

HMDA

**More Really Is Less:
The Data Fog Frustrates HMDA**



American
Bankers
Association®

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The Core Principles for Regulating the United States Financial System, enumerated in Executive Order 13772, include the following that are particularly relevant to an evaluation of current U.S. rules and regulatory practices regarding implementation of the Home Mortgage Disclosure Act (HMDA):

- (a) empower Americans to make independent financial decisions and informed choices in the marketplace, save for retirement, and build individual wealth;*
- (c) foster economic growth and vibrant financial markets through more rigorous regulatory impact analysis that addresses systemic risk and market failures, such as moral hazard and information asymmetry; and*
- (f) make regulation efficient, effective, and appropriately tailored.*

The American Bankers Association¹ offers these views to the Secretary of the Treasury in relation to the Directive that he has received under Section 2 of the Executive Order.

- **Expanded data collection adds nothing but volumes of irrelevant data, distracting from achievement of HMDA's purposes.**
- **Regulators have failed to protect expanded HMDA data from breaches of security and privacy.**
- **Expanded data collection will feed banker regulatory worries about meeting customer needs outside of the norm.**
- **Data expansion should be suspended until security and privacy concerns are fully addressed.**
- **Bureau regulatory expansion of data beyond the statute should be rescinded.**
- **Dodd-Frank expansion of HMDA data fields should be repealed.**

Introduction

ABA member banks are committed to full compliance with the purposes of HMDA, which are to—

- help determine whether financial institutions are serving the housing needs of their communities;

¹ The American Bankers Association is the voice of the nation's \$17 trillion banking industry, which is composed of small, regional, and large banks that together employ more than 2 million people, safeguard \$13 trillion in deposits, and extend more than \$9 trillion in loans.

- assist public officials in distributing public-sector investment to attract private investment to areas where it is needed; and
- assist in identifying possible discriminatory lending patterns and enforcing antidiscrimination statutes.²

Dodd-Frank Act amendments to HMDA³—which were further expanded by the Bureau of Consumer Financial Protection (Bureau)⁴—vastly increase HMDA data collection and reporting obligations. Despite assertions by the Bureau that it has taken steps to reduce industry burden, our members report that collecting, verifying, and reporting the expanded HMDA data will significantly increase costs and limit the availability of mortgage credit. Curiously, there has never been a demonstration that the existing HMDA data collections are inadequate to accomplish the goals of the statute. Moreover, more troubling is that the vast expansion of data collection unrelated to the purpose of HMDA may cloud any focus on data collected for HMDA’s antidiscrimination goals.

At the same time, we are concerned that the Bureau has not initiated a public rulemaking to address the significant consumer privacy dangers and data protection threats that the expanded HMDA data collection poses. These come from the probability that manipulation of the expanded data points will make it easier for unfriendly parties to unmask identities of borrowers and their personal financial profiles than it is now, and the wholesale risks common to an age where harmful data breaches of government-held information are real, frequent, and therefore must be anticipated.

I. Expansion of HMDA Data Collection

The Dodd-Frank Act transferred rulemaking authority for HMDA from the Federal Reserve to the Bureau. The statute also expanded the volume of data that lenders are required to collect, adding 13+ new categories of data fields:

1. the age of applicants,
2. total points and fees of the loan,
3. the difference between the Annual Percentage Rate (APR) of the loan and a benchmark rate,
4. the term in months during which any prepayment penalty may be imposed,
5. the value of the property pledged as collateral,
6. the term in months of any introductory period,
7. any loan terms that prevent full amortization,
8. the term in months of the mortgage,
9. the channel through which the application was made,
10. a unique identifier for the loan originator (lending officer),
11. a unique identifier of the loan,

² 12 U.S.C. § 2801; 12 C.F.R. § 1003.1(b).

³ Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, § 1094, 124 Stat. 1376 (2010).

⁴ Home Mortgage Disclosure (Regulation C), 80 Fed. Reg. 66128 (Oct. 28, 2015).

12. the parcel number of the real property,
13. applicant credit score, and
14. such other information as the Bureau requires.

The Bureau used item 14 as a welcome invitation made from a wide open door, doubling the number of new data requirements. What is hard to find is how any of these requirements fulfill an unmet purpose of HMDA. Plenty of new *market* data would be collected, but increased government collection of market information is not only irrelevant to the purposes of HMDA but a distraction from its intended focus on meeting community housing needs consistent with standards of nondiscrimination.

When the Bureau finalized the rule in 2015, implementing the expansion of HMDA data requirements, the Bureau added 25 new data categories to the existing 23, multiplying the data that must be collected, verified, and reported each year. Within the data points there are sub-elements and categories that geometrically expand that actual number of data fields for collection.

While the addition of new data points may provide a more fulsome picture of the mortgage markets, they were added to the Dodd-Frank Act with no discussion or consideration of the benefits, challenges, or costs associated with collecting, reporting, and protecting the information. For example, an applicant's credit score must now be collected and reported. However, most applicants have more than one credit score, banks often use a combination of scores in underwriting a loan, not all loans require the use of a credit score, and credit scores can change during the course of the underwriting process.

The Bureau asserts that its rule will “achieve compelling social benefits,” including “enhanced transparency” to “facilitate the detection and remediation of discrimination; promote public and private investment in certain underserved markets, *potentially* increasing access to mortgage credit; and promote more stable and competitive markets” (emphasis added).⁵ At the outset, it should be noted that “promotion of more stable and competitive markets” is not included in HMDA’s statutory purpose, suggesting that the Bureau’s greatly expanded collection of data is an alternate way to amass information for the Bureau’s national mortgage database, a project conducted in conjunction with the Federal Housing Finance Agency.⁶

As the Bureau admits in its Regulatory Flexibility Analysis (RFA), these benefits are presumed, not demonstrated.⁷ We believe that the significant costs and burdens imposed by the additional data collection and reporting obligations cannot be outweighed by presumed benefits, particularly when considered within the context of the statutory purposes of HMDA.

⁵ *Id.* at 66262.

⁶ BUREAU OF CONSUMER FIN. PROT. AND FED. HOUS. AND FIN. AGENCY, TECHNICAL REPORT 15-02, NATIONAL SURVEY OF MORTGAGE BORROWERS (2015), available at http://files.consumerfinance.gov/f/201508_cfpb_national-survey-of-mortgage-borrowers-technical-report-15-02.pdf.

⁷ *See Id.* (“Quantifying and monetizing these benefits, however, would require identifying all possible uses of HMDA data, establishing causal links to the resulting public benefits, and then quantifying the magnitude of these benefits.”)

For example, no data set can satisfactorily explain all underwriting or pricing decisions. For many years, HMDA data have been used to identify *possible* instances of illegal discrimination. Regulators have long noted that HMDA data alone cannot be used conclusively.⁸ There can be legitimate, necessary, and non-discriminatory factors—unobtainable via HMDA data—involved in underwriting or pricing decisions, and such information, when reduced to individual data points, will be of limited use in understanding credit decisions.

Our members do anticipate, however, that examiners and community groups may use the additional data to feed their statistical models to assert disparate impact claims. As a result, lenders may become even more conservative in their lending, finding regulatory safety in matching overall industry patterns, reluctant to try anything new that may stand out from the statistical crowd. This in turn could diminish the flexibility needed to serve marginally qualified borrowers, creditworthy customers with unusual or unique circumstances, and overall reducing credit availability.

A. Collecting Will Be Costly

Balanced against these unsubstantiated benefits are the substantial costs and burdens to be realized by the new data collection, verification, and reporting requirements. On the low side, the Bureau’s Regulatory Flexibility Act (RFA) analysis estimates additional annual operational expenses of \$120,600,000,⁹ to which the Bureau adds \$899,000 for institutions that will be required to report HMDA data *quarterly*.¹⁰ Further, the Bureau estimates that the expanded data collection will increase the cost of each closed-end mortgage application by \$23 and the cost of each open-end line of credit application by \$41.40 for “representative low complexity institutions.”¹¹ Overall, the Bureau estimates the lenders will incur costs in four areas: data collection, reporting and resubmission, compliance and internal audits, and HMDA-related exams. Although it is not simple to distill the cost estimates from the Bureau’s analysis, one figure is telling: the Bureau, which is likely to use conservative estimates when determining the impact of rule, estimates that the annualized, one-time additional cost that the new rule will impose on the industry to be between \$177 million and \$326.6 million.¹²

These costs are in addition to the existing cost of HMDA compliance. A 2012 ABA survey found that the median time spent collecting, verifying, and reporting HMDA data was 1.47 hours per Loan Application Record (LAR), or \$32.34 per LAR entry when calculated in terms of salary costs.¹³

⁸ As stated by the FFIEC when it released the latest HMDA data, “The current HMDA data alone cannot be used to determine whether a lender is complying with fair lending laws.” See Press Release, Fed. Fin. Institutions Examination Council, Federal Financial Institutions Examination Council Announces Availability of 2015 Data on Mortgage Lending (Sept. 29, 2016), available at <https://www.ffiec.gov/press/pr092916.htm>.

⁹ Home Mortgage Disclosure (Regulation C), 80 Fed. Reg. at 66263.

¹⁰ *Id.* at 66295.

¹¹ *Id.* at 66268. (“Representative low complexity institutions,” also referred to as “Tier 1” institutions in the RFA analysis, are institutions that have a Loan Application Register (LAR) with 50 records or less.

¹² Home Mortgage Disclosure (Regulation C), 80 Fed. Reg. at 66307.

¹³ See, ABA’s *HMDA Compliance Survey*, May 2012,

<http://www.aba.com/Compliance/Documents/HMDAComplianceSurveyReport.pdf>.

The numbers above reflect the Bureau’s cost estimates involved with the beginning of the new data exercise, the effort required to collect, verify, and report the information. A 2017 ABA survey found that more than 50% of respondent banks anticipate the need to hire additional staff to comply with the rule, staff who will be providing no services to customers, who, effectively, would be working for the regulators to manage data that they have ordered.

The costs are multiplied by low regulatory tolerances for even minor clerical errors. Despite bankers’ best efforts, the complexity of HMDA fields and the inevitability of human and technological error make it impossible for the data to be 100% accurate. Current resubmission standards are impractical, and tolerances will become even more unfeasible when the revised HMDA rule goes into effect. This was a point often raised during the discussions between the Bureau and small business representatives in discussions leading to the proposed rule. In fact, the Bureau was sufficiently concerned about the expectations imposed on accuracy that it issued a separate proposal to address the issue through a request for information in January 2016;¹⁴ final guidelines have yet to be issued.¹⁵ This has an added impact on credit by inhibiting any flexibility to make loans that do not fit within the narrow confines of the credit definitions established by HMDA.

B. Negative Impact on Commercial Real Estate Lending

When it was deliberating the rule, the Bureau, in order to simplify consideration of the rule’s triggers, focused on loans secured by a dwelling. While simpler in concept, this approach would have captured a host of commercial loans, including the vast amount of credit for multifamily lending, and the bulk of the information captured would have been completely irrelevant to HMDA purposes. Although the final rule does not cover all commercial loans, the final rule still will capture many commercial real estate loans. HMDA is designed to focus on consumers and the availability of credit for individual consumers as they purchase housing.¹⁶ The statute is not intended nor was it designed to capture information on commercial loans. In fact, the design of the HMDA regulation makes it incompatible with commercial loans, and the data templates currently used do not lend themselves to commercial real estate lending.

C. Compromising Customer Privacy and Data Security

Already today, using the *existing* publicly available HMDA data, it is relatively simple to identify specific borrowers and, as a result, discover information about their finances. According to a former Federal Reserve Board Senior Advisor, approximately 95% of loan records are “unique,” meaning loan amount and census tract can be attributed to a single person. With a cross match to private lien transfer records, one can identify these individuals in 95% of the

¹⁴ 81 Fed. Reg. p. 1405

¹⁵ ABA raised these concerns during the comment process and urged the Bureau to propose new resubmission guidelines, which the Bureau did. More than one year later, however, the Bureau has not published new guidelines. Moreover, it is not clear that the prudential regulators will follow any standards set by the Bureau. *See* Letter from American Bankers Association and Consumer Bankers Association, to Monica Jackson, Office of the Executive Secretary, Bureau of Consumer Fin. Prot. (Mar. 14, 2016), available at <https://www.aba.com/Advocacy/commentletters/Documents/cl-HMDA-resubmission2016.pdf>.

¹⁶ Section 302(a) of HMDA specifies that Congressional concern was depository institutions providing “adequate home financing to qualified applicants on reasonable terms and conditions,” and not the general supply of housing.

cases.¹⁷ The new data points would add to the information that is publicly reachable, including information about the borrower's credit score, property address, and age. This will be a treasure trove for identity thieves or others who want to commit financial crimes. That cannot be consistent with good public policy.

Demonstrating Congress' concern with protecting consumer privacy, the Dodd-Frank Act requires that the Bureau "modify or require modification of itemized information for the purpose of protecting the privacy interests of the mortgage applicants or mortgagors, that is or will be available to the public."¹⁸ To date, however, the Bureau has only stated that it plans "at a later date to provide a process for the public to provide input regarding the application of [a] balancing test to determine the HMDA data to be publically disclosed."¹⁹ We are unaware of plans to initiate a rulemaking to address the significant privacy issues presented, neither do we believe that mention of a balancing test to be applied at a later date rises above a thin mirage of meaningful protection. Exposing the financial information of individual consumers is not acceptable and must be addressed before more customer data are collected.

It further must be admitted that collection by the Bureau of the vast trove of data points added by Dodd-Frank and expanded by the Bureau will make the HMDA database extremely alluring to hackers, whether the data are held by companies or by the Government. While our members go to great lengths to ensure HMDA data are protected, the collection and transfer and warehousing of greatly increased and more sensitive data will necessitate even more robust and costlier private sector and government systems. Member banks report little confidence that the mechanisms that the Bureau has proposed for submitting the data, using the Internet, will have adequate security protocols to protect the information in transit.

II. Specific Recommendations

A. Rescind the Bureau's Expansion Beyond the Statute

The Dodd-Frank Act significantly expanded the HMDA data requirements. The additional fields added by the Bureau, outside of those required by statute, would not collect information of value to the purposes of HMDA beyond what is already gathered, but they would compound the problems of data collection, transmission, and protection. This regulatory data expansion by the Bureau should be rescinded.

¹⁷ Glenn Canner, Senior Advisor, Fed. Reserve Board, Remarks at the Georgetown Credit Research Center Conference: *Ensuring Fair Lending: What do we know about pricing in mortgage markets and what will the new HMDA data fields tell us?* (Mar. 14, 2005).

¹⁸ Dodd-Frank Wall Street Reform and Consumer Protection Act § 1094.

¹⁹ BUREAU OF CONSUMER FIN. PROT., FAIR LENDING REPORT OF THE CONSUMER FINANCIAL PROTECTION BUREAU 2015 (2017), available at https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/201704_cfpb_Fair_Lending_Report.pdf

B. Suspend Data Expansion until Security and Privacy Concerns Are Fully Addressed

The effective date of the October 2015 HMDA expansion rule, scheduled for January 1, 2018, should be suspended immediately until the information security and privacy concerns are fully addressed. Bankers are already struggling to meet the deadlines in keeping with security, privacy, and compliance needs. Suspension of the effective date will work to avoid serious problems for borrowers and lenders.

C. Exclude Commercial Loans

ABA believes that all commercial loans should be excluded from coverage. This would be consistent with other statutes, such as the Truth-in-Lending Act and the Real Estate Settlement Procedures Act. Excluding commercial loans would avoid confusion and uncertainty and would streamline and make the process more efficient, consistent with the purposes of HMDA, allowing for a better focus on the realization of HMDA's purposes.

D. Revoke the New HMDA Data Elements Added by DFA

The provisions of section 1094 of the Dodd-Frank Act, expanding the fields of data to be collected by statute under HMDA, should be repealed. These additional data requirements, further elaborated by Bureau regulation, take HMDA away from its focus on detecting illegal discrimination and assessing whether depository institutions are serving the housing needs of their communities, and instead draw it into the realm of market monitoring. This repeal, while avoiding the numerous compliance, security, and privacy problems, would keep HMDA dedicated as a tool for fighting illegal discrimination, a high priority concern in its own right.