The Home Mortgage Disclosure Act: Foundation for a Sound Housing Market

(Part III of IV)

By Stuart I. Quinn and Faith A. Schwartz
Confidential

The recipient of this document agrees that at all times and notwithstanding any other agreement or understanding, it will hold in strict confidence and not disclose the contents of this document to any third party and will use this document for no purpose other than evaluating or pursuing a business relationship with CoreLogic. No material herein may be reproduced, in whole or in part, by any means without the express written consent of CoreLogic. Unauthorized distribution is strictly prohibited.
Executive Summary

The housing industry continues to undergo a significant transformation with many downstream regulatory changes happening in 2014 and beyond. In the years ahead, regulators, Congress and other industry actors will closely review how a loan is: (1) originated; (2) validated prior to closing; (3) funded; (4) serviced and (5) delivered to the secondary marketplace. Adherence to established rules and regulatory oversight will be the key to a highly functioning secondary mortgage market, but there are many moving pieces. The new Home Mortgage Disclosure Act (HMDA) rules, for example, are yet another change to mortgage origination operations and disclosure requirements that are necessary to track trends in the demographics and demand for new loans. The combination of HMDA requirements, Real Estate Settlement Procedures Act (RESPA), Truth In Lending Act (TILA) disclosure changes, Qualified Mortgage and Ability to Repay (QM/ATR) underwriting reviews, Qualified Residential Mortgage (QRM) secondary market execution and servicing rules have outlined the need for careful, prudent origination and servicing of a mortgage loan in the new housing finance system. Investments in systems, compliance, communication and customer care will remain a dominant theme in the years ahead to absorb new rules and requirements as we build the foundation of a safe and sound housing finance system.
The Home Mortgage Disclosure Act: Foundation for a Sound Housing Market
(Part III of IV)

Faith A. Schwartz and Stuart I. Quinn

The Home Mortgage Disclosure Act (HMDA) has been in continual evolution since its passage in 1975. Recent developments have brought this nearly 40-year-old law under new scrutiny. Designed to provide the public with sufficient information to determine whether depository institutions (and their majority-owned subsidiaries) were fulfilling the housing needs of their local communities and neighborhoods, HMDA has also assisted policy makers in determining areas that require allocation of public sector investment dollars. In a process originally overseen by the Federal Reserve Board (the Board), depository institutions submit standardized annual reports that provide the government with mandated data to allow for increased transparency in lending practices. On July 21, 2011, the rule-writing authority of Regulation C that implements HMDA was transferred from the Board to the newly created Consumer Financial Protection Bureau (CFPB or the Bureau) under the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act or Dodd-Frank).[1]

Background

The data collected and reported at the outset of HMDA focused on summary information predominately concerned with the number of loan originations, dollar amount and specific census-tract data submitted by depositories, banks and credit unions. The expectation was that the data would help identify institutions that extended depository or credit services without sufficiently expanding other credit opportunities or adequately investing in the community, with an emphasis on access to the residential mortgage markets. This restrictive practice was commonly referred to as ‘redlining,’ in which lending institutions categorically identified lending areas that were ineligible for certain financial services based on social and ethnic demographics and housing stock characteristics.[2]

From its enactment in 1975 to some of the most substantial amendments to the law in 1989, the data collected and storage methods used, pursuant to HMDA, made little contribution to the ability to conduct rigorous analysis that could empirically and conclusively prove restrictive lending practices. It was not until technological advancement allowed for increased data storage, cross-tabulation and analytics, that a series of reports, released in 1988, elevated public policy concerns surrounding the alleged practice of redlining. The most prominent example of this reporting was Bill Dedman’s Pulitzer-Prize winning “The Color of Money” series that highlighted an analysis conducted by the Atlanta Journal Constitution. Dedman reported that the paper’s analysis revealed white middle-income neighborhoods received home mortgage loans at a rate of five to one compared to those given in similar black middle-income neighborhoods.[3] A second report, released by the Detroit Free Press, similarly found the ratio of loans offered in Detroit to be three to one. The Federal Reserve Bank of Boston subsequently released a study of lending patterns in January 1989 that concluded “lower mortgage originations in black neighborhoods cannot be explained away by lower levels of income and wealth, lower rates of housing development, or other neighborhood differences.”[4] At the

[1] Rulemaking responsibilities and authority over banks, credit unions and thrifts with assets greater than $10 billion was transferred to the CFPB; further oversight is delegated amongst the other federal bank regulators.

[2] In 1935 the Federal Home Loan Bank Board requested that institutions categorize risk levels of specific areas, ‘Type D’ areas considered the riskiest, included a number of predominately African-American neighborhoods. ‘Type D’ categories were identified in red coloring. See Bernanke Testimony At Community Affairs Research Conference (March 2007).


time, HMDA did not provide enough data to effectively analyze across comparative traits of applicants such as race or income.

In 1989, Congress and the Board made some of the broadest changes to HMDA by amending the language of HMDA through the Financial Institutions, Reform, Recovery and Enforcement Act (FIRREA)\(^5\). As residential home mortgage lending continued to evolve from traditional depository institutions to mortgage bankers and a more robust secondary market, policy makers expanded the scope of HMDA to better encompass the growing diversity of actors in the marketplace. The amendments to HMDA through FIRREA widened coverage of the disclosure requirements to lenders not affiliated with banks, thrifts or their holding companies and subsidiaries of companies that now faced the same treatment as affiliated lenders.\(^6\) Data fields were also expanded to incorporate loan-level information, including income, gender, race or ethnicity, class of purchaser and disposition of applications. The ability to calculate application approval disparities across race and income enhanced the use of HMDA as a tool for enforcing other fair housing laws, such as the Equal Credit Opportunity Act (ECOA), Community Reinvestment Act (CRA) and, the Fair Housing Act (FHA).\(^7\)

**What the Rule Is and What the Rule Is Not**

HMDA is considered a transparency-based regulation and is largely viewed as a tool meant to be exercised in tandem with existing fair housing laws. For instance, under the ECOA it is “unlawful for any creditor to discriminate against any applicant, with respect to….race, color, religion, national origin, sex or marital status, or age.”\(^8\) HMDA data can be analyzed to identify potential discrimination by mortgage lenders based on any of those demographic characteristics. It does not, however, create lending standards or practices. The statute provides enforcement authority under consent decree from the enforcing regulator, but it does not allow for private action. Many regulatory bodies leverage HMDA data in statistical examinations and pattern analyses to determine what regions or institutions may require additional inquiry, but those regulators have a statutory responsibility to refer alleged discrimination cases to either the Department of Justice (DOJ) or the Department of Housing and Urban Development (HUD), as appropriate.

In 2002, Regulation C was modified and the data fields mandated by HMDA expanded again to include: (1) pricing rate spread for ‘higher priced loans;’ (2) lien position; (3) secured or manufactured property and; (4) whether the loan is subject to the Home Ownership and Equity Protection Act (HOEPA).\(^9\) This amendment changed the focus from ‘which consumers get home loans to the terms on which consumers get home loans.’\(^10\)

\(^5\) Amendments were made in 1980 to centralize and standardize reporting of all institutions by the FFIEC and in 1987 amended the law to subsidiaries.


\(^8\) See 15 USC §1691

\(^9\) Regulation C, 12 CFR, Part 203

Transfer to the CFPB

In 2011, the Dodd-Frank Act transferred HMDA supervisory and enforcement authority from the Board to the CFPB for banks, thrifts and credit unions with over $10 billion in assets. Coverage extended to all of the listed institutions affiliates and subsidiaries, no matter their size. The statutory language also required the CFPB to make a number of additions to the collected data elements, again emphasizing collection of information demonstrating the terms under which consumers received loans. The new fields mandated by Dodd-Frank include: total points and fees calculation, presence of negative amortization, length of introductory rate period, duration of prepayment penalties, term to maturity, difference between the benchmark and Annual Percentage Rate, property value (loan to value), channel, age, credit score and other fields that the CFPB may deem appropriate. The CFPB formally initiated the rulemaking process under Regulation C (HMDA) in Feb. 2014.

Since being transferred supervisory and rulemaking authority, the Bureau first exercised their enforcement duties under the existing statute, prior to modifying the rules, signaling their intent to fully enforce the Act. In Oct. 2013, the Bureau announced two enforcement orders for inaccuracies in data submissions of 2011 HMDA data. The consent orders came with civil penalties of $425,000 and $34,000. Accompanying the consent orders were the release of a bulletin providing compliance guidance and resubmission guidelines for those institutions subject to HMDA. The compliance guidelines outline the expectation that comprehensive policies, procedures and internal controls are in place to ensure accuracy of reporting. This includes pre-submission audits and reasonable amounts of analysis, including reviews of any regulatory changes that may have occurred since the prior examination or collection cycle. The resubmission guidelines place a higher accuracy standard and compliance burden on larger institutions by stratifying guidance by institutions submitting more than 100,000 HMDA Loan Application Registers (LARs) entries and those submitting less than 100,000. The CFPB guidelines mimic the Board's previous guidelines for institutions with fewer than 100,000 entries, requiring resubmission when 10 percent or more HMDA sample entries contain errors or when a single data field exceeds a 5-percent error threshold. Institutions with 100,000 or more LARs entries are required to resubmit when sample error entries reach higher than 4 percent or 2 to 4 percent for individual fields.

The addition of data fields to HMDA under the Dodd-Frank Act requires the Bureau to convene a Small Business Review Panel, under the Small Business Regulatory Enforcement Fairness Act (SBREFA panel). On Feb. 7, 2014, the Bureau initiated rulemaking proceedings and announced its intention to assemble the SBREFA panel with an accompanying outline of proposals that document preliminary impact analysis and supplemental questions to which consumers, small lending institutions, trade associations and advocates may respond. The four broad categories laid out for consideration include: additional data fields beyond the statutory requirements, increased standardization and quality, readjustments of the threshold requiring institutions to report and, enhancement of the submission and data modification process.

---

11 Section 1094 of the Dodd-Frank Wall Street Reform and Consumer Protection Act
12 Resubmission Guidelines and Bulletin, the Bureau may also require resubmissions if “errors prevent an accurate analysis of the institution’s lending.”
Data Points Proposed Beyond the Statute

As Regulation C is written today, covered institutions are required to submit data on closed-end home purchases and home improvement and refinance transactions secured by a dwelling. Only dwelling-secured refinance home equity lines of credit (HELOC) are mandatory, while the reporting of home purchase and improvement HELOCs under existing rules are optional. The Bureau has alternatively proposed eliminating home improvement loans not secured by a dwelling, but proposes to expand coverage of loan type to include cash-out refinances, all HELOCs, Home Ownership and Equity Protection Act (HOEPA) status (including cause of trigger), a qualified mortgage flag and all reverse mortgages.

Beyond the expanded loan types, the CFPB used their rulemaking power within the statute to propose additional fields they believe are useful for regulatory purposes. The proposed data elements beyond the statutory requirements include: debt-to-income (DTI); combined loan-to-value (CLTV); total origination charges; total discount points; borrower’s risk-adjusted, pre-discounted interest rate; interest rate received; automated underwriting system (AUS) result; new unique identifiers for the loan, originator, property, entity;* and requiring the reporting institution to indicate the reason for denial of an application.13

The Bureau foresees that the increased number of fields will cause upfront costs for the covered institutions. Additional data will be collected throughout the SBREFA process to better account for impacts, and the proposal solicits feedback on adjusting the reporting coverage thresholds to a minimum of 25 closed-end mortgage loans, rather than existing differences between depository and non-depository thresholds. The CFPB estimates the proposed change to the coverage threshold would drop 1,775 depository institutions from reporting and require 450 new non-depository institutions to begin reporting.14

---

13 Some items are replacing or modifying existing fields, an exhaustive list is available here: http://files.consumerfinance.gov/f/201402_cfpb_hmda_outline-of-proposals.pdf p. 13-19 and Appendix A

*The majority of the identifiers examined propose leveraging and modifying existing identification systems such as Treasury’s Office of Financial Research Legal Entity Identifier (LEI or G-20’s Global LEI) for entities or the National Mortgage Licensing System and Registry (NMLS) for originators.
Industry Impact

The process of capturing data, ensuring compatibility, auditing and generating reports is a burdensome and costly exercise for the housing industry. However, the collection of indicative and timely data is necessary to conduct meaningful analyses of trends within a marketplace, as well as for regulatory oversight and enforcement. In 2012, 7,400 home lenders contributed HMDA data, and each institution most likely utilized data fields beyond HMDA requirements to effectively analyze their own crediting decisions. The supplemental fields mandated in Dodd-Frank begin to capture the breadth of data vital to the underwriting decision, but institutional weighting and use can differ across the reporting lenders. HMDA does not establish lending standards, but there is concern that the expansion of fields could unintentionally create standards or ‘safe harbors’ for future credit models that reduce lending beyond a certain scope.15

When discussing fair lending issues, it is necessary to consider the underlying demography of the population that is becoming the driver of housing demand. As of 2009, the composition of 15–29-year-olds was over 60 percent white and non-Hispanic, while 72 percent of those aged in the 45–59 cohort were white and non-Hispanic.16 The diversity of younger generations and demonstrated stronger preference amongst specific segments, such as Hispanics, to attain homeownership elevates the importance of HMDA for both the financial industry and its regulators.17

The evolution of HMDA over the years is representative of advancements in accessibility, technology and social progress. Transparency regulations are political in nature and therefore require adaptation so that they remain sustainable and effective.18 The CFPB acknowledges within their proposal outline that it would be unnecessarily burdensome to rebuild existing standards and reporting infrastructure. What the CFPB requests through the addition of data elements, it attempts to reciprocate by leveraging existing Uniform Loan Delivery Dataset (ULDD) or Mortgage Industry Standards Maintenance Organization (MISMO) and taking on some responsibility to assist in the software development needed to modernize the submission process. The issued outline from the CFPB begins the discussion on what is adequate and necessary to monitor fair lending compliance. The industry is expecting the CFPB to demonstrate the clear added value each of the additional elements represents to its mission and ensure the agency is not capturing fields for the sake of data.19 We are in the preliminary stages of substantive dialogue; a dialogue that we hope will continue to enhance the transparency originally sought by the statute’s authors.

---

17 See most recent topic analysis housing survey by Fannie Mae
Faith A. Schwartz:
Faith is responsible for managing the CoreLogic government business, while providing policymaker education and thought leadership. Prior to joining CoreLogic she was an executive director at the HOPE NOW Alliance, a non-profit coalition created in 2007 to bring together, servicers, lenders, investors, Federal Reserve Banks and government-sponsored enterprises to help homeowners in distress stay in their homes.

Faith is a former member of the Federal Reserve Consumer Advisory Committee and currently sits on the boards of the CoreLogic Academic Research Council, the Structured Finance Industry Group (SFIG), and HOPE LoanPort, which provides a communication loan workout vehicle for borrowers, counselors, and investors. In 2013, Faith was honored by the MBA as one of the Top 20 Leading Industry Women and in 2012, was selected as one of HousingWire's Women of Influence.

Stuart I. Quinn
Stuart is responsible for policy research and strategy for the CoreLogic government business. Prior to joining CoreLogic, he was the data metrics manager for the HOPE NOW Alliance, responsible for developing and analyzing monthly and state foreclosure prevention data. Stuart formerly worked as a consultant for the American Chemical Society assisting as a multimedia specialist and market analyst.
ABOUT CORELOGIC

CoreLogic (NYSE: CLGX) is a leading global property information, analytics and data-enabled services provider. The company's combined data from public, contributory and proprietary sources includes over 3.3 billion records spanning more than 40 years, providing detailed coverage of property, mortgages and other encumbrances, consumer credit, tenancy, location, hazard risk and related performance information. The markets CoreLogic serves include real estate and mortgage finance, insurance, capital markets, and the public sector. CoreLogic delivers value to clients through unique data, analytics, workflow technology, advisory and managed services. Clients rely on CoreLogic to help identify and manage growth opportunities, improve performance and mitigate risk. Headquartered in Irvine, Calif., CoreLogic operates in North America, Western Europe and Asia Pacific. For more information, please visit corelogic.com.

CoreLogic
40 Pacifica, Ste. 900
Irvine, CA 92618

For more information, please contact Faith Schwartz at 202-969-6464