action against First Alliance, which was featured in *The New York Times* and ABC Nightly News, was filed in Newark, and focused predominantly on practices here in New Jersey. Similarly, there's no -- some of which are mentioned in my testimony of private litigation against lenders here in New Jersey. And the issue of exactly why this is exclusively done in significant measure by private litigants, as opposed to going to the State enforcement agencies, is a highly significant one. It certainly appears in some instances to reflect a lack of trust that the State enforcement apparatus will

move promptly and responsibly to address serious allegations. Obviously, resource constraints play some part there as well.

So, as a final measure, let me just make one additional comment with regard to my view of what the North Carolina legislation did, and is a somewhat different one than the one that Assistant Commissioner Ketcha provided. The way the North Carolina legislation, like the New York legislation, sets out to address some of these problems is by identifying certain practices that they view as per se illegal, regardless of the terms of the loan. And the two that we've talked about most today are the practice of flipping and the practice of single-premium credit insurance. And once again, the proposal is with regard to certain practices to simply bar them outright.

With regard to other issues that, I think, are more complicated to get a handle on, the high-cost loans, they proceed with a different premise. And that is, once certain triggers are exceeded, and this is modeled largely after the Federal HOEPA legislation, additional protections need to be given consumers. Because in those instances, there's a greater concern about what the adverse consequences of those loans will be. So mandatory counseling provisions in some instance for these loans are a way to ensure that many of the financially unsophisticated borrowers are actually given information in the loan-specific context that they would need to be able to evaluate the merits of that particular loan transaction. One can argue, and I'm sure there would be argument, about the particular merits, the particular triggers, and the like, but that kind of model is something that is devised in recognition of the fact that disclosures, unfortunately in many instances, really don't do a whole lot of good, and adding paper to the mortgage loan transaction for people who are

really engaged in this for all of the wrong reasons is not going to significantly assist in curbing these kinds of practices.

Thank you. I'd be happy to answer any questions, if you have.

SENATOR INVERSO: Very good. Very good testimony. Thank you very much. Appreciate it.

Senator, any questions?

SENATOR SINGER: No.

SENATOR INVERSO: Okay. Our next speaker is Bob Levy, Mortgage Bankers Association. Bob.

**E. ROBERT LEVY, ESQ.:** Thank you, Senator, Senator Furnari.

What we've just heard today is a real problem in terms of any response that can anywhere close to adequately deal with everything that's been said, primarily because, as we've become used to in other settings, including the departmental hearings and elsewhere, for better/for worse, what we're faced with is anecdotal stories that provide very little in the way of factual detail sufficiently so that one can analyze in a meaningful way what has actually transpired. Some of the stories are so convoluted -- they involve sales practices, they involve real estate brokers, they involve sellers, they involve lenders, they involve home improvement contractors -- there's no way, given this type of hearing and the scenario we have in force today, to adequately discern what actually transpired and who's at fault. For a reason, I-- And frankly, while we're here to talk about predatory lending to the extent it may or may not exist in New Jersey, some of the stories have nothing to do with the lending side or have more to do with other aspects of the transaction.

For example, Ms. Salowe-Kaye or her associate discussed one very convoluted story dealing with maggots in homes and repairs that weren't made and sales that were undertaken. Apparently, perhaps, there was a real estate broker involved, the seller was somehow involved. Well, these-- That kind of story is as much a fraud against the lender as anything else. We've heard stories like that where the lenders are defrauded, because what's happening is that the homes are appraised with false appraisals, and people are buying homes that they think are in one state of repair and they're in another, repairs that are supposed to be made with the funds that aren't made, and so on. Well, who's going to get hurt there? The lenders that are going to get hurt that are ultimately going to wind up with these loans. So, in a situation like that, I'm not sure we're dealing at all with a predatory lending issue. We're dealing with a very complex transaction where there's some fraud against lenders, as well as others involved.

So to try and ferret out from these somewhat vague explanations of what transpired is extremely difficult. And I don't think-- I certainly am not in a position to do it based upon what I heard today, and I would suggest that the appropriate way to deal with those kinds of allegations-- We have a Department of Banking that's very seriously and very intently involved in dealing with these kinds of issues and desirous of enforcing against lenders who are subject to their jurisdiction, which are, by the way, other than the national and Federal organizations-institutions, pretty much involves the whole lending community in the State of New Jersey.

And I might add, although you've heard-- I heard one comment to the effect that perhaps those who are not financial institutions are not as

highly regulated. I can tell you that the mortgage brokers and mortgage bankers of New Jersey, whom I represent, the Mortgage Bankers Association of New Jersey and the League of Mortgage Lenders, are very highly regulated. We have net worth requirements, we have examination requirements. Before you can get licensed, the licensed individual has to pass an exam. We have bonding requirements. There are refunds that are called for by the Department through their enforcement proceedings on a regular basis.

I sit as a member of the License Lenders Advisory Board here in New Jersey, and we get reports from the Department on a regular basis as to their enforcement results. And I have to tell you, it's admirable and effective, and there's a lot of money that's refunded every year through the Department's efforts. Because when the complaint is sent to the Department and if more of these were given to the Department, I can assure you from what I've seen they are right on top of these issues and they go after the companies and they will make every effort to make sure that the consumer, if the consumer has been harmed, that restitution is made. And if there are illegalities, they're going to go after the company, and they have. Quite recently, I heard -- I think it was First Alliance may have been mentioned. That's a company that New Jersey went after, as well as other states.

The other point is, you hear some of these companies' names bandied about. Well, Delta, which was one of the companies involved and one of the assertions made as to predatory lending, has already been dealt with. They've been dealt with by the state of New York. They've been dealt with by the Department of Justice. And I believe I saw somewhere they may not even

be in the subprime market anymore, but I know for a fact that Delta has been dealt with on an enforcement basis.

First Alliance is out of business. They're gone. The Attorneys General in a number of states went after them. I know we have proceedings against them and then so -- they're gone. As far as I am aware, most if not all of the companies that have been noted as being involved in any transactions which could be considered predatory in nature have been or are being dealt with currently.

What we're really talking about here is, aside from those kinds of assertions based on this anecdotal information, is where are we trying to get to, and why are we here before the Legislature as opposed to, again, talking to the Department further, the Department of Banking, or Consumer Affairs? What we're really facing here is very specific requests by Citizen Action, as an example, of prohibitions that they would like to see placed on New Jersey lenders with regard to the subprime market.

Now, we've heard from several people that the subprime market does benefit consumers, that the subprime market is not a predatory lending market per se, and therefore, what we're really talking about is looking at a loan-by-loan kind of a situation to see whether in any given case a particular lender in a particular scenario has done something that warrants some kind of enforcement against them. It's not a blanket, as everyone has admitted -- a blanket kind of approach to this issue. And it would be wrong to do that to harm, you know, more than the lender that happens to be involved in the transaction, if possible, is predatory.

However, unfortunately, the types of prohibitions that are being requested would apply to all lenders in the subprime market once they reached a trigger on a particular loan where either the rates or points would bring them within the scope of the law. And those triggers are not particularly high and would include many, many loans that are very, very legitimate loans and not at all what one would call predatory.

But let's take a look at them. No prepayment penalties for home loans of \$150,000 or less. Well, first of all, you heard about flipping. To the extent that it does occur, what's one of the things that stops flipping? Prepayment penalties. That's one of the big advantages of a prepayment penalty, is it can stop churning of a loan because a borrower does not want to make a payment in order to refinance, and therefore, it's an inhibition against churning. That's number one.

Number two, a prepayment penalty causes that loan to be lower in cost. So where you charge a prepayment penalty, because of the stability in that loan that's sought after by those in the securities markets and investors that purchase that loan, that loan will be less costly and priced at a lower basis than a loan that doesn't have a prepayment penalty. Furthermore, the thrifts today, the Federal thrifts, can charge prepayment penalties no matter what you do here in New Jersey. We can pass laws here in New Jersey, but the thrifts are not subject to it. You've got the Alternative Mortgage Transactions Parity Act. On adjustable rate, you can't alter that. That's also preempted. And finally, we already have a law in New Jersey that prohibits prepayment penalties.



So what we're asking for here already exists in part to begin with, and the real issue, frankly, is whether we ought to take a fresh look at prepayment penalties here in New Jersey, particularly since the Federal thrifts can use them and others can use them and see whether we ought not have a formula where you can allow prepayment penalties to get the benefits to the consumers of lower cost and a more stable loan and one that's less likely to be churned.

No flipping is something that is difficult to deal with, because it's got a very negative connotation: Frequently refinanced loans with no tangible benefit to borrowers. Well, number one, what is a tangible benefit to a borrower? If a borrower is in foreclosure and going to lose their home, and you come along and you're willing to do a loan refi on it, let's say it's less than a year old, but they're still -- they haven't made their payments; they're going to lose their home -- and your rate is higher than the rate on that loan, is that an illegal flip? Well, if it is, the borrower loses the home, because they will not be able to get a loan in order to pay off that mortgage. They will not be able to refinance the loan. Are we doing a good thing by doing that? Should we sit in judgment over people who want to pay a little more in order to save their houses, or are we going to say, no, the Legislature in the State of New Jersey feels that you should not have a house? It's not appropriate for you, because we don't want you to pay more than you're paying now.

The other part of that issue is: With no tangible benefit to borrowers. Who is going to sit in judgment on that? I'll tell you who's going to sit in judgment on that. When the plaintiffs' lawyers get a hold of this kind of thing and they decide to file suit against the lenders, which they do regularly

around this country, and decide to file a class action, it's going to be a judge sitting there who is going to determine after the fact that there was no tangible benefit to a particular borrower. And then that lender is going to be subjected to some significant cost in terms of potential liability in that lawsuit.

What that means is that those types of provisions lead to concern on behalf of lenders in the subprime market, because they don't know what's going to happen after the fact, and therefore, the risk of doing these types of loans becomes too great. And when the risk becomes too great, the lender has to pull out of the market. And that's what we're experiencing today in North Carolina. That's why Countrywide is pulling out of the marketplace. We know of others that are pulling out of the marketplace. New York, that has Part 41, a regulation that many view as too onerous, as well. They are losing lenders in a subprime market. And so the very people that we are allegedly trying to help are the people that are getting hurt by these types of provisions, because the risk is made too great.

Remember, these loans are being made to people with impaired credit. What does that mean? That means that these loans are made to people who are more likely than others to default on a loan. That's what it's all about. And when they default, by the way, the loans tend to be foreclosed, obviously, and not to the interest of the lenders, because lenders lose money on foreclosures. They lose up to -- I think the average is around 25 percent a loan when you foreclose on it. So what are we talking about here? We're talking about lenders who are already subjected to risk.

I want to just very quickly read something that has, perhaps, more credibility to it than something that I would say on behalf of an industry that I represent.

SENATOR INVERSO: Bob?

MR. LEVY: Yes.

SENATOR INVERSO: I need to interrupt you here.

MR. LEVY: Uh-huh.

SENATOR INVERSO: I have to go to the Judiciary Committee on an issue. If you want to continue, I'll be back in about three or four minutes.

MR. LEVY: Sure.

SENATOR INVERSO: Or if you want to just take a break, but perhaps we ought to continue this. Senator Furnari certainly is here, and then I'll catch up on the transcript of the gap that I have--

MR. LEVY: Oh, I don't want you to miss this. This is good stuff I have here. (laughter)

SENATOR INVERSO: I probably have heard it before, but okay.

MR. LEVY: If the Senator wouldn't mind waiting a few minutes for the chairman, is that all right?

SENATOR FURNARI: I'm still here, if you'd like.

MR. LEVY: Is that all right?

SENATOR FURNARI: It's okay.

MR. LEVY: Okay.

SENATOR FURNARI: If you want, I could ask a couple of questions about--

SENATOR INVERSO: Why don't you? Yeah, why don't you. Okay.

SENATOR FURNARI: --some of the other things that you've-- Okay. In this subprime market, approximately, is there a percentage of loans that go to foreclosure?

MR. LEVY: Oh, yeah. The answer is, yes, there is. I don't know what it is, and it would be higher than it would be in the financial marketplace, no question.

SENATOR FURNARI: Now, when lenders decide to go into a given market, are there things like calculations-- Let's strike that. Is the rate of a mortgage driven by outside overall market conditions exclusively, or does -- when someone decides to lend money, is it based on a formula of expectations of certain losses? We can generally say that we're going to lose 25 percent of such and such. So, in order to come up with our formula of investments, how are these things set up, and are they accounted for?

MR. LEVY: Okay. I would say the conventional marketplace, the prime markets, are probably almost totally governed by factors beyond the control of the lender by national, you know, cost of money requirements, secondary market considerations. Loans, to a large extent, both from the mortgage bankers' side, as well as from the financial institutions' side, are sold into these secondary markets today to secure admission to Fannie, to Freddie, you know, and whatever. And the requirements of that marketplace pretty much govern what the rates are going to be on those loans and the point quotes.

In the subprime markets, they are handing or trending toward more stable pricing today than they ever did before, but they are more subject to a kind of an ad hoc determination on a loan-by-loan basis, because of the fact that they-- It's really a risk-based type of function. And so when a subprime market-- The subprime lenders used to say that in a subprime loan you're creating a loan to meet the needs of a particular borrower, as opposed to the prime markets, where you'd be more inclined to fit the borrower to existing loans. In other words, to a 30-year fixed rate, you know, adjustable rate, 15-year balloon, whatever.

When you're dealing with subprime, you're dealing with lenders who've got problems, a borrower who's got problems. So you're looking at potential, you know, past foreclosures, bankruptcies, you know, mispayments, and a variety of other problems, you know, income levels that are kind of slim and a variety of factors. So you have to look at that loan, and part of the judgment is, of course, what is the likelihood that this loan is going to default. And when you're in this subprime market, the likelihood is greater, and significantly greater in some cases, that that loan is going to go into default. And once it does, and you have to go into foreclosure, if that's where it ends up, you've got a problem, because you're going to lose money. You're going to lose maybe 25 percent on that loan.

SENATOR FURNARI: Are these loans as often -- for want of a better-- I know I'm not using terms-- Are they as regularly packaged and sold, I guess--

Where am I getting that? (referring to feedback) From here? Okay. I turned it on, and it stopped.

Are these packaged and sold in the same manner, or are these loans that are kept in -- and again for want of not knowing the terms -- smaller portfolios of the bank's own portfolio or the mortgage lender's portfolio? Are they dealt with in a different manner is what I'm asking?

MR. LEVY: They're dealt with pretty -- in a pretty similar manner. There was a-- The securities market became a big -- a great source of money, you know, in the subprime market over the last, I would say, decade. And then that -- they backed away from it because of some of the problems that emerged in the subprime markets. And I think they're getting back into it again as it stabilizes. So you've got-- Securitization is a huge source, where loans are sold into the securities markets in the package, then so on, and that includes subprime as well. And then you have the traditional purchasers of subprime. I mean, some of them portfolio -- keep them in portfolio, and others sell them off. But it's pretty similar now to what the conventional products are doing.

SENATOR FURNARI: What I'm trying to do is get a picture here of two conflicting facts. Generally, what you're saying, I think, if I can summarize, is there's bad people out there in everything we did, and you're talking about some of the bad people, and there's probably enough policing, so let's not get carried away with things that are going to affect the whole market. But then we have some statistics that were presented that says in this -- that suggest-- I'm not saying that have proven anything, but have suggested that this subprime market has grown tremendously in this past period of time. And it suggests that maybe there's something happening in this particular

market that shouldn't be done. Is there a valid reason? Is there a good reason why this subprime market has blossomed to the extent that it has recently?

MR. LEVY: Yeah. Number one, the subprime markets, you know, given the risk factor, was also a marketplace where returns were great. And so, as with any other kind of lending, whether commercial lending or otherwise, certain markets can be attractive if the reward pays sufficiently for the risk. And that's why a lot of lenders found that the subprime markets paid insufficiently for the risk that they were going to take. And assuming that you evaluate those risks in a reasonably sensible fashion, applying commonsense kinds of criteria to those types of loans, those who knew how to make those kinds of loans, you could make a reasonable profit in the subprime market, and that induced, for the benefit of the consumers, I might add, lenders into that marketplace. So that what happened is you have people that were most in need of loans that weren't getting them before and now suddenly had a resource for obtaining loans. And where do those people find themselves? Well, many of them, obviously, were in urban areas, many of them were minorities in urban areas, and so they were the individuals who really achieved tremendous benefits as a result of this subprime market, whereas, before it existed, they simply were not going to get any loans.

I think it's interesting. You know, I heard Phyllis say something about the hundreds of people she could bring here. Well, I'm sure that had we the resources to do it, I could bring thousands and thousands from New Jersey alone that would say, "Thank you very much for having made it possible for me to now live -- own my own home and live in my own home, where I couldn't have done that before the subprime lenders were available to make a

loan to me.” And, you know, while it’s unfortunate that some people have to pay, you know, 12 percent versus 9 percent or versus 8 percent or 7 percent, depending upon what time period you’re in, those are still people who are purchasing something that otherwise couldn’t.

And so you’re giving them a choice and you’re giving them the ability to make a choice as to whether they want to pay a little more given their impaired credit and given the fact that they may be in a position where they’re more likely to default than others. And, by the way, that’s all been reenforced more now than ever with the credit scoring. Because credit scoring has made it -- has simplified the process of determining when a loan is more likely to go into default than another. And so it depicts, based upon the evaluation, literally, of millions of files -- millions, you know, what factors are likely to impact the default ratio of a particular loan. And so that credit score can be used to some extent, and it depends on the lender and how they use it, and so on and so forth, to help determine what the risk is going to be in a particular loan product. But the consuming public has benefited greatly. The numbers tell you that, the numbers that everybody is quoting, the huge volume increases.

I mean, can you imagine? Think about New Jersey. Now, we heard -- what did we hear? -- about 400 percent increases and things of that nature. Well, if you really think about it, let’s assume for the moment that we could find 100 people that had a problem. That’s not a lot, not when you talk about this vast amount of subprime money going into these marketplaces to people that have impaired credit. That’s a very, very small number of people. So the vast majority of these folks are very happy with what happened to them



and the ability to be able to own these homes or to refinance a home that might have gone into foreclosure.

SENATOR FURNARI: Is there a way to see if-- Is there a way to make a calculation? Is the total amount of money being lent, is it commensurate with the increase in the amount of subprime? In other words, if this same money was being lent conventionally, as the gentleman testified before, that nearly 50 percent of the people who were receiving subprime loans would have been eligible for conventional loans that we have, then we obviously have a problem of the consumer being ripped off.

MR. LEVY: You would have a major problem if that were true, which it isn't.

SENATOR FURNARI: Okay. So it's--

MR. LEVY: I mean, I can't say it any other way.

SENATOR FURNARI: I have one other question--

MR. LEVY: It's just not factually accurate. And by the way, Fannie Mae has a program called an A-minus Program, and I think that's what the gentleman's referring to. And I think if you go back and look at what Fannie Mae was talking about, about the possibilities of using the A-minus Program, which is not the A Program, which isn't the same as the conventional program, and trying to fit more people into it and analyzing exactly what the wording of their statement was, you'll see that there was never, as far as I recall, a blanket statement that 50 percent of all the subprime loans could be conventional. It's just not so. It's not the case. We know what the subprime market is, and they just simply don't fit conventional standards. Now could there be some out there that might be? Of course.

I mean, Senator, there is no question that you're going to find from time to time a fraudulent situation. You're going to find from time to time a bad lender who is going to defraud some consumer. You're going to find, unfortunately, I have to say, one of my colleagues, perhaps, an attorney who might defraud, you know, a consumer -- you might find an accountant who might defraud a consumer and so on and so forth. That's the way it is.

But the question here is, what response do we give to these isolated situations which still have yet to be fully evaluated to see what they are in the first place? Do we now -- and listen to the Department that says, "This is what we're doing." And by the way, I think the Department's doing a very admirable job. I've seen some of the states that-- And I'm so pleased about New Jersey, because I feel we're so much more sophisticated than many of these other states, quite honestly, because what I've seen is states jumping in. And let me tell you why.

You know why North Carolina has done what's it's done? Because the Attorney General's elected, and the Attorney General is very much involved in that law. Why? It's political. Okay. Let's put the cards on the table. It had nothing to do with reality. It had to do with politics. And what about New York Part 41, you know where that came from?

SENATOR FURNARI: Excuse me, wait a second. I'm not going to buy into the proposition just because you were elected -- established policy differently than--

MR. LEVY: No. No. I said--

SENATOR FURNARI: --what's correct.

MR. LEVY: I started by saying I'm proud of New Jersey.

SENATOR FURNARI: Because those--

MR. LEVY: I don't think we're like that.

SENATOR FURNARI: --of us who get elected--

MR. LEVY: No. No. We're not--

SENATOR FURNARI: --we don't necessarily only pass things because it's political.

MR. LEVY: No. No. We're not like that here--

SENATOR FURNARI: Let me just ask you this?

MR. LEVY: --but they are in North Carolina.

SENATOR FURNARI: Let me just ask you--

MR. LEVY: And they are in New York, by the way, and I'll tell you why there, too.

SENATOR FURNARI: Let me just ask you--

MR. LEVY: Yeah.

SENATOR FURNARI: --just a few brief other questions. You were approaching the prepayment penalty, and it's my understanding in New Jersey that there are no residential loans that have a prepayment penalty, regardless of who produces them. That is not correct?

MR. LEVY: That's not correct.

SENATOR FURNARI: So, if I have a loan from-- And give me an example of--

MR. LEVY: XYZ Federal Savings and Loan Association can make a loan with a prepayment penalty.

SENATOR FURNARI: And is that prevalent in the State of New Jersey?

MR. LEVY: Yes, fairly. There are plenty with prepayment penalties now.

SENATOR FURNARI: Gee, I'm going to tell you, you learn things every day. I remember telling people who were trying to assess them against my client that said, "You can't do that in the State of New Jersey," and they backed away.

MR. LEVY: Yeah. No, it's-- And frankly, the Department of Banking doesn't like it, and the Department of Banking was reluctant to tell anybody you could do it. And that's why, frankly, Senator, if anything, I'm in favor of taking a fresh look at whether we should change that prohibition to allow prepayment. You know, in New Jersey, we did allow at one time, unfortunately, I remember it well, because I think it goes back to the time when I was with the Banking Department, and we had something like a three, two, one provision in New Jersey's law where you could charge 3 percent, then 2 percent the second year, and 1 percent the third year. I don't think anyone, including our industry, would have a problem with that type of prepayment penalty so that you get it up front, and then when the loan gets a little older, you can't take it anymore. But it's a--

SENATOR FURNARI: Then there's a commensurate -- and would the industry have a problem with there being a commensurate reduction in the interest? In other words, if some were going to market a loan like that, because it's stable and it's better, they could -- you could buy down, like buying down points.

MR. LEVY: Well, the market would deal with that. I mean, the reason we have a problem, by the way, when dealing with arbitrary or

not-so-arbitrary limits or regulation of rates and that kind of thing, is because what happens is you lose the benefit of the marketplace. We have to be flexible in a market, and when rates change and whatever, we have to be able to adjust immediately. And that's one of the reasons why usually ceilings never work and why point ceilings never work. And, in fact, the only time a point ceiling ever worked in New Jersey, or anywhere else for that matter, is when the cost of money and the lender making a loan reached a level of the point ceiling or the rates ceiling, and then you are going to stop lending, because you couldn't afford to make the loan. Other than that, it never affected a thing.

And so, the marketplace works very, very well. I mean, it really does. I mean, competition works well. The subprime markets -- the competition didn't work so well for a number of years because of the type of market. But now, that's starting to change, and you're starting to see, frankly, rates and points down in the subprime markets to the point where it's not as, you know, there's not as great an inducement to get into the market. And that's why today more than ever it's more likely that a law that's onerous or ambiguous, that leaves you subject to potential liability or potential lawsuits, is more likely than ever to keep you out of the marketplace, and that's why the lenders are pulling out. The Part 41 in the New York regulation -- lenders in New York are also pulling away. We know that for a fact. It won't be long before we'll have, you know, fairly specific data on those states, and we're going to show very confident. We're going to show the reduction in subprime lending in New York, North Carolina, and elsewhere where you have those kinds of legal provisions.

SENATOR FURNARI: Well, Mr. Levy, that's all the questions that I have. This is a very unique experience for me, because I now, by default, have become the Chairman of this Committee. (laughter) It's my first time as Chairman, and I'm going to suggest that we take a five-minute break--

MR. LEVY: Thank you.

SENATOR FURNARI: --before we go further with Senator Inverso.

**(RECESS)**

**AFTER RECESS:**

SENATOR FURNARI: I want to call this meeting back to order. Okay, I want to call this meeting back to order. It's now 19 minutes after 2:00. This meeting has been continued while Senator Inverso unfortunately had to step out, but he is in the process of answering a number of questions about his bill before the Judiciary Committee. It seems that we have not completely finished our agenda. However, we do have testimony that's been submitted to us. I've asked certainly all the questions that I have. Whether Senator Inverso has more questions, I'm sure he will raise that issue with the Chairman -- Chairman Cardinale -- whether or not there should be another time for a public meeting with regard to these issues or questions.

I would ask everyone who's here who wants to submit anything else to please submit it to us in writing so that it becomes a part of the record. And at this time, I'm going to adjourn the public hearing. Just posting

everyone, there may be no further public hearing. There may just simply be a report of the Committee or hearings on any proposed legislation that may have come of this, but that's certainly within the discretion of our Chairman.

So I'm adjourning this meeting at this time. Thank you.

**(HEARING CONCLUDED)**