

HOUSE OF REPRESENTATIVES
COMMONWEALTH OF PENNSYLVANIA
HOUSE COMMERCE COMMITTEE

* * *

MORTGAGE REFORM AND PREDATORY LENDING

PUBLIC HEARING

* * *

FRIDAY, MAY 4, 2007

* * *

Majority Chairman Honorable Peter J. Daley
Honorable John Siptroth
Honorable Julie Harhart
Honorable Mike Carroll
Honorable Tom Yewcic
Honorable Chris King
Honorable Mario M. Scavello
Honorable James Wansacz
John Scarpato
David Callen

* * *

The Shawnee Inn & Golf Resort
1 River Road
Shawnee on Delaware, Pennsylvania

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Scheduled to begin at 10:00 a.m.

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2 CHAIRMAN DALEY: My name is Pete
3 Daley. I'm State Representative of the
4 49th Legislative District in Washington and
5 Fayette Counties.

6 I am the Majority Chair of the House
7 Commerce Committee, and we are here today
8 to have a hearing on several proposals that
9 are being considered by our committee of
10 House Bills 1079 through 1084 inclusive,
11 which is a package of bills that we've been
12 working on with the Administration and
13 Secretary of Banking to address some very
14 serious problems, as you all know, because
15 this area is the epicenter of foreclosures.

16 This is the second in a series of
17 hearings that we're having across
18 Pennsylvania. Last week we were -- two
19 weeks ago, we were in Carnegie, which is
20 right outside the city of Pittsburgh.

21 Next week we will be in Philadelphia
22 for the third in the series, and possibly a
23 fourth.

24 We plan to accelerate these bills
25 through our committee upon conclusion of

1 that hearing process, and we look forward
2 to hopefully passing those before we pass
3 the budget sometime in August of this year.
4 That was a joke. We're supposed to have a
5 budget on June 30. We may be a little bit
6 optimistic.

7 I would like to thank Representative
8 Siptroth for having us. Representative
9 Siptroth represents the 189th District
10 where we sit. And I would like to turn
11 this meeting at this point over to
12 Representative Siptroth for a few comments.

13 REPRESENTATIVE SIPTROTH: Thank you,
14 Mr. Chairman. And good morning, everyone.
15 And members of the committee, I'm glad that
16 you were all able to join me here today and
17 take another step toward correcting the
18 profoundly distressing problems we have had
19 here and across the state with sub prime
20 mortgage lending.

21 Like most things the legislature
22 elects to regulate, the problem is aimed at
23 some of the bad actors and not the entire
24 industry, by all means.

25 There are other factors in the

1 current crisis like borrowers overreaching
2 their ability to pay, job losses and
3 economic downturns and unexpected increases
4 in taxes, increased commuting costs and
5 utility expenses. Some of those we can't
6 fix very easily. But everyone in this
7 region knows the heartache and misfortune
8 that can be sowed by loan deceptions and
9 mismatches between borrower and loan
10 obligations and how this disrupts lives and
11 families and communities.

12 The committee has undertaken this
13 series of hearings on mortgage reform in
14 the context of a package of bills drafted
15 by the Rendell administration to a great
16 degree in response to the very problems in
17 this region.

18 I'm a prime sponsor of the first
19 bill in the group. At its heart, my bill
20 calls for all mortgage solicitors, not just
21 firms, to be licensed, to be adequately
22 trained before licensure in both ethics and
23 law, and to be subject to serious sanctions
24 for misconduct in the making of home loans.

25 Other bills focus on increasing

1 standards and oversight for appraisers and
2 the mortgage foreclosure process.

3 As part of the coordinated strategy,
4 the administration's hope is that these
5 bills together will tighten up on the
6 dishonest practices in the industry without
7 harming our legitimate lenders and without
8 turning off the opportunities for home
9 ownership that most Americans seek.

10 The bills aim to give teeth to the
11 significant increases that the legislature
12 has already approved through the budget in
13 additional examiners, investigators and
14 enforcement personnel in the Department of
15 Banking.

16 My hope as a member of the committee
17 is that our witnesses today and in
18 Philadelphia next week will give us good
19 feedback on whether these bills will do the
20 job and whether we need to add or subtract
21 from them to protect the people and the
22 families of Pennsylvania.

23 Thank you, Mr. Chairman.

24 CHAIRMAN DALEY: Thank you, John.

25 Ladies and gentlemen, this committee really

1 means business. We are going to
2 aggressively attack this problem. We're
3 not going to let anything lie on the table.
4 We're going to try to move this legislation
5 in the very close future.

6 I'd like to start the introduction
7 at the dais here. We have a great turnout
8 of legislators from across Pennsylvania to
9 participate.

10 The first gentleman -- we'll start
11 with John. You can introduce yourself, and
12 then we'll come right down the table.

13 JOHN SCARPATO: John Scarpato. I'm
14 staff for the Republican Caucus for the
15 committee, for Minority Chairman
16 Representative Dick Hess.

17 REPRESENTATIVE HARHART: Julie
18 Harhart. I represent Lehigh and
19 Northampton Counties.

20 REPRESENTATIVE SIPTROTH: I'm
21 Representative Siptroth. You've heard from
22 me.

23 DAVID CALLEN: I'm Dave Callen. I'm
24 the executive director of the committee.

25 REPRESENTATIVE CARROLL: I'm Mike

1 Carroll. I'm a representative from Monroe
2 and Luzerne Counties.

3 REPRESENTATIVE YEWIC: Tom Yewic
4 from Cambria and Somerset Counties.

5 REPRESENTATIVE KING: Chris King
6 from Bucks County.

7 REPRESENTATIVE WANSACZ: Jim Wansacz
8 representing parts of Lackawanna, Luzerne,
9 Wyoming and Susquehanna Counties.

10 CHAIRMAN DALEY: I want to remind
11 everybody that if you're going to testify,
12 Trish Sims is our stenographer. And if you
13 know anything about testifying or doing
14 depositions, you know you have to take your
15 time, speak clearly. Don't speak too fast
16 like you do in western Pennsylvania. And
17 please do not shake your head when we ask
18 questions. Like for nos or yeses, you have
19 to articulate your answers so she can
20 record them as such.

21 If she needs a break, she's going to
22 let us know. She says she's going to be
23 fine. She ain't see nothing yet.

24 We have the wonderful pleasure of
25 starting out this morning with the Monroe

1 County District Attorney, David Christine.

2 Is that how you say it?

3 DAVID CHRISTINE: Yes, sir.

4 CHAIRMAN DALEY: Your reputation is

5 well-known across Pennsylvania. My

6 District Attorney, John Pettit, which I

7 know you know --

8 DAVID CHRISTINE: I just saw him a

9 couple of weeks ago.

10 CHAIRMAN DALEY: -- he sends you his

11 regards. Please, the floor is yours.

12 DAVID CHRISTINE: We're not sworn?

13 CHAIRMAN DALEY: No, you're not

14 sworn. We'll hold you to what you say, but

15 we're not going to make you swear to it.

16 DAVID CHRISTINE: Welcome to Monroe

17 County. The problems that this committee

18 is here to address with the legislation now

19 under consideration is very important

20 because the problems that you've identified

21 and want to try to help us with are

22 systemic in Monroe County.

23 I'm in the fourth year of my current

24 term of office, but I was also the District

25 Attorney of Monroe County from 1988 to

1 1991.

2 And in the last year of my term, not
3 knowing that it was going to be my last
4 year, I was not returned to office by the
5 people of Monroe County.

6 At that time, I impaneled a Grand
7 Jury in 1991, the purpose of which, in
8 part, was to address some of the very
9 things which concern this committee today
10 in 2007.

11 The impanelment was delayed. And my
12 successor, for reasons unknown to me -- he
13 had a lot on his plate -- chose to use the
14 Grand Jury in another direction.

15 We have a Grand Jury now impaneled
16 in Monroe County currently. Obviously,
17 what they're doing must remain
18 confidential, but this issue that's before
19 you has been long term. It's been getting
20 worse because, of course, more and more
21 people are moving to Monroe County.

22 The type of problem -- and I know
23 you know this, but I just want to make it
24 clear to the public. The type of problem
25 you very happily and appropriately are

1 trying to meet the challenge of is really
2 one of the most insidious types of
3 victimization. Most people know when
4 they're being victimized.

5 If I come home and my car has been
6 stolen, I know it's been stolen. I call
7 the police. They're trained to react to
8 something like that. If I come home and an
9 heirloom has been taken by a burglar, I
10 know I've been victimized. I can survive
11 that loss, and the police can react
12 appropriately.

13 But a lot of people who get into
14 trouble when they are the victims of a
15 coerced loan situation with dummied-up
16 documents don't even know. Sure, they know
17 that they may be foreclosed upon. Sure,
18 they may know they may have to declare
19 bankruptcy.

20 But they may not even know that they
21 were the victims of inappropriate, illegal
22 behavior. And that's the hardest type of
23 crime to correct, when victims don't even
24 know, other than they're suffering, that
25 there's someone or some person responsible

1 for those misdeeds.

2 And unlike a car theft, unlike the
3 loss of an heirloom in a burglary,
4 obviously, the loss of one's home and the
5 disruption to finance and family, years
6 long in trying to get over, makes it one of
7 the worst kinds of crimes.

8 And, yet, without some state
9 oversight, which is what these bills, I
10 understand -- I've read them -- are trying
11 to address with licensing, monitoring,
12 training, suspension, revocation of
13 licenses and the like. Without that, this
14 type of victimization will continue.

15 The law enforcement community, which
16 I represent in Monroe County, like in every
17 other county in the state, doesn't have
18 training for this type of challenge without
19 the help of the state executive branch and
20 the legislature to provide the tools to the
21 state executive branch to help with this
22 challenge.

23 Police officers are designed to
24 react to what they see with their eyes: A
25 burglary, a rape, an act of violence.

1 But this type of crime -- and,
2 really, it's a lot more than just fraud.
3 County Detective Eric Kirschner, who the
4 commissioners of Monroe County kindly
5 allowed me to hire to focus on white collar
6 crime and fraud like this, will tell you
7 it's very difficult to ferret out this type
8 of problem. You need training.

9 I'm one of the few lawyers in the
10 D.A.'s office that did real estate work
11 when I practiced with my father, Elmer
12 Christine, back in the 1980s.

13 And that's why the legislation you
14 guys are contemplating will make it much
15 easier for the law enforcement community.

16 Understanding that the training is
17 not there and the sophistication, the
18 financial documentation, tracking, bank
19 account evaluation is not there to help us
20 so that if someone's license is suspended
21 or revoked or a file is examined by agents
22 from the state executive branch and
23 criminal activity uncovered and discovered,
24 it can then be transferred to the law
25 enforcement community for action.

1 Because only when people have their
2 licenses suspended or revoked for
3 inappropriate behavior or only when they
4 are aggressively prosecuted can we
5 communicate to people who are taking
6 advantage of our new citizens that this
7 type of behavior will not be tolerated, and
8 they will pay a serious price.

9 Does the committee have any
10 questions for me?

11 CHAIRMAN DALEY: Would you think
12 that we ought to hear from Eric Kirschner
13 or maybe take questions for you and then
14 have questions for him?

15 DAVID CHRISTINE: Yeah. What I
16 would recommend, if I may, Mr. Chairman, is
17 to allow Eric to give you a couple -- he
18 has a couple of case histories of how this
19 stuff goes on when people don't realize
20 that after they leave the table, getting
21 their loan, their financial information on
22 the back end is being doctored up, and
23 their signature is being forged on
24 documents to make the file look like it's a
25 legal file. And they don't even know. And

1 they walk away thinking they've got a
2 beautiful home, not realizing it's a
3 disaster.

4 They go under. They're financially
5 damaged. And unless someone opens that
6 file up or somehow realizes they were
7 defrauded, the victim remains a victim with
8 no place to go for help. And the
9 defendant, the suspect, goes on to the next
10 victim. Because obviously, as you know --
11 and I know you know this, too, ma'am,
12 coming from the Lehigh Valley -- when you
13 have a rapidly growing area where most of
14 your newcomers are coming from out of
15 state, they're prime victims of this type
16 of behavior. They don't know the laws
17 here.

18 Many don't have attorneys and feel
19 that there's someone in the room there for
20 them, and there's no one in the closing
21 room for them. Everyone in that room
22 tentatively has no responsibility to them
23 unless, as your legislation envisions,
24 there's going to be accountability,
25 training, supervision and consequences for

1 inappropriate behavior.

2 So with your permission, I'll ask
3 Eric to come up. If you have any back-end
4 questions for me, you can certainly address
5 them to me at that time.

6 REPRESENTATIVE SIPTROTH: I have one
7 that I might want to ask.

8 CHAIRMAN DALEY: Go ahead.

9 REPRESENTATIVE SIPTROTH: I have
10 two, actually.

11 David, how successful have you been
12 in prosecuting cases? And I know that
13 you've had a number of them without this
14 legislation, regarding mortgage foreclosure
15 and deception.

16 DAVID CHRISTINE: Well, Eric has a
17 couple of cases which he has filed where --
18 like, there's a forgery and he can see it's
19 a forgery from looking at the paperwork.
20 In that, we obviously have the capacity to
21 handle a case where someone falsifies
22 someone's signature.

23 The problem is that it's getting to
24 know that occurred. Obviously, once it's
25 been given to us in a way that we can look

1 at the evidence and then respond to it, we
2 have the capacity here in Monroe County to
3 prosecute.

4 It's getting -- unless someone is
5 smart enough to know what happened to them
6 or get control of the paperwork to be able
7 to see that these things have been done on
8 the back end -- fabrication, fake checks,
9 fake payroll records. Some mortgage
10 brokers will actually -- he'll get into
11 detail on this -- create a fake account.

12 One case he'll tell you about -- I
13 shouldn't steal your thunder here. This
14 one mortgage broker got a 1-800 number for
15 purposes of income verification so that the
16 bank, when they called in, were actually
17 calling a dummy number to get confirmation
18 of the income of the prospective customer.

19 We can do it, but it's detection
20 that needs to be enhanced. And these bills
21 that are envisioned as being passed by the
22 legislature will greatly help in that need.

23 REPRESENTATIVE SIPTROTH: And do you
24 think that we should add any bill that
25 would provide training for individuals like

1 yourself and the industry to help educate
2 on white collar crime?

3 DAVID CHRISTINE: Well, there's no
4 question that if there was some money on
5 the state level to help primarily the
6 police learn about this -- because,
7 obviously, the lawyers just prosecute the
8 case in the office. The police are the
9 ones that need training.

10 And I'll be honest with you. Most
11 of the police in Monroe County are afraid
12 of this kind of offense. This is
13 difficult. They're not trained to handle
14 documentation.

15 Certainly, if it's a big case, the
16 Attorney General has and will continue to
17 assist the 67 County District Attorneys,
18 but he can only handle the very big cases.
19 He doesn't have the resources.

20 And we want to do the cases here
21 when they're manageable enough to be
22 handled on the local level. And the
23 training would be helpful in that regard to
24 do that, because it's tough.

25 CHAIRMAN DALEY: Do you have another

1 question?

2 REPRESENTATIVE SIPTROTH: No.

3 That's all.

4 CHAIRMAN DALEY: Okay. Let me ask
5 you this question. I'm an attorney also.
6 So I do a lot of closings. So I
7 understand. I had a real estate license
8 prior to coming into the legislature.

9 So your problem is identifying that
10 someone has actually been -- had fraud
11 perpetrated against them in some way. Joe
12 and Mary Smith buy a home. They have the
13 appraisal done. They do all the closing
14 documents. Then they end up going into
15 foreclosure.

16 But there are people that are
17 already in foreclosure that had these
18 crimes perpetrated against them. Most
19 people don't know, because they don't have
20 the documents because documents are added
21 to their file at some point; is that
22 correct?

23 DAVID CHRISTINE: Yes.

24 CHAIRMAN DALEY: So the problem you
25 have is identifying the victims -- I think

1 you mentioned that early on.

2 DAVID CHRISTINE: Yes.

3 CHAIRMAN DALEY: -- so you can
4 basically get a handle on who are the
5 victims. And the victims don't even know
6 that they're the victims.

7 DAVID CHRISTINE: Absolutely.
8 That's why licensure -- because it will
9 then obviously have the according
10 supervision of the licensees -- will make
11 it easier for the state, through these
12 various enactments that you're considering,
13 once they identify a bad person. Because
14 Eric will tell you that this is a pattern.
15 These people do this all the time. They
16 come to Monroe County because they know --
17 it's just like the drug dealers coming to
18 Monroe County from New York City -- because
19 you get a higher price here.

20 So, too, in this opportunistic world
21 sadly do these perpetrators -- a small
22 minority of the group, of course -- come
23 into the county knowing it's the second
24 fastest growing county in the state -- Pike
25 is first. Your area is growing rapidly.

1 I feel sorry for the people down
2 near Maryland. They're going through --
3 those counties down there are going through
4 the same growth spurts.

5 And they come here knowing there's
6 going to be a lot of people coming and not
7 having any idea what the local scene is and
8 to take advantage.

9 CHAIRMAN DALEY: So you think
10 licensure will help to eliminate some of
11 the bad guys?

12 DAVID CHRISTINE: Absolutely. I
13 read -- in some of the documentation you
14 were kind enough to send me, someone made
15 the obvious observation that hairdressers
16 and barbers are licensed, and partly that's
17 to make sure they don't use a certain kind
18 of brush they're not allowed to.

19 Certainly, in an area where someone
20 can be hurt for 20 years with a bankruptcy
21 or a house that they're thrown out of
22 because it's foreclosed upon, certainly
23 that would, I think, come into the
24 legislature and the executive branch with
25 the same type of oversight to help us, when

1 we catch them, to go after them.

2 CHAIRMAN DALEY: Okay.

3 REPRESENTATIVE WANSACZ: District
4 Attorney Christine, I'm a little confused.
5 Can you kind of walk me through -- if I'm a
6 victim, if this happened to me, what is my
7 first -- what do I do first if I believe
8 something has happened? Do I contact the
9 police department?

10 DAVID CHRISTINE: I'm going to defer
11 to Eric, because he's the one that gets the
12 call. So let him tell you, because he's
13 the one that actually picks up the phone
14 with the victim on the other end of the
15 line. He'll get into a more realtime feel
16 for that, if I may.

17 REPRESENTATIVE WANSACZ: Great.

18 CHAIRMAN DALEY: Let me ask another
19 question. You don't discover this until
20 somebody is in foreclosure. Joe Smith
21 doesn't say, "Oh, I checked my documents."
22 And all of sudden, I realized that I never
23 signed or wrote these checks." I mean,
24 that's a rarity? Am I correct? I mean,
25 it's really the person that goes into

1 foreclosure, that all of a sudden, there's
2 an examination of the documentation.

3 DAVID CHRISTINE: We had cases where
4 they actually find out some other way.

5 ERIC KIRSCHNER: I have an
6 example --

7 CHAIRMAN DALEY: Come up, please.

8 ERIC KIRSCHNER: My name is Eric
9 Kirschner. I'm a detective with the Monroe
10 County District Attorney's Office.

11 I found out this morning that David
12 didn't want me to read my testimony because
13 he thought it would bore you, but I'm not a
14 great public speaker. So I'm going to
15 disobey him and read it.

16 DAVID CHRISTINE: We'll talk later.

17 ERIC KIRSCHNER: I prepared four
18 scenarios, which I've passed out to you.
19 And some of these cover some of the
20 questions you just asked.

21 And in the first example, there was
22 no mortgage foreclosure because the people
23 never even moved into the house.

24 This is what happened. A victim
25 receives an unsolicited call from a

1 Stroudsburg real estate/mortgage company
2 offering to secure financing to build a
3 home, even with bad or questionable credit.
4 This is another reason why you should be on
5 the "Do Not Call List."

6 The victim already had a lot in mind
7 to buy and was looking to put a modular on
8 the lot. The victim tells the Stroudsburg
9 real estate company about the lot, and the
10 Stroudsburg real estate company buys the
11 lot from the third party seller for an
12 unknown price and then resells it to the
13 victim for \$40,000, and they accepted a
14 \$2600 deposit.

15 The Stroudsburg real estate/mortgage
16 company then introduces the victim to a
17 local area builder from Analomink. The
18 victim sells the lot to the builder for a
19 dollar in June with the understanding that
20 they would later obtain financing for a
21 land/house package.

22 The Stroudsburg real estate/mortgage
23 company arranges financing through a
24 private individual from Philadelphia in
25 June.

1 The victim believes they have a
2 construction loan which will convert to a
3 conventional mortgage upon completion of
4 the home. They do not.

5 The victim makes interest payments
6 to the Stroudsburg real estate/mortgage
7 company for a period of eight months during
8 the construction of the home in the amount
9 of \$11,000.

10 During that time, the victim
11 regularly visits the house to watch their
12 home become built. Suddenly, in May the
13 Analomink builder tells the victim he's not
14 receiving any draw money from the
15 Stroudsburg real estate company.

16 The Analomink builder shows a letter
17 to the victim that he had sent to the
18 Philadelphia financing company concerning
19 the nonpayments.

20 This letter was probably written to
21 mislead the victim since the Stroudsburg
22 real estate company and the Analomink
23 builder are related.

24 Finally, the Analomink builder tells
25 the victim that he will be finishing the

1 house, which if you recall had been deeded
2 to him by the victim, and selling it to
3 recoup his losses, which he just did
4 recently.

5 So the victim has spent \$13,700 with
6 nothing to show for it, and they don't have
7 any documentation to even prepare for a
8 lawsuit to sue somebody.

9 The Stroudsburg real estate/mortgage
10 company is operated by a person with a
11 conviction -- it's a felony marijuana
12 conviction -- that prohibits him from
13 holding a real estate or mortgage brokerage
14 license. And the Stroudsburg real estate
15 company is registered in his wife's name,
16 although the victim never dealt with the
17 wife.

18 This might be a why having the
19 individual mortgage broker employee
20 licensed, because then only a licensed
21 person could deal with the victim.

22 REPRESENTATIVE WANSACZ: If I could
23 interrupt on that, what about the real
24 estate agent, since he is licensed or she
25 is licensed? Wouldn't that be a proper

1 channel to check someone out?

2 ERIC KIRSCHNER: Well, the real --
3 the holder of the license is the wife of
4 the subject.

5 REPRESENTATIVE WANSACZ: Okay. So
6 can her license be taken away from her
7 through this --

8 ERIC KIRSCHNER: I don't know.
9 These are things that we refer then to the
10 Department of Banking. So I don't think we
11 have the power to revoke someone's license.

12 REPRESENTATIVE WANSACZ: That would
13 be a complaint made to the Real Estate
14 Board, I'm sure. But is that something
15 that you guys do then, make a complaint to
16 the Real Estate Board?

17 ERIC KIRSCHNER: On some cases, we
18 forward the complaint directly to the
19 Department of Banking. And in other cases,
20 we have been redirecting the complainant to
21 forward their complaint.

22 Usually we have them go through the
23 Attorney General's office, because they
24 have a Bureau of Consumer Protection Web
25 site that they can go on and fill out their

1 complaint.

2 Scenario two I'm going to skip over
3 because it's the same company that did
4 scenario one.

5 Scenario three is a pretty
6 interesting one because I believe the guy
7 is still operating today. This scenario
8 describes a Bartonsville area resident
9 passing himself off as a real estate
10 professional and financial expert who meets
11 with people who have bad credit and are in
12 mortgage foreclosure. He has no license.
13 He has no real estate license. He has no
14 mortgage brokerage license. Yet, he tells
15 people that he can arrange the building of
16 a home, the sale of an existing home and
17 financing. This is how he does it, and he
18 has no intention of ever getting them a
19 home.

20 The Bartonsville financial expert
21 meets with the homeowner victim in
22 Saylorsburg. This is a true scenario, and
23 this sounds -- this one is pretty good.

24 The Bartonsville financial expert
25 meets with the homeowner in Saylorsburg who

1 is in the beginning stages of a mortgage
2 foreclosure. He tells the Saylorsburg
3 property owner, who we shall identify as
4 Victim 1, that he has a plan to save his
5 house.

6 Victim 1 accepts the plan and moves
7 out of state, leaving his house in the
8 hands of the Bartonsville financial expert.

9 The Bartonsville financial expert
10 contacts Victim No. 2 who owns a house in
11 Effort and is also in the beginning stages
12 of mortgage foreclosure.

13 The financial expert meets with
14 Victim No. 2 and says he has worked out a
15 plan whereby he can sell Victim No. 2's
16 Effort house and at the same time arrange
17 to have Victim No. 2 buy a house in
18 Saylorsburg, and then he charges the victim
19 \$750 to reveal the plan.

20 Victim No. 2 moves out of his Effort
21 house and moves his family, wife and
22 several young children, into Victim No. 1's
23 Saylorsburg house.

24 Victim No. 2 begins paying the
25 Bartonsville financial expert a thousand

1 dollars a month rent with the understanding
2 that it is an informal lease/purchase
3 arrangement.

4 After a couple of months, Victim 2
5 observes mortgage foreclosure notices on
6 his front door. Victim No. 2 contacts the
7 Bartonsville financial expert who says,
8 "Ignore it. I'm taking care of everything.
9 Don't worry about it."

10 In the meantime, the Bartonsville
11 financial expert meets with Victim No. 3,
12 an elderly lady from New York who wants to
13 retire to a home in the Poconos.

14 Victim No. 3 owns her own home in
15 New York and has good credit, but is not
16 sophisticated in the details of purchasing
17 a home. And the Bartonsville financial
18 expert can't believe his good fortune.

19 He tells the soon-to-be victim that
20 he has a perfect house for her in Effort,
21 and she can have it for a steal. This is
22 Victim No. 2's house.

23 Victim 3 agrees to move into the
24 house and pays the Bartonsville financial
25 expert a thousand dollars a month, with the

1 understanding that when she sells her house
2 in New York, she'll have the money to
3 purchase the house in Effort for cash.

4 Several months later, she sells her
5 house in New York, gives her \$85,000 to the
6 Bartonsville financial expert.

7 Around this time, Victim No. 3
8 notices foreclosure notices posted on the
9 door of her Effort home. She calls her
10 kindly Bartonsville financial expert who
11 tells her to ignore the notices, that he's
12 working everything out.

13 Eventually Victim No. 2 is evicted
14 from the Saylorburg house, and Victim No.
15 3 is evicted from her Effort house. Victim
16 No. 1 has disappeared from the area and can
17 no longer be located.

18 Investigation reveals that the
19 rental money the Bartonsville financial
20 expert collected from Victim No. 2 and
21 Victim No. 3 went straight to his pockets,
22 and he used it to pay his personal
23 expenses.

24 Victim No. 1 never received the rent
25 money collected from Victim No. 2, and

1 Victim No. 2 never received the rent money
2 the Bartonsville expert collected from
3 Victim No. 3.

4 The \$85,000 that Victim No. 3 paid
5 to purchase the Effort house went into the
6 pockets of the Bartonsville financial
7 expert. The financial expert used the
8 \$85,000 to pay his personal expenses and
9 claims he lost about half of the remaining
10 balance in a bad investment.

11 I arrested the Bartonsville
12 financial expert for the theft of the
13 \$85,000, and a trial is pending. When the
14 arrest was publicized in the local papers,
15 I received telephone calls from several
16 more people claiming that they were
17 victimized in a similar way.

18 Each of the victims said they met
19 with the financial expert in an office in
20 his Bartonsville home. They each described
21 his office as a large room with hundreds of
22 pictures of houses along the wall with the
23 locations of each one of those houses from
24 all over the state and other countries.
25 About half of those pictures had "sold"

1 signs stamped across them.

2 This Bartonsville financial expert
3 has no professional licenses, and it does
4 not appear that he's ever successfully
5 brokered a deal.

6 To this day, I can't be sure that
7 the Bartonsville financial expert is not
8 continuing his schemes. After all, he has
9 no other income source, and it appears that
10 he was pretty successful for an extended
11 period of time.

12 And then I have one more scenario
13 that I would like to share with you.

14 CHAIRMAN DALEY: When you arraigned
15 him, what did they post his bond at?

16 ERIC KIRSCHNER: I think \$50,000.
17 I'm sure he -- he needed to come up with 7
18 to 10 percent, and he probably took it from
19 somebody else.

20 CHAIRMAN DALEY: If somebody has
21 posted that bond at half a million bucks,
22 he'd be in jail and not been in this,
23 right, unless he could come up with --

24 ERIC KIRSCHNER: That's correct.
25 But they rarely put somebody -- set bail

1 that high for a nonviolent crime.

2 CHAIRMAN DALEY: Maybe they need to
3 start considering it.

4 ERIC KIRSCHNER: Right. In 2004 --
5 this is a pretty strange case, too, but I
6 think these are typical of what happens in
7 Monroe County.

8 In 2004, a Tannersville builder
9 meets an elderly widowed property owner
10 from Mt. Pocono. Our newest victim tells
11 the Tannersville builder she is looking to
12 sell her Mt. Pocono property, which
13 consists of three buildings: An abandoned
14 tavern, an old four-unit apartment building
15 and an even older farmhouse.

16 With the proceeds, she was looking
17 to move into a modular on a lot she would
18 like to own.

19 The Tannersville builder tells her
20 he's in the business of buying and selling
21 properties, arranging financing and
22 building homes and modulars. We'll call
23 this elderly victim No. 1.

24 The Tannersville builder tells
25 elderly Victim No. 1 that for \$50,000 he'll

1 sell her property, buy her a lot and put
2 her a modular on it.

3 So she gives him \$50,000 and
4 transfers the property to the Tannersville
5 builder and waits for results.

6 The Tannersville builder approaches
7 an unsophisticated wannabe entrepreneur
8 with good credit from New York. We'll call
9 this individual Victim No. 2. He has no
10 money, but excellent credit.

11 The Tannersville builder tells
12 Victim No. 2 he has a great investment
13 property: A tavern, a four-unit apartment
14 building and a two-story three-bedroom
15 house all for 200,000.

16 The Tannersville builder also shows
17 Victim No. 2 a lease agreement showing that
18 the property is already earning \$1300 a
19 month. The lease agreement is signed by
20 Victim No. 1.

21 Imagine how much money will be
22 earned once the four-unit apartment
23 building is leased out and the tavern is
24 reopened?

25 New York Victim No. 2 applies for a

1 \$190,000 mortgage through a
2 California-based lender. After the
3 property is appraised by a professional
4 Newfoundland-based appraiser for \$250,000,
5 the mortgage is approved.

6 The Tannersville builder receives a
7 check for \$190,000 from the lender at
8 closing. Victim No. 2 admits that he never
9 visited the property site, relying solely
10 on the appraisal report.

11 The Tannersville builder tells
12 Victim No. 2 that he'll collect the rents
13 and pay the mortgage. And when the rent
14 collection exceeds the mortgage, Victim No.
15 2 will get the difference.

16 Of course, Victim No. 2 never
17 receives any rental income and loses the
18 property in a mortgage foreclosure. The
19 California-based bank never received a
20 single mortgage payment.

21 Over time, I received calls from
22 Victim No. 1, Victim No. 2 and I eventually
23 interviewed representatives from the bank.

24 I convinced the bank to pay for a
25 second appraisal from an appraiser

1 recommended by our office, because we don't
2 have the funds to pay for the appraisal.

3 I meet with the new appraiser at the
4 Mt. Pocono property. We find a farmhouse
5 with broken windows, a sagging porch, a
6 leaky roof and rotted wood siding. The
7 four-unit apartment building has collapsed
8 floors and a missing roof. The tavern is
9 missing doors, windows and much of the
10 floor.

11 The house, tavern and the apartment
12 share a cesspool. The overflow from the
13 cesspool leaks into the tavern basement and
14 is waist deep.

15 The appraiser states that the value
16 of the property is a negative \$50,000. Any
17 seller would need to demolish the
18 buildings, remove the debris and fill in
19 the cesspool before the property would be
20 sellable. The bank does not want to follow
21 through with the prosecution.

22 Victim No. 1 is homeless. Victim
23 No. 2 is -- no longer has good credit.
24 When I interviewed the original assessor, I
25 am told that one man's junk is another

1 man's treasure. And he based his appraisal
2 on what the property's potential might be
3 worth if it were cleaned up.

4 The Tannersville builder is still in
5 business today. I've received several
6 other complaints regarding this builder,
7 and I've since charged him with felonies in
8 a different matter.

9 Now, I don't have any more detailed
10 scenarios, but David had mentioned a couple
11 of things.

12 I have a Stroudsburg mortgage broker
13 that got his own dedicated 800 number for
14 verifying employment. One mortgage
15 applicant, a New York doorman who listed
16 his income at \$500 per week, unknowingly
17 has his mortgage application changed to
18 reflect a thousand dollars per week.

19 His employer's telephone number is
20 changed in the mortgage -- to the mortgage
21 broker's 800 number. The mortgage is
22 approved, and the New York doorman moves
23 into his new Pocono Mountains home.

24 In less than a year, he loses the
25 house in a mortgage foreclosure, and the

1 85-year-old victim is homeless.

2 Three years ago, an employee at a
3 Lehigh Valley-based mortgage brokerage firm
4 forges an applicant's signature, and the
5 mortgage is approved.

6 The applicant, discovering that the
7 mortgage payments are almost double what
8 she expects, files a complaint.

9 I arrest the employee, and he's
10 convicted of forgery. Three months ago, I
11 interview a home buyer who claims that
12 either his mortgage broker or his builder
13 altered an appraisal in order to obtain a
14 mortgage.

15 When the home buyer discovers the
16 alteration, he backs out of the deal. The
17 builder refuses to return the deposit
18 money. I call the broker and attempt to
19 discover who might have altered the
20 appraisal documents.

21 The employee I arrested three years
22 ago answers the phone. I end up
23 interviewing the same employee I arrested
24 for forgery three years before. Although
25 denying involvement, the mortgage broker

1 forwards money equal to the victim's
2 deposit to the builder who, in turn,
3 refunds the buyer his deposit.

4 I'm hoping that the mortgage broker
5 fires the employee. Ultimately, it doesn't
6 matter because I expect to run into him
7 again working for another broker.

8 I'd like to add that, although it is
9 apparent that we need regulations for
10 employees and mortgage brokers and stronger
11 requirements for the appraisers, we also
12 need resources and training to investigate
13 and prosecute offenders.

14 I imagine that investigators and
15 attorneys working for the regulatory
16 agencies are already overwhelmed with the
17 investigation and enforcement of existing
18 rules and regulations.

19 I don't see how they could
20 effectively enforce new laws without
21 additional resources.

22 Local police and prosecutors'
23 offices probably receive the bulk of
24 complaints regarding mortgages schemes,
25 phony appraisals and other frauds related

1 to real estate mortgages.

2 We need training and guidance in
3 investigating and prosecuting these frauds.
4 Better communications between agencies and
5 improved complaint referral, perhaps
6 Internet-based, will go a long way to
7 protecting Pennsylvania residents from
8 these scam artists that never seem to be
9 put away.

10 CHAIRMAN DALEY: Questions from the
11 committee?

12 REPRESENTATIVE WANSACZ: If I could,
13 just to the question I posed earlier to the
14 D.A., once you believe that you're a victim
15 of a case like this, what is their first
16 step? Can you walk me through the process?

17 ERIC KIRSCHNER: Well, if we get the
18 call?

19 REPRESENTATIVE WANSACZ: Well, if
20 I'm the victim, what should I do? What's
21 the first thing?

22 ERIC KIRSCHNER: Well, if I were a
23 victim of a scam like this, I would first
24 notify the -- I would go online and file a
25 complaint with the Attorney General's

1 office, because they have the Bureau of
2 Consumer Protection Complaint Web site
3 which has a complaint form on it, and you
4 can fill that complaint form out.

5 Then I would follow up with a phone
6 call and get directions as to what should I
7 do next. And I'm really not sure what --

8 REPRESENTATIVE WANSACZ: They
9 shouldn't contact your office or contact
10 the local police? They should go directly
11 to the Attorney General? You think that's
12 the first step?

13 ERIC KIRSCHNER: If they contact me,
14 then I will refer -- I examine every case
15 that comes in. If I can find a crime that
16 I can prosecute, such as a forgery or a
17 theft, like I mentioned in some of these,
18 then I would take that case, and I would
19 prosecute it. I would investigate it and
20 forward it to the D.A.'s office for
21 prosecution.

22 Many times people call thinking they
23 were scammed and weren't. They simply had
24 bad credit or they lied and put something
25 false on their application.

1 It's hard to distinguish whether or
2 not -- so much of this stuff comes in. I
3 get three or four calls a week on mortgage
4 and real estate fraud. It's hard to
5 distinguish whether it's the victim's fault
6 or it's the mortgage company's fault or
7 it's no one's fault.

8 So, yes, we will investigate and
9 forward it to the proper authority. It
10 would be easier if we could -- if we had a
11 policy or procedure or guide for referring
12 these to, say, the Department of Banking or
13 the Department of State, whoever might
14 handle that complaint.

15 And if the people are licensed --
16 that employee of the mortgage brokerage
17 firm -- who, by the way, also has a felony
18 arrest and marijuana conviction in New
19 Jersey, or felonies in some cases. That
20 broker has a felony arrest. So he would
21 not even get a license and wouldn't be in
22 business.

23 But having been in business when we
24 arrested and convicted him of forgery, he
25 wouldn't have been able to go to another

1 brokerage firm and become another employee
2 there and do the same thing all over again.
3 He did exactly the same thing he did
4 before, three years ago.

5 CHAIRMAN DALEY: How many cases do
6 you think there have been? How many cases
7 do you think?

8 ERIC KIRSCHNER: I went through, I
9 think, 120 to come up with five scenarios.

10 CHAIRMAN DALEY: 120?

11 ERIC KIRSCHNER: That I have.

12 CHAIRMAN DALEY: How many do you
13 think in the real world are out there in
14 Monroe County?

15 ERIC KIRSCHNER: I think many more
16 than that. Not everybody knows to call the
17 D.A.'s office. They might call the police
18 department, and the police department might
19 refer them to another agency. So it's only
20 those cases that come into the D.A.'S
21 office.

22 CHAIRMAN DALEY: Representative
23 Harhart?

24 REPRESENTATIVE HARHART: I think you
25 took my question, Representative Daley.

1 CHAIRMAN DALEY: I apologize.

2 REPRESENTATIVE HARHART: That's all
3 right.

4 CHAIRMAN DALEY: You said Pike
5 County is fast growing also. So there's a
6 possibility that wherever we have new
7 development, quick development, people
8 coming in from New York or New Jersey or
9 from outside the state that's unfamiliar
10 with the laws of Pennsylvania, as the
11 District Attorney said, that there's a
12 possibility that this is going to be a new
13 cottage industry for certain people.

14 ERIC KIRSCHNER: This is not new.
15 It's been going on for the last three or
16 four years. I would imagine in many cases
17 they don't even complain to anybody. They
18 just go away. They just pack up and go
19 away.

20 REPRESENTATIVE HARHART: Just to
21 follow up on Representative Daley's
22 question, when you find these people, what
23 is their term? I mean, what kind of
24 sentencing do they get? Do they get a
25 sentencing once they're found and fined?

1 ERIC KIRSCHNER: Well, we have a
2 couple of cases in the pipeline, but we
3 have -- and the theft cases are clear.
4 They're going to be sentenced to jail time.

5 REPRESENTATIVE HARHART: For how
6 long?

7 ERIC KIRSCHNER: A couple of years.
8 The forgery, he was not -- he did not get
9 any jail time. He got -- he had to pay
10 back 40 or \$50,000 in restitution and
11 fines, but he got no jail time.

12 CHAIRMAN DALEY: First offense?
13 ARD?

14 ERIC KIRSCHNER: First offense could
15 be ARD, yes.

16 REPRESENTATIVE HARHART: That's
17 interesting. Thank you.

18 REPRESENTATIVE CARROLL: One thing,
19 to follow up Representative Wansacz, not
20 all of the communities have a local police
21 department. And whatever mechanism is put
22 in place for the first step that
23 Representative Wansacz was describing has
24 to include the possibility that the victim
25 may not have a local police department to

1 turn to.

2 So we have to be certain that we
3 have a mechanism in place to allow for some
4 relief or attempted relief, absent a local
5 police department.

6 ERIC KIRSCHNER: And in many cases,
7 local police departments don't have a
8 specialized white collar crime unit to do
9 an investigation.

10 REPRESENTATIVE CARROLL: The local
11 police department that I'm familiar with, I
12 doubt highly that they would have anybody
13 on their department staff that would be
14 capable of, you know, addressing these
15 kinds of very narrow and particular crimes.

16 CHAIRMAN DALEY: Any other
17 questions?

18 * * *

19 (No response.)

20 * * *

21 CHAIRMAN DALEY: I'd like to
22 introduce Representative Scavello who just
23 joined us.

24 Thank you very much for your
25 testimony, gentlemen. We find it -- I know

1 I find it enlightening and quite
2 disconcerting how we're going to try to get
3 a handle and wrap our hands around this,
4 because obviously it's a problem all over
5 Pennsylvania. Here, it's sort of like the
6 epicenter of what's happening.

7 The next gentleman who will testify
8 is Paul Wentzel, Pennsylvania Department of
9 Banking, concerning current lawsuits and
10 history.

11 PAUL WENTZEL: Good morning. My
12 name is Paul Wentzel, and I'm executive
13 assistant to the Secretary of Banking and
14 legislative liaison.

15 Vickie Reider, who is the current
16 acting Secretary of Banking, testified
17 before the committee two weeks ago in
18 Carnegie.

19 And I was reminded in the questions
20 that were asked about consumers, that we
21 just doubled our consumer services staff in
22 the Department of Banking.

23 Any consumer that would have a
24 problem with a mortgage company or an issue
25 with financial institutions should call

1 1-800-PABANKS. That's our toll-free.

2 We have six state people there who
3 answer those phones, and they're very
4 experienced in consumer and mortgage
5 issues.

6 I think that would be helpful to the
7 consumers if they have problems. And
8 they've worked with people from Monroe
9 County over the last couple of years.

10 The Chairman has asked me to talk
11 about current law, give a little history
12 and background on the current law.

13 So Sandy is back there. She said
14 she was going to serve coffee if it got
15 really slow to keep you guys with it, but
16 I'll try to keep it moving.

17 The original Mortgage Bankers and
18 Brokers Act portion of the Mortgage Bankers
19 and Brokers Consumer Protection Equity Act
20 was approved by the General Assembly in
21 1989.

22 I know Representative Daley was
23 around for that. He probably remembers
24 there was heavy debate over a couple of
25 years on that statute.

1 It provided for the first ever
2 licensure and regulation of nondepository
3 first mortgage business in Pennsylvania.
4 Pennsylvania was among the first five
5 states to enact such a statute. In fact, I
6 think we were the third state and the
7 second state in the eastern part of the
8 country.

9 The original bill was a Casey
10 Administration bill. The Banking
11 Department was primarily focused on first
12 mortgage brokers at the time that were
13 abusive to consumers.

14 We worked closely with the former
15 chairman of this committee and Chairman
16 Daley's former colleague from Fayette
17 County, Representative Fred Taylor, and his
18 staff in developing the original
19 legislation. And it was a long, arduous
20 process to get the legislation shaped up.

21 The statute requires a person who
22 directly or indirectly originates or closes
23 a mortgage loan with his own funds for
24 consideration be licensed as a mortgage
25 banker.

1 It does the same for mortgage
2 brokers who indirectly negotiate or place
3 mortgage loans for others for
4 consideration.

5 So the mortgage banker is the
6 lender. The broker is the arranger of the
7 loan. The mortgage banker has the money.
8 The brokers have no money. They arrange
9 loans.

10 The Act contains a series of
11 exemptions, some of which had to be added
12 to secure passage of the legislation.

13 State and federally chartered
14 depository institutions -- banks, savings
15 and loans and credit unions -- are
16 completely exempt because they're regulated
17 under other statutes.

18 Subsidiaries and affiliates of
19 depository institutions are partially
20 exempt. This is kind of an unusual
21 structure. This means that they are
22 licensed, but they are not required --
23 they're required to comply with the
24 regulatory provisions of the bill. So they
25 don't have a license, but they must meet

1 the other provisions, and they must be
2 registered with the Department so we know
3 who they are if they're operating in
4 Pennsylvania.

5 Attorneys are exempt from the Act in
6 the normal practice of the legal business.

7 Realtors have an interesting sort of
8 partially exempted exemption tied to
9 compensation and whether they are involved
10 in the sale of the property as well as the
11 loan.

12 As we heard earlier, builders are
13 exempt when obtaining mortgages on their
14 own construction.

15 Insurance companies are exempt and
16 their mortgage affiliates and subsidiaries
17 are partially exempt, but also must
18 register with the Department.

19 Consumer discount companies like
20 Beneficial, Household, American General are
21 partially exempt when making mortgage loans
22 outside of the provision of the Consumer
23 Discount Company Act.

24 Brian Hudson is here from PHFA, the
25 executive director. His operation is

1 exempt. I know he's pleased with that.
2 And so are nonprofit corporations that
3 promote home ownership.

4 Commercial loans and business loans
5 are completely exempt from the Act. So we
6 don't regulate the business loan or the
7 commercial loan.

8 W-2 employees of a mortgage banker
9 or a mortgage broker are exempt. And, as
10 you know, House Bill 1079, Representative
11 Siptroth's bill, removes the employee
12 exemption, as well as those currently in
13 place for realtors, builders and insurance
14 companies. We believe that these
15 individuals who deal directly with
16 consumers need to be licensed.

17 To give you a few numbers, of first
18 mortgage bankers and brokers, there's 400
19 companies of mortgage bankers, with 1220
20 branch offices, currently licensed in
21 Pennsylvania; 2800 mortgage brokers, with
22 600 branch offices. All these things are
23 growing.

24 We have ebbs and flows in the
25 mortgage industry, but it seems like the

1 brokers just continue to be licensed. We
2 have more of them licensed every year.

3 We have 131 loan correspondents,
4 with 100 branch offices. These are
5 mortgage brokers who can close loans in
6 their own name, and they simultaneously
7 assign the loan to a lender.

8 And then we have 363 limited brokers
9 who are exclusive agents that are
10 authorized to broker refinances of first
11 mortgages only.

12 Applicants for licensure and their
13 officers, directors and principals must be
14 of good character and reputation. That's
15 in the statute.

16 The Department has given more
17 scrutiny to these individuals in recent
18 years, trying to make sure that we have
19 good people in this industry.

20 Mortgage bankers have the more
21 stringent licensing requirements, which
22 includes \$250,000 of tangible net worth
23 that they have to keep in the company, a \$1
24 million funding capability and mandatory
25 fidelity bond coverage.

1 Brokers' requirements aren't very
2 stringent. One tough requirement for them,
3 though, is that they have to have a
4 \$100,000 penal bond in place if they take
5 fees up front from a borrower. So that
6 penal bond is there if a consumer is
7 damaged, and they would have access to
8 their fees that they paid to the broker if
9 the loan isn't produced.

10 One individual from each mortgage
11 banker or broker office is required to
12 attend a minimum of six hours of continuing
13 education annually. That's good. That was
14 inserted, I think, in 2000 or 2001. So
15 they're going -- they're getting CE every
16 year from their associations and other
17 groups.

18 The bill, House Bill 1079, would
19 require all applicants for mortgage
20 licensure to successfully complete 12 hours
21 of instruction and testing relating to the
22 mortgage loan business and state and
23 federal statutes before becoming licensed.

24 Under the current law -- and the
25 industry doesn't like this -- licensees are

1 required to keep an office in Pennsylvania.
2 They must have a bricks-and-mortar spot in
3 Pennsylvania where records are kept and
4 where examiners can go to look at those
5 records. They're required to maintain
6 books, accounts, records and documents
7 which the Department has full access to
8 when conducting examinations. They're
9 filing an annual report with us, right now
10 on May 1 of each year, that we can look at
11 how they're operating and it has important
12 regulatory information in it and business
13 information. And it's part of our renewal
14 process. We look at this information and
15 consider whether we'll renew the licensee.

16 They're subject to examination at
17 the discretion of the Department. So
18 there's not a mandatory examination for a
19 mortgage company like there is for a bank
20 or savings and loan or a credit union.

21 Some other things they've got to do,
22 they've got to refund fees -- this is in
23 the statute -- when a mortgage loan is not
24 produced within the same time specified by
25 the mortgage banker or broker at the rate,

1 term and cost agreed to by the borrower.
2 So that's important. It's on the mortgage
3 banker or broker to deliver the loan as
4 contracted for.

5 The other thing, they have to ensure
6 that all lock-in agreements are in writing.
7 This was an issue. For a number of years,
8 we didn't require that, and then it got to
9 be an issue.

10 The 2001 amendment prohibited
11 mortgage brokers from locking in interest
12 rates because they really can't lock them
13 in because they don't have the money.

14 So the General Assembly Act said
15 only mortgage bankers can lock in interest
16 rates, and that was a good consumer
17 protection that was placed in the Act.

18 Our authority under the Act is
19 relatively broad. The Department can issue
20 rules and regulations regarding the proper
21 conduct of the mortgage business.

22 This is very important language that
23 we were able to have inserted by
24 Representative Taylor back in '89. And
25 we're currently using this to develop and

1 promulgate our proposed "ability to repay"
2 regulation, which is very important, that
3 we discussed with the Chairman and that you
4 all will be seeing fairly soon. It's going
5 to be starting through the Independent
6 Regulatory Review process within a month.

7 We can suspend, revoke or refuse to
8 renew any license for several reasons,
9 including if they make a material
10 misstatement on an application -- and
11 there's more of that than you might
12 think -- violating provisions of the Act or
13 regulations and demonstrating negligence or
14 incompetence in performing any act covered
15 by the statute.

16 In terms of penalties, non-licensees
17 committing a felony of the third degree, if
18 they operate as a mortgage banker or
19 broker, then the Department can also levy
20 fines against the unlicensed entities. And
21 there's a lot more of those than you might
22 think also, as many of you will discover.

23 Licensees that violate the Act are
24 also subject to fines up to \$2,000 per
25 offense under the current law. Under House

1 Bill 1079, the amount of the fine would be
2 boosted to a maximum of \$10,000 per
3 offense.

4 There was a major change in the Act
5 in June of '01 when Representative Dwight
6 Evans sponsored an amendment that added the
7 Consumer Equity Protection Act provisions
8 to the statute. And this is sort of not a
9 well-known -- not well-known provisions.

10 But the key ones preempt all
11 political subdivisions from enacting and
12 enforcing ordinances pertaining to the
13 financial or lending activities by state or
14 federally regulated entities.

15 So a city or a town can't pass an
16 ordinance that regulates a bank or another
17 financial entity.

18 Also, the amendments prohibit
19 certain predatory lending practices with
20 regard to closed end home equity loans of
21 less than \$100,000 made at high cost. That
22 generally means the interest rate and point
23 triggers in the Federal Home Ownership
24 Protection Act, known as HOEPA.

25 But for the most part, lenders have

1 avoided the Act 55 provisions by lending at
2 interest rates and points below the federal
3 triggers.

4 So that's probably -- it's kind of a
5 two-edged sword. It's good because it's
6 making loans at lower interest rates. But
7 the protections that are Act 55 aren't
8 being helpful to consumers because those
9 types of loans aren't being made for the
10 most part.

11 The Act's been updated regularly by
12 the General Assembly. So it's in pretty
13 good shape. However, we would like to see
14 the individual loan originators licensed;
15 remove the Realtor, builder and insurance
16 company exemptions; establish much higher
17 standards for licensure; upgrade our
18 enforcement authority; and increase the
19 penalties in the Act. And House Bill 1079
20 would accomplish that.

21 The next Act I'll get into is the
22 Secondary Mortgage Loan Act, which is less
23 known. It was enacted in 1980, about 10
24 years before the First Mortgage Act. It
25 does not contain the same licensing

1 standards, enforcement authority or
2 consumer protections comparable to those in
3 the First Mortgage Act.

4 Prior to its enactment, home equity
5 lending was not very common in
6 Pennsylvania. I guess you have to be of a
7 certain age to remember that. But people
8 didn't get home equity loans or home equity
9 lines of credit back before this Act was
10 enacted to a great extent.

11 It's our understanding that the
12 consumer discount companies made a limited
13 number of small loans secured by real
14 estate prior to 1980.

15 Banks, savings and loans and credit
16 unions tended to refinance a borrower's
17 first mortgage if they needed cash for home
18 improvements or for college tuition or for
19 a vacation. So you would just re-fi the
20 first, instead of taking out money in a
21 second or home equity loan, back prior to
22 the enactment of this Act.

23 Under this Act, the second mortgage
24 is a loan in a principal amount in excess
25 of \$5,000 -- it's got that cap -- which is

1 secured by a lien on real estate where the
2 property is subject to a prior mortgage and
3 is used as the residential dwelling. So
4 it's only for residential property that
5 these loans can be made against.

6 The Act required licensure and
7 regulation of all second mortgage lenders
8 or home equity lenders. Once the Act
9 became law, it became a very profitable
10 business for the finance company industry.

11 It seems like banks came along later
12 and saw what a profitable and good business
13 it's going to be and helpful to consumers.

14 In 1989, the General Assembly
15 expanded the coverage of the Act to second
16 mortgage loan brokers. There were no
17 second mortgage loan brokers in the early
18 days of the legislation.

19 And then in 1995, they added
20 broker's agents, who were exclusive
21 brokers. They make loans only -- they
22 broker loans only to one lender.

23 This Act contains a few exemptions,
24 but they're much less than the First
25 Mortgage Act. State and federally

1 chartered depository institutions are
2 exempt from these provisions, but their
3 subsidiaries and affiliates are not, like
4 they are in the First Mortgage Act.

5 Realtors and attorneys are exempt in the
6 normal course of business.

7 Some more numbers on second mortgage
8 lenders and brokers: 405 second mortgage
9 lenders, with 215 branches; 2,115 second
10 mortgage brokers, with 702 branches right
11 now; and 130 broker's agents that are
12 brokers -- that broker loans exclusively
13 for one lender.

14 Primarily that's for Primemercia, a
15 company that sells insurance and securities
16 and also makes -- does some mortgage
17 lending.

18 Again, applicants for a second
19 mortgage lender's license are required to
20 have at least \$200,000 of legal capital.
21 Brokers need to have \$25,000 in capital if
22 they accept advance fees. If they don't
23 accept advance fees, they don't have to
24 have any capital at all.

25 Unfortunately, this statute does not

1 provide the Banking Department with the
2 authority to scrutinize applicants to the
3 extent the First Mortgage Act does. That's
4 why we're trying to make these changes in
5 the Act through the legislation.

6 A couple of things that the second
7 mortgage companies can do. They can
8 collect a three percent application fee,
9 three percent of the original principal of
10 the loan.

11 They can charge a maximum rate of
12 1.85 percent on the unpaid balance. And
13 there's caps -- interest rate caps, rate
14 caps and fee caps in this statute and not
15 in the First Mortgage Act statute, because
16 Congress deregulated first mortgage lending
17 and said in 1980 and 1982 that the
18 states -- you cannot regulate first
19 mortgage lending. But they left the second
20 mortgage home equity lending alone.

21 So this Act allows for caps of
22 interest rates and fees on these types of
23 loans.

24 Further, the second mortgage
25 companies can make open end loans, in

1 addition to closed end loans. So they can
2 have open end lines of credit, which is a
3 product that's been quite successful for
4 them.

5 They can provide credit life, credit
6 accident and health, and credit
7 unemployment insurance, but borrowers can't
8 be compelled to purchase this insurance.

9 So they can make it appear that in
10 order to get the loan, you take the
11 insurance. Borrowers will think, "Well, I
12 want this loan. So I ought to take this
13 type of insurance." This statute prohibits
14 that from occurring.

15 Again, licensees are required to
16 maintain a principal place of business in
17 the Commonwealth, maintain books and
18 records and documents which the Banking
19 Department would have free access to during
20 examinations, which are required for the
21 second mortgage companies and the second
22 mortgage brokers.

23 So under this statute, we're
24 required to do an examination at least once
25 every two years like we are for banks and

1 savings and loans and credit unions and
2 some other entities.

3 They have to maintain their
4 accounting records in compliance with
5 generally accepted accounting principles.
6 They also have to file an annual report so
7 we can review their status and see how
8 they're doing and make sure that they're
9 eligible for renewal of their license.

10 This provision requires them to
11 receive permission from the Banking
12 Department if they want to sell loans or
13 package loans and sell them to a
14 non-licensee.

15 So the way this Act works, a
16 licensee cannot sell outside of the license
17 arena without permission from the
18 Department.

19 Another thing that's positive in the
20 Act is it requires lenders to permit
21 prepayment of loans without penalty.
22 There's no prepayment penalty provisions in
23 this Act. They're not allowed.

24 Again, we have the authority to
25 issue rules, regulations and orders

1 regarding the proper conduct of the
2 mortgage business. And the second mortgage
3 bankers and brokers will be included in our
4 "ability to repay regulation," which you'll
5 see come before the committee in short
6 order.

7 We can suspend, revoke or refuse to
8 renew a license for any of the same reasons
9 cited in the First Mortgage Act. However,
10 we cannot take action against a licensee
11 for negligence or incompetence, as
12 permitted under the First Mortgage Act.
13 That's in the fourth provision, and we
14 would like to add that into the Second
15 Mortgage Act so that we have that
16 authority.

17 Penalty-wise, we don't have the
18 authority to penalize nonlicensees for
19 violation of the Act. So if there is -- if
20 we find someone who is operating a second
21 mortgage business, what we have to do is
22 refer them to the Attorney General for
23 penalties. Fines for other violations by
24 licensees are comparable in the two Acts.

25 The Act's licensing standards,

1 enforcement authority and penalties for
2 violations have not been amended in many
3 years. The last amendment to this Act was
4 in 1995. So they need to be upgraded and
5 should mirror those in the First Mortgage
6 Act and what we were proposing in the First
7 Mortgage Act.

8 Individual second mortgage loan
9 originators need to be licensed,
10 professional and accountable; and the
11 exemptions in the two Acts need to be
12 uniform. Enactment of House Bill 1080
13 would accomplish these changes.

14 If I have time, I'll go into two
15 more of the Acts.

16 CHAIRMAN DALEY: We're running a
17 little bit behind. I mean, if you can
18 summarize it, that could be great.

19 PAUL WENTZEL: These are shorter.
20 House Bill 1082 proposes to amend the
21 Department of Banking Code of 1933, which
22 is the -- delineates the powers and duties
23 of the Banking Department.

24 We're focusing on Section 302 which
25 relates to the disclosure of information by

1 the Department.

2 Current law prohibits publishing or
3 divulging of any information obtained from
4 an examination or investigation made by the
5 Banking Department, or any letter, report
6 or statement sent to the Department or any
7 document in the custody of the
8 Department -- so it's a pretty tight
9 standard -- unless it's required by
10 subpoena or when the Department is making
11 investigative referrals to federal, state
12 or local law enforcement agencies or
13 federal or state regulatory agencies.

14 Violation of this provision is a
15 misdemeanor and also means that if a
16 departmental employee does that, they lose
17 their job.

18 This is a pretty serious provision
19 in terms of confidentiality. I don't think
20 there's any other like it in state
21 government, other than maybe the Department
22 of Revenue.

23 This 302 provision was enacted in
24 the '30s with the intent of maintaining
25 confidentiality of information relating to

1 the financial condition of a depository
2 institution or banks and to avert runs on
3 banks.

4 That was all before the Department
5 was charged with regulating nondepository
6 financial services companies, such as
7 consumer discount companies, auto dealers
8 that provide financing and pawnbrokers.

9 In '02, the General Assembly
10 loosened this somewhat, authorizing release
11 of information relating to whether the
12 licensee's license is current, suspended or
13 revoked pursuant to a final order.

14 So if a consumer calls in and wants
15 to know if a company is still active or
16 under suspension, we can tell them that.
17 We couldn't do that before '02.

18 We can also talk about whether an
19 individual has been suspended or prohibited
20 from participating as a licensee pursuant
21 to a final order. We call this the death
22 penalty provision. A person has been so
23 bad, we have to say they're out of the
24 business. You can't return. We can talk
25 about that to the press or the public.

1 The House Bill 1082 amendments would
2 authorize the Department to publicly
3 release information concerning departmental
4 enforcement actions against a nondepository
5 licensee, not banks, a nondepository
6 licensee, such as a mortgage banker or a
7 broker, when a fine -- when an order or
8 fine or adjudication has been issued by the
9 Department.

10 This way consumers would be informed
11 about the companies that have a record of
12 violations, but continue to operate in the
13 state.

14 One more bill, House Bill 1084,
15 proposes amendments to the Loan Interest
16 and Protection Law, which is commonly
17 referred to as the Commonwealth's usury
18 statute.

19 The legislation establishing this
20 statute was originally sponsored by Senator
21 Ed Zemprelli from Pittsburgh who guarded
22 its provisions for many years.

23 At one time, the statute determined
24 the maximum allowable interest rate you
25 could charge on a mortgage loan in

1 Pennsylvania. And the interest rate was
2 tied to the monthly index of Long-Term
3 United States Government Bond Yields, plus
4 2.5 percent, which is published and still
5 continues to be published in the
6 Pennsylvania Bulletin.

7 So at one time, the state controlled
8 the maximum rate that could be charged on a
9 mortgage. However, these interest rate
10 limitations were preempted by federal law
11 in the early 1980s.

12 So we no longer control interest
13 rates at the state level for mortgage --
14 first mortgages.

15 The law continues to cap the maximum
16 legal rate of interest a nonmortgage
17 consumer lender may charge at six percent
18 per year, unless otherwise permitted by
19 statute. The six percent is the maximum
20 that can be charged by a nonregulated
21 entity.

22 The statute provides exemptions from
23 the six percent annum cap for business
24 loans, corporate loans and unsecured,
25 noncollateralized loans in excess of

1 \$35,000.

2 What the bill would do is increase
3 the monetary cap for residential mortgage
4 loans in the Act from the current 50,000 to
5 197,000. That's the amount -- the 50,000
6 would be allowing for inflation since 1974.

7 But I just discovered yesterday that
8 that one-ninety-seven amount is low. And I
9 know we've discussed it, and you thought it
10 was low also.

11 That one-ninety-seven is the amount
12 of inflation until '04 when we did our
13 study on mortgage foreclosures. We may
14 want to -- if you decide to move this bill,
15 we might want to increase that cap.

16 The impact of these changes will be
17 to prohibit prepayment penalties by
18 nondepository lenders and also increase the
19 coverage of the Secondary Mortgage Loan Act
20 to the \$197,000 cap.

21 So I didn't think I'd get into --
22 I've gone on long enough. I didn't think
23 I'd get into the other two statutes,
24 because they're not banking in nature.

25 CHAIRMAN DALEY: We have a couple of

1 questions.

2 REPRESENTATIVE WANSACZ: Thank you.
3 I think we're going to ask to put on that
4 cup of coffee.

5 PAUL WENTZEL: It's not too
6 exciting. The Chairman asked for it,
7 though.

8 REPRESENTATIVE WANSACZ: You're very
9 informative. You're a man of knowledge.
10 Thank you for the history.

11 My quick question is, with the bills
12 introduced -- and you heard the previous
13 testifier about the problems specifically
14 here in Monroe County, but are happening in
15 other growth areas of the state -- will
16 these bills address those problems, or do
17 we need to go a little bit further? I know
18 you made some suggestions here in your
19 testimony.

20 PAUL WENTZEL: Will it address --

21 REPRESENTATIVE WANSACZ: Will it
22 address the problems here that we're seeing
23 currently -- you just heard the District
24 Attorney testify how people are -- will
25 these bills help stop --

1 PAUL WENTZEL: I didn't hear all his
2 testimony. But it will help in getting --
3 the part of it, from our perspective, I
4 said this to the Chairman, is to get these
5 individual loan solicitors or originators
6 licensed and controlled and professional.
7 If we can get them under control, that will
8 help.

9 The main thing is, in terms of the
10 foreclosure issues, we're not getting into
11 it today. I think we will in the future.
12 But the regulation we've developed
13 regarding the borrower's ability to repay
14 and requiring lenders to verify borrowers'
15 ability to repay and their income and other
16 loans and expenses they may have, if we can
17 control that, that's going to be very
18 helpful.

19 REPRESENTATIVE WANSACZ: If I
20 could -- and I know Representative Siptroth
21 did a great job of identifying these needs
22 and getting them licensed. My question is,
23 also serving on the Professional Licensure
24 Board, the licensing -- I mean, is there
25 just going to be, "Okay. Here's 12 hours

1 of class. You're licensed"? Are you going
2 to have to take a test?

3 PAUL WENTZEL: Take a test?

4 REPRESENTATIVE WANSACZ: Take a test
5 that shows that you know what you're doing
6 and there's ethics involved?

7 PAUL WENTZEL: There's a lot there,
8 and there's going to be -- we already do
9 look at criminal history records. We want
10 to be able to look at the character and
11 history of these prospective applicants and
12 know that they're good people.

13 We're already doing some of that,
14 but not across the board for all the Acts.
15 So if we can get that a little stronger, I
16 think we can keep some more of the bad guys
17 out. Some people that come from out of
18 state that we don't know about, keep some
19 of them out of business. I think that will
20 just help upgrade the business
21 significantly.

22 REPRESENTATIVE WANSACZ: Thank you.

23 CHAIRMAN DALEY: Representative
24 Scavello.

25 REPRESENTATIVE SCAVELLO: Thank you,

1 Representative Daley, for giving me the
2 opportunity.

3 Paul, I really appreciate the work
4 you've done here, and I know from day one
5 the time that you spent here in Monroe --
6 you had no trouble finding this place, I
7 know, because your staff and your office
8 has been here regularly trying to help the
9 folks that had a problem with their
10 mortgages. I know you were able to help
11 quite a bit of them.

12 For the benefit of everyone here,
13 you spent a tremendous amount of weekends
14 here in Monroe to visit with folks that
15 were in jeopardy of losing their homes.
16 And I thank you for that.

17 PAUL WENTZEL: We had -- the deputy
18 secretary spent probably 10 weekends here
19 talking to consumers, trying to help
20 consumers with their mortgage foreclosure
21 problems. It's a tough job, though.

22 REPRESENTATIVE WANSACZ: You did a
23 great job. Thank you.

24 DAVID CALLEN: Paul, you indicated
25 that possibly that threshold of

1 one-ninety-seven should be lifted. I know
2 in this area prices of homes have really
3 escalated.

4 PAUL WENTZEL: Representative Daley
5 told us that the first time we talked about
6 the bills. He said that amount is too low.
7 So we need to check that.

8 DAVID CALLEN: If we picked a
9 median, that would have to be devised by an
10 average of the cost of the average home up
11 here, which is probably around \$250,000,
12 but with some sort of an index built in so
13 that we don't have to readdress that every
14 year.

15 PAUL WENTZEL: That's actually how
16 it's written. But the way -- the
17 one-ninety-seven amount is in the bill.
18 And, actually, that was drafted in '04-'05.
19 So it's a little bit low in terms of what
20 inflation would be of 50,000.

21 We just discovered that yesterday.
22 So if you decide to move the bill, we'll
23 have to change that. You all were thinking
24 about raising it anyhow.

25 DAVID CALLEN: Thank you,

1 Mr. Chairman.

2 CHAIRMAN DALEY: Representative
3 Harhart, do you have any questions?

4 REPRESENTATIVE HARHART: No.

5 REPRESENTATIVE CARROLL: Just one
6 quick question. It seems to me that the
7 buyer is completely unprotected on a lot of
8 these transaction. And, you know, I wonder
9 if the Department has any -- has given any
10 thought or has any position on, you know,
11 some sort of buyer's representative at
12 closings for real estate purchases.

13 PAUL WENTZEL: Like a Realtor?

14 CHAIRMAN DALEY: An attorney.

15 REPRESENTATIVE CARROLL: An
16 attorney, for example.

17 PAUL WENTZEL: Well, I'll tell you,
18 we always encourage that. I don't know if
19 we could statutorily require it, because of
20 the cost involved.

21 REPRESENTATIVE CARROLL: Just for
22 the simple reason, not with respect to the
23 real estate transaction, but with respect
24 to the financial transaction.

25 PAUL WENTZEL: I think that would be

1 good advice. I don't know if we can
2 require that statutorily, but I think it's
3 something we always tell borrowers -- when
4 they call us and they want us to take a
5 look at their contract or have questions
6 about their contract, we say, "It's very
7 good to have an attorney on board to review
8 that."

9 CHAIRMAN DALEY: Well, we can talk
10 to the Bar Association and maybe see what
11 they say about statutorily requiring that
12 in some form or manner.

13 PAUL WENTZEL: I know that when we
14 had our -- when we did our work with the
15 advisory committee, that was an issue for
16 the industry. It made them very nervous
17 about having counseling of the borrowers.
18 And, say, there was an attorney or someone
19 counseling the borrower and the borrower
20 decided to go forward with the loan even
21 though the counselor or attorney said,
22 "Well, this might not be the best loan for
23 you." Then the industry was telling us
24 "Well, we're going to be on the hook. We
25 might be liable in that situation." So it

1 made them nervous.

2 You can understand that. If the
3 borrower decided they wanted to disregard
4 the advice, take the loan, I don't know
5 what we can do about that.

6 CHAIRMAN DALEY: How about
7 developing a form in which they would sign
8 a waiver to highly suggest they have legal
9 counsel or have someone look at this, a
10 professional, and they waive, you know,
11 that right to have counsel look at this.

12 PAUL WENTZEL: I think that would
13 work. That might work.

14 CHAIRMAN DALEY: It would be like an
15 informed consent.

16 PAUL WENTZEL: We actually had
17 talked with our advisory group and consumer
18 groups and industry people about
19 statutorily requiring some counseling for
20 borrowers, particularly borrowers who are
21 sub prime borrowers, that they really know
22 what they're getting into.

23 CHAIRMAN DALEY: John?

24 REPRESENTATIVE SIPTROTH: Just a
25 real quick follow-up to Representative

1 Carroll and what Representative Daley has
2 been speaking about.

3 One of the very reputable local
4 financial institutions requires potential
5 buyers to sit down and watch a videotape,
6 okay, prior to entering into an agreement
7 so that some of this deception that does
8 happen -- and it's not the entire industry.
9 Again, it's a few.

10 PAUL WENTZEL: A few.

11 REPRESENTATIVE SIPTROTH: But some
12 of that deception, the buyer would be aware
13 of what to look for.

14 I think requiring something like
15 that would be approved by the Department
16 would be a great first step. And one of
17 the individuals in the area has furnished a
18 videotape, which I've not had an
19 opportunity to see it, but it does provide
20 information so that the buyer is aware of
21 what transactions are to take place.

22 Regarding the legal counsel, in all
23 fairness to the buyers and without shooting
24 an arrow in the foot of the attorneys, a
25 lot of opportunity -- or a lot of times,

1 the only opportunity you have is at the
2 closing to sit and review the contract.
3 They really don't know what the
4 background -- the history and the
5 background financially is of the individual
6 who is applying for the loan. And that's
7 the real problem here, is most times the
8 buyers -- potential buyers just overexceed
9 themselves.

10 PAUL WENTZEL: That's the rub.

11 CHAIRMAN DALEY: You were talking
12 about PSAs.

13 PAUL WENTZEL: Right. We talked
14 about that with you.

15 CHAIRMAN DALEY: It's seems to me in
16 order to -- it would have to be a real
17 intense marketing campaign in this region
18 through PSAs or other ways of letting
19 people know that if you have a problem or
20 you think you have a problem, maybe you
21 need to stop with the documents and give
22 you a call --

23 PAUL WENTZEL: Right.

24 CHAIRMAN DALEY: -- at the 1-800
25 number, like you said that exists. We need

1 to make sure that people are aware that
2 they may be sitting on a ticking time bomb
3 or it's collapsing underneath them and they
4 don't know that. Of course, I know we have
5 a problem with people coming in from New
6 York in this region that may not see that
7 PSA --

8 PAUL WENTZEL: Right.

9 CHAIRMAN DALEY: -- prior to moving
10 in.

11 PAUL WENTZEL: We've experienced
12 that.

13 CHAIRMAN DALEY: But if they do see
14 it and know it's here -- I mean, you can do
15 billboards. You can do a lot of things.
16 And a lot of these billboard companies,
17 they'll have some vacant billboards in the
18 area. We'd love to write PSAs. I think
19 that's something we need to talk about.

20 By the way, to the committee
21 members, this is such an important issue.
22 I know that some of it's long and
23 laborious, but it's very crucial to the
24 people in this region and throughout
25 Pennsylvania.

1 Although we're running over, I think
2 this is so important. We're not going to
3 cut anyone short, because we need to hear
4 and ask the questions.

5 REPRESENTATIVE YEWIC: I have a
6 question then.

7 CHAIRMAN DALEY: Okay. Go ahead.

8 PAUL WENTZEL: Well, the acting
9 secretary, Secretary Reider, will be
10 shorter next week. We cut her time now.

11 REPRESENTATIVE YEWIC: A real brief
12 question, Paul.

13 PAUL WENTZEL: Yes.

14 REPRESENTATIVE YEWIC: Not very
15 long ago we had about \$125 billion bail-out
16 of the savings and loan industry. Do the
17 folks you work with in the banking
18 community see the same kind of problem
19 here? What's the impact on Pennsylvania?

20 PAUL WENTZEL: With the mortgage
21 companies?

22 REPRESENTATIVE YEWIC: Yes. Are we
23 going to have another bail-out?

24 PAUL WENTZEL: I don't think so. I
25 mean, there was some back a month or so

1 ago, but it seems to -- the shift seems to
2 have righted itself.

3 REPRESENTATIVE YEWIC: The market
4 is going to right itself?

5 PAUL WENTZEL: It seems like it's
6 going to be okay.

7 REPRESENTATIVE YEWIC: So is some
8 of this legislation overkill, or do we need
9 to sit back and see what happens?

10 PAUL WENTZEL: Well, we're not -- I
11 don't think we are getting into those
12 issues. We're trying license these people
13 and make them more professional and have
14 better disclosures, better enforcement.

15 But what happened with the sub prime
16 market over the last couple of months is
17 something highly unusual; and, hopefully,
18 it's corrected itself. But I can't imagine
19 that there would be -- well, there wouldn't
20 be any state bail-out, but there could be a
21 federal bail-out. But I can't imagine that
22 that would happen here.

23 I mean, the difference is that for
24 the savings and loan industry, which there
25 are very few left in Pennsylvania -- we

1 only have eight in the banking department
2 anymore -- the statute said that the
3 federal government, the FSLIC -- the full
4 faith and credit of the United States
5 government was behind the savings and
6 loans, because there were deposits.

7 These lenders, there are no deposits
8 involved. They're lending their money to
9 borrowers. It's not like they hold
10 people's deposits. And that's why the
11 bail-out needed to be done, to protect
12 people's deposits back in the '80s and
13 early '90s when savings and loans failed.

14 REPRESENTATIVE YEWIC: Okay.

15 PAUL WENTZEL: Does that make sense?
16 There's nothing there at risk in terms of
17 deposits or investments that consumers
18 would have.

19 CHAIRMAN DALEY: Dave?

20 DAVID CALLEN: One of the things
21 that you mentioned in your presentation was
22 the requirement for all lenders to have a
23 bricks-and-mortar office in the state --

24 PAUL WENTZEL: Yes. That's on the
25 books now.

1 DAVID CALLEN: -- which is good in
2 terms of being able to walk in. Especially
3 if you have problems with a loan and you
4 need to do a work-out or whatever.

5 But part of what I've been stumbling
6 over in going through this is that the
7 large number of loans that now have been
8 securitized that are being serviced by
9 somebody who has a bricks-and-mortar
10 office, but who actually has absolutely no
11 authority to deal with the loan anyway.
12 All they're there to do is collect a
13 payment. Is that something we should be
14 addressing?

15 PAUL WENTZEL: Well, something I
16 think that came up at the Carnegie hearing
17 is about whether servicers should be
18 licensed, we don't have that in the bill
19 now because it would be a huge undertaking.
20 But I think it's something the committee
21 should consider. But that would be
22 companies all over the country that do
23 servicing.

24 DAVID CALLEN: Yes.

25 PAUL WENTZEL: Sometimes the

1 consumer issues are more with the servicers
2 than they are with the actual originator.

3 DAVID CALLEN: With problem loans,
4 especially.

5 PAUL WENTZEL: Right. We were able
6 to work with them because we might have
7 them licensed in some other way. A lot of
8 times, they're helpful, but sometimes
9 there's no state control of a servicer. I
10 don't think there's much federal control
11 either of a servicer.

12 DAVID CALLEN: Well, one of the
13 large second mortgage guys was -- I don't
14 want to mention them here, because they are
15 trying to do a good job with their loans.
16 But they also service loans.

17 PAUL WENTZEL: Right.

18 DAVID CALLEN: And this fellow told
19 me they have absolutely no latitude with
20 the securitized loans, to try to work them
21 out. I mean, the contract is the contract
22 is the contract. They have to enforce the
23 contract, and that's just kind of
24 ridiculous, in terms of a business
25 practice.

1 PAUL WENTZEL: That doesn't seem
2 completely correct to me. I mean, I think
3 that a loan can be pulled out as a security
4 and treated differently, if necessary.
5 They have to replace it with another loan,
6 I would think. But I'm not an expert on
7 that, but I would think that would be
8 possible.

9 DAVID CALLEN: We need to talk about
10 that more.

11 CHAIRMAN DALEY: Mario?

12 REPRESENTATIVE SCAVELLO:
13 Representative Siptroth mentioned it
14 briefly, and I want to just highlight that.
15 I'm hoping these bills here really address
16 this issue.

17 And that is putting someone into a
18 home that they cannot afford because,
19 believe me, most of these shadow financing,
20 inflated appraisals, all of that that is
21 done, because, by doing that, you're able
22 to put somebody in a home that they cannot
23 afford. And if you look at all the
24 situations in Monroe --

25 PAUL WENTZEL: That's it.

1 REPRESENTATIVE SCAVELLO: -- that's
2 it. That's what we need to address. If
3 we're doing that with this legislation --

4 PAUL WENTZEL: Well, what we're
5 doing is -- we think we already have the
6 authority to address that under these Acts.
7 That's the regulation I mentioned briefly.
8 I didn't get into it deeply, but that's all
9 about the ability to repay and having the
10 lender do that analysis or the broker, to
11 make sure that they have the income, that
12 they don't have so much other debt that
13 they can't pay. That's in the regulation.

14 You will be seeing that soon. It
15 will come before this committee, I think,
16 for review before it finishes, you know --
17 before it's published.

18 REPRESENTATIVE SCAVELLO: That
19 shadow financing, that is what created all
20 this. And the reason why they had that is
21 because they couldn't afford -- they didn't
22 show the income in order to be able to
23 afford that mortgage.

24 PAUL WENTZEL: That's right. I've
25 said to the executive director that these

1 bills are important to us. But, really,
2 the regulation that we're working on
3 probably is more important in terms of
4 addressing those consumer issues here,
5 particularly in Monroe County and Allegheny
6 County.

7 CHAIRMAN DALEY: Mario, we'll get
8 you a copy of that regulation for you to
9 review --

10 REPRESENTATIVE SCAVELLO: Thank you.

11 CHAIRMAN DALEY: -- before we
12 actually review it.

13 REPRESENTATIVE SCAVELLO: I
14 appreciate that. Thank you very much.

15 CHAIRMAN DALEY: Any other
16 questions? Hearing none, Paul, thank you
17 very much.

18 PAUL WENTZEL: Thanks for allowing
19 me to talk so long. I appreciate it.

20 CHAIRMAN DALEY: Our next testifier
21 will be Mr. David Jones, Community Bank,
22 Clarks Summit, Pennsylvania, for the
23 Pennsylvania Bankers Association.

24 Mr. Jones, thank you for coming this
25 afternoon.

1 DAVID JONES: Is it morning or
2 afternoon?

3 Good morning, Chairman Daley and
4 members of the Commerce Committee,
5 including my own state representative,
6 Mr. Wansacz.

7 My name is David A. Jones. I am
8 vice president of Community Bank & Trust
9 Company in Clarks Summit here in
10 northeastern Pennsylvania. We're a
11 community bank with about \$550,000 in
12 assets.

13 I think most of you have my
14 testimony here. If I want to spare you
15 some of the historical stuff, it's up to
16 you, but I can skip that part and go right
17 into the Pennsylvania -- I represent the
18 Pennsylvania Bankers Association. And,
19 again, there's some historical information
20 here, which I know some of you have already
21 heard it. And I can skip that, if you
22 want, and go right into the different
23 proposals that we have and our position on
24 that.

25 CHAIRMAN DALEY: Well, give a

1 cursory outline of the Bankers Association.

2 DAVID JONES: Well, as far as the
3 Pennsylvania Bankers Association -- I mean,
4 it is in the -- right in front of you.
5 We're a trade organization that represents
6 banks and savings and loans and thrifts, a
7 little bit different than the brokers and
8 the mortgage bankers, and perhaps have a
9 different slant on some of these laws.

10 In the write-up here, you'll see
11 that we, the banks, are supervised in
12 numerous ways. We have federal
13 supervision, state supervision. We're
14 audited internally.

15 If we sell loans to Fannie Mae or
16 Freddie Mac or something like that, we are
17 audited by them also.

18 So I think we have a whole different
19 structure of supervision than perhaps the
20 brokers and the mortgage bankers. And this
21 write-up sort of details that. And, again,
22 I can read it, if you wish, or I can go
23 into the -- I know things are running a
24 little bit late. But if you want to go to
25 the actual proposals and what the PBA's

1 position is on these proposals --

2 CHAIRMAN DALEY: You take your time
3 and do what you think is best.

4 DAVID JONES: Let me go through the
5 proposals. And then if you want to, we can
6 go back to some historical information if
7 you want to cover that.

8 But the Department of Banking's
9 specific mortgage lending proposals have
10 recently been introduced in the House --
11 within the House. The PBA's Credit Access
12 Task Force reviewed the Department's
13 proposals during their development and
14 advised our Government Relations Policy
15 Committee, which established PBA's position
16 on the legislation.

17 The Department proposed to amend the
18 Loan Interest and Protection Act, Act 6 of
19 1974, to increase the monetary cap of the
20 Act from 50,000 to one-ninety-seven -- and
21 Paul Wetzel just talked about that just
22 recently, just now -- which will be
23 adjusted for inflation.

24 The primary impact would be to
25 prohibit prepayment penalties on mortgage

1 loans covered by the Act.

2 The bill would also permit the
3 Department to investigate and examine,
4 issue cease-and-desist orders, suspend
5 licenses and bar individuals from serving
6 in capacities regulated by the Department
7 for violations of this Act.

8 It is the PBA's view that free
9 markets are the best means to govern
10 products and services. The mortgage market
11 is very competitive. Most residential
12 mortgages are already obtained without
13 prepayment penalty. The bank I work for,
14 we don't have any prepayment penalties at
15 all.

16 Prepayment penalties are merely a
17 means by which mortgages can be priced
18 differently. The borrowers may choose that
19 option or not. In other words, I think
20 what we're saying is that it's the free
21 market that will determine whether a
22 prepayment is necessary or not and perhaps
23 shouldn't be something that should be
24 legislated against, but let the market set
25 the price.

1 The next one is -- the Department
2 requested an amendment to the Department of
3 Banking Code of 1933 which delineates the
4 Department's powers and duties to permit
5 the Department to publicly release
6 information regarding pending enforcement
7 actions against nondepository licensees,
8 such as mortgage bankers and brokers.

9 Under the current statute, the
10 Department has stated its belief that it
11 may release information to the public only
12 after a final order has been issued against
13 the licensee.

14 And the PBA's position on that is
15 that the PBA believes that the Department
16 of Banking Code requires a number of
17 amendments to modernize its administrative
18 procedures and would like the opportunity
19 to elaborate on our suggestions at a later
20 date.

21 With respect to the specific issue
22 of the release of information by the
23 Department regarding pending enforcement
24 actions against nondepository licensees,
25 the PBA would support the disclosure for

1 final, fully adjudicated enforcement
2 actions.

3 I think, you know, it's sort of like
4 you're innocent before you're proven guilty
5 and when you should actually disclose this
6 information to the public. I think that's
7 sort of the gist there.

8 And in regards to the Real Estate
9 Appraiser Certification Act, the Department
10 wishes to amend the Real Estate Appraiser
11 Certification Act to include the Attorney
12 General and Secretary of Banking on the
13 State Board of Real Estate Appraisers,
14 increase the maximum civil penalty the
15 board may assess from 1,000 to 10,000 for
16 each violation of this Act on who performs
17 appraisals on any federally-related or
18 nonfederally-related real estate
19 transactions without being certified,
20 provide for licensee denial, suspension and
21 revocation in additional circumstances.

22 Again, here we're listing the PBA
23 position. The PBA has long advocated for
24 reform of the State Board of Certified Real
25 Estate Appraisers.

1 In addition to the changes the
2 Department proposes, the PBA requests that
3 experienced commercial and consumer real
4 estate lenders be added to the board.

5 Again, I think what they're saying
6 here is that in addition to professionals
7 in the real estate industry being on the
8 board, they feel there should be other
9 people on this board.

10 PBA also notes that certified
11 appraisals are not required by federal
12 banking regulations in de minimis
13 transactions, and we would appreciate
14 clarification that these amendments are not
15 an attempt to alleviate or obviate the
16 federal financial institutions regulators'
17 ability to govern real estate lending.

18 I don't know how much more I can
19 elaborate on that, except I do think that
20 the PBA's position is that the board that
21 supervises the appraisers should have
22 perhaps other people on it other than just
23 people from the industry.

24 Amending the Pennsylvania Housing
25 Finance Agency statute that governs the

1 Homeowners Emergency Assistance, HEMAP, to
2 require lenders to send copies of revised
3 and expanded Act 91 foreclosure notices to
4 PHFA so that mortgage foreclosures can be
5 monitored on a statewide basis. Such
6 copies could be provided by mail, fax or
7 electronically.

8 Lenders would have to provide copies
9 of specified documents from the original
10 mortgage transaction to PHFA in order to
11 receive payments on behalf of mortgagors
12 approved for assistance.

13 Extend PHFA's temporary stay of
14 foreclosure under the HEMAP program to
15 include the period of administrative
16 appeal.

17 Reduce the interest rate on HEMAP
18 loans from the current nine percent to the
19 interest rate under Act 6 of 1974.

20 Again, noting PBA's position on
21 this, we should note that only a very few
22 percentage of Act 91 notices result in
23 mortgage foreclosure.

24 PBA believes that its members would
25 be unable to provide, in the time allotted,

1 all of the information specified by the
2 expanded notice as well as those documents
3 specified from the original mortgage loan
4 and cannot support such a requirement.

5 In other words, I think what we're
6 saying here is that in the banking
7 industry -- in the financial industry, many
8 people become delinquent on their loans,
9 and many notices go out to people saying
10 you better pay up.

11 In most cases, the people pay -- are
12 able to correct that. Sometimes they have
13 temporary financial situations, and they
14 can't, and then they catch them up.

15 I think to require -- it's a little
16 overkill to require a letter to be sent
17 every time a letter is sent out to a
18 customer.

19 I think you're more interested in
20 statistical information perhaps than
21 knowing that a letter has been sent out.
22 Lots of letters go out to lots of
23 customers. And in most cases, the
24 delinquency is cured. I lost my place
25 here.

1 As far as the PBA's position, we
2 should note that only a small percentage of
3 Act 91 notices result in a mortgage
4 foreclosure.

5 The PBA believes that its members
6 would be unable to provide in the time
7 allocated or allotted all of the
8 information specified by the expanded
9 notice, as well as those documents
10 specified from the original mortgage loan
11 and cannot support such requirements.

12 PBA members would agree to supply
13 PHFA a quarterly summary of Act 91 notices
14 sent to mortgagors in their current form
15 arrayed by zip code.

16 PBA cannot support extending the
17 stay, given that very few HEMAP
18 applications are approved after an
19 administrative appeal.

20 I don't know -- we're talking about
21 foreclosures in Pennsylvania. And, again,
22 I'm speaking more personally than from the
23 PBA position, but it takes a long time to
24 foreclose on a property. From my personal
25 experience at our bank, the process is a

1 long process, but it gives the customer
2 every opportunity to cure the default. And
3 I think the average -- I'm going to guess
4 at this -- Paul Wentzel would probably know
5 better than I would, the average time to
6 foreclose on a property, but it's long. I
7 think in Pennsylvania it's longer than in
8 many states.

9 CHAIRMAN DALEY: About a year.

10 DAVID CALLEN: As long as.

11 DAVID JONES: Nine months to a year.

12 CHAIRMAN DALEY: Up to a year at
13 least.

14 DAVID JONES: I mean, banks don't
15 just snap their fingers and say, "You're
16 out of the house."

17 I think that in most cases, they
18 work with the customer to try and solve the
19 default.

20 The Department proposes amending the
21 Mortgage Bankers and Brokers and Consumer
22 Equity Protection Act and the Secondary
23 Mortgage Loan Act to create a new licensing
24 category for individual mortgage
25 organizations -- or originators. Excuse

1 me. This is an individual who deals
2 directly with the consumer by soliciting,
3 accepting or offering to accept mortgage
4 loan applications or negotiating loan
5 terms; creating a free license education
6 and testing requirement for mortgage
7 originators, in addition to the continuing
8 education requirement currently in place by
9 law; eliminate the real estate licensee,
10 builder and insurance company exemption
11 from the Act; strengthen and make uniform
12 the licensing requirements and enforcement
13 provisions of the Acts.

14 PBA's position on this is: As noted
15 above, financial institutions and their
16 affiliates are already highly-regulated --
17 and I didn't go through all of the history
18 behind the bank. But we are highly
19 regulated and are routinely examined for
20 compliance with those rules by federal
21 financial institution regulators, in
22 addition to state banking departments in
23 the case of state-chartered banks.

24 With respect to the issue of the
25 extent to which states can regulate or

1 license national banks or their
2 subsidiaries, earlier this week the United
3 States Supreme Court decided that "in
4 accordance with the courts of appeals that
5 have addressed the issue, we hold that the
6 national bank's mortgage business, whether
7 conducted by the bank itself or through the
8 bank's operating subsidiary, is subject to
9 OCC's superintendence and not to the
10 licensing, reporting and visitorial regimes
11 of the several states in which the
12 subsidiary operates.

13 The decision avoids a patchwork of
14 duplicative and conflicting federal and
15 state regulations. Now the banking
16 industry can focus on the more important
17 issue of compliance versus which set of
18 rules apply.

19 I think the concept here is that
20 banks -- financial institutions are
21 highly-regulated. And to require them to
22 be licensed is probably -- in my personal
23 opinion, is probably overkill. That's what
24 I'm saying.

25 Do you understand what I'm talking

1 about there? And there's some question
2 about whether federal government or the
3 states should apply licensing requirements
4 on financial institutions.

5 REPRESENTATIVE WANSACZ: David, if I
6 could just jump in. Banks currently now
7 are already -- already have to be licensed
8 through the Department of Banking.

9 DAVID JONES: The banks are, that's
10 correct.

11 REPRESENTATIVE WANSACZ: So I think
12 what we're trying to address through
13 Representative Siptroth's bill is those --
14 as you heard from the previous testifiers,
15 those people that you compete against every
16 day.

17 I mean, I'm familiar with, you know,
18 how it works going through a bank and the
19 process that you guys take to make sure
20 that the person can afford a loan.
21 Unfortunately, we're dealing with some of
22 these other people that they just try to
23 close the deal at sub prime lending.

24 DAVID JONES: I think that sometimes
25 everybody tries to put all of the providers

1 of mortgages under one umbrella or one
2 package, and I think that's probably not a
3 good thing.

4 REPRESENTATIVE WANSACZ: But your
5 organization, do you have any problem with
6 any clarification on Representative
7 Siptroth's bill? Are you for or against --

8 DAVID JONES: Well, I think on the
9 licensing issue, I think we're for
10 licensing of brokers and mortgage bankers,
11 but we're not --

12 DAVID CALLEN: It doesn't sound like
13 that.

14 DAVID JONES: Well, we're for the
15 licensing of brokers and bankers,
16 absolutely. I think that's a good thing.

17 I think trying to license individual
18 bank employees is probably, again in my own
19 terms, overkill.

20 DAVID CALLEN: This legislation
21 doesn't address banking employees at all.

22 DAVID JONES: I understand that.

23 DAVID CALLEN: It's employees of
24 mortgage brokers. That's okay? You're
25 okay with that?

1 DAVID JONES: We're okay with that,
2 absolutely.

3 REPRESENTATIVE SIPTROTH: Any other
4 questions? Representative Scavello?

5 REPRESENTATIVE SCAVELLO: Thank you
6 for your testimony. You know you mentioned
7 it's a nine-month process for the
8 foreclosure. However, if somebody was put
9 into a home they couldn't afford, nine
10 months is not going to bail them out.

11 I have confidence in our local banks
12 here that if somebody went into that bank
13 for a mortgage, they wouldn't be in a
14 position with some of these cases with
15 shadow financing and all that.

16 But our problem here in Monroe has
17 been inflated values. So if you tried to
18 get out, you could not, because on a
19 brand-new home, when the market -- there's
20 4,000 resales out there. You just can't
21 get -- you can't get out of that situation.
22 So you're stuck.

23 It's almost like you're in jail, and
24 that's what some of these folks felt like.
25 They can't get out. They can't walk away

1 from that home. They can't try to sell it,
2 and they can't come up with the money to
3 pay that mortgage.

4 DAVID JONES: I have to be careful
5 here, because I'm representing the
6 Pennsylvania Bankers Association, if I
7 express my own personal opinion.

8 You have to remember in the mortgage
9 industry, there's an investor on one side
10 and a customer on the other side, and the
11 broker or the banker is in the middle.

12 So if the investor becomes greedy
13 enough -- I hate to use that word -- to buy
14 these loans and -- for example, in our
15 bank, we sell loans to Fannie Mae and
16 Fannie Mae sets up certain standards.

17 Well, if they expand their standards
18 and allow 100 percent financing or things
19 like that, then somewhere that is going to
20 happen. But separating that from actual
21 fraud, which was talked about earlier,
22 there's people out there that it's absolute
23 fraud, and that's wrong.

24 Then you have the situation where a
25 person comes in and they want -- they need

1 the money. They want to refinance the
2 house. Credit card bills are high, and
3 they got 100 percent financing of their
4 house, and then the market goes south on
5 them. They're stuck. I don't have a good
6 solution for that. I think that's --

7 REPRESENTATIVE SCAVELLO: You got a
8 problem, and that's what we had here. I
9 tell you that I feel it's going to happen
10 again. It's happening now.

11 REPRESENTATIVE SIPTROTH: And if I
12 could just expand, there are individuals
13 that will walk into a financial institution
14 and say that I cannot go any higher than X,
15 Y and Z in my percentage points, and
16 somehow that's arranged. And that's where
17 we have to be a little more diligent.

18 DAVID JONES: On the rate or on the
19 points?

20 REPRESENTATIVE SIPTROTH: On the
21 rate. And, you know, I'm not picking on
22 particular institutions, by any means,
23 because for the most part, they're all on
24 the up-and-up. It's just those few.

25 And that arrangement is being made

1 for those folks to do that. And, again,
2 these are people that come in with, you
3 know, very little credit. They get that.
4 And then what happens, they go out and they
5 fill their beautiful new home that they
6 paid \$225,000 for, which may be somewhat
7 marginal. And then they go out and fill
8 their credit cards with extensive debt to
9 furnish the home, put in the plasma TV and
10 this type of thing. In fact, some of those
11 folks think that they can use what they've
12 improved as home improvements, that
13 particular plasma TV that they put on the
14 wall, the big screen, but that is not part
15 of home improvements.

16 DAVID JONES: Most financial
17 institutions have what they call
18 prequalification or preapproval. And the
19 first question that this customer says to
20 the bank is, "How much can I afford?"

21 So what the bank should say to the
22 customer is, "How much can you afford,"
23 instead of saying, "Well, you can afford a
24 thousand dollars a month." Well, that's
25 the upper maximum limit. Well, maybe you

1 can afford a thousand dollars a month; and
2 you have the same salary, but you can't
3 afford the thousand dollars a month.

4 I don't think your job here is to
5 micromanage the banking industry. I think
6 you have to have the oversight and the
7 licensing and the -- that's what I think
8 should happen. I'm speaking here again --
9 they're going to yell at me because I'm
10 supposed to represent the PBA.

11 DAVID CALLEN: I take it Reisteter
12 is falling asleep.

13 DAVID JONES: I know. I can't turn
14 around.

15 REPRESENTATIVE WANSACZ: That's what
16 happens when you're from Lackawanna County,
17 speaking about experience.

18 But Dave and I know each other a
19 long time. And Mario and I were just
20 talking about this. As you just stated,
21 it's how much can you afford.

22 There is so many -- and maybe we
23 need, as a committee, to require more
24 information. But there is so much
25 information that's out there now. Like,

1 for example, you can go onto the Web sites
2 and plug put in all of your expenses and
3 everything and say this is how much home I
4 can afford, this is how much that I need to
5 go as far as the interest rate.

6 So maybe we should require more of
7 that information out there. And I don't
8 know if that can be done or is something
9 that could be set out from the bank as
10 far --

11 DAVID JONES: I think the
12 investor -- the ultimate investor in the
13 loan puts in what they're willing to
14 accept, the risk they're going to accept.

15 I don't think you can legislate
16 against that. I think that's the free
17 market that we have in this country.

18 REPRESENTATIVE WANSACZ: I'm not
19 saying -- I'm saying put out information to
20 where -- if I'm a person looking to borrow
21 money from your institution, that you can
22 say, "Okay. You know what? You're
23 pre-approved, but here's a Web site that
24 you can go to. Here's maybe a form that
25 you can fill out to make sure that you're

1 comfortable with" --

2 DAVID JONES: I think that's already
3 out there. I think most banks -- a lot of
4 people go on the Internet and find out how
5 much will be acceptable. It still goes
6 back to how much can you afford.

7 REPRESENTATIVE SIPTROTH: And
8 sometimes individuals are placed in the
9 circumstances that, after the fact, you
10 know, that they can no longer afford it,
11 and that's understandable.

12 DAVID JONES: They're stuck.

13 CHAIRMAN DALEY: Representative
14 Yewcic?

15 REPRESENTATIVE YEWCIC: If you know
16 the number, what percentage of the banking
17 business is sub prime?

18 DAVID JONES: Sub prime, I think,
19 has -- I'm not so sure there's even a
20 definition of sub prime. It's risk. How
21 much risk is the investor willing to take?
22 We're a bank. We're a small community
23 bank. We sell our loans to investors like
24 Fannie Mae or Freddie Mac or something like
25 that. They set standards for the risk

1 they're willing to accept, and there's a
2 price for that.

3 Then you go to somebody else who is
4 willing to accept more risk or a more
5 riskier loan, and they have a higher price.

6 REPRESENTATIVE YEWIC: So you
7 accept the initial risk by issuing the
8 mortgage? You sell that to Fannie Mae or
9 something.

10 DAVID JONES: But Fannie Mae -- for
11 us, for our bank, a small community bank,
12 Fannie Mae sets parameters. In fact -- I
13 don't want to take lot of time with this.

14 REPRESENTATIVE YEWIC: They'll set
15 a parameter. You go by their parameters,
16 and you'll do the mortgage.

17 DAVID JONES: What a lot of
18 institutions have is the -- a lesson in
19 lending -- they have automated underwriting
20 systems, and you just key in the
21 information, and the system says "approved"
22 or "not approved" or maybe it's approved,
23 but certain conditions have to be met, and
24 then there's a price established for that
25 loan. That's sort of what sub prime is all

1 about.

2 REPRESENTATIVE YEWIC: I understand
3 that. So if I walk in there and I'm a bad
4 investment, I fall in the criteria of
5 Fannie Mae loans, all these other groups,
6 do you have other stringent -- you're the
7 local guy. You're who I talk to. Are you
8 going to deny me, even if I fall into that
9 criteria?

10 DAVID JONES: If you fit -- if you
11 fit the terms that we've set, then you
12 qualify. You know what I mean? We can't
13 discriminate and say, "Hey, buddy, you're
14 getting a house that's too expensive." If
15 you fit the predetermined qualifications --

16 REPRESENTATIVE YEWIC: So even if
17 you look at a guy's income and know he's a
18 bad credit risk, if he fits in there,
19 you're not going to tell him, "We can't
20 disqualify you. You're okay"?

21 DAVID JONES: If he meets -- we set
22 the standards. If he meets the standards,
23 he gets the loan.

24 REPRESENTATIVE YEWIC: Are
25 standards too low?

1 DAVID JONES: I don't want to
2 comment on something -- I don't want to get
3 myself in trouble here. I'm not the
4 investor. I'm not putting my money out.

5 REPRESENTATIVE YEWIC: You're the
6 banker. You can't issue a loan and sell it
7 to Fannie Mae or somebody and walk away
8 from it.

9 DAVID JONES: No, we don't.

10 REPRESENTATIVE YEWIC: You're a
11 small community bank. In general, I
12 understand that.

13 DAVID JONES: The broker just passes
14 the loan on to somebody else.

15 REPRESENTATIVE YEWIC: That's
16 another problem.

17 DAVID CALLEN: Does it appear that
18 the standards have become too loose from
19 the result, as an experienced banker?

20 DAVID JONES: Okay. Not talking
21 about PBA, but people are greedy, and
22 investors are greedy. They want the
23 business. So they're willing to expand the
24 envelope to get more business, and they're
25 willing to take the risk.

1 REPRESENTATIVE YEWIC: All right.
2 So if we're going to do all this new
3 licensing and response from everybody, is
4 that greed -- is that going to stop the
5 greed? I don't think so.

6 DAVID JONES: What it's going to
7 do -- in my opinion, it's going to stop the
8 illegal action, the abusing, like what was
9 talked about, that the District Attorney
10 talked about, switching people and all that
11 kind of stuff. That's what it's going to
12 stop.

13 But as far as the investor on one
14 end wanting to make a loan, if he's willing
15 to accept the risk, I don't think you can
16 legislate against that.

17 REPRESENTATIVE YEWIC: I agree.
18 That's where it's at.

19 REPRESENTATIVE SIPROTH: Any other
20 questions?

21 DAVID CALLEN: Dave, the process
22 that's being proposed about notifying PHFA
23 on the Act 91 notices, with the electronic
24 communications, it's hard for me to
25 understand why it is difficult or onerous

1 to hit a button and copy the Department on
2 something.

3 DAVID JONES: It could be done, but
4 I think -- I'm not so sure what you're
5 trying to accomplish.

6 DAVID CALLEN: I think they're
7 looking at tracking, early warning systems.
8 The rest of it, in terms of mortgage
9 documents and stuff, I wonder how -- that
10 seems maybe that it becomes unrealistic.

11 But how hard is it to go -- I mean,
12 every time you want something, I hit a
13 button and it's gone.

14 DAVID JONES: I'm not sure it's
15 quite that easy.

16 DAVID CALLEN: When you produce a
17 letter on a computer, which everybody does,
18 and you print it up and you hit a button
19 that says e-mail to the Department, how
20 hard can it be?

21 DAVID JONES: Again, I'm speaking --
22 I don't want to speak for PBA or nothing.
23 Now, all of a sudden, people say "Well,
24 wait a second. You had 57 letters, but
25 only 56 went into PHFA," -- in other words,

1 I'm not so sure you're -- in other words,
2 you got to say, "What am I trying to
3 achieve"?

4 REPRESENTATIVE YEWIC: Track
5 foreclosures and trouble loans.

6 DAVID JONES: I'm not so sure -- we
7 can provide statistical information which
8 would be as good as individual letters. A
9 lot of letters go out. In many cases, the
10 guy -- "Oh, I had a little problem. I was
11 sick. My wife was in the hospital. I
12 didn't get a chance to write the check."
13 And they're cured. Are you interested in
14 those people?

15 DAVID CALLEN: On a statistical
16 basis.

17 DAVID JONES: On a statistical
18 basis. Not on an individual basis, I don't
19 think. I think banks are willing to
20 provide the statistics, but not
21 necessarily -- don't burden them down with
22 unnecessary stuff.

23 DAVID CALLEN: It's one button.

24 DAVID JONES: I don't know if it's
25 that easy.

1 DAVID CALLEN: Thank you,
2 Mr. Chairman.

3 REPRESENTATIVE SIPTROTH:
4 Representative Harhart has some questions.

5 REPRESENTATIVE HARHART: I guess
6 we're talking about the responsibility of
7 the lender, the banks.

8 What responsibility do you feel that
9 a borrower should have? When they come
10 into the bank, should there be any kind --
11 or is that just common sense that you
12 should know what your --

13 DAVID JONES: No, it's not. I think
14 the educational issue that we talked about
15 with the video -- I think the person
16 supplying -- the lender has a certain
17 obligation to make sure that the customer
18 knows what's going on. It's complicated.

19 Anybody ever have a mortgage on
20 their house? Everybody go to a mortgage
21 closing? Everybody sign all those
22 documents? Everybody read them all?

23 REPRESENTATIVE YEWIC: No.

24 DAVID JONES: It's complicated. And
25 there's regulation -- I'm not going to take

1 all this time up here. Everybody will yell
2 at me.

3 REPRESENTATIVE HARHART: I asked the
4 question.

5 DAVID JONES: RESPA requires --
6 within three business days of a mortgage
7 application, you have to notify the
8 customer of a whole bunch of stuff, truth
9 in lending, early disclosures, good faith
10 estimate.

11 But do they understand it? I mean,
12 is it explained to them? They get all that
13 information, and then they go to the
14 closing, and they get more information.

15 Yes, I think that the borrower has
16 an obligation to know what he's getting
17 into. Does the lender have an obligation
18 to make sure he understands that?

19 REPRESENTATIVE HARHART: Okay.

20 DAVID JONES: Yes, they do, to some
21 extent. But when you buy a car and you go
22 in and you get a car loan, in many cases,
23 you can get a car loan in 30 minutes. You
24 can go by a BMW for \$50,000 and drive out
25 of the parking lot in 30 minutes with the

1 loan.

2 Does that customer understand what
3 he's getting into? I don't know.

4 REPRESENTATIVE HARHART: Education
5 is really the key.

6 DAVID JONES: I think, if I was able
7 to read all the information here that the
8 PBA provided, we provide education for
9 school children and other people. I think
10 education is extremely important.

11 REPRESENTATIVE HARHART: Thank you.

12 CHAIRMAN DALEY: Any other questions
13 from the members?

14 Thank you very much. Thank you,
15 David.

16 Our next testifier will be the last
17 testifier before the break. It will Harry
18 Skene --

19 HARRY SKENE: Skene.

20 CHAIRMAN DALEY: Harry Skene. Harry
21 is an attorney, and he's the Economic
22 Justice Coordinator for the United
23 Neighborhood Centers of Northeast
24 Pennsylvania. Thank you very much.

25 HARRY SKENE: Thank you, Chairman.

1 Thank you, committee members, for inviting
2 me here to testify about this important
3 matter.

4 The citizens of this Commonwealth
5 cannot wait any longer for protection from
6 foreclosures due to abusive loan products.

7 The Department of Banking has
8 formulated amendments to various
9 legislative acts which were introduced by
10 the House as House Bill 1079, House Bill
11 1080, House Bill 1081, House Bill 1082,
12 House Bill 1083 and House Bill 1084. I'll
13 discuss those a little later.

14 These changes are the minimum
15 requirement to help to derail the
16 escalation of foreclosures in this
17 Commonwealth.

18 Action must be taken now. We can
19 not, out of concern or preemption, wait to
20 see what federal legislation or regulation
21 comes forth. You must act now.

22 We cannot allow the industry to
23 continue to stall the process and suggest
24 that lesser action be taken. The minimum
25 action must be taken -- as illustrated in

1 this legislation, must be taken now.

2 We cannot allow the foreclosure
3 mills operated by law firms to push forward
4 and kick out financially troubled persons
5 from their homes, particularly if they
6 might be victims of predatory lenders.

7 You must act now to define a
8 predatory loan and implement a moratorium
9 on foreclosures until we have that
10 definition.

11 I've been doing foreclosure studies
12 in Lackawanna County and Luzerne County for
13 the last year and a half. I'm going to
14 give you some statistics from the December
15 and February list.

16 In that December and February
17 list -- December of 2006 and February of
18 2007 -- we have found that over 85 percent
19 of the foreclosures are from out-of-town
20 banks, mortgage brokers, mortgage dealers,
21 mortgage companies, not
22 Pennsylvania-licensed banks. Our local
23 banks have maybe 15 percent of the
24 foreclosures.

25 As testimony that was previously

1 given, I understand the difference between
2 the requirements of the banks where they
3 come in and check ratios and they run a
4 very smooth process, and they don't get
5 overly risky. That's why they have lower
6 foreclosures.

7 But our mortgage brokers and
8 mortgage companies, 85 percent or more of
9 which are outside of this Commonwealth, are
10 issuing mortgages at a high rate. And a
11 lot of those are exotic mortgages that have
12 very dangerous provisions, which would go
13 into the predatory lending issue.

14 REPRESENTATIVE WANSACZ: Harry, if I
15 could, you're saying 15 percent local.
16 What's the number? 84? 15 percent? What
17 is the actual number?

18 HARRY SKENE: It was less than two
19 out of five.

20 REPRESENTATIVE WANSACZ: So would it
21 be a hundred foreclosures took place in
22 Lackawanna/Luzerne Counties since your
23 study? What are you basing these numbers
24 off of?

25 HARRY SKENE: Actually, the

1 problem -- and one of the reasons we need
2 to have disclosure of the mortgages is not
3 every county is computerized.

4 So for us to -- for anybody to
5 figure out whether the loan is a predatory
6 loan or not, you need to actually look at
7 the documentation.

8 When you look at the mortgage,
9 unless there's a prepayment rider on it,
10 you don't know there's a prepayment. You
11 don't know what the adjustment is on the --
12 there's a rider for the adjustable rate.

13 But we don't know where people start
14 at, and we don't know the provisions of the
15 loan.

16 What we did is -- we have to go in
17 and we count each foreclosure that actually
18 went to sheriff's sale. So I was just
19 giving you an example from December's list
20 and then February's list.

21 And on those lists, there were, in
22 Lackawanna County, about 100 and -- roughly
23 100 foreclosures and about 13 of those were
24 from local banks.

25 REPRESENTATIVE WANSACZ: Okay.

1 CHAIRMAN DALEY: You mean 100
2 foreclosures in two months, the two months
3 you looked at?

4 HARRY SKENE: It's actually about a
5 four-month period. The lists go out about
6 every two months.

7 I can get more numbers for you --
8 that wasn't something I wasn't going to
9 speak about right away until I heard other
10 testimony and decided that was important
11 information for you to have.

12 Now, when you look at a prime loan
13 and a sub prime loan, a prime loan in
14 mortgage lending is not prime rate, like
15 we're all used to hearing.

16 What they do is, if a person has
17 excellent credit -- a person with excellent
18 credit will get the lower interest rate.
19 Anybody who has less good credit will get
20 what's called a sub prime loan.

21 Sub prime lending is not necessarily
22 bad, because that allows people who have
23 less good credit the opportunity to
24 experience the American dream and buy a
25 home.

1 Now, certainly they should not buy a
2 home they can't afford. In Pennsylvania,
3 when they go to a bank, apparently that is
4 checked carefully, and they're less likely
5 to end up going into foreclosure.

6 Another statistic, over 85 percent,
7 again in that two-foreclosure period, were
8 people who were in low- to moderate-income
9 census tracts.

10 So most of these loans were likely
11 sub prime loans; but, again, we can't tell
12 that for sure because we don't have the
13 loan documents. That's not part of the
14 legal records. And I don't know -- other
15 than the provision here in the Act where it
16 would require the lender to provide those
17 documents to the Department of Banking,
18 there's no way for us to know.

19 It's not a requirement in the
20 Pennsylvania Rules of Civil Procedure when
21 you're filing a mortgage foreclosure
22 action.

23 So we can see, at least in
24 Lackawanna County, that these mortgages are
25 low-mod [sic], and it's people who are

1 being taken advantage of because they're
2 getting into mortgages that they may be
3 able to afford the day they get in, because
4 they're lasting roughly a year to two and a
5 half years before they go. And then
6 there's an adjustment on the rate, and
7 their income is not going up to meet that
8 adjustment, which is why it's important for
9 the committee to move forward and adopt
10 this legislation -- and I'll go in a little
11 bit more and talk about the new regulations
12 from the Department of Banking, which are
13 excellent and will help out tremendously,
14 if they're adopted, in the long run.

15 REPRESENTATIVE SCAVELLO: If I could
16 ask one question. Now, your organization
17 just covers Lackawanna and Luzerne. Does
18 Monroe County here have a specific
19 organization that does the same thing as
20 yourself?

21 HARRY SKENE: No. We are northeast
22 Pennsylvania, and we have tried -- what I
23 do, I work for United Neighborhood Centers
24 of Northeastern Pennsylvania in a grant
25 from the National Community Reinvestment

1 Coalition, which is a think tank out of
2 Washington, D.C.

3 And our plan is to work in all of
4 the counties in northeast Pennsylvania.
5 And what I've done is built a coalition of
6 members from all different business
7 communities. We have bankers. We have
8 mortgage brokers. We have Realtors. We
9 have -- Fannie Mae is part of our group.
10 We have clergy. We have -- the NAACP is a
11 cosponsor.

12 So we have a lot of different groups
13 that are working together to try to
14 understand what we could do.

15 And since we started with this, the
16 Pennsylvania Credit Union Association has
17 come out with an alternative to payday
18 lending. Payday lending was something we
19 were working on a lot in the beginning.

20 I have been to Washington and
21 Harrisburg speaking about this foreclosure
22 problem for over a year.

23 And what is somewhat offensive is --
24 not until Wall Street starts getting
25 affected by this, by the securitization of

1 these loans when they start to lose money,
2 that's when everybody is starting to take
3 action, when consumers have been having a
4 problem for a number of years.

5 It's not until Wall Street has a
6 problem that we decide to start doing
7 something about it.

8 We had spoken to people in
9 Harrisburg and in Washington, D.C. a number
10 of times, and there was no action moving.
11 And it's partially -- the majority of it is
12 is because industry is stalling the
13 process, because they don't want more
14 regulation and they don't want to be
15 responsible for some of these actions.

16 You can't just say --

17 REPRESENTATIVE SCAVELLO: I'm sorry.
18 The question was -- I just wanted to know,
19 like, specifically being from Lackawanna
20 County and northeast -- we're familiar with
21 what's been happening here in Monroe County
22 at a much -- I'm assuming a much greater
23 rate in Monroe than it would be in
24 Lackawanna or Luzerne, as far as
25 foreclosures go.

1 I was wondering if Monroe had those
2 same type of statistics to show.

3 HARRY SKENE: I haven't done that
4 study here yet. I'm sorry I went off a
5 little bit, but we've invited people from
6 here.

7 REPRESENTATIVE SCAVELLO: Without a
8 study being taken, I can tell you those
9 numbers are probably about the same, maybe
10 even a little greater, out-of-state
11 banks --

12 HARRY SKENE: We're glad to come
13 down here, and we've invited people from
14 Monroe County to become involved and then
15 we would hold meetings down here.

16 But we just haven't had responses
17 from people to bring us down. We haven't
18 had the interest here as we've had in
19 Luzerne and Lackawanna Counties.

20 CHAIRMAN DALEY: Okay. Let's move
21 on.

22 HARRY SKENE: Okay. I was at a
23 conference last week, and one of the
24 panelists on the housing session was
25 asked -- said, "To be a mortgage broker,

1 all you need is \$500 and a heartbeat, and
2 you can sell mortgages."

3 And under the current legislation,
4 that's not even true. All you need is a
5 business card and a heartbeat to sell
6 mortgages.

7 I am pleased with regard to the
8 legislative changes that would require
9 licensure of all persons brokering
10 mortgages in this Commonwealth, as
11 illustrated by House Bill 1079.

12 Moreover, this bill sets forth a
13 requirement that each licensee complete
14 continuing education of six credits per
15 year, which is important for people to
16 continue with the latest trends in what is
17 safe in selling mortgages.

18 The strict penalties outlined in
19 House Bill 1081 for real estate appraisers
20 will go a long way in curbing inflated
21 appraisals.

22 Presently there is a concern that
23 appraisers are providing appraisals based
24 on the need of the mortgage brokers or the
25 lender in order to provide the mortgage,

1 rather than the true market value, which I
2 believe you've seen here in Monroe County.

3 The firm penalties proposed in this
4 legislation should deter appraisers from
5 engaging in such activity.

6 House Bill 1082 provides for public
7 disclosure of its sanctions against
8 licensees. This is important, as consumers
9 should know whether a particular licensee
10 has engaged in practices that have been
11 sanctioned by the Department Defendant.

12 The availability of this information
13 is a good start, but I think that more
14 information should be made public, in
15 particular, complaints made against
16 broker/lenders concerning conduct which
17 violates the banking acts.

18 The availability of this information
19 may alert others to come forward with
20 additional information or complaints
21 against brokers or lenders and will alert
22 potential consumers to be wary of possible
23 bad actors.

24 House Bill 1038, which amends Act
25 91, requires mortgagees to provide copies

1 of notices or monthly statistical reports
2 to the agency so that the Department can
3 better track foreclosures in the
4 Commonwealth.

5 This is very important. The study
6 that I explained that I had been doing, we
7 have to go in and try to hand-count each
8 and every case that's gone through into
9 foreclosure. With the statistical
10 information being given to the agency, we'd
11 have a better idea of what's happening in
12 the Commonwealth, and action could be taken
13 before it's get too bad.

14 Also, the stay, in reality, when
15 people apply for mortgage assistance, it's
16 usually denied the first time. And then on
17 appeal is when it's usually approved. A
18 lot of the cases that go through on appeal,
19 there's an approval.

20 So the dangerous part is that if you
21 don't have that stay, then the people who
22 are denied first and then have not taken
23 their administrative appeal, their house is
24 back into foreclosure, and they have to go
25 through that, and they can lose their house

1 before the appeal. I think changing that
2 time is a positive.

3 Now, I'm still concerned with the
4 notices that the mortgagee sends out. I've
5 represented many people who have been in
6 foreclosure. And oftentimes -- I've also
7 been in tax court, and I've represented a
8 lot of people in tax matters, and they have
9 the same issue.

10 They're afraid to open up the
11 envelopes. They're called by debt
12 companies. They're called by the banks.
13 They're called by people and they're
14 harassed about paying this obligation.
15 They don't have the money to do it. They
16 don't want to lose their home, but then
17 they end up ignoring it.

18 They stop returning their calls.
19 They put on their answering machine. And
20 when they get paperwork, they don't open
21 the envelope. It's tucked away in the
22 envelope nicely. They're afraid of it.

23 Many people come into me with a
24 stack of documents. They give it to me. I
25 ask them if they got things. They haven't

1 even opened up the envelopes.

2 Therefore, I think it would be very
3 important for notices to be on the outside
4 of the envelopes so that people know that
5 this that is coming now is something that's
6 really going to help you. So that might
7 inspire them to open it up.

8 CHAIRMAN DALEY: How do you deal
9 with the issue of privacy?

10 HARRY SKENE: Well, I would suggest
11 something, like, clearly and plainly
12 demonstrating on the front that enclosed is
13 information for mortgage assistance from
14 the Pennsylvania state agencies.

15 So it doesn't have to say that
16 you're in default, that you're subject to
17 foreclosure, but something a little more
18 benign so that when somebody reads that,
19 they see hope.

20 If they see hope, they're going to
21 be much more likely to open it up. If they
22 see the return address from the bank, they
23 say -- they're just waiting for that
24 sheriff's notice to get on the front door
25 and they're in trouble.

1 CHAIRMAN DALEY: My problem with
2 privacy -- you know as an attorney,
3 anything that would reveal any dilemma or
4 calamity someone may be in may be injurious
5 to their reputation and so forth.

6 I mean, I know what you're saying.
7 I've heard and seen it many times. But
8 envelopes addressing mortgages or the fact
9 that they're dealing with their mortgage
10 may send a message if they have someone
11 delivering the mail or the neighbors, and
12 it may be a problem. I know what you're
13 saying. If you say, "Help is inside" -- I
14 don't know.

15 HARRY SKENE: "A Pennsylvania agency
16 may be able to help. Please open this
17 envelope," or something like that. That's
18 why I said a Pennsylvania agency instead of
19 saying the PHFA, something that people
20 might -- you know, be a little bit more
21 benign, but give them an idea that I better
22 look inside.

23 CHAIRMAN DALEY: "Help is on its
24 way"?

25 HARRY SKENE: Yes.

1 CHAIRMAN DALEY: "Open quick."

2 REPRESENTATIVE SIPTROTH: Similarly
3 to some of the institutions that put on an
4 envelope that, you know, "we may be able to
5 remedy your home mortgage woes by opening
6 this document," something like that. So it
7 works in both ways. And that's on some of
8 the documents.

9 HARRY SKENE: Unfortunately, there
10 are some people that do that on envelopes
11 now for people who are having credit
12 problems. They say something about, "We
13 can help you fix your credit problems,"
14 which is injurious. You might not even
15 have credit problems. They just send it
16 out to you, and you get that in the mail.

17 CHAIRMAN DALEY: Go ahead.

18 HARRY SKENE: House Bill 1084, which
19 amends Act 6, would end prepayment
20 penalties for loans up to \$197,000.

21 I hear today that might be higher,
22 which would be good. Right now it's at
23 \$50,000. So one of the big predatory
24 lending issues is the prepayment penalty.
25 And I understand that the ceiling, whatever

1 that number turns out to be in the future,
2 will adjust annually with inflation, which
3 is good.

4 But prepayment penalties are the
5 trap, which can prohibit those who have
6 been taken advantage of in the predatory
7 loan from freeing themselves from the
8 clutches of the menacing loan products.

9 So raising that amount gives us the
10 opportunity to take away prepayment
11 penalties. And, again, most of those
12 prepayment penalties are in the loans from
13 the mortgage companies that are out of
14 state.

15 Now, the Pennsylvania Department of
16 Banking proposed regulations last year
17 which were very good, and I commented on
18 those. But they've yet to be adopted. I
19 hope that they soon are adopted.

20 I understand that there's new
21 regulation which would require various
22 disclosures to be given to the customer in
23 a very clear and easy to understand manner.

24 So they would have to give the
25 customer a very clear understanding as to

1 the type of loan he or she is receiving.
2 Licensees would have to disclose whether or
3 not taxes and insurance were being
4 escrowed -- that's a big issue, because
5 people leave the table and don't know that
6 they now have to pay taxes and insurance.
7 Once those big bills come, they're in
8 trouble.

9 -- whether the licensees can
10 directly lock in the loan rate. That's
11 where we have the problem where a lot of
12 times people get to the closing and they
13 find out they're not getting the same
14 interest rate as earlier and the person
15 says, "I couldn't lock that in. This is
16 what you have now." They're ready to move
17 into that house, and they find out they're
18 paying more interest.

19 -- whether the loan contains a
20 variable rate or a balloon payment feature,
21 which again is part of the many predatory
22 loans and the existence of a prepayment
23 penalty and if the loan features negative
24 amortization.

25 Additionally, licensees will be

1 required to be reasonably determine, based
2 upon the documents provided by the
3 applicant -- so that has the responsibility
4 of the borrower -- whether the applicant
5 will be able to repay the loan based upon
6 its terms and conditions at final maturity
7 at the fully indexed rate, assuming a fully
8 amortized payment schedule.

9 That's a very important regulation
10 which will drastically help consumers and
11 protect people from predatory loans.

12 Now, the Department of Banking, the
13 Pennsylvania House of Representatives and
14 the Senate have taken important steps
15 towards raising the bar to protect mortgage
16 customers of this Commonwealth.

17 Without this -- all this effort is
18 meaningless if we don't act now. Please
19 take swift action to protect Pennsylvania
20 from unfair mortgage loan products.

21 Thank you.

22 CHAIRMAN DALEY: Thank you. Let me
23 just say that you had asked in your third
24 paragraph about a moratorium on
25 foreclosures until we have a definition of

1 predatory lending.

2 In the Pittsburgh area, we had the
3 same question about setting a moratorium up
4 on foreclosures.

5 We think that's probably not legal,
6 but we are working on something that could
7 be very similar to that. And we hope to
8 announce within the next week or two an
9 emergency plan to help those individuals
10 with sub prime lenders.

11 I can't tell you anything more than
12 that, but we are working towards something
13 very diligently that may be announced.

14 Do any members of the committee have
15 questions of this gentleman?

16 REPRESENTATIVE KING: I just wanted
17 to retouch on what you said at the
18 beginning when Representative Wansacz was
19 asking questions. I think it's important.

20 You pointed out that the
21 foreclosures that you studied, less than
22 15 percent were due to -- or from
23 Pennsylvania-related banks.

24 I think that's an important
25 distinction just to note that we do have a

1 lot of quality institutions and banks in
2 this state. And we're getting taking
3 advantage of by some bad lenders, a lot of
4 them from outside the State.

5 And I just thought that was an
6 important thing to touch on. I appreciate
7 you saying that.

8 HARRY SKENE: Unfortunately, it is
9 Pennsylvanians who are the mortgage brokers
10 who are doing that, and they're trying to
11 make money, and they come in. And if they
12 can make a deal, they're going to get the
13 money.

14 But unlike Pennsylvania banks who
15 have a process and they're looking through
16 it and checking everything, they're
17 getting -- these brokers have the
18 opportunity to broker a mortgage for an
19 out-of-town bank based on whatever the
20 criteria is. And there's actually a spread
21 in the index which gives them -- they're
22 favored to give a higher interest rate.

23 So if a person comes in and says, "I
24 don't really have that good of credit. I
25 don't know if you'll be able to help me,"

1 even if the person doesn't have that bad of
2 credit, once the person knows that, they
3 go, "Let's go to sub prime," and they can
4 put the person into that kind of loan.

5 With regard to the moratorium, just
6 this week I read that the federal
7 legislature is taking up that same issue
8 where they're talking about doing that.

9 I don't know if the reason you can't
10 do it is, because of preemption, you can't
11 take that power away from the banks and
12 prevent banks from foreclosing, but I know
13 that the sheriff's in all of our counties
14 are the ones that are in control of
15 foreclosures.

16 So if something was done to allow
17 them to make an assessment before it goes
18 to foreclosure, that might be a way to look
19 at the issue.

20 CHAIRMAN DALEY: You mean for a
21 sheriff's sale?

22 HARRY SKENE: Right.

23 CHAIRMAN DALEY: Okay.

24 HARRY SKENE: I'm not as much
25 concerned about the filing of the action as

1 I am taking the people out of their homes.

2 CHAIRMAN DALEY: For the committee,
3 once you file the action, that's a
4 foreclosure process. It's a process where
5 the sheriff does a writ of execution.
6 He'll come out. He'll assess the property.
7 He'll post the property. He'll give a time
8 in terms of when the sale will occur.

9 And you're suggesting give the
10 sheriff a little latitude or moratorium of
11 when he does that execution and that final
12 sale?

13 HARRY SKENE: That's correct. Based
14 upon -- if we had a definition of a
15 predatory loan that the sheriff can
16 exercise -- if it's been determined such
17 provisions were included in the note, that
18 the sheriff would be able to have a
19 moratorium on that until the matter could
20 be worked out in whatever way the parties
21 can work that out.

22 CHAIRMAN DALEY: Any other questions
23 from the committee? Hearing none, we're
24 going to take a five-minute break.

25 * * *

1 (Whereupon, a recess was taken from
2 12:24 p.m. to 12:36 p.m.)

3 * * *

4 CHAIRMAN DALEY: Ladies and
5 gentlemen of the jury, I would like to
6 bring this committee back to order.

7 Our next testifier will be Dave
8 Ward, Esquire, Pennsylvania Financial
9 Services Association and Michael Catarino
10 with Catarino Legislative Consultants. I
11 guess, Dave, we'll begin with you or
12 whatever you want.

13 DAVID WARD: Mike can start, and
14 I'll follow up.

15 CHAIRMAN DALEY: Although we're
16 running behind schedule, we're not pressing
17 anyone to alter or change their testimony.
18 It's a very important issue, and the
19 committee is -- I know some of the members
20 have to leave a little early for other
21 commitments, but please don't be offended
22 by an evacuation going on while you speak.

23 MICHAEL CATARINO: Not a problem.
24 This is going to be a challenge with which
25 glasses to wear.

1 Good afternoon, Chairman Daley,
2 Chairman Hess and members of the House
3 Commerce Committee.

4 I'm Mike Catarino, and I'm president
5 of Catarino Legislative Consultants. I'm
6 here today representing PFSA. PFSA has
7 over 45 member companies representing over
8 a thousand branches throughout the
9 Commonwealth.

10 I'm going to touch briefly on a few
11 items on the foreclosure and then turn it
12 over to Dave, and Dave will be specific on
13 our position on the package of bills that's
14 been introduced.

15 I want to commend the Chairman, the
16 committee and the Department of Banking for
17 taking a proactive approach in trying to
18 remedy the problem of foreclosures.

19 We at PFSA will work closely with
20 all involved to solve this problem.
21 Mortgage foreclosures continue to rise
22 nationwide; but the numbers are much better
23 in Pennsylvania, according to last week's
24 article in the business section of the
25 Harrisburg Patriot.

1 In fact, the first three months of
2 the year, the number of foreclosures in the
3 state fell 29 percent from the same period
4 in 2006, according to the California-based
5 Realty Trac.

6 In Pennsylvania, 12,255 properties
7 were in some stage of foreclosure in the
8 first quarter of 2006. But for the first
9 three months of this year, the number
10 dropped to 8,643 in the mid-Atlantic
11 states.

12 Pennsylvania has the highest
13 percentage of homes valued between 50,000
14 and 100,000. This fact, plus the low
15 unemployment rate, 3.8 percent and an
16 above-average credit score have helped keep
17 down foreclosures in Pennsylvania.

18 So I think it's extremely important.
19 There's a direct correlation between
20 employment and foreclosure. For example,
21 the largest amount of sub prime loans are
22 by far in California, and they have one of
23 the lowest foreclosure rates.

24 You have Michigan, which is one of
25 the lowest sub prime lenders -- loans being

1 made and they have one of the highest
2 because they have a 6.6 unemployment rate.
3 And that's probably due to the auto
4 industry.

5 So basically all I wanted to touch
6 on before I turn it over to Dave is to say
7 that there are other elements involved
8 besides what you hear about and read about
9 in the papers.

10 And you could have a sub prime, a
11 prime or a super prime. If you're
12 unemployed, it doesn't matter if you have a
13 \$80,000 house or \$1.6 million house. If
14 mom and dad don't have deep pocket, you're
15 in trouble.

16 I thank you for an opportunity to
17 make this presentation.

18 CHAIRMAN DALEY: Thank you very
19 much, Michael.

20 DAVID WARD: Mr. Chairman, members
21 of the committee, I represent the
22 Pennsylvania Financial Services Association
23 that Michael also represents.

24 And we're going to comment on three
25 of the bills, the Mortgage Bankers and

1 Brokers, the Secondary Mortgage Loan law
2 and the Act 6 bill.

3 On the Act 6 bill, what that does is
4 simply raises the ceiling, and that means
5 that you're increasing a rate cap on loans
6 that was below 50,000. Now it would be
7 below 197,000.

8 The basic effect of that will be to
9 push some people out of the mortgage
10 market. There was some mention of \$200,000
11 houses here. Folks who would not qualify
12 for a loan at the Act 6 rate are simply
13 going to be turned down and be out of the
14 market.

15 One other possible thing that they
16 might do is to increase the amount they
17 offer for the house or increase the
18 mortgage that they get above 197,000 to get
19 out of this, make it 205,000, and then they
20 would qualify.

21 So they may be forced to borrow more
22 money than they need in order to qualify
23 for a loan.

24 CHAIRMAN DALEY: Do you want to hold
25 the microphone?

1 DAVID WARD: I'm sorry. Is it on?

2 CHAIRMAN DALEY: Yes.

3 DAVID WARD: The individuals may
4 well be forced to increase what they do,
5 the amount they borrow, in order to qualify
6 for a loan. We see no benefit to that.

7 There doesn't seem to be a rate
8 problem in the state. I don't think
9 anything that's been presented on the
10 foreclosures deals with having to force a
11 rate cap on loans and force it down in that
12 lower area in order to protect consumers.

13 Going on to the Secondary Mortgage
14 Act and the Mortgage Bankers and Brokers
15 Law, what we have here is a huge expansion
16 of the licensing requirements.

17 You have three mortgage lenders in
18 the nonbank area here. You have mortgage
19 bankers, mortgage lenders, secondary
20 mortgage lenders and the consumer discount
21 companies.

22 I have spent many years in this
23 legislative world of mortgages; and it took
24 me about, I'm going to say, 15 to 20 hours
25 to try to figure out what this actually

1 does.

2 And I helped -- I negotiated and
3 worked on the original Second Mortgage Act
4 here in Pennsylvania back in 1979. So I'm
5 familiar with it.

6 What you are going to do with these
7 two bills is require consumer discount
8 companies who make a real estate loan to
9 get all three licenses. Some of their
10 employees have to get all three licenses.

11 You're going to bring in what I
12 would term clerical or administrative
13 people. Perhaps the guy that writes the
14 advertisements for a mortgage company will
15 have to be licensed under this language.

16 There are very broad terms in here,
17 very broad language. It would take hours
18 and hours to go through in detail the
19 comments that I'm making.

20 I have, in written testimony that
21 we've submitted, pointed out where these
22 changes occur.

23 Servicing is defined anew in one of
24 these acts. And we're afraid that it may
25 well bring in -- by the broad definitions

1 of servicing, which basically are doing
2 something for another person involved in
3 this whole mortgage situation, you may well
4 bring in the securitization process. You
5 might even in bring in bondholders who buy
6 bonds from securitization trusts that these
7 sub prime lenders sell their mortgages to
8 obtain the funds to make new mortgages. If
9 you do that, those bondholders would be
10 required to get a license. They'd be
11 subject to the new, much more substantial
12 penalty such as \$10,000 per offense and so
13 forth.

14 Some of you may be familiar with a
15 situation in Georgia in 2003 where they
16 adopted a law that did pass liability and
17 risk on to the secondary markets.

18 Wall Street reacted by saying,
19 "Okay. We're not going to buy any
20 mortgages from the state of Georgia." And
21 Standard & Poors and others got into that,
22 and they had to repeal that bill within 30
23 or 60 days.

24 I'm afraid that in this bill the
25 language is so complex that you may face

1 the same risk, that you'll be interfering
2 with secondary mortgages.

3 The thing that is very clear, and I
4 say without question, you are going to
5 increase the cost of the mortgage industry
6 very, very substantially.

7 You're now going to have to license
8 more and more people within the companies.
9 You're going to have to increase the
10 licenses. As I said, now instead of having
11 one license -- traditionally, the Consumer
12 Discount Company Act, the Second Mortgage
13 Act, the First Mortgage Act said you don't
14 have to have a license under this act if
15 you're licensed by the state, by the
16 Department, under another act, to make a
17 given loan.

18 That rule is going to go away if all
19 this language is adopted. You'll have to
20 have all three licenses. So each of the
21 companies who now are licensed in one
22 category will have to go through the
23 process, if they're going to make real
24 estate loans, and get licensed under all
25 three and incur the licensing fees three

1 times, send all those employees to school
2 and so forth.

3 All of those expenses, all of that
4 activity we do not see as protecting the
5 consumer or responding to any of the
6 questions that have been asked by the
7 committee that I've listened to through
8 part of the hearing this morning.

9 The mere fact that you've got a
10 license and can hang it on the wall does
11 not protect a consumer from taking out a
12 bad loan. It does not prevent the fellow
13 with a license hanging on the wall from
14 giving people advice and either -- as in
15 perhaps this representative's opinion, not
16 giving them the right advice.

17 So what we have is a very complex,
18 very expensive pair of bills, three of them
19 actually, that will increase the cost, but
20 not solve the problems.

21 We think there are things that could
22 solve the problems, but they're not in the
23 licensing area. They're perhaps some
24 controls over what type of loans are
25 actually made.

1 The Department has a proposed
2 regulation which we think is a positive
3 step to help avoid the type of problems
4 that have been described today. There are
5 other things that might do that.

6 But this very major licensing bill
7 we don't think helps solves the problem.
8 I'm happy to take any questions if you have
9 any.

10 CHAIRMAN DALEY: Let me just start.
11 You're saying that there's a major cost
12 that's going to be placed on the mortgages.
13 You talk about a doomsday scenario like in
14 Georgia in which we have Wall Street
15 rebuffing taking paper in Pennsylvania.
16 You said there was other things that could
17 be done, perhaps the types of loans.

18 What other substantive suggestions
19 do you have to what we can do to protect
20 people from being, for all intents and
21 purposes, screwed out of their life savings
22 by unscrupulous people?

23 DAVID WARD: If you're talking about
24 actual fraud, I'm not sure that this bill
25 addresses that at all.

1 There may be some provisions, which
2 I'm not prepared to outline today, that can
3 deal with actual fraud situations.

4 If you look at the Department
5 regulations that are proposed, I think they
6 do deal with some rules that will apply to
7 the existing licensees who are going to
8 make the loans, that deal with the
9 borrower's income, with their -- they call
10 it fixed expenses, but basically with their
11 monthly expenses, their car payments, their
12 heat and light payments, their telephone
13 payments and so forth and so on. That goes
14 into consideration when you're computing
15 the ratios that go into whether you're
16 going to approve or disapprove this loan.

17 Those things are fine, and we would
18 support those, that type of legislation
19 and/or regulation, because that gets at the
20 heart of the problem.

21 What you're considering here, these
22 two bills with the Mortgage Bankers and the
23 Secondary Mortgage Loan laws, will not get
24 at the heart of the problem.

25 So there are positive things that we

1 can do. We'll be happy to discuss those
2 with committee members and the Banking
3 Department later.

4 I didn't come prepared to give you a
5 draft bill or something, but there are
6 positive things that can be done. It's
7 just not this.

8 And the major expenses, when I talk
9 about that, I would -- I worked for
10 Beneficial Finance, which started out as a
11 personal loan company and became a mortgage
12 company. It's now been bought up and is
13 gone.

14 But seeing this bill passed in
15 Pennsylvania, we would have to probably
16 have hired one or two people simply to keep
17 track of the licenses. So you add a couple
18 of bodies just to keep track of the
19 licenses, because now you're going to have
20 to hang three licenses in each licensed
21 location for each individual and so forth
22 and so on. It's very complex; and,
23 frankly, I would see no benefit to it at
24 all.

25 Each individual would become subject

1 to three different licensing fees. You've
2 got the education requirements. I don't
3 know whether the Department would allow
4 them to be lumped together, but maybe
5 they've got to go to 36 hours of training
6 to get the initial license and then 18
7 hours of training each year thereafter.
8 That would be something that would be
9 worked out.

10 But the way the bill is drafted that
11 would seem to be the requirement.

12 CHAIRMAN DALEY: We're looking for
13 your positive suggestions, either from your
14 testimony or from something you can submit
15 to the committee in writing. I'll share it
16 with the committee. Does any member of the
17 committee have questions?

18 REPRESENTATIVE SCAVELLO: Thank you,
19 Mr. Chairman. Just a comment and then a
20 question.

21 Dave and Mike painted a picture --
22 maybe it's a question for you, Mike -- that
23 everything is great in PA, but have you
24 looked at this area and the foreclosures in
25 Monroe County and Pike County?

1 MICHAEL CATARINO: What I mentioned,
2 I was not drawing any conclusions. I was
3 just stating articles in there. And I want
4 to be very clear that there are other
5 problems that lend itself to foreclosure
6 besides what you read in the paper.

7 And you can have pockets, like
8 you're talking about, where you have
9 increased foreclosures.

10 But I would submit to you that the
11 largest factor is people being unemployed.
12 And if you do not have the income, you
13 cannot make those payments.

14 Now, are people being taken
15 advantage of? Yes. And how you would get
16 to that and solve that problem, I don't
17 think is addressed in the bill, as David
18 said.

19 REPRESENTATIVE SCAVELLO: Mike, with
20 all due respect, in our area here, putting
21 someone into a home that they cannot
22 afford -- and to me, I think that -- and
23 Representative Siptroth mentioned it
24 earlier -- that is the issue. And how do
25 we stop that?

1 You know, if we say, well, this
2 doesn't do it, then we need to hear your
3 recommendations how we stop that. And part
4 of this created -- the inflated mortgage,
5 the inflated prices with the appraisals --
6 putting someone into a home that they could
7 not afford.

8 DAVID WARD: Well, my comments tried
9 to address that point. And as I mentioned,
10 the Department is working on a regulation
11 that will deal with that problem. And the
12 only way to deal with it is to try to
13 define for the lenders who are in the
14 business some categories of what they need
15 to look at so that they meet your
16 definition.

17 I don't know frankly what is a house
18 that someone can't afford. That's a nice
19 phrase, but you need to define it.

20 REPRESENTATIVE SCAVELLO: If your
21 income doesn't generate enough dollars to
22 pay for that mortgage and pay for those
23 taxes and pay for those expenses, putting
24 someone into that home that they cannot
25 afford.

1 DAVID WARD: Okay. But the question
2 is whether they can afford it at the time.
3 Someone mentioned over here that you go
4 into a house and then you start to furnish
5 it. You put a plasma TV up here. You put
6 some new carpeting on the floor. You do
7 all these things. And, all of sudden, you
8 can't afford it any longer.

9 Some of those factors have to be
10 taken into account. What credit cards did
11 these folks have and what will they go out
12 and load up on them after the closing?

13 In other words, you're asking a
14 question that needs to be defined very
15 carefully with specific things. Not just
16 to say, well, if somebody goes to school
17 for 12 hours and then gets a license and
18 pays \$1500 to the state, this problem will
19 go away.

20 REPRESENTATIVE SCAVELLO: Let me lay
21 out a scenario. You're in an area, Monroe
22 County, where at one point we had 4,000
23 homes on the resale market.

24 Now you come to this area, and you
25 build a home. You build a brand-new home.

1 Okay. And then you apply for that mortgage
2 for this new home that you had built for
3 yourself.

4 That home, the construction of that
5 home and everything, and the number that it
6 is -- let's put a number on it, 200,000.
7 You find that when you applied for that
8 mortgage, you didn't put into consideration
9 your expense of the trips back and forth to
10 New York, which is about 10 or 12,000 a
11 year. That didn't go into that number.
12 You never owned a home before. So you
13 realize that, you know what, I got to pay
14 for heat. I got to pay for the oil, and I
15 never had to pay for water before. All
16 these other bills are now on your
17 shoulders.

18 But here's your problem. You
19 realize you can't afford the home. So now
20 you're trying to do the right thing. Sell
21 it and get out. But you find out that when
22 you go and call someone in to look at the
23 home, because of all the homes that are on
24 the market, your home is worth 150,000 and
25 you're into the house for 200,000.

1 DAVID WARD: Let me tell a very
2 short anecdote. A gentleman who worked for
3 Beneficial in California that I met the
4 first year I got there in 1978, he was
5 going to retire and sell his condo on the
6 beach in Newport Beach. I saw him a year
7 later. He bought it for about 300,000. He
8 got a cash offer for 800,000 a year later.
9 He turned it down, because he had another
10 year to go to retire. So then it comes
11 about 1982, and he went to sell his condo
12 in Newport Beach. He got 350. Now, this
13 guy was ready to shoot himself.

14 The markets go up, and they go down.
15 We have had -- I think anyone in this room
16 can recognize -- a housing bubble in the
17 northeast and other sections of the
18 country, and that's part of the problem.
19 If the house value goes down -- unless
20 you're telling me that there's a fraudulent
21 appraiser involved, okay, a fraudulent
22 appraisal happened, what in this bill, if
23 that's the case, is going to help that?

24 REPRESENTATIVE SCAVELLO: Agreed.

25 DAVID WARD: Okay. If it's simply a

1 fact that the prices in the housing market
2 fell apart on this poor individual, what in
3 this bill is going to help them? Nothing.

4 All that the bill would do is
5 increase the cost of the lender in the
6 first place so his rate is going to be a
7 little higher when he makes that mortgage
8 initially.

9 REPRESENTATIVE SCAVELLO: Isn't it a
10 fact with all these foreclosures, it also
11 reduces the price of the market even lower?

12 So if we don't solve the problem,
13 the market is going to continue to fall.
14 And many cases, folks that are in homes
15 that they thought they made a great
16 investment, three or four years later,
17 because of the foreclosures around them,
18 their values have kind of gone down also.

19 DAVID WARD: But go back to my
20 California example. That fellow had that
21 800,000-dollar offer. He didn't take it.

22 Prices collapsed because rates went
23 up from '79 to '82, if you go back and look
24 at that, and it went down. He sold it for
25 350. I guarantee you today that same place

1 in California is selling for a heck of a
2 lot more than 350. Things go up and down.

3 REPRESENTATIVE SCAVELLO: I look
4 forward to your recommendations.

5 REPRESENTATIVE SIPTROTH: I have one
6 question.

7 Dave, does the Financial Services
8 Association have any objection to the
9 prepayment penalty in these proposals, the
10 removal of the prepay penalties?

11 DAVID WARD: I will confess that's
12 one little detail that I hadn't picked up
13 on. Is there a -- there's prohibitions on
14 the prepayment penalty in certain cases, I
15 believe, in the bill.

16 DAVID CALLEN: It currently only
17 goes up to \$50,000. The proposal is to
18 take up to one-ninety-seven and then index
19 it.

20 DAVID WARD: Prepayment penalties,
21 prohibiting them, we think, is a mistake.
22 And that would happen automatically in the
23 increase.

24 I thought you were talking about the
25 other bills, and I hadn't seen it in there.

1 But in Act 6, the prepayment penalty
2 applies only under 50,000. It would raise
3 it up to one-ninety-seven. Prepayment
4 penalties can be a positive thing.

5 CHAIRMAN DALEY: For who?

6 DAVID WARD: For the borrowers. It
7 can help reduce the rates if you have a
8 reasonable prepayment penalty.

9 If you're going to deal with
10 prepayment penalties in general, you don't
11 want to simply prohibit them, in my
12 opinion.

13 What you might want to do is put a
14 reasonable limitation or restriction on
15 them to a finite period of time in the loan
16 and perhaps a reasonable restriction on the
17 finite amount of penalty and whether it
18 applies to the full original principal
19 balance or only the remaining principal
20 balance.

21 So there's rational things that can
22 be done with it. But to simply prohibit
23 it, again, seems to us that when you look
24 at this Act 6 and you're raising that
25 ceiling up, you're just going to make it

1 more restrictive on those lenders and cut
2 more people out of the market.

3 REPRESENTATIVE SIPTROTH: But when I
4 shop for a mortgage, I make sure that there
5 is no prepayment penalties in the contract.
6 I shop for a mortgage based somewhat on
7 that because, you know, tomorrow I may have
8 an opportunity to have a windfall of
9 income, not in this position maybe --

10 CHAIRMAN DALEY: But to say never
11 again.

12 REPRESENTATIVE SIPTROTH: But,
13 nonetheless, I may have the opportunity
14 that I want to pay that mortgage off. Now,
15 if I want to pay that mortgage off, even if
16 it's a five-year abstinence or 10-year or
17 whatever the case may be, whether it's
18 based on the prime mortgage or interest or
19 whatever, you know, I want to have that
20 ability. And why does the industry object
21 to abstinence or prohibition?

22 DAVID WARD: The ability to, you
23 know, pay it off quickly is a plus, I
24 suppose. If you're in a situation where
25 rates are going up or if rates are coming

1 down and changing rapidly, someone with a
2 prepayment penalty for two years, say, may
3 be prevented from engaging in what most
4 people in the business criticize as
5 flipping the loan by turning them over
6 maybe even as rates come down and taking
7 more and more out or ending up with a
8 variable rate loan. It will kind of keep
9 them there stable for a couple of years.

10 Consumers do not always do something
11 in their best interest. I would suggest if
12 you're shopping for a fixed rate loan and
13 you get it approved, go and ask them if you
14 can knock a quarter of a point off if you
15 put a prepayment penalty on it. That might
16 be more benefit to you than the ability to
17 pay it off for two years.

18 REPRESENTATIVE SIPTROTH: Well, I
19 agree adversely that some individuals will
20 never pay their home off simply by
21 refinancing at whatever level they get,
22 whether it be 80 percent, 100 percent of
23 the market value. They continue to do
24 that, and they never have an opportunity to
25 pay their home off. So I will agree that,

1 you know, there is some adversarial issues
2 along with that.

3 DAVID WARD: There can be positive
4 things, too.

5 CHAIRMAN DALEY: I understand you
6 raising the flag for your organization in
7 telling that. I respect that. That's your
8 job, and you do it rather articulately.

9 But to say that there's an advantage
10 to the borrower if there's a penalty
11 prohibiting -- prepayment penalties almost
12 sounds preposterous. I mean, it doesn't
13 make sense to me or good logic reason.

14 I've represented a credit union for
15 many years, and I've done a lot of
16 foreclosures, and we've done a lot of
17 mortgages.

18 And I've looked on both sides of
19 this issue. And you don't need to respond
20 to this. I just find it absolutely -- it's
21 hard for me to fathom how a borrower would
22 be benefited by the fact of precluding a
23 prohibition on prepayment penalties, how
24 that would affect interest rates, how that
25 would be in his or her good interest.

1 I don't know. I can't understand
2 that. I mean, it almost sounds like too
3 many legal words coming from an attorney
4 that is just confusing and doesn't make
5 really good common sense to me.

6 DAVID WARD: In one version, not
7 here in Pennsylvania, there has been a bill
8 that dealt with prepayment penalties,
9 limiting them as I mentioned, and one
10 factor is that you would have to offer a
11 different rate.

12 CHAIRMAN DALEY: Not in
13 Pennsylvania. That's not in Pennsylvania.

14 DAVID WARD: I'm saying, if you're
15 looking for legislation to deal with
16 something with a problem that might help
17 something, if you have a prepayment --
18 rather than just outlaw them and saying you
19 can't do this at all, if there must be an
20 offer --

21 REPRESENTATIVE SIPTROTH: So it has
22 to be incentivized?

23 DAVID WARD: A different rate
24 offered for a loan with a prepayment
25 penalty and without for a two-year period

1 or a three-year period.

2 CHAIRMAN DALEY: How about for the
3 whole term of the loan? What if the guy
4 gets a windfall, like he does not from this
5 job but some other job, for two or three
6 years -- I mean, what the heck?

7 DAVID WARD: Well, obviously, if
8 he's gotten the windfall, all he needs to
9 do is continue making the payments for two
10 years and then --

11 REPRESENTATIVE SIPTROTH: But why
12 should I pay that financial institution
13 that interest?

14 DAVID WARD: Well, if you got a
15 break at the start and you're paying a
16 lower rate because of it, then okay. You
17 say, "Well, gee, I gambled on that, but I'm
18 going to be mad if I don't get a -- take
19 advantage of it for three years."

20 REPRESENTATIVE SIPTROTH: But
21 7 versus 7.25, I'm still paying
22 seven percent if you're going to give me a
23 quarter point off --

24 DAVID WARD: That's fine. But if
25 you are --

1 REPRESENTATIVE SIPTROTH: -- for 30
2 years.

3 DAVID WARD: Well, I think you're
4 saying, "I want to have it both ways. I'd
5 like to get the rate, but I don't want to
6 have to comply with the deal that got me
7 the rate." What can I say?

8 CHAIRMAN DALEY: Good, Dave. We're
9 going to take a couple of more questions,
10 and then we'll move on to the next
11 testifier.

12 DAVID CALLEN: Dave, first of all,
13 in terms of the prepayment penalties, since
14 we're on that, what if we were to, instead,
15 put something in that said that prepayment
16 penalties are allowed, but they're void in
17 the even of a pending default? In other
18 words, it would be easy for somebody who
19 could not pay the loan the way it is to pop
20 out of it into a fixed rate or something
21 like that.

22 DAVID WARD: I don't think I would
23 have any objection to that at all.

24 DAVID CALLEN: Because then you
25 could have the prepayment penalties, but in

1 the worst of circumstances --

2 DAVID WARD: Right. If you have
3 somebody who gets in trouble --

4 DAVID CALLEN: -- it wouldn't lock
5 somebody in --

6 DAVID WARD: -- as opposed to
7 getting the windfall, no, I don't think we
8 would have an objection to that. I would
9 have to check with my --

10 DAVID CALLEN: And the second thing,
11 on the objection to the licensure thing
12 because of the three licenses, how about
13 just one license, period, and one training,
14 period? Why not?

15 DAVID WARD: Well, if the suggestion
16 is to --

17 DAVID CALLEN: You know, a loan is a
18 loan is a loan.

19 DAVID WARD: -- scrap the Mortgage
20 Bankers and Brokers Act and the secondary
21 Mortgage Act and the Consumer Discount
22 Company act, at least as far as real estate
23 is concerned, it probably would be a good
24 idea.

25 Many, many states have a single

1 unitary mortgage law for the nonbank
2 business. That's quite a project. You
3 have to meld all that different information
4 into one bill, far beyond what we're doing
5 today.

6 But I would think that might not be
7 a bad idea. It would save the industry
8 money. It would save enforcement money to
9 the Department, and I think you could end
10 up with a bill that would have a very good
11 control and effects on the industry.

12 CHAIRMAN DALEY: Any other
13 questions?

14 Thank you gentlemen for testifying.

15 DAVID WARD: Thank you.

16 CHAIRMAN DALEY: Our next testifier
17 will be Mr. Bill Cullen, Hometown Security
18 Mortgage.

19 WILLIAM CULLEN: Thank you very much
20 for the opportunity to testify. My name is
21 William Cullen. I'm the president/owner of
22 Hometown Security Mortgage. We're a
23 mortgage banker located in Stroudsburg with
24 a branch office in Clarks Summit.

25 I don't represent any association or

1 anything like that. I'm a local boy who
2 opened his big mouth and called his
3 legislator's office, and they said come
4 here and tell us -- tell you what I told
5 him. So here I am.

6 I've been in the mortgage business
7 for 17 years. We're a locally owned and
8 operated business, but we compete in the
9 marketplace with companies big and small.

10 I agree with the proposal to license
11 loan officers and mortgage companies. I
12 believe it's the only help our industry --
13 excuse me. I'm not used to this.

14 CHAIRMAN DALEY: Take your time.

15 WILLIAM CULLEN: It's my belief this
16 can only help our industry by increasing
17 the professionalism of loan officers and
18 requiring a minimum base of knowledge for
19 these loan officers. Continuing education,
20 as it's proposed, also, as in another
21 fields, will allow our industry to have
22 more a professional group of people
23 interacting with the public.

24 But I do feel that the playing field
25 should be level, that all loan officers of

1 all mortgage companies should be licensed.

2 If Hometown Security Mortgage must
3 license their loan officers, then the big
4 mortgage companies with their call centers
5 and telemarketers should have to license
6 their loan officers also.

7 When dealing with the public,
8 there's no difference between what my local
9 loan officer can tell somebody on the
10 telephone and what a telemarketer
11 somewhere, wherever, can tell somebody who
12 calls into their call center.

13 Therefore, they should be subject to
14 the same requirements. It's hard enough
15 for me to compete. If we also have to be
16 subject to more stringent requirements than
17 the larger companies, we're at a serious
18 disadvantage. The public also will be at a
19 disadvantage.

20 With licensed loan officers, there's
21 a mechanism for monitoring the behavior of
22 loan officers and for punishing those that
23 take advantage of the public.

24 Loan officers are the face of the
25 mortgage industry and the voices of the

1 this industry. They're whom the public
2 deals with. They're the front line. They
3 should be as well educated and professional
4 as possible.

5 And I believe licensing will help
6 tremendously in achieving the
7 professionalism and in alleviating a lot of
8 these problems in the mortgage industry.

9 The public and the industry can
10 benefit from the licensing of loan
11 officers, but it should be done in a fair
12 and equitable manner. And that's really
13 what I have to say. Thank you very much.

14 CHAIRMAN DALEY: Questions from the
15 committee?

16 Thank you very much for your
17 testimony.

18 WILLIAM CULLEN: You're welcome. I
19 appreciate it.

20 CHAIRMAN DALEY: The next testifiers
21 will be Mr. Al Wilson and Ms. Maureen
22 McGrath.

23 And, Mr. Wilson, are you Al Wilson,
24 the singer?

25 AL WILSON: I'm not the

1 show-and-tell man.

2 Chairman Daley, Representative
3 Siptroth, Brian Hudson, PHFA, members of
4 the staff, I thank you for coming here
5 today and giving me an opportunity to
6 represent the people, as well as myself,
7 who was a victim.

8 In the year of August 1999, my wife
9 and I located [sic] to purchase a home in
10 the beautiful part of Pennsylvania.

11 We were always instilled with the
12 dream of having a home -- a home and dreams
13 that sadly has ended.

14 However, upon suspecting something
15 that was wrong, we submitted complaints to
16 the State Attorney General's office, and it
17 was a great disappointment to find that we
18 were victims of predatory lending.

19 After five and a half years of
20 advocating for justice against predatory
21 lending, by way of forums, marches on
22 Washington, D.C., the Pennsylvania Capitol,
23 Stroudsburg, the county and statewide
24 foreclosure studies, congressional
25 hearings, mediation hotlines, State

1 Attorney General's jury and investigations,
2 opening up of a housing counseling agency,
3 and criminal and civil indictments that
4 ended with settlements by the State
5 Attorney General's office, we are again
6 facing countywide foreclosures in Monroe
7 County and on the national level, which is
8 a meltdown.

9 As we continue to discuss these
10 issues, how many additional families will
11 lose their homes and have no recourse?

12 Situations as these only produce a
13 troubled economy locally, statewide and
14 nationally.

15 Being present today only reinforces
16 the need for elected lawmakers in
17 Harrisburg and Washington, D.C. to work
18 more diligently for victims of predatory
19 lending.

20 Where is the accountability is the
21 question? How can this happen? Victims of
22 sub prime loans and predatory lending must
23 be made whole by the government and
24 financial institutions.

25 To have a great economic future, we

1 must first correct what happened in the
2 past to cause this fraudulent breakdown.

3 Our state and federal government
4 must enact an emergency moratorium on
5 foreclosures for the victims who fell prey
6 to mortgage brokers, financial institutions
7 that committed predatory lending acts and
8 fraudulent acts against them.

9 Last quarter, foreclosures in Monroe
10 County soared in digits. How long will
11 this madness continue before stricter laws
12 are passed to prevent sub prime and
13 predatory lending practices?

14 The question is: How long will we
15 allow the poor and middle class suffer
16 before we lose stability in our society?

17 Predatory lending could be compared
18 to malignant disease that starts small and
19 spreads without hope.

20 Today, we must resuscitate our
21 homeowners market, make it whole with
22 mortgage reform, so that home ownership
23 again once becomes the American dream.

24 Predatory lending, fraud and
25 discrimination have no place in society.

1 The statewide study and enforcement results
2 of sub prime loans shows that the majority
3 of the victims are black and Hispanic
4 decedents and elderly.

5 Our federal and state government
6 officials must work hard to get solid laws
7 passed to deter those who prey and
8 perpetrate white collar crimes against
9 innocent, unsuspecting people, not laws
10 that give a criminal a pat on the back and
11 continue with business as usual because of
12 critical corruption.

13 Again, the housing industry needs
14 new laws. And the victims who have been
15 financially destroyed be made whole again
16 through compensation and restoration of
17 their pride and their dignity.

18 The elected officials must realize
19 they have failed the victims by allowing
20 the dream, the American dream, to be
21 snatched from them by simply allowing them
22 to be taken advantage of by corrupt
23 companies who claim no responsibilities for
24 their actions.

25 Our elected officials must now show

1 compassion and understanding for someone's
2 mother, sister, wife, brother or kids who
3 are losing their homes.

4 Upon enacting new laws, elected
5 officials must enforce them and be held
6 accountable for enforcing them.

7 The rules of engagement brings about
8 conflict. And unless we have laws put in
9 place to defer and the determination to
10 enforce them, we are just whistling Dixie
11 on a rainy day. Nothing changes. It only
12 remains the same.

13 If we are serious about new laws and
14 saving homeowners from foreclosures, let's
15 make the people whole again by providing
16 them with foreclosure protection and
17 monetary restitution.

18 Thank you.

19 CHAIRMAN DALEY: Thank you,
20 Mr. Wilson. Any questions?

21 JOHN SCARPATO: I was just going to
22 ask what happened in your situation, if you
23 can just tell a little about how you were
24 taken advantage of.

25 AL WILSON: Well, inflated

1 appraisals. The same scandal. The
2 documentation, basically.

3 I'm in federal court. So I'm not
4 going to talk too much about it. It's in
5 federal litigation. But it's the same
6 procedures over and over again.

7 What dismays me is the fact that
8 after all the fighting for five years, you
9 look at -- the foreclosure rates within the
10 last month or so, in the last quarter,
11 tripled. Tripled. We have a counseling
12 agency to counsel people, which helped to
13 some degree. But that didn't survive
14 because of financial support. So we had to
15 shut the doors.

16 My situation is dead. As I
17 testified before Congress as I recall in
18 2005, we need to pass laws that's going to
19 stick. We need to pass laws that's going
20 to make people do -- at least attempt to do
21 the right thing.

22 We cannot make laws that's on paper
23 but nobody enforces them and there's no
24 action taken. Otherwise, this is going to
25 continue.

1 After five and a half years of
2 marching on Washington, the Justice
3 Department, talking to the FBI, State
4 Attorney General, PHFA, the Banking
5 Department, all these agencies, we're still
6 sitting here today talking about
7 foreclosures. We're talking about
8 predatory lending. We're talking about sub
9 prime.

10 When I first moved here and talked
11 about sub prime and predatory lending, they
12 laughed. And they said, "Oh, you just
13 don't want to pay your rent. You just
14 don't want to pay your house note."

15 But I tell you, it took a long haul
16 and a long run, but now they know. And as
17 I said back in 2005 and 2006, as I recall,
18 that unless we curtail predatory lending
19 and sub prime, it will cause a serious
20 problem with our economy.

21 And based on what I read from The
22 New York Times and The Wall Street Journal,
23 that has occurred. And if we don't stop
24 it, it's going to get worse. And you know
25 who is going to pay for it, guys? The

1 middle class people, that's who is going to
2 pay.

3 It's not going to get any better.
4 We can talk about laws. We can make laws.
5 We can shoeshine them. Make them good.
6 But the bottom line, they got to have
7 teeth. If they don't, we're in trouble.

8 Any more questions?

9 CHAIRMAN DALEY: Go ahead,
10 Representative Siptroth.

11 REPRESENTATIVE SIPTROTH: Just one.
12 In part of your testimony, Mr. Wilson, you
13 indicated that we have to make monetary
14 restoration.

15 AL WILSON: Restitution.

16 REPRESENTATIVE SIPTROTH:
17 Restitution. I'm sorry. And how would you
18 think the state should accomplish that?

19 AL WILSON: Let me say this. I
20 didn't come with a master plan. But we
21 know for a fact we have victims who are
22 subject to predatory lending and sub prime.

23 You have to come up with a method
24 whereby you have to deal with the financial
25 institutions to force them to give back

1 what they took.

2 See, we can't go in the future and
3 leave millions of people behind in the
4 past. You can't accomplish the -- focus on
5 the future because you can't forget about
6 all those people now who are losing their
7 homes, all those folks who can't sleep at
8 night. We have to deal with what's in the
9 past in order to go to the future. There
10 is no future if you can't correct your
11 past.

12 I mean, how do you do it? The state
13 has money. The federal government has
14 money. The financial institutions who
15 defrauded these people have money.

16 Let's sit down with these people.
17 The government has got the power. Let's
18 tell them, "You've got to make amendments
19 to what you did to these people." Because
20 these people just can't take a moratorium
21 on foreclosure and amend their lives.

22 They've lost everything. They've
23 lost on attorneys. They've lost on trying
24 to survive. They've lost with the time.
25 Most of them lost a job trying to fight to

1 save their home. I lost a job saving a
2 house -- trying to save a house.

3 But the thing is I don't have all
4 the answers, but I can tell you this. For
5 those who created sub prime and predatory
6 lending practices, they should know how to
7 go back and rewrite things that's going to
8 help the people.

9 But I can tell you this. We can
10 talk about new laws all we want; but until
11 we correct what has happened to these
12 people in the past, you're going to be able
13 to be effective.

14 Like one gentleman that stood here
15 and said earlier -- you know, you make the
16 laws, but now do they really have any
17 teeth? Are they really going to benefit
18 the people? Will it really stop those
19 crooked financial institutions and broker
20 companies from doing what they did again?
21 No, it won't.

22 The only thing they understand is
23 when you get a law and if you break that
24 law and you pay a heavy price, that's it.

25 I'm telling you from experience as a

1 police officer, that's the bottom line.
2 They have to understand we're not playing
3 games. You're not going to destroy the
4 American citizens and walk around with your
5 money in your pocket and go over to the
6 Virgin Islands or to whatever islands you
7 want to call it and enjoy your life while
8 they suffer.

9 And that's what's happening, and
10 anybody with compassion should understand
11 that. Because your family, as well as my
12 family or somebody else's family is
13 suffering from those particular situations.
14 We don't have to think about it. It's
15 factual.

16 Any other questions?

17 CHAIRMAN DALEY: Mr. Wansacz?

18 REPRESENTATIVE WANSACZ: Thank you,
19 Mr. Chairman.

20 Mr. Wilson, understanding that
21 you're in federal court, but what I'm
22 trying to understand -- and I know you were
23 here for most of the testimony today. We
24 heard a lot about these banks being in
25 other parts of the state.

1 First off, did you deal with a
2 licensed thing and were they in
3 Pennsylvania or from outside?

4 AL WILSON: Outside the state. I
5 think they were in California -- Florida or
6 California.

7 REPRESENTATIVE WANSACZ: Now, with
8 the bills that we're looking at, we also
9 just heard that maybe what we're doing
10 isn't going to stop some of these
11 practices.

12 In my opinion, I think it's going to
13 help. I don't know if it will totally
14 eliminate it. And I know you speak
15 passionately about that. But what we're
16 trying to do is figure out exact teeth, as
17 you so like to say -- teeth into this to
18 stop people from getting taken advantage
19 of.

20 What I'm just wondering is, when you
21 moved, you moved from New York, I'm
22 assuming?

23 AL WILSON: New York City.

24 REPRESENTATIVE WANSACZ: So you
25 moved from New York into Monroe County?

1 AL WILSON: Right.

2 REPRESENTATIVE WANSACZ: You
3 purchased a loan from California. Now, was
4 it also -- the real estate agent, were they
5 involved in this as well, buying the house,
6 or was it an overappraisal? I mean, I'm
7 just trying to understand this without
8 getting into too much.

9 AL WILSON: First, it was an inhouse
10 operation by Eagle Valley. Second of all,
11 the mortgage that I got, I didn't know
12 anything about the bank. You understand?
13 As I began to commission the appraisal and
14 file with the State Attorney General's
15 Office, I discovered more.

16 The inflated appraisal is a major
17 component of my case. Inflated appraisals
18 are big here.

19 REPRESENTATIVE WANSACZ: So you
20 actually found out about this before you
21 even went into foreclosure, I'm assuming,
22 or did you find this out after you went
23 into foreclosure?

24 AL WILSON: I found out about it
25 around 2001 or 2002 once I commissioned my

1 appraisal. I didn't know anything about
2 sub prime and predatory lending. I had no
3 reason to.

4 I lived in New York most of my life
5 and went to University of Alabama. So I
6 didn't have no reason to know about a
7 house. You understand?

8 But the thing is, the scope of the
9 fraud that exists here in Monroe County is
10 unbelievable. The criminality that's set
11 down and accepted is unbelievable.

12 REPRESENTATIVE WANSACZ: And I can
13 agree with you, and I think that's why
14 we're here today introducing these bills,
15 is that problems, such as what happened
16 here in Monroe County, but also happened in
17 the rest of the state -- we are trying to
18 stop those practices.

19 But I don't know if you were here
20 earlier when the District Attorney
21 testified.

22 You know, we're trying to figure
23 out, as well, what do people do such as
24 yourself when you realize that maybe you're
25 a victim. Do you contact the Attorney

1 General? Do you contact the District
2 Attorney?

3 Obviously contacting the local
4 police force, as we all know, a lot of our
5 local police force -- some communities
6 don't have them. Some people depend on
7 State Police.

8 We're trying to figure out ways to
9 also help the victim, in your case -- such
10 as people like yourself.

11 AL WILSON: The best way to do that,
12 once you discover -- but, first, you've got
13 to know what you're looking at.

14 Most people don't know what
15 predatory lending or sub prime is. So they
16 don't know they've already been violated.

17 But once they discover it, the best
18 way to do it is to go to the State Attorney
19 General's office or to the local D.A.'s
20 office, file complaints or hire an
21 attorney. Those are the best things to do,
22 and then take it from there.

23 But they have to understand the
24 scope of what they're in. And most people
25 who buy a home, especially first-time

1 homeowners, they don't understand that.
2 Because, you understand, you're talking
3 about real estate law. You're talking
4 about a whole different scope of law. I
5 didn't understand anything about real
6 estate law. I don't think most attorneys
7 know anything about real estate law.

8 So when you expect a citizen to
9 understand, to interpret 50,000 pieces of
10 paper in a matter of 10 seconds or 30
11 seconds or 30 minutes, it's impossible.

12 And that's the advantage the banks
13 and the brokers and the real estate people
14 have over these people. They know they
15 don't understand or can't interpret real
16 estate.

17 And the time factor is another one.
18 When you're in a closing, it should -- and
19 I'm going to recommend this. When you go
20 to a closing, it should be where they have
21 to sit at least two and a half to three
22 hours to understand or have some sort of
23 precounseling session before they finalize
24 the house.

25 CHAIRMAN DALEY: I think your

1 problem arises way before the closing. You
2 need to be counseled through the process.

3 AL WILSON: I agree.

4 CHAIRMAN DALEY: The closing is too
5 late for you to back out. I mean, that's
6 D-Day.

7 I want to offer to you the
8 opportunity to come down and talk privately
9 at our office -- you can talk to Sandy in
10 the back, the young lady with the blonde
11 hair -- so we can talk in a private setting
12 and so we can talk about things that can't
13 be disclosed publicly.

14 And I would like to listen to what
15 you have to say. I will then have the
16 opportunity to share with the members of
17 the committee in a more private way as
18 opposed to a public way.

19 AL WILSON: Thank you.

20 CHAIRMAN DALEY: Thank you.

21 AL WILSON: You're welcome.

22 CHAIRMAN DALEY: Ms. McGrath?

23 MS. McGRATH: Good afternoon. I
24 want to thank you for allowing me to speak
25 today.

1 I had originally submitted my
2 testimony regarding mortgage servicing
3 fraud. After hearing the various
4 testimonies today, I'm going to expand what
5 I want to testify on.

6 I have been involved in mortgage
7 servicing fraud specifically since 2001
8 when the term "mortgage servicing fraud"
9 was unknown, when the term "predatory
10 lending" was unknown, when the term "real
11 estate fraud" was unheard of.

12 In dealing with people across the
13 United States of America, I have become
14 extremely versed on all of the aspects that
15 lead up to foreclosure.

16 It can start with the developer. It
17 will then go to his real estate agent or
18 broker. It goes to the appraiser. It goes
19 to the loan originator. It goes to the
20 bank.

21 The banks usually also become
22 victims. The banks are so set apart on
23 what they are funding. But, again, because
24 they are not putting up their money, they
25 will fund a loan.

1 From there it can be put into
2 trenches set out on Wall Street, REMEX,
3 Reuters, MSBs. There's a pooling of
4 services agreement attached to all of that.
5 That trench -- that trust will be sent out
6 to investors, people like you or me sitting
7 here. You have a servicer. Now, what we
8 have is, we have something starting up in
9 Pennsylvania and Monroe County that's
10 completely fraudulent and has now been
11 passed throughout the United States of
12 America. Possibly in retirement funds.
13 Possibly in our teachers' retirement funds.

14 You will not -- the licensing and
15 the investigations will not prevent the
16 foreclosure unless you get the servicer
17 under control.

18 Because of the nature of the beast,
19 once a note or a trench of notes are
20 securitized, the trustee must be passive in
21 order to preserve the tax status.

22 Therefore, the person or the entity
23 that is foreclosing on people is the
24 servicer. We have had -- I have been
25 involved with, directly, Fairbanks

1 Capital -- I turned to the Department of
2 Banking in Pennsylvania that came out of
3 Harrisburg, Pennsylvania -- licensed as a
4 secondary mortgage broker.

5 I turned to the Department of
6 Banking. I tried to explain to them what
7 was happening. I met deaf ears.

8 I literally had to go to the state
9 of Maryland for assistance. I went to
10 Senators Mikulski and Serbanes who brought
11 down Fairbanks Capital with a
12 45 million-dollar class action lawsuit.
13 Maryland homeowners received every penny
14 that was stolen from them returned.
15 Florida homeowners received every penny
16 returned to them. Massachusetts people had
17 every penny returned to them.

18 The people in Pennsylvania, because
19 Pennsylvania took no action, received on
20 the average \$55, after losing homes
21 illegally foreclosed on them.

22 I want to deal also with prepayment
23 penalties. Okay. This comes in as part of
24 the servicers. Prepayment penalties I
25 don't have a problem with if it is at the

1 option of the borrower, where the borrower
2 will say, "I'm willing to lock into this
3 for two years at a lower rate so you can
4 make your money."

5 However, what I have seen is
6 prepayment penalties are consistently used
7 in forbearance agreements or work-out
8 agreements where people are put into a
9 higher rate of interest and locked in up to
10 five years so that their equity can be
11 stolen from their homes.

12 This is what the game is all about,
13 gentlemen. It's about stealing the equity
14 of the homes. And I don't ever want to
15 hear that it costs a bank money to
16 foreclose on a house, unless it is a bank
17 that holds their own notes, which are very
18 few [sic] and in between.

19 And I think the majority of the
20 banks across the nation are right here in
21 Pennsylvania that hold their own notes.

22 Okay. Once they sell that note,
23 they receive their money in full. Most
24 notes, if you're under 20 percent, are
25 backed by PMI.

1 When a trench is put together to put
2 up for a public offering statement, you
3 have various levels of interest put in
4 there. You have Alt-A, all the way down to
5 your sub prime. The sub prime buoys up the
6 Alt-A. They get taken care of. There's
7 also insurance in there.

8 And then we also have the servicer.
9 If they can show that a loan, after 90
10 days, doesn't look like it's going to be
11 able to come back on track, they get to
12 keep the note and the property -- and PMI
13 insurance.

14 These are all issues that -- unless
15 it's addressed, all of these licensing
16 bills are for naught.

17 CHAIRMAN DALEY: Any questions?

18 Thank you for your testimony. I
19 know that your statement deviates somewhat
20 from your written testimony. Your written
21 testimony, we will include that as part of
22 this record.

23 MS. McGRATH: Thank you.

24 CHAIRMAN DALEY: Thank you very
25 much.

1 Our next testifier is Marshall
2 Enders, Esquire. Mr. Enders, identify
3 yourself and who you represent.

4 MARSHALL ENDERS: My name is
5 Marshall Enders. I'm here for myself as an
6 attorney to share with you my experience in
7 this alleged predatory lending and sub
8 prime, as it's been called, because I
9 probably have the most hands-on experience
10 of anybody that's testified here today.

11 I represent -- my practice involves
12 the representation of developers and
13 builders in Monroe and Pike County. I also
14 represent certain mortgage brokers
15 currently and have in the past.

16 The reason I'm here is, because when
17 I saw the article in the paper and the
18 allegations of predatory lending and how
19 that causes mortgage foreclosure, I called
20 John and asked him if I could appear.

21 I'm involved right now in 12
22 individual cases and one mass tort case
23 alleging -- all those cases, predatory
24 lending is alleged. I represent the
25 builders and mortgage brokers.

1 There's one other predatory lending
2 case that I'm aware of and that involved
3 Keystone Builders. All those companies are
4 now out of business.

5 If predatory lending is the cause,
6 why has the mortgage foreclosure rate still
7 gone up? The answer is: Predatory lending
8 does not exist on the scale that you've
9 been led to believe.

10 Are there some unscrupulous mortgage
11 brokers? Yes. But I submit it's a small
12 group, and they can be handled with the
13 existing laws.

14 My concern is, from the litigation
15 standpoint -- and I don't know why it's a
16 concern since I'd only be making more
17 money -- if you overregulate mortgage
18 brokers or lenders, it's going to
19 require -- create a myriad of more
20 litigation. So far in those 12 individual
21 cases and one mass tort action --

22 CHAIRMAN DALEY: When you say "mass
23 tort," so people know, as opposed to a
24 class action, it's a mass action, right?

25 MARSHALL ENDERS: Right. There's

1 105 plaintiffs in that case. It originally
2 started out to be certified as a class, and
3 it was not certified as a class.

4 CHAIRMAN DALEY: Not certified as a
5 class by the federal court?

6 MARSHALL ENDERS: Right. But there
7 are 105 plaintiffs. There are 12 other
8 individual cases. I've had an opportunity
9 to depose the plaintiffs in the 12
10 individual cases and 45 depositions in the
11 mass tort case.

12 Recently I had an opportunity to
13 read a definition of predatory lending.
14 That definition defined predatory lending
15 as a pejorative term used to describe
16 practices of some lenders which the person
17 using the term dislikes.

18 And based upon what I have learned
19 through the course of discovery, that's a
20 very proper definition.

21 People get disclosure statements.
22 They get good faith estimates. All these
23 things are received before closing. They
24 have the opportunity to read them. I've
25 seen the documentation. I've questioned

1 people, and they told me they didn't read
2 it.

3 If you don't read the disclosures
4 before you go to a closing, why even bother
5 going? They set forth the interest rate.
6 They set forth the term of the loan. They
7 set forth whether there's going to be a
8 prepayment penalty.

9 In the 117 people I'm dealing with,
10 one person had a prepayment penalty, and
11 that was to get a lower rate.

12 And I'm certainly not opposed to
13 expanding the scope of prepayment
14 penalties. In fact, I think it should
15 totally be outlawed.

16 What brings about foreclosure?
17 Well, a group of people, when they read the
18 article in The Pocono Record back in 2001,
19 simply stopped paying and have not made a
20 mortgage payment since that time. They're
21 living in their homes rent-free,
22 mortgage-free.

23 If the lenders didn't pay the real
24 estate taxes -- their failure to pay real
25 estate taxes creates a burden on the rest

1 of the tax base.

2 One individual I deposed flat out
3 said, well, his wife was on the
4 application, showed her income, but they
5 had no intention of her working once they
6 moved to Pennsylvania. They didn't bother
7 to tell the broker or the lender that.
8 They simply just did it.

9 People have financial problems.
10 What's caused it? You heard earlier -- I
11 think the gentleman said, well, they come
12 into a home. They want to refurnish it.

13 When I built my home, I didn't go
14 out and buy new furniture. But dozens of
15 plaintiffs that I've questioned, they've
16 gone out and bought new furniture, big
17 screen TVs. One couple bought a gourmet
18 kitchen, which runs about 30 or \$40,000.
19 They had to pay for that. If they're
20 financing that and they're financing their
21 home, how do they make the payments?

22 I would think -- in the mass tort
23 action, there is over -- close to 60
24 percent of the people were able to go out
25 and either get refinancing or borrow home

1 equity loans. So the equities in the homes
2 are there.

3 The other reasons: People get tired
4 of the commute. They stop commuting. They
5 look for jobs in this area, which pay a
6 lower amount of money. People's spouses
7 have died. So where they were a two-income
8 family, they suddenly become a one-income
9 family. Divorce -- people have gotten
10 divorced. Again, you have one spouse
11 trying to carry on what two spouses
12 originally contracted for.

13 And other things -- factors of life
14 experience -- cause them to default on the
15 mortgages. It's not simply the lending
16 practices.

17 In fact, I think the lending
18 practices cause very few foreclosures. And
19 there was some conversations earlier about
20 the appraisers.

21 Well, in the mass tort action,
22 there's one appraiser named as a defendant.
23 The builder and mortgage broker who I
24 represent used five or six different
25 appraisers, all of whom came in with the

1 same values.

2 In the 12 individual cases, there
3 are seven different appraisers who are
4 named as defendants. Did they all get
5 together and conspire? I have not seen
6 anything -- well, in the 12 individual
7 cases, nothing has been produced to
8 contradict valuation the house was sold
9 for. They're relying on the tax records,
10 for the most part, which is not
11 establishing fair market value.

12 In the mass tort action, the expert
13 reports that I've seen are not true
14 appraisals. They take a high and low
15 average of houses that are being sold, some
16 40 years old. How do you compare a new
17 home with a home that's 40 years old?

18 The methodology we employed -- the
19 person we submitted -- the chairman of the
20 Real Estate Commission is our expert.

21 And he said the methodology was
22 totally improper. The same appraiser that
23 represents the -- an expert for the
24 plaintiffs in that case is an expert for me
25 in seven or eight of the individual cases,

1 not that I hired him, but the client hired
2 him. And he substantiated the values that
3 the homes were sold for.

4 The appraisal industry is basically
5 whose opinion is being given at the time
6 and what is the purpose of that opinion.

7 The one area I think that needs
8 regulation -- and I don't know if your
9 committee has the power to do it -- when
10 you buy a new home, the lender will
11 establish an escrow account so you pay
12 taxes.

13 Now, my clients disclosed a higher
14 escrow account payment per month that the
15 buyer should anticipate. However, when you
16 get to closing, the bank will require only
17 an escrow for the lot, not the house-lot
18 package, which is going to be reassessed in
19 12 months.

20 Therefore, people relied on the
21 HUD-1 escrow as opposed to what was set
22 forth in the good faith estimate, and they
23 come up short. And it does create a
24 financial hardship for them.

25 So what needs to be done is that the

1 lenders have to be required to escrow for
2 the total amount of the taxes or
3 anticipated taxes based upon the
4 improvement.

5 I also have a title company. One of
6 our title agents tried to do that, and was
7 told flat out by the bank you can't do it.

8 And we did advise the people that
9 their taxes were going to be higher, but
10 the bank refused to escrow any more than
11 was necessary for the lot.

12 Even when we -- the mortgage broker
13 discloses, hey, it's going to be more,
14 substantially more, it doesn't do any good.

15 So I think in adopting new law, you
16 should be very careful about how you
17 regulate these things because regulation of
18 laws causes litigation. And it has to be
19 established in such a way that it's fair,
20 because a lot of these things come down to
21 a he-said-she-said. "Well, I was told this
22 by the salesman." "I was told this by the
23 mortgage broker's representative." The
24 mortgage broker's representative says, "I
25 never said that."

1 You have them sign all kinds of
2 documents. I mean, in the one case,
3 there's pages and pages of documents
4 disclaiming this, disclaiming that.

5 Well, the reason I did that -- we
6 had all these documents being signed. The
7 plaintiff said, "Well, that was so they
8 could commit the fraud, to cover it up.
9 That's why we had all the documents signed
10 saying the house is as-is. If this
11 happens, we're not responsible."

12 So I would ask you just to exercise
13 caution in adopting any legislation that
14 you do.

15 CHAIRMAN DALEY: Let me ask you a
16 question. On the closing where all these
17 people indicated they signed all these
18 documents, did they say they had legal
19 counsel during that process? What was the
20 percentage?

21 MARSHALL ENDERS: The claim in all
22 the cases is that they were told by the
23 builder they didn't need counsel.

24 In the mass tort case, I think there
25 were five people that were represented by

1 local lawyers, all of them good real estate
2 lawyers. None of them had any complaints.

3 And from my own experience, if you
4 go to a closing and your closing is with
5 Chase Manhattan or Pocono Community, you
6 can't go in and say, "I want to change the
7 language of this mortgage or change the
8 language of this note."

9 All a lawyer does really at closing
10 is explain the documents to the person.

11 CHAIRMAN DALEY: Your mass action,
12 is it a federal action?

13 MARSHALL ENDERS: Yes.

14 CHAIRMAN DALEY: And were there RICO
15 charges?

16 MARSHALL ENDERS: There's RICO
17 charges in all of them.

18 CHAIRMAN DALEY: From your
19 explanation, are you -- how did it survive
20 summary judgment motions?

21 MARSHALL ENDERS: We just filed
22 summary judgment motions.

23 CHAIRMAN DALEY: No POs?

24 MARSHALL ENDERS: We filed Rule
25 12(b). It was granted in part and

1 dismissed in part because they said, based
2 on the allegations, there was insufficient
3 showing.

4 CHAIRMAN DALEY: There's enough
5 disputed fact or whatever?

6 MARSHALL ENDERS: Right. You can't
7 argue the facts. So, yes, we've now filed
8 a motion for summary judgment on 76 of the
9 105 plaintiffs.

10 CHAIRMAN DALEY: Your suggestion is
11 the fact that the escrow situation is a
12 problem. And Mario was here saying, yeah,
13 that's a great idea.

14 But you're on the other side of the
15 tracks, so to speak, on this issue because
16 you're representing a lot of defendants.

17 Maybe if you could jot us a note as
18 to some other ways that you think we could
19 keep your defendants from getting in this
20 situation and also the plaintiffs from
21 getting in this situation, it may really
22 help us out.

23 I mean, because you can see, bottom
24 up, in terms of -- I'm not saying you're in
25 the bottom position -- what needs to be

1 done so everyone doesn't get themselves in
2 this position again.

3 MARSHALL ENDERS: I think I'd have
4 to give that some thought. But I think
5 what happened here in Monroe County, it
6 started with The Pocono Record. And it's
7 been -- I'm in litigation with The Pocono
8 Record in a slander claim that's been put
9 on hold. But the purpose for which it
10 started had nothing to do with reality, and
11 that just mushroomed it.

12 People started believing they were
13 getting defrauded because The Pocono Record
14 said it. And, again, in depositions,
15 they're coming out and saying, "It was in
16 The Pocono Record."

17 CHAIRMAN DALEY: But some people
18 were convicted.

19 MARSHALL ENDERS: I represent -- I
20 was involved in that, too. I can tell you
21 that they pled nolo contendere to one
22 charge because they didn't want to go
23 through the criminal process.

24 CHAIRMAN DALEY: That's a
25 conviction. You and I both know that.

1 MARSHALL ENDERS: But they weren't
2 convicted of fraudulent lending.

3 CHAIRMAN DALEY: Yeah. Because they
4 didn't --

5 MARSHALL ENDERS: They couldn't
6 prove it.

7 CHAIRMAN DALEY: They said there was
8 evidence there to show the guilt. That's
9 was nolo contendere means, right? There's
10 sufficient evidence to show guilt, but
11 they're not pleading guilty or not guilty
12 on the issue.

13 MARSHALL ENDERS: They're saying
14 that they have no defense to the charge,
15 but the charge had nothing to do with
16 fraudulent lending that they pled guilty
17 to.

18 CHAIRMAN DALEY: Okay.

19 MARSHALL ENDERS: I think in the
20 criminal justice circle, people plead
21 guilty for other reasons besides their
22 guilt.

23 CHAIRMAN DALEY: I understand that,
24 right. I agree.

25 REPRESENTATIVE SCAVELLO: Marshall,

1 thank you for your testimony. I've said
2 earlier -- and you alluded to it a little
3 bit in your testimony -- about not being
4 able to afford a home. And I guess the
5 fault is on both sides, because there are
6 folks out there that will put two incomes.
7 And then, all of a sudden, they're into
8 their house and they decide to give up one
9 of the incomes, and they're in a situation
10 that they can't afford.

11 And I think it happens on both
12 sides, because sometimes -- and I've
13 experienced that. I've seen it for myself
14 where someone buys a home in Monroe County
15 and in their mortgage payments, they don't
16 include the things that they normally
17 didn't pay when they rented. But, however,
18 that biggest nut, especially if they
19 commute, it's about -- between 10 and
20 \$15,000 that wasn't -- you're borrowing on
21 something that you don't really have the
22 money to pay.

23 MARSHALL ENDERS: Yet, that's true
24 and not true. People that I've asked about
25 that -- and that's one of the allegations

1 in the complaint, in everybody's complaint.
2 "We had to commute. We didn't know we had
3 to commute, and this is an expense."

4 I ask people how many times between
5 the time they first came up until the time
6 they closed on their home they visited.
7 Some say 12. Some say five. Some say
8 three. They all say, "We knew we had to
9 commute."

10 Now, the unfortunate thing is -- I
11 don't know whether they had an estimate of
12 what it was going to cost them. I know
13 that one -- certain salespeople for one of
14 my clients actually did that.

15 The problem with that is, if they're
16 off on that estimate, it's going to be the
17 same thing as the real estate taxes. "You
18 told me this, and it's that. It's
19 increased to this." And it becomes another
20 bone of contention, if you would. But,
21 yeah, I think it is a problem.

22 REPRESENTATIVE SCAVELLO: Not
23 knowing those issues, not knowing those
24 costs, you run into that situation. And
25 I'll give you an example. This is somebody

1 who walked into my store, read the article.
2 "Where do I go to complain? I'm one of the
3 victims."

4 I spoke to the individual. And he
5 said the house next door -- and he paid
6 one-forty, and the house next door was a
7 foreclosure. And he said he was told it's
8 only worth 100,000. They had a mortgage.
9 And then went out -- and it's the same
10 house.

11 I said, "Well, let me ask you a
12 question." I said, "When were the houses
13 built?" He said, "Well, mine is a year
14 newer." "What color was the house?" He
15 said, "Well, it's a different color."

16 So I said, "If you bought that house
17 for a hundred, you would have to change
18 your siding, maybe change your front door?"
19 He said yeah.

20 I said, "Well, there's a cost
21 there." So I said, "When you get into the
22 house" -- my wife likes light kitchen
23 cabinets and all. I said, "What color were
24 the cabinets?"

25 He said, "Dark." I said, "Now,

1 Would you change them?" He said, "Maybe
2 not immediately." So what I'm trying to
3 bring out, I said, "The two houses are
4 identical, but you built a house to your
5 standards, what you wanted to see in that
6 house, the carpeting, everything." And
7 it's got a value to you and no one else,
8 because those are your choices.

9 If somebody should buy your home,
10 you're going to get a -- you have different
11 tastes. But the problem is with -- what
12 happens when foreclosures begin and you see
13 how many we've had, it keeps dragging the
14 values of properties.

15 And, unfortunately, if you're one
16 that's involved -- you know, you bought the
17 house for one-seventy, now you can't get
18 out because you're maxed out.

19 MARSHALL ENDERS: This takes me to a
20 whole different sphere.

21 REPRESENTATIVE SCAVELLO: I know.

22 MARSHALL ENDERS: People -- I
23 haven't found -- one person had their
24 house -- one couple had their house on the
25 market for a couple of weeks and took it

1 off.

2 All the other people I deposed,
3 "Have you listed the house for sale?" "No,
4 I don't want to sell my house."

5 They're happy with their house.
6 They're not happy, I guess, with the --
7 they think they're entitled to something.

8 What happens with foreclosures,
9 you'll see a foreclosure -- somebody going
10 in and buying up the foreclosure for
11 \$60,000, throwing a coat of paint on it and
12 selling it for at or about what it was
13 originally sold for.

14 I mean, the flipping aspect, which
15 my clients have been accused of, which they
16 didn't do, happens here a lot. And people
17 are making a ton of money.

18 CHAIRMAN DALEY: That happens all
19 the time. I mean, people search the papers
20 for those properties being foreclosed on or
21 a sheriff's sale, an estate or something.
22 They go in, and they buy at a low price,
23 and they raise it up. That's normal.

24 MARSHALL ENDERS: This is a business
25 in this area.

1 REPRESENTATIVE SCAVELLO: Oh,
2 really?

3 MARSHALL ENDERS: Yes. It's a
4 business. There's three or four groups,
5 some of them insiders who know what's
6 coming up and go and buy the homes, and
7 then turn around and sell them for a heck
8 of a lot more.

9 CHAIRMAN DALEY: Hearing all the
10 questions, Mr. Enders, I want to thank you
11 for your testimony.

12 MARSHALL ENDERS: Thank you.

13 REPRESENTATIVE SIPTROTH: Thank you,
14 Marshall.

15 CHAIRMAN DALEY: Our last testifier
16 is Mr. Brian Hudson, executive director of
17 Pennsylvania Housing Finance Agency, and we
18 appreciate him hanging in there again.

19 BRIAN HUDSON: Thank you, Mr.
20 Chairman, members of the committee.
21 Certainly I would like to again thank you
22 for giving me the opportunity to testify
23 for you this afternoon and commend you
24 again for your work in taking a look at the
25 foreclosures in the sub prime market.

1 I am Brian Hudson, the executive
2 director/CEO of the Pennsylvania Housing
3 Finance Agency.

4 And I would like to talk to you this
5 afternoon a little bit about our Homeowners
6 Emergency Mortgage Assistance Program,
7 better known as the HEMAP program, and then
8 some of the initiatives that PHFA has
9 undertaken and will be undertaking to help
10 deal with the sub prime issue.

11 PHFA is the Commonwealth's leading
12 provider of affordable housing. We run
13 three core programs: Multi-family rentals
14 using tax credits and some support with our
15 own funds. We also have a large first-time
16 homeowner buyer program where we sell
17 taxable bonds and originate approximately
18 7,000 mortgages a year. Last year we
19 actually sold \$768 million in bonds to
20 provide mortgages for first-time
21 homeowners.

22 We are the administrator on behalf
23 of the Commonwealth of the Homeowners
24 Emergency Mortgage Assistance Program,
25 HEMAP, which was created in 1983 as a

1 result of the downturn in the steel
2 industry and employment in the western part
3 of the state.

4 Generally, the program works this
5 way. If a homeowner is 60 days delinquent,
6 the lender is required to send what is
7 known as an Act 91 notice, informing the
8 homeowner of the impending foreclosure.

9 The homeowner has 30 days to have a
10 face-to-face meeting with a counseling
11 agency. Now PHFA supports a network of
12 about 100 counseling agencies throughout
13 the Commonwealth, and we support that
14 through our reserves and operating income.
15 Right now that cost is about \$700,000
16 annually.

17 The homeowners has a face-to-face
18 with the counseling agency, which sends an
19 application to PHFA. We have then 60 days
20 in which to render an opinion. Right now,
21 our turnaround is about 15 to 20 days in
22 rendering that opinion.

23 The eligibility for HEMAP loan: The
24 homeowner must be at least 60 days
25 delinquent on at least one of their

1 mortgages. If the homeowner has more than
2 one mortgage, not all mortgages need to be
3 delinquent. However, no more than two
4 mortgages can receive HEMAP assistance.
5 And HEMAP can be in no worse than the third
6 lien position.

7 The home must be located in
8 Pennsylvania, and the homeowner must reside
9 in the home. It must be his principal of
10 residence.

11 The home must be a one- or
12 two-family residence, and the mortgage
13 cannot be not an FHA mortgage. HEMAP is
14 not eligible for FHA primarily because FHA
15 has their own loss mitigation program.

16 HEMAP loans cannot exceed \$60,000 in
17 assistance. Assistance will be for 24
18 months, and it can be in the form of a
19 one-time or a continuing assistance. If
20 the homeowner needs a continuing payment,
21 then HEMAP would actually make a partial --
22 a portion of that homeowner's payment.

23 The homeowner must be suffering
24 financial hardship due to no fault of their
25 own. Typically, these reasons are laid off

1 from their job, medical reasons. And
2 sometimes we see divorce as one of the
3 primary reasons.

4 And they have to demonstrate the
5 ability to get back on their feet and
6 resume their mortgage payment within 24
7 months. And if approved, they can receive
8 assistance up to 24 months.

9 I would like to comment a little bit
10 on the legislation that was presented, Bill
11 1083 that was presented in April. It
12 recommended some changes to the HEMAP
13 program.

14 Number one is increasing the amount
15 of information required to be included in
16 an Act 91 notice, requiring lenders to
17 provide a copy to PHFA.

18 We think this is important because,
19 number 1, it would allow PHFA to determine
20 where those hot pockets are.

21 We are working with the bankers. I
22 know you heard testimony regarding that.
23 What we want to know is what can you send
24 us. I think we've agreed on quarterly
25 reports. What other information can you

1 send us with regards to that foreclosure
2 notice, because that will allow us to
3 determine where these hot pockets are and
4 what can we do to help those homeowners
5 stay in their home.

6 The other recommendation is to
7 continue the stay after the appeal hearing.
8 Currently, if an application is filed in a
9 timely manner, PHFA contacts the lender and
10 a foreclosure action is ceased.

11 This amendment would continue the
12 stay if the applicant appeals the denial.
13 It would allow the lender to proceed, but
14 do not -- proceed with paperwork, but not
15 proceed with foreclosure.

16 Another problem that we've been
17 having in the HEMAP program is receiving
18 reinstatement numbers from the lender in a
19 timely fashion. We want to beef that part
20 of the language up to have that sent to
21 HEMAP more efficiently, more timely, within
22 15 days, no longer than 30 days.

23 And the last piece requires PHFA to
24 do an ongoing analysis of foreclosures in
25 the Commonwealth and provide

1 recommendations to address these problems.

2 We're willing to take on that role
3 in terms of the Commonwealth. In 2003, we
4 did team up with the Department of Banking
5 to look at the foreclosures in Monroe
6 County.

7 And as a result of what was
8 happening in Monroe County, we instituted a
9 statewide counseling network, which I
10 mentioned earlier. We have four counseling
11 agencies here now that are helping
12 homeowners.

13 But HEMAP was not designed to deal
14 with some of the issues that were occurring
15 in Monroe County. It was not to deal with
16 predatory loans.

17 I know you heard a lot of testimony
18 this morning and this afternoon with regard
19 to that. One question that was asked was
20 what about -- are we lowering our
21 standards?

22 No, we haven't lowered our
23 standards. Products were created to get
24 around those standards, and that was part
25 of the problem.

1 I'm a firm believer in education,
2 and that's one of the reasons why this
3 counseling network is important. We wanted
4 to have an educated consumer when they look
5 at these loans.

6 We're not trying to limit the
7 options, but we want them to understand
8 that they're looking at. For high
9 prepayment fees, for a lot of points up
10 front, this is what you're getting.

11 Taking that to this counseling
12 agency, to that counselor, and get an
13 opinion from them, just as you would a
14 second opinion from a medical doctor, to
15 see if that's the right loan for that
16 individual.

17 Here in Monroe County in 2004, we
18 received 308 applications for HEMAP. We
19 approved 86. In 2006, we had 406
20 applications for HEMAP. We approved 58.

21 Year to date so far through 2007,
22 we've received 155 applications, and we've
23 approved 30 of those applications.

24 Since the inception of the HEMAP
25 program, 4,656 applications have been

1 received in Monroe County alone. And we
2 received about -- we approved about 1,010
3 applications, totaling \$16 million.

4 Again, a great program, but not to
5 deal with some of the issues. With
6 counseling network, we're reaching out to
7 the homeowners and trying to help them
8 understand what the product is.

9 But I do support -- strongly support
10 some of the legislation that is being
11 recommended with regards to the Department
12 of Banking and some of the changes.

13 The other change that we want to
14 recommend for HEMAP is reducing the
15 interest rate. We're currently, by
16 statute, at nine percent. Reduce that with
17 a floating index. At the base current
18 market, that rate would be seven and a
19 quarter percent.

20 After we've expended these dollars
21 to help get these people in the home, we
22 want to make sure they have an interest
23 rate that reflects the current interest
24 environment.

25 In addition, PHFA is looking at a

1 product that will provide refinancing
2 opportunities for those homeowners that
3 have the wrong mortgage loan.

4 We're trying to get out ahead of the
5 second wave, if you will, of resetting sub
6 prime mortgages. That will be coming in
7 the next six months to a year.

8 We want to do this through the form
9 of selling taxable bonds. These will be
10 fixed rate loans. We will not -- we don't
11 have a floor with regard to a credit score.
12 It would require extensive counseling. It
13 does not include a work-out loan, which is
14 different. A work-out loan would be that
15 loan that has an appraiser -- an appraisal
16 of the property that does not support the
17 mortgage. That's another issue. We need
18 to talk about that.

19 I am in discussion with some banks
20 and had a meeting earlier this week at the
21 Federal Reserve to talk about these issues
22 on predatory lending and what can be done.

23 Our first step to do this is to
24 provide for those homeowners who could
25 qualify under a restructuring of their loan

1 that may be a variable rate loan so that we
2 can bring that to the table and help them.

3 '03, what happened here in Monroe
4 County, I think it opened the eyes to a lot
5 of individuals, certainly to us at PHFA.

6 We don't ever want to have something
7 like that happen again. And that's one of
8 the reasons why we're trying to create
9 these products and give extensive
10 education.

11 We've been working -- teamed up with
12 the Department of Banking. They've
13 expanded their staff. We communicate on a
14 regular basis with regards to financial
15 literacy.

16 All of that is part of it. I heard
17 previous testimony that it's not the
18 homeowner's fault, it is the homeowner's
19 fault, it's the builders. There was a
20 little bit of everything happening in
21 Monroe County. And we want to address
22 that, and we want to be there to help.

23 That's my testimony. I thank you
24 for giving me the opportunity, and I love
25 to answer any questions you may have from

1 the committee members.

2 CHAIRMAN DALEY: Any questions by
3 any members?

4 REPRESENTATIVE SCAVELLO: Brian, I
5 just want to thank you for all the work I
6 know that you've done here in Monroe. Your
7 agency has been here helping out the
8 banking folks as well, and the HEMAP
9 program has helped a tremendous amount of
10 folks.

11 If you didn't qualify, it's because
12 you didn't have the ability to pay back?
13 Is that one of the reasons why some of
14 those weren't approved?

15 BRIAN HUDSON: Or it was a result of
16 your personal circumstances. Maybe you
17 went out and charged credit and did not
18 cover it. You started a business with your
19 home. Things like that.

20 REPRESENTATIVE SCAVELLO: Otherwise,
21 you were able to help a tremendous -- I
22 know my office is in contact with your
23 office, and you've helped a tremendous
24 amount of folks that applied through us.
25 And I thank you for that, because many of

1 those folks are now on their feet. And
2 without HEMAP being available, they would
3 not be there. They would be out of their
4 home.

5 BRIAN HUDSON: It's a great program.
6 It's actually one of a kind in the nation
7 and just recently recognized by Harvard
8 University as one of the top 18 innovations
9 in American government.

10 So it's a great program. Our
11 counterparts in other communities are
12 looking at starting --

13 REPRESENTATIVE SCAVELLO: It's nice
14 to be a leader.

15 CHAIRMAN DALEY: Representative
16 Siptroth.

17 REPRESENTATIVE SIPTROTH: I, too,
18 want to commend you, Brian, and the
19 Department. You guys are doing a great job
20 down there.

21 And Monroe County has been hit with
22 a number of individuals that certainly need
23 the state's help.

24 I have one question regarding
25 prepayments. First of all, in order to be

1 eligible for the program, you have to be in
2 default for 60 days. That's part of it.

3 Do you take into consideration if a
4 prepayment clause, like up to two years, is
5 part of the program? Do you try to take
6 that out? Do you let it in and help the
7 individual with the existing firm, the
8 existing bank? How does that work?

9 BRIAN HUDSON: The counseling
10 agencies that we are currently dealing
11 with, we have been instructing them -- and
12 in some cases, they are successful -- to
13 negotiate with the lender to restructure
14 that loan. And a lot of times that does
15 work.

16 One of the things that we're going
17 to be doing when we create this taxable
18 program, our first look will be at the
19 HEMAP loans.

20 So we're going to look at all the
21 HEMAP loans and see which ones can we
22 actually refinance. And we're going to go
23 back to some of those lenders and hope to
24 negotiate away that prepayment penalty.
25 Because we're going to say, "Look, we're

1 going to refinish this homeowner. Put them
2 into a fixed rate mortgage, and we want you
3 to release that prepayment."

4 Right now that hasn't been
5 aggressive, the release of prepayments.
6 They've been negotiating directly with that
7 lender to restructure the loan, and that
8 prepayment may stay in place.

9 But when we launch -- and I say when
10 we launch -- this the program next month,
11 we are going to go back, and we'll be able
12 to refinance a lot of homeowners in the
13 HEMAP program. And one of the things we
14 want to do is negotiate away that
15 prepayment penalty.

16 REPRESENTATIVE SIPTROTH: Thank you.

17 CHAIRMAN DALEY: Okay. Brian, I
18 want to once again thank you for your
19 testimony, your participation, what your
20 agency does. You have great people. It's
21 a pleasure to be able to work with you.
22 And I know -- we're looking forward to some
23 future endeavors that we're going to be
24 dealing with you on. I appreciate your
25 unbelievable candor today and thank you

1 very much.

2 Ladies and gentlemen, this concludes
3 the hearing. This hearing is now adjourned
4 as of 2:03 this afternoon. Thank you all.

5 * * *

6 (Whereupon, the hearing was
7 adjourned at 2:03 p.m.)

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C E R T I F I C A T E

I, Trisha Sims, CCR, Certified Court Reporter and Notary Public in and for the Commonwealth of Pennsylvania, certify that the foregoing is a true and accurate transcript of the hearing held before me on the date and place hereinbefore set forth.

I further certify that I am neither attorney nor counsel for, nor related to or employed by, any of the parties to the action in which this hearing was taken, and further, that I am not a relative or employee of any attorney or counsel employed in this matter, nor am I financially interested in this case.

Trisha Sims
Court Reporter
Notary Public