The Home Mortgage Disclosure Act: A Synopsis and Recent Legislative History

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Abstract
This article describes the provisions of the federal Home Mortgage Disclosure Act (HMDA), tracing its legal evolution since 1989, when Congress expanded HMDA to require reporting of home mortgage lending by ethnicity and race. HMDA requires most lenders to report the demographic makeup and geographic distribution of home mortgages to the federal government. The 1989 amendments and later developments transformed HMDA from a law exclusively concerned with geographic disinvestment to one concerned with lending disparities by ethnicity and race. In the process, HMDA evolved from an obscure reporting statute to a flashpoint for debates over lending discrimination and subprime lending.

The Home Mortgage Disclosure Act of 1975 (HMDA or the Act), the focus of this issue of the Journal of Real Estate Research, was one in a series of federal antipoverty laws enacted by the United States Congress in the 1960s and 1970s. Congress passed the first of these statutes in 1968, when it enacted Title VIII of the Civil Rights Act prohibiting discrimination in housing finance. In the 1970s, as urban centers continued to decline, Congress passed three more statutes designed to address the twin ills of discrimination and disinvestment. One of these statutes was the Home Mortgage Disclosure Act; the other two were the Equal Credit Opportunity Act of 1974 (ECOA) and the Community Reinvestment Act of 1977 (CRA).

The Home Mortgage Disclosure Act was a direct response to mortgage redlining and urban blight. In the Act, Congress declared that banks and thrifts had “contributed to the decline of certain geographic areas by their failure . . . to provide adequate home financing to qualified applicants on reasonable terms and conditions.” Congress had two purposes in mind in enacting HMDA: to ascertain whether banks and thrifts were serving the housing needs of their communities and to target public spending in underserved neighborhoods more effectively to spur private investment. In recent years, federal regulators have also articulated a third purpose behind HMDA, which is to help identify lending discrimination and enforce the federal antidiscrimination laws. This third purpose differs from the first by focusing on discrimination based on prohibited categories including ethnicity and race, rather than on discrimination based on geographic locale.
Unlike Title VIII, ECOA, and CRA, HMDA is strictly a reporting statute. The Act requires lenders to compile and disclose annual data on the demographic makeup and geographic distribution of housing-related loans. The Act does not place affirmative obligations on lenders apart from reporting and does not authorize private lawsuits for HMDA violations. Congress gave the Federal Reserve Board (the Board) authority to issue regulations implementing HMDA.8

This article traces the historical evolution of HMDA since 1989, when Congress, in its first major amendments to HMDA, expanded the Act to cover most residential mortgage lenders and mandated the disclosure of lending patterns by ethnicity and race. The story starts with the 1989 savings and loan bailout legislation, when an odd alliance of banks and consumers convinced Congress to change HMDA from a law regulating banking institutions alone to a law regulating virtually all residential mortgage lenders. That same law spurred HMDA’s evolution from a statute exclusively concerned with geographic disparities in mortgage lending by income to one also concerned with lending disparities by ethnicity and race. This development occurred in fits and starts, often over opposition from lenders, first during the savings and loan crisis and later when lenders came under press scrutiny for abusive lending. Similarly, HMDA enforcement is much more serious today than it was at HMDA’s inception in 1975, now that HMDA features statutory reporting deadlines and agency sanctions for reporting violations. In the process of these changes, HMDA underwent a remarkable transformation from a musty reporting statute to a flashpoint for debates over racial disparities and subprime lending. Just as HMDA provides a mirror into mortgage redlining, income inequality, and race discrimination, HMDA’s evolving shape has been a product of continued debates in this country about economic disparities and persistent discrimination by race.

HMDA’s Coverage

Originally, HMDA only applied to banks, savings associations, credit unions, and their mortgage lending subsidiaries.9 Depository institutions complained that they were competitively handicapped by having to comply with HMDA while nonbank mortgage lenders did not. Consumer groups and civil rights groups also sought to expand the reach of HMDA. Together, these groups formed an alliance to convince Congress, in the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA), to expand HMDA as part of the cleanup of the savings and loan debacle in order to level the competitive playing field for shaky banks and thrifts. The 1989 amendments broadened HMDA by reaching independent non-depository lenders with offices in metropolitan statistical areas and more than $10 million in assets.10

Soon it became evident that numerous non-depository mortgage lenders were able to stay below the $10 million floor by selling their loans on the secondary market shortly after origination. At the urging of banks and thrifts, Congress amended HMDA again in 1991 to authorize the Board, in consultation with the Department
of Housing and Urban Development (HUD), to close this gap by narrowing the exemption for small non-depository mortgage lenders. The Board responded by expanding HMDA in 1992 to cover non-depository mortgage lenders, regardless of asset size, who make at least 100 home purchase or refinance loans per year.\(^{11}\) With the 1992 rule, the Board thus expanded HMDA to cover non-depository entities that are active mortgage lenders despite their small size.

The Home Mortgage Disclosure Act’s application to independent mortgage lenders remained subject to a potentially important exemption. In the 1989 amendments, Congress had created an exemption from HMDA for non-depository mortgage lenders who were not “engaged for profit in the business of mortgage lending.”\(^{12}\) At first, the Federal Reserve Board restricted the meaning of “the business of mortgage lending” to lenders whose home mortgage originations comprised 10% or more of their total loan origination business in dollars. By 2000, some large mortgage lenders had become exempt under this standard because more than 90% of their loan originations involved non-mortgage lending such as consumer loans or credit cards. To correct this problem, the Board proposed amending the Act’s regulations in 2000 to add an alternative dollar-volume test. Under the proposed test, non-depository lenders who originated total home mortgages of $50 million or more a year would be deemed to be “in the business of mortgage lending,” regardless of the ratio of home mortgages to total loans in their loan origination portfolios.\(^{13}\) When the final rule came out in 2002, the Board not only adopted the dollar-volume test, but reduced the threshold by half, thus reaching non-depository lenders with total mortgage originations of at least $25 million. The Board lowered the threshold after a broad range of commenters, including lenders, community groups, and law enforcement agencies, called for broader HMDA coverage.\(^{14}\)

As a result of these changes, HMDA has exceedingly broad market coverage. Most home mortgage lenders today are subject to HMDA’s reporting requirements. Today, a mortgage lender must satisfy two criteria in order to trigger coverage under HMDA. First, the lender must either be (1) a bank, savings association, or credit union that originates federally related mortgage loans,\(^{15}\) or (2) a for-profit, non-depository lender that is engaged in the business of mortgage lending.\(^{16}\) Second, the lender must have had a home or branch office located in a metropolitan statistical area (MSA) or metropolitan division (MD) on the preceding December 31.\(^{17}\)

The meaning of the term “branch” depends on the type of lender. For banks and savings associations, a “branch” means any location that accepts deposits and is approved by a state or federal banking regulator (excluding stand-alone ATM machines). For credit unions, a “branch” means any office where member accounts are established or loans are made, regardless of government approval. For non-depository mortgage lenders, HMDA defines “branch” to mean either of two things. First, a “branch” is any office where a lender takes applications for residential mortgages, other than offices of affiliates or other third parties such as loan brokers. Second, a non-depository lender is also deemed to have a branch
office in any MSA or MD where it originated five or more home purchase or home improvement loans in the last calendar year. Congress included the five-loan alternative test in FIRREA in order to expand the number of non-depository lenders who are covered by HMDA.\textsuperscript{18}

The Act exempts two groups of lenders from compliance with the Act. The first exemption applies to small depository institutions. Originally, Congress gave depository institutions with total assets of up to $10 million a complete exemption from HMDA, regardless of the number of mortgage loans they originated.\textsuperscript{19} In regulatory relief legislation in 1996, Congress raised this exemption to adjust it for past inflation and indexed it to the Consumer Price Index for Urban Wage Earners and Clerical Workers. Thus, for the reporting year 2007, banks, savings associations, and credit unions with total assets of up to $36 million as of year-end 2006 were exempt from collecting HMDA data.\textsuperscript{20}

The other exemption is designed for state-chartered mortgage lenders in certain states. Under that exemption, if the Federal Reserve Board determines that a state-chartered or state-licensed mortgage lender is subject to a state disclosure law that is substantially similar to HMDA and has adequate provisions for enforcement, the lender is exempt from HMDA. This exemption has been a dead letter to date, because no state has yet adopted an exemption from HMDA.\textsuperscript{21} In sum, HMDA’s coverage has expanded steadily over the years from banking companies at the outset to also cover most non-depository mortgage lenders today.

It is interesting to contrast HMDA’s wide orbit with the ambit of the Community Reinvestment Act (CRA), which only applies to banks and thrifts. It was pressure from banks and thrifts, in league with consumer and civil rights groups, which resulted in HMDA’s expansion. This alliance successfully pressed for the 1989 and 1991 amendments expanding HMDA to independent non-depository mortgage lenders. Yet those same groups have advocated expanding CRA to non-depository lenders to no avail to date. It may be that HMDA’s status as a mere reporting statute and the Board’s own interest in added data helped mobilize support for HMDA’s expansion and neutralize any opposition. In contrast, CRA entails a different political calculus, most likely because it imposes heavy community reinvestment duties on the lenders that it regulates.

**Timetables and Data Fields**

Initially, HMDA was a humdrum reporting statute that focused on geographic lending disparities strictly by income, not by race. As it was originally conceived by Congress, HMDA was concerned with whether lenders were redlining low- and moderate-income neighborhoods, regardless of the incomes or creditworthiness of individual residents of those neighborhoods. HMDA’s original language did not require lenders to report lending data according to ethnicity or race. It was only in 1989 that Congress amended HMDA to capture these dimensions of lending. In the process, Congress propelled HMDA into the limelight and public controversy.
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The 1989 Congressional Amendments: Applications, Gender, and Race

Originally, HMDA required lenders to collect and report data only on loan originations and only according to census tract and income. In 1989 in FIRREA, Congress expanded HMDA data reporting in three significant ways. First, Congress broadened reporting to include mortgage applications, including applications that were denied. Second, Congress required lenders to report race characteristics and gender for submitted applications and loan originations. Finally, FIRREA required lenders to report sales of mortgage loans, as well as the type of purchaser. Once Congress made it possible to track racial disparities in submitted loan applications, approvals, and denials, the once sleepy statute came to life.

The HMDA amendments in FIRREA were a byproduct of the savings and loan crisis, which consumed Congress in 1989. In FIRREA, in response to the thrift debacle, Congress revamped bank and thrift regulation, increased the powers of bank and thrift receivers, strengthened banking sanctions, and recapitalized the deposit insurance funds, all at enormous expense to U.S. taxpayers. During the legislative process, members of Congress, especially Democrats, expressed dismay that failed thrifts had siphoned deposits out of local communities, only to invest them in remote, high-risk projects. Thus, Congresswoman Marcy Kaptur found a direct connection between disinvestment by failed thrifts and mortgage redlining: “It is a pathetic commentary on those who steered the S&L industry down this dead-end path that deposits flowed out of communities that were redlined in order to pay for risky investments made far from home by institutions that manipulated small depositors’ funds.” In her view, “any acceptable solution to the S&L crisis [meant] that reinvestment must take place in communities which have faced lending discrimination.” Congressman Joseph P. Kennedy II similarly insisted on increased lending to predominantly minority communities as the quid pro quo for bailing out the thrift industry: “I cannot accept the argument that it is right to tax all Americans to pay for the fraud and misconduct of the S&Ls, but that it is ‘not relevant’ that Congress give those same taxpayers equal access to credit from banks, S&Ls and mortgage companies. I do not think the United States Government ought to stand by idly while a federally-subsidized industry systematically denied credit to black and Hispanic Americans.

Against this backdrop, the Senate and the House ultimately agreed to the HMDA amendments as part of a larger set of provisions in FIRREA, including disclosure of Community Reinvestment Act ratings and examination reports, which were designed to address mortgage discrimination by gender and race. According to the conferees, HMDA data on gender and race would assist “regulatory agencies in identifying possible discriminatory lending patterns . . . that disadvantage women, minority borrowers, or predominantly minority or low- or moderate-income neighborhoods.” To that end, the conferees instructed federal banking regulators to facilitate analysis of HMDA data “by (i) applicant race and gender, (ii) racial composition of neighborhood, and (iii) applicant income level.”
Finally, FIRREA required lenders to categorize the purchasers of loans they sold in order to “permit identification of potentially discriminatory practices by particularly large secondary market entities.” This data permits analysts to track whether financing by the capital markets—and capital suppliers who are subject to different regulatory regimes—affect disparities in the supply of credit to census tracts and individuals by income, ethnicity, gender, or race.

**The 1992 Congressional Amendments: Increased Public Disclosure**

For the first time in 1990, lenders collected HMDA data on gender and race. When the results came in, the race data created a stir. Federal Reserve Board analysis of the 1990 data showed that racial minorities were turned down for mortgage loans more than twice as frequently as whites. After holding hearings in May 1992, the House Banking Committee expressed dismay that despite these racial disparities, “the four banking regulatory agencies collectively could come up with only one single example of a fair lending violation they had referred to the U.S. Department of Justice for prosecution.” In addition, the House hearings uncovered problems with the format of HMDA data and slow release of data to the public, including foot-dragging by the federal government in issuing HMDA reports.

Congress responded to these revelations by amending HMDA in the Housing and Community Development Act of 1992. In the 1992 amendments, Congress required lenders to make raw HMDA data entered on loan/application registers (LARs) available to the public for a reasonable fee upon request. The amendments stipulated that lenders must make LARs publicly available for at least three years, within thirty days of request, starting on March 31 of the year following the reporting period. In the legislative history, Congress also urged the Federal Financial Institutions Examination Council (FFIEC) to “facilitate the availability of LARs by census tract order.”

Congress further imposed deadlines for the release of HMDA disclosure reports and aggregate reports. The 1992 law required lenders to provide HMDA disclosure reports to the public for a reasonable charge upon request within three business days after receiving the reports from FFIEC. Similarly, Congress instructed FFIEC to release the disclosure reports to the public “as promptly as possible” and no later than September 1 following the reporting year. Congress further set a December 1 deadline for FFIEC’s release of the aggregate reports to the public.

Finally, Congress added provisions to protect customer privacy. The 1992 amendments directed the Federal Reserve Board to require the redaction of sensitive information from LARs (including an applicant’s name, identification number, date of application, and date of loan decision) before the registers are disclosed to the public in order to protect the privacy of loan applicants.
Today, technological advances have reshaped the delivery of disclosures. The FFIEC no longer makes disclosure reports for individual lenders available on CD-ROMs; instead, it posts them online. Similarly, most lenders import their LARs data into FFIEC HMDA software in machine-readable form and submit the data via email to the Federal Reserve Board. The LARs and transmittal sheets remain available from FFIEC on CD-ROMs. As before, lenders must make their disclosure statements available at their home offices for viewing by the public and elsewhere upon request.32

The 2002 Pricing Data Regulations

Congress last amended HMDA in 1996. Since then, notwithstanding Congressional inaction, HMDA has continued to evolve through interpretive rulemaking by the Federal Reserve Board, largely in response to the emergence of the subprime mortgage market and associated allegations of predatory lending. With the growth of subprime lending, new forms of credit discrimination came to light in the form of discriminatory overcharges for credit. Ultimately, these pricing discrimination concerns forced the Federal Reserve Board to reexamine and strengthen HMDA's regulations post-1996.

The Board’s review began in a routine fashion in 1998, when the Board’s staff initiated a periodic update to the HMDA regulations in the form of an advance notice of proposed rulemaking. That year, the Board solicited public comments on six main issues, including whether denials of preapproval requests should be reported; whether reporting categories for refinancings should be modified; whether purchases of seasoned loans and loans acquired through branch acquisitions should still be reported; whether lenders should be allowed to report construction loans; whether mobile home loans should be separately coded; and whether all lenders, not just some, should report their reasons for denials. Notably, the 1998 advance notice of proposed rulemaking did not solicit comment on the reporting of pricing data or subprime loans.33

Between 1998 and 2000, the press reported growing concerns about predatory lending. In June 2000, HUD and the Department of the Treasury issued a major report documenting lending abuses in the subprime market. Among its recommendations, the report advised amending HMDA’s regulations to require the reporting of interest rates and fees on residential mortgages, as well as credit scores, debt-to-income ratios, and ages of loan applicants.34 That same year, the Board held hearings on possible changes to the Home Ownership and Equity Protection Act (HOEPA) in cities around the country, where it also received suggestions for revising HMDA.

In December 2000, the Board issued a proposed rule recommending changes to the regulations implementing HMDA.35 In the proposed rule, the Board sought to expand the types of data reported on the home mortgage market in general and
the subprime market in particular. Due to concerns that preapproval requests were supplanting traditional applications, the Board proposed mandatory reporting of preapproval requests for binding written commitments. Further, the Board recommended mandatory reporting of three more items: the annual percentage rate (APR) of every loan subject to the Truth in Lending Act, whether reported loans were HOEPA loans, and whether loans and applications involved manufactured homes. In particular, the Board wanted data on APRs to identify subprime loans and assist in fair lending investigations.

Other parts of the proposed rule sought to iron out inconsistencies in data reporting. In an effort to standardize reporting, for instance, the Board proposed simplifying the definition of a “refinancing,” requiring lenders to report all home-equity lines of credit (HELOCs) and loans where any part of the proceeds were intended for home improvement, and defining a “dwelling” to exclude college dormitories and other transitory residences. The Board also proposed exempting loans purchased as part of a branch acquisition from HMDA reporting, but not purchases of seasoned loans or bulk loans.

The Board’s 2000 announcement further asked for comment on whether lenders should have to report their reasons for denials, loan-to-value ratios, and the identity of the institution’s parent company, if any. In requesting comment, the Board stressed that it was not yet prepared to propose mandatory reporting of those items due to opposition from lenders. Subsequent comments from members of the public did not cause the Board to change its mind and order disclosure of that information.

Finally, the Board took pains to state that it had overruled any reporting of three final items. The first consisted of construction loans, which the Board refused to allow lenders to report. More importantly, the Board shut the door on mandatory reporting of credit scores and balloon payments. In defense of inaction, the Board merely stated that that the benefits of this information did not outweigh the burden, without explaining how or why reporting would be burdensome.

After two more years elapsed, the Board at last produced a final rule in 2002. The final version forged a compromise between lender and consumer interests. On the one hand, the Board required reporting of price data on high-cost loans. On the other hand, the Board retreated on its proposals to report all APRs and HELOCs.

During the comment period, the proposal to collect APRs had sparked fierce debate. Numerous lenders argued that reporting APRs in isolation was meaningless and prone to misinterpretation without additional data on creditworthiness. Nevertheless, lenders were not willing to report credit score data needed to put APRs in context due to fears about lending discrimination lawsuits. Lenders also voiced concerns about the administrative burden of any new reporting requirements.

In response, the Board cut the proverbial baby in half by limiting reporting of price data to higher-priced loans and by not requiring reporting of credit scores.
In its preamble to the final rule, the Board defended mandatory disclosure of price data on grounds that the data were “critical to address fair lending concerns . . . and to better understand the mortgage market, including the subprime market.” Instead of requiring disclosure of APRs, the Board decided to require lenders to report the rate spread between the APR and the yield on the comparable Treasury security. The Board considered rate spread data superior to APR data because the rate spread information would “adjust pricing data for changes in market conditions over time.”

Under the final rule, lenders must report rate spreads only when the APR exceeds the yield on the comparable Treasury security by three percentage points for first-lien loans or five percentage points for junior-lien loans. Rate spreads must only be reported for home-secured loans that lenders originate, and not for other applications, purchased loans, or unsecured home improvement loans. The Board also required lenders to report whether loans are subject to HOEPA.

In exchange for partial victory on the pricing data question, the Board scrapped its proposal to require mandatory reporting of HELOCs due to industry opposition. In a half-hearted defense of its retreat, the Board asserted that mandatory reporting of HELOCs would “result in increased burden” while offering less benefit than the pricing information, even in its scaled-back form.

The rest of the final rule adopted certain of the other original proposals with little or no change. The Board implemented mandatory reporting of all preapproval requests (except for preapprovals that were approved but not accepted by the applicant, which the Board allowed lenders to report at their option). As for the definition of “home improvement loans,” the Board drew a distinction between loans secured by dwellings and loans that were not. Any home-secured loan made in whole or in part for home improvement purposes must be reported as a home improvement loan, regardless how the lender classifies the loan. In contrast, unsecured loans must be reported as home improvement loans only if the lender classifies them as such. Consistent with the proposed version, the final rule also required lenders to report loans and loan applications involving manufactured homes. Finally, the Board adopted the redefinitions of “dwelling” and “refinancing” largely as proposed and required lenders to report first mortgages and piggyback second mortgages separately.

Before finalizing the rate spreads, the Board solicited additional comment on whether to peg the spreads at 3% and 5%. The notice-and-comment period brought renewed outcries about how to report prices and whether to report them at all. Lenders took an array of positions in opposition to the Board’s rule. Some advocated using the HOEPA thresholds of 8% and 10% for first-lien and subordinate-lien loans, some advocated disclosure of APRs instead of price spreads, and others opposed reporting pricing data at all. Lenders also voiced fears of being stigmatized for making higher-priced loans. Ultimately, however, the Board held firm and issued a follow-up rule retaining the 3% and 5% thresholds because those pegs “would avoid capturing the vast majority of prime loans while capturing the vast majority of other loans.”
The follow-up rule made two other changes of note. First, the Board required lenders to report the lien status of applications and originations, but not of purchased loans. In the opinion of the Board, lien status was necessary to understand the pricing data because junior-lien loans generally cost more than first-lien loans, other things being equal. In addition, the Board decided to require lenders to ask for ethnicity, race, and sex in telephone applications. From 1993 to 2000, home mortgage applications with missing data on race and ethnicity had risen from 8% to 28%, while telephone loan applications had increased. Concerned that increased use of telephone interviews was fueling under-reporting, the Board adopted the telephone application rule in an effort to stem the rising tide of missing data on ethnicity and race.41

Current Reporting Requirements

To summarize, today’s law requires lenders to report HMDA data on applications and denials, originations, refinancings, and purchases of residential mortgages and home improvement loans.42 Lenders must record the data on the LAR within thirty calendar days following the quarter in which final action on an application is taken. Lenders have until March 1 each year to submit last year’s LAR to the Federal Reserve Board. In addition, lenders must make their LARs available to the public after removing sensitive customer information.43

Once lenders submit their LARs, the FFIEC uses the raw data to prepare disclosure reports for individual lenders summarizing their lending experience for the previous year. Disclosure reports for every lender are available on FFIEC’s website without charge. In addition, FFIEC posts aggregate reports on lending patterns by state and MSA online for free.44

Under today’s regulations, lenders must report the following data:45

1. An identification number;
2. The date the application was received;
3. The type of loan or application (conventional, FHA-insured, VA-guaranteed, or Farm Service Agency- or Rural Housing Service-guaranteed);
4. The purpose of the loan or application (home purchase, home improvement, or refinancing);46
5. Whether the application was a request for preapproval and whether it resulted in denial or origination;47
6. The property type (one-to-four-family dwelling, manufactured dwelling, or multifamily dwelling);
7. Whether the property securing the loan was owner-occupied;
8. The amount of the loan or application request (in thousands, rounded to the nearest thousand);
9. The action taken (including origination, purchase, or denial) and the date of the action;
10. Codes for the property location, by MSA or MD, by state, by county, and by census tract (if the lender had a home or branch office in that MSA or MD);48
11. The ethnicity of the borrower(s) or loan applicant(s);49
12. The race of the borrower(s) or loan applicant(s);
13. The gender of the borrower(s) or loan applicant(s);
14. The gross annual income relied on in processing the application (in thousands, rounded to the nearest thousand);
15. For any loan sold, the type of entity that purchased the loan.50
16. For higher-priced loans, any rate spread above the yield on the comparable Treasury security that exceeds three percentage points for first-lien loans and five percentage points for junior-lien loans;
17. Whether the loan was subject to HOEPA; and
18. Lien status (first lien, junior lien, or not home-secured).

For every application, a lender must state whether the loan was granted or denied, the application was withdrawn, or the file was closed for lack of complete information.51 While national banks and savings associations must report the reasons for denial, other institutions may, but are not required to, disclose the reasons for denial.52

The breadth of today’s HMDA data is a direct product of social debates over transparency in racial lending patterns, expanded lending to the underserved, and the reliability and timeliness of public mortgage lending data. In order to expand HMDA’s coverage, banks joined hands with consumers in order to force their non-depository competitors to comply with the same reporting requirements that applied to banks. In contrast, the expansion of HMDA’s data fields was borne of successive crises and was generally achieved without widespread support from banks. In 1989, for instance, the banking industry was forced to accept expanded reporting on applications, race, and gender as a condition for the savings and loan bailout. In 2002, public pressure on the Federal Reserve Board over subprime lending abuses and allegations of discriminatory loan pricing caused the Board to require reporting of rate spreads. After strong opposition from banks, the Board watered down its original proposal to only require rate spread data for higher-priced loans, but refused to abandon rate spread reporting altogether despite urging by many banks.

**Enforcement**

Unlike most federal consumer protection laws, private citizens cannot enforce HMDA through private lawsuits. Congress did not expressly legislate a private
right of action in HMDA and no court has recognized an implied right of action under that statute. However, Congress did provide that the same agency sanctions that are available against federally insured depository institutions under the Fair Housing Act and the Equal Credit Opportunity Act’s cease-and-desist orders, suspension, and removal of institution-affiliated parties who commit violations, and civil money penalties are available for HMDA violations.  

The agency with authority to levy sanctions varies depending on the identity of the lender. Insured banks and thrifts are regulated by their primary federal banking regulator, which is the Office of the Comptroller of the Currency for national banks, the Board for state member banks, the Federal Deposit Insurance Corporation (FDIC) for state nonmember banks and savings banks, and the Office of Thrift Supervision for savings associations. The National Credit Union Administration oversees compliance by credit unions. Finally, the Secretary of Housing and Urban Development enforces HMDA for all non-depository lending institutions.

In 1998, federal banking regulators began assessing modest civil money penalties for serious inaccuracies in HMDA filings. Today, the agencies sporadically impose fines for alleged HMDA violations, usually via negotiated consent orders, with the FDIC being the most active. Lenders who maintain procedures that are reasonably adapted to avoid HMDA reporting errors are exempt from sanctions for unintentional errors in compiling or recording loan data, including census tract numbers. Similarly, where lenders inadvertently report inaccurate or incomplete data in a good faith rush to meet the thirty-day deadline after the calendar quarter, they will not be deemed to violate HMDA so long as they correct or complete the data before submitting their loan registers to the Board.

**Conclusion**

In its current incarnation, HMDA is a crucial statute and yet an imperfect one, at once heralded and excoriated. It exposes profound mortgage lending disparities in this country by race, locale, and income. Furthermore, it provides the public and the press with data covering more of the residential mortgage market than virtually any other data set, at relatively low cost. These features are the result of Congressional amendments in 1989, 1991, and 1992 that expanded HMDA reporting to most non-depository lenders, mandated disclosure of applicants’ race and ethnicity, and required prompt disclosure of most loan-level data on LARs to the public at reasonable cost upon request. The Federal Reserve Board’s rate spread rules in 2002 continued to expand HMDA by providing price point data on the racial and geographic distribution of subprime residential mortgages.

Despite the evolution in HMDA reporting, HMDA continues to serve as a lightning rod for criticism by lenders and consumers alike. As Federal Reserve Board Governor Mark W. Olson explained in testimony before a House subcommittee in June 2006, the Board “cannot conclude from the HMDA data...
alone that an observed racial or ethnic difference in the prices of loans is the result of unlawful discrimination” due to lack of reported information on loan-to-value ratios and credit scores. Consumer groups and industry spokespeople agree with this analysis, but disagree about the policy implications. In an effort to improve the explanatory power of HMDA, consumer groups have urged the Board and Congress to require reporting of creditworthiness data including loan-to-value ratios and credit scores. Industry groups, in contrast, strenuously oppose HMDA reporting of credit scores.

So far, the Federal Reserve Board has only been willing to require reporting disclosure of rate spread data but not of credit scores. In private discussions, Board staff members have cited a variety of concerns for that position, including the proprietary nature of credit scores, their lack of standardization, and the need to protect consumer privacy. These problems did not deter the Department of the Treasury and the Department of Housing and Urban Development, however, from calling for HMDA disclosure of credit score data in 2000. The House Subcommittee on Financial Institutions and Consumer Credit held hearings on this question in 2006. However these problems are ultimately resolved, the question of whether and how to resolve the matter of missing creditworthiness data in HMDA is likely to remain at the forefront of calls for HMDA reform.

Endnotes

8 12 U.S.C. § 2804(a); see 12 C.F.R. pt. 203 (Federal Reserve Board Regulation C).
The Federal Reserve defines “federally related mortgage loans” as home purchase or refinance loans secured by first liens on one-to-four-family dwellings that are either: (1) made by lenders who are federally insured or regulated; (2) made by or insured, guaranteed, or supplemented by a federal agency; or (3) intended for sale to Fannie Mae or Freddie Mac. 12 C.F.R. § 203(d), (e)(1)(iv).


Lenders who sell a loan in the same calendar year in which it was originated or purchased must identify the type of purchaser to whom the loan is sold. For the type of purchaser, the reporting categories include Fannie Mae; Ginnie Mae; Freddie Mac; Farmer Mac; private securitizations; commercial banks, savings banks or savings associations; life insurance companies, credit unions, mortgage banks, or finance companies; affiliate institutions; or other types of purchasers. Federal Financial Institutions Examination Council 16, A-7 through A-8, D-13 through D-14 (2007b); 12 C.F.R. pt. 203, Appendix A.


Id. at 557 (letter from Rep. Joseph P. Kennedy II).


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34 Department of Housing and Urban Development and Department of the Treasury (2000).


41 See id. at 43220-22.

42 12 U.S.C. §§ 2802(a), 2803(a)(1).


46 Lenders may, but do not need to, report home equity lines of credit for home improvement or home purchase. 12 C.F.R. § 203.4(c)(3); 12 C.F.R. pt. 203, Appendix A.

47 At their option, lenders may also report any preapproval requests that were approved by the lender but declined by the applicant. 12 C.F.R. § 203.4(c)(2); 12 C.F.R. pt. 203, Appendix A.

48 For most loans on property located outside MSAs and MDs where the lender has a home or branch office, and for all property located outside of any MSA or MD, the lender can enter this information at its option. However, banks or savings associations that are required to report data on small business, small farm and community development lending under the Community Reinvestment Act must enter HMDA data for rural residential properties. 12 C.F.R. § 203.4(e); 12 C.F.R. pt. 203, Appendix A.
Ethnicity, race, gender, and gross annual income must be reported for loans and for applications that do not result in origination, but not for loans purchased by lenders. 12 C.F.R. pt. 203, Appendix A.

For a description of the reporting categories, see note 23 supra.

12 U.S.C. §§ 2802(1), (3), 2803(a)-(b), (d); 12 C.F.R. § 203.4(a); id. pt. 203, Appendix A.


12 U.S.C. §§ 1818(b)-(e), (i), 2804(b)(1)-(b)(2), (c), 2805(b); 12 C.F.R. § 203.6(a).


12 C.F.R. § 203.6(b).

Testimony of Governor Mark W. Olson (2006).

See, for example, Federal Reserve Bank of San Francisco (comments of Josh Silver) (2006); Letter from John Taylor (2006).

See, for example, Statement of Douglas Duncan (2006); Testimony of Bill Himpler for the American Financial Services Association (2006).

Department of Housing and Urban Development and Department of the Treasury (2000). The Census Bureau has resolved similar privacy concerns through strict privacy protocols for university researchers. See, for example, U.S. Census Bureau Center for Economic Studies (2007a); U.S. Center Bureau Center for Economic Studies (2007b).


References


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