Remarks of Stella J. Adams

Governor Duke and my esteemed colleagues I want to begin by reminding us all of the purpose of the Home Mortgage Disclosure Act because it is this purpose that drives all of my comments and concerns.

Congress recognized that some depository institutions "contributed to the decline of certain geographic areas by their failure pursuant to their chartering responsibilities to provide adequate home financing to qualified applicants on ***reasonable terms and conditions*** [emphasis added]. "*[Codified to 12 U.S.C. 2801]*

The purpose of HMDA" is to provide the citizens and public officials of the United States with sufficient information to enable them to determine whether depository institutions are filling their obligations to serve the housing needs of the communities and neighborhoods in which they are located and to assist public officials in their determination of the distribution of public sector investments in a manner designed to improve the private investment environment. *[Codified to 12 U.S.C. 2801]*

And finally, the FIRREA amendments of 1989 require the collection and disclosure of data about applicant and borrower characteristics to assist in identifying possible discriminatory lending patterns and enforcing antidiscrimination statutes. *[Codified to 12 C.F.R. § 203.1]*

I believe that current HMDA regulations and collections fail to adequately address the three mandated purposes for the law and therefore we must consider any proposed changes to HMDA on how well it addresses these clearly articulated goals.

We have been asked to consider several questions I will attempt to address just a few of them. I believe strongly that we should collect additional data including credit scores, LTV, CLTV, DTI, rate spreads on all loans, product type of loans, the more detailed documentation loan type, gross margin of ARMS, minimum and maximum mortgage rates for ARMS, initial periodic rate caps on ARMS, the Index used for ARMS. The benefits of these additional collections are that they will allow regulators and communities to determine if financial institutions are providing qualified applicants with mortgage loans on '*reasonable terms and conditions*'. One of the great tragedies to come out of this crisis is the fact that 35-60% of the borrowers who received subprime products QUALIFIED FOR prime products. These same borrowers are bearing the brunt of the current foreclosure crisis that is CURRENTLY contributing to the decline of many of our communities. This data would allow governmental bodies to allocate taxpayer dollars more efficiently and effectively by allowing them to tract trends and allocate public dollars in a way that ensures that all segments of their community have access to capital and that they are investing public money to stimulate private capital not subsidize it.

These collections will also assist in identifying possible discriminatory lending patterns by pinpointing statistically significant differences in the terms and conditions of loan offerings.

These additions that I propose offer no significant costs to lenders in that all the data points listed above are currently collected by the lenders and are publically available as part of the prospectus for MBS and ABS offerings. I am merely suggesting that the HMDA data collection also include all of the current SEC filings data collection materials. In fact, this should create efficiencies for the lenders as they would not need to segregate the collections into two separate public filings. The privacy are minimal as again all of this information is currently publically available.

I believe any entity that originates pools and packages mortgage loans should be required to report HMDA data, again if they sell loans on the secondary market they are collecting and reporting this information, so there is no reason they should be exempt from HMDA.

Further, I believe all data collection should be mandatory and that the practice of optional reporting should be dropped because it creates inconsistencies and distorts the lending patterns of those who choose to voluntarily report.

I do not believe any mortgage loans should be excluded from HMDA reporting, currently, reverse mortgages are not currently covered but are the product that is trending towards abuse. While currently 90% of all reverse mortgages are FHA insured that means that 10% of the market is currently sold to private investors. We cannot continue to leave our seniors so vulnerable it is important to get ahead of this problem and add age to the demographic information that is collected.

There is an emerging issue that I want to bring to your attention, this new product offering will cause massive damage and as I see it, will provide borrowers with very little recourse. I urge the Federal Reserve to monitor the actions of the Federally Chartered Financial Institutions as they stake out this new market. There is currently a securities- based loan product being marketed to real estate and mortgage brokers as "a creative solution to the credit crunch can now easily obtain a revolutionary new securities-based line of credit and take advantage of real estate opportunities when they arise". The credit features of this "alternative" include: Institutionally management; all accounts SIPC-insured, not credit or income driven, not secured by real estate, Interest rates as low as 3%, no set maximum credit line amount, close in as few as 5 days, no up-front or out-of-pocket costs, leveraged securities = Possible tax benefits, repay principal anytime, refill credit line, reviewed periodically for higher credit lines. Sounds too good to be true this is a potential nightmare and gives predators entre into middle and upper income minorities only remaining asset their retirement funds. **Securities Loan Guidelines:**

No Doc Private Loans on publicly traded: Stocks, Bonds, Mutual Funds, U.S. Treasury Notes and Pink Sheets

Min. Portfolio: $200K+, Doc: Asset Only
LTV: 35% - 95%
Rates: Rates vary depending on the credit line amount. Credit lines of $100,000 to $250,000 average about 5.25% while lines of$1,000,000+ start from 3%. (Fixed and variable rates available)

Interest Only: Yes
Term: 3+ years The typical term is 3 years but can be prepaid and closed at any time without penalty with no additional fees.

Minimum/maximum line amounts - Depending on the type of securities, the minimum line amount is approximately $100,000, no set maximum.
Available: Nationwide

Remarks of Stella J. Adams

I can see it now, you think you are taking out a mortgage on your home, you make your payments and after three years they call the note and ask for full payment. You can't refinance the loan and you lose your retirement fund or investments. Most middle and upper income families have at least $200k in mutual funds, 401K's or stocks and bonds. I am so afraid of this product and its long-term implications for cash-strapped middle class families.

And on that happy note, I end my remarks.

Additional Documents and articles

1. Fannie Mae MBS prospectuses http://www.fanniemae.com/mbs/disclosure/index.jhtml?p=Mortgage-Backed+Securities&s=Prospectuses+%26+Related+Documents

2. Freddie Mac MBS disclosures http://www.freddiemac.com/investors/volsum/mvsguide.html

3. http://www.freddiemac.com/mbs/docs/pcoc_031110.pdf

4. WSJ article on wealthy walking away from loans http://professional.wsj.com/article/SB10001424052748704288204575362882033038278.html?mod=ITP_moneyandinvesting_0&mg=reno-wsj#printMode

5. Article on the massive loss of generational wealth lost by African American middle class http://www.alternet.org/story/147452/

6. Sample of the new securities based lending for real estate http://www.usbest.biz/uploads/RealEstatePresSteveDecker-6-7-10-2.pdf

TESTIMONY OF

STEVEN L. ANTONAKES

MASSACHUSETTS COMMISSIONER OF BANKS

On

Regulation C

Implementing the Home Mortgage Disclosure Act of 1975

Before the

FEDERAL RESERVE BOARD

July 15, 2010

1000 Peachtree Street NE
Atlanta, GA 30309-4470

Introduction

Good morning Governor Duke, Director Braunstein, members of the Consumer Advisory Council, and staff. My name is Steven L. Antonakes and I serve as the Commissioner of Banks for the Commonwealth of Massachusetts. The Division of Banks ("Division") is the primary regulator of 230 Massachusetts state-chartered banks and credit unions with total combined assets in excess of $255 billion. The Division is also charged with the licensing and examination of nearly 1,000 non-bank mortgage lenders and brokers, over 4,000 individual non-bank mortgage loan originators, and an additional 3,500 non-bank financial entities, including check cashers, money transmitters, finance companies, and debt collectors.

I commend the Federal Reserve Board ("Board") for periodically reviewing Regulation C which implements the Home Mortgage Disclosure Act ("HMDA") to ensure it continues to remain relevant given changes in the mortgage market. The last set of amendments were made in 2002 and among other changes mandated reporting for non depository mortgage lenders that originate $25 million in mortgage loans annually; expanded required data fields to include pricing information for certain higher priced loans; and attempted to deal with new delivery channels by requiring lenders to seek information about race, ethnicity, and gender in telephone applications.

Nevertheless, the mortgage market has changed dramatically since the 2002 amendments and these hearings begin the process to consider the first substantive changes to HMDA since our economic challenges and foreclosure crisis took hold.

Over the past few years, the mortgage industry has significantly consolidated resulting in a small handful of nationwide money center banks now holding a dominant share of the mortgage market. Prior to this consolidation, a number of developments significantly impacted the mortgage industry. These include the widespread securitization of mortgage loans; the outsourcing of mortgage origination channels resulting in broader access to credit, but weaker controls; new product offerings; and significant improvements in technology which produced new delivery systems, automated underwriting, and risk-based pricing.

However, ongoing documented disparities between the pricing of loans made to white borrowers versus black and Hispanic borrowers clearly demonstrates that more needs to be done. Unfortunately, it will take years for many urban communities to recover from the devastation of the ongoing foreclosure crisis. More so than ever before, access to sustainable homeownership opportunities in low- and moderate-income neighborhoods will be essential. Simply put, we can not allow the events of the past few years to undo the significant gains in homeownership among our nation's black, Hispanic, and Asian communities.

Given today's very different mortgage landscape, the ongoing financial crisis, and near passage of landmark financial reform legislation, it is the appropriate time to consider how HMDA can be further improved to make it more effective in the years ahead.

In my testimony today, I will relate the Massachusetts experience in utilizing HMDA data to conduct Community Reinvestment Act ("CRA") examinations of state-chartered banks, credit unions, and certain non-bank mortgage lenders and provide some thoughts on how Regulation C can be amended to further improve the usefulness of HMDA in identifying discriminatory lending practices.

State Consumer Protection Efforts

The states have long been recognized as laboratories for innovation. Accordingly, many of the nation's key financial consumer protections were first implemented on the state level. For example, Massachusetts had systems for deposit insurance that predated the creation of the Federal Deposit Insurance Corporation. In addition, the federal Truth-In-Lending Act was primarily based on the Truth-In-Lending Act which was enacted in Massachusetts two years earlier. In addition, to date, 35 states, including Massachusetts and the District of Columbia, have enacted subprime and predatory lending laws[1].

State efforts to strengthen and improve the supervision of non-bank mortgage lenders, brokers, and loan originators are another example of state innovation which provided the framework for federal action. The states began developing the Nationwide Mortgage Licensing System (NMLS) in 2003 as a means for identifying and tracking mortgage entities. Congress embraced this effort through the passage in 2008 of the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act). The SAFE Act sought to raise minimum standards throughout the United States by giving states until July 31, 2009 to pass laws licensing loan originators and to utilize the NMLS.

Some assert that preserving the rights of the states to promulgate higher consumer protection standards will balkanize consumer protection standards and create excessively burdensome inconsistencies. Advocates of this position argue their businesses will be forced to operate under a "patchwork quilt" of varying state laws. However, the facts

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1 Source: National Conference of State Legislatures, www.ncsl.org.

don't support this assertion. When a high federal standard is established – generally based on laws tested at the state level – the states tend to harmonize to the federal standard.

The SAFE Act is a very recent example of a coordinated state-federal approach that is accomplishing important consumer protection goals in addressing weaknesses in mortgage regulation and doing so in a nationally consistent manner. The states implemented the provisions of the SAFE Act in a rapid and seamless manner. As a result of new federal standards that created a floor and not a ceiling, mortgage regulation and applicable law has never been more consistent.

Massachusetts Use of HMDA Data

In addition to conducting regular safety and soundness examinations of all state-chartered banks and credit unions, the Division also conducts consumer compliance examinations and CRA and fair lending examinations of all state-chartered banks and credit unions. In Massachusetts, the Division created administrative requirements mandating that state-chartered banks serve their entire communities prior to the passage of the federal Community Reinvestment Act. A specific Massachusetts Community Reinvestment Act was later enacted in 1982.[2] The Massachusetts landmark 2007 foreclosure prevention law also extended Community Reinvestment Act-like requirements to licensed mortgage lenders originating 50 or more mortgage loans a year in the Commonwealth. Thus, Massachusetts became the first state in the nation to extend

[2] See Massachusetts General Laws, Chapter 167 §14 and its implementing regulations at 209 CMR 46.00 *et seq*.

CRA to non depository lenders.[3] Utilization of HMDA data is integral to the Division's CRA and fair lending examinations of state-chartered banks and credit unions and licensed non-bank mortgage lenders.

The Division has found that the error rate for non-bank HMDA filers is high. Since beginning its effort to examine non-bank mortgage lenders for CRA-type requirements, the Division has had to suspend several examinations due to a determination that HMDA data submitted to the federal government had so many errors and omissions that a determination of compliance with applicable fair lending laws and regulations could not be made. In these cases, the Division has entered into public formal enforcement actions with these companies mandating the resubmission of corrected HMDA data to the Board; the establishment, implementation, and maintenance of operating policies and training procedures to ensure that all applicable personnel possess a comprehensive understanding of the HMDA reporting requirements under Regulation C, and the payment of an administrative penalty collected in consideration of the licensee's failure to comply with the statutes, rules and regulations governing the conduct of those engaged in the business of a mortgage lender in Massachusetts.

In March 2010, the Division and 34 additional state mortgage regulators entered into a settlement agreement with CitiFinancial. The agreement between CitiFinancial and the state mortgage regulators was executed after an examination conducted by the Division found that CitiFinancial had failed to include 91,127 HMDA reportable residential mortgage loans as required for the period between 2004 and 2007. The terms of the settlement agreement included requirements for CitiFinancial resubmitting

[3] See Massachusetts General Laws, Chapter 255E §8 and its implementing regulations at 209 CMR 54.00 *et seq*.

corrected and completed HMDA reports to the Board for the years 2004 through 2007; engaging an independent consultant to conduct a thorough fair-lending review to ensure the data from the previously unreported 91,127 mortgage transactions does not in any way demonstrate a pattern or practice of discriminatory lending; reviewing and substantially modifying its internal control procedures to ensure all reportable HMDA transactions are accurately compiled and reported; and remitting a penalty totaling $1.25 million.

In order to ensure fair lending compliance can be effectively measured on an individual basis and appropriately studied on a macro level, increased scrutiny for non-bank lenders and bank subsidiaries and affiliates by all regulators will be required.

Suggestions to Improve Regulation C

In my testimony, I have provided information relative to how Massachusetts utilizes HMDA. In addition, the following is intended to be responsive to questions posed by the Board for possible revisions to Regulation C.

Data Elements

In considering whether Regulation C should be amended to increase the data elements required to be completed for compliance with HMDA, the cost of increased compliance must be measured against the value that any additional data would provide. Given its existing limitations, HMDA serves as a starting ground to determine whether disparate treatment of mortgage applicants exits. A thorough file review and comparison of similarly situated mortgage applicants is then necessary. Accordingly, utilizing HMDA to determine compliance with fair lending laws and regulations is inherently labor intensive. The addition of appropriate data fields will likely provide for better and more accurate screening processes. However, some type of file review will remain necessary.

The Board specifically seeks comments relative to the inclusion of a borrower's credit score; loan-to-value ratio; debt-to-income ratio; and age, as well as the rate spread for all loans and the origination channel.

Certainly there is benefit to collecting sufficient data to accurately assess how credit decisions are made and loan pricing is determined. The inclusion of the credit score relied upon by the mortgage lender as part of the mortgage lender's credit review process would be valuable and better focus examination techniques. This field would significantly assist in isolating factors that contribute to a loan decision and aid in the evaluation of discriminatory patterns. In addition, loan-to-value and debt-to-income ratios remain the two critical ratios relied upon during the underwriting process. The income relied upon by the lender would seem to be the most accurate means of determining a debt-to-income ratio.

Given the aging of our population, the lack of existing metrics to determine age discrimination, and the growing popularity of reverse mortgages, a data field to capture the age of borrowers should be considered. Furthermore, the Board should give consideration to requiring the reporting of all originated reverse mortgage loans by adding a "Type" code for reverse mortgage loan applications. While the Federal Financial Institutions Examination Council (FFIEC) has announced the expansion of call report data for banks to include the number of reverse mortgages originated or outstanding beginning at the end of this year, the collection of reverse application data would greatly enhance the ability of both regulators and the public to monitor this rapidly growing mortgage product.

Data and pricing analysis would be greatly enhanced by the inclusion of loan spread information for all loans and not just higher cost loans as is required now. Finally, consideration should be given for requiring the reason for a credit denial be included in HMDA submissions. Such information remains a voluntary field at this time, although it is mandated by some federal bank regulators.

Whereas many lenders have outsourced their origination channels, the Board seeks comment as to whether this information should, in some way, be captured by HMDA. Rather than require additional data, a preferred method may be to require a mortgage lender to demonstrate the controls they have over third party origination networks to ensure that all fair lending laws and regulations are consistently adhered to. These controls could be reviewed and tested during the CRA examination process.

The addition of several new fields of reporting data will increase compliance and recordkeeping costs. Community banks and credit unions generally bear a disproportionately higher regulatory burden because they lack the resources that the large banks devote to compliance. The resulting regulatory burden will likely be somewhat mitigated by substantial improvements in technology and the automated programs utilized by many larger mortgage lenders. However, community banks and credit unions should not be subject to the same requirements as larger financial institutions unless there is a clear benefit from such a mandate. Accordingly, the Board should consider appropriately risk scoping data collection requirements by only mandating the reporting of credit score, loan-to-value and debt-to-income ratios, borrower's age, rate spread, and reason for denial for the nation's largest mortgage lenders. Either an asset cap or dollar volume of mortgage loans originated annually could be initially utilized to determine which institutions should report expanded HMDA data. After a two year period, the Board should then review the cost of reporting and the corresponding value of these additional data fields before determining whether all mortgage providers should collect and report these data.

Coverage and Scope

The Board also seeks specific comment on whether HMDA reporting requirements should be extended to mortgage brokers, whether certain types of institutions should be exempt from reporting and whether additional mortgage loans should be reported or whether certain types of mortgage loans should be excluded from reporting.

The Division recognizes the value of potentially pinpointing disparate treatment among select third party mortgage brokers or even individual loan originators. However, given the Division's experience supervising licensed mortgage brokers, mandating that mortgage brokers complete HMDA Loan Application Registers may not be the best means of achieving this goal. The regulatory burden for these often single person shops would be significant. Moreover, absent rigorous review of the data submitted, HMDA integrity issues would likely be significant.

A far more effective solution would be to move in the direction of the proposed Dodd-Frank Wall Street Reform and Consumer Protection Act and require all mortgage lenders to include the NMLS assigned unique identifier of any mortgage broker, licensed non-bank loan originator, or registered loan originator associated with all HMDA reportable loans.

The tremendous opportunity here is for the Board to build off the success and foresight of the states in designing the NMLS to protect consumers against harmful business practices. By registering every loan originator with a unique identifier and requiring that identifier to be incorporated with loan origination documents and HMDA reporting, the ability to associate the loan documents and business practices with the company and individual that negotiated the transaction will be greatly improved. This will provide a powerful means by which bad actors will not be able to hide from their past bad actions.

Moreover, by requiring this information to be included by mortgage lenders rather than mortgage brokers, it reinforces the core principle that any mortgage lender remains ultimately responsible for the actions of the third parties they do business with. The inclusion of such information will also provide an effective means for mortgage lenders to better police and supervise their outsourced origination channels.

The Board should also know that the NMLS intends to implement a call report requirement for all licensed mortgage lenders and mortgage brokers beginning in March 2011 for calendar year 2010[4]. The NMLS mortgage call report is intended to fulfill requirements of the SAFE Act as well as build on state regulator efforts to create uniform financial and activity reporting requirements across state lines.

The proposed NMLS mortgage call report is comprised of two parts: financial information about the licensee and information about the licensee's mortgage loan

[4] See http://mortgage.nationwidelicensingsystem.org/news/ProposalsForComment/Public%20Comment%20Request%20for%20NMLS%20Call%20Report.pdf.

activity. The development of the NMLS mortgage call report draws from the FFIEC call reports required of depository institutions and seeks to replace and standardize individual financial and activity reports currently required by state regulators. The NMLS mortgage call reports will also allow State regulators to risk scope examinations of licensed mortgage lenders and mortgage brokers based on the number of loans originated and type of mortgage products offered.

Conclusion

I commend the Board for taking the time to consider how Regulation C can be improved and more reflective of the current mortgage market. We have witnessed significant changes since the Board's 2002 amendments. Given these changes, I believe now is the right time to modernize the law by expanding the data fields for our nation's largest mortgage lenders. This can provide the necessary test case to determine the costs and benefits of further expansion. In addition, the expansion of the data fields to include the NMLS provided unique identifier for mortgage brokers and loan originators will is a superior means of focusing internal controls and regulatory scrutiny than require mortgage brokers to additionally complete a Loan Application Register. Finally, given the aging of our population and the tremendous growth in the popularity of reverse mortgages, Regulation C should be expanded to require data on the age of borrower's and specially mandate the reporting of reverse mortgage loans. Hopefully all of my other comments herein will aid the Board in its deliberations. Thank you for the opportunity to testify today. I look forward to answering any questions you may have.

Statement by Philip E. Greer

Senior Vice President – Loan Administration

State Employees' Credit Union at the Federal Reserve Board Public Hearing on HMDA, July 15, 2010 at the Federal Reserve Bank of Atlanta

I would like to thank the Board of Governors of the Federal Reserve System for this opportunity to participate as a panelist at the Board's hearing on the Home Mortgage Disclosure Act.

I am Philip E. Greer, Senior Vice President of Loan Administration for the State Employees' Credit Union in Raleigh, NC. The State Employees' Credit Union is a state-chartered, federally insured credit union serving the public school and state of NC employees and their families throughout North Carolina. We have 1.6 million members whom we serve through 232 branch offices, and we have assets now exceeding $21 billion. Through a variety of member friendly loan products, we have assisted our members with loans now totaling in excess of $13.6 billion.

The State Employees' Credit Union began originating first mortgage loans in 1950. Recognizing that home ownership promotes the economic well-being of both our members and the communities in which they reside, we have focused on mortgage lending as a key member service for the past 60 years. In 2009, we originated 15,000 first mortgage loans totaling $2.3 billion, and we service 100,000 first mortgage

loans totaling $11.4 billion. As a member owned financial cooperative, our sole purpose is to serve all members equally, regardless of race, age, gender, etc.

<u>SECU Mortgage Lending</u>

During the first 30 years of mortgage lending at SECU, mortgage loans were originated as fixed rate loans. In the environment that existed prior to 1980, with interest rates on deposits being regulated, fixed rate mortgage loans made economic sense for the lender. In 1980, Congress passed the Depository Institution Deregulation and Monetary Control Act, designed to "level the playing field" between banks and the savings and loan industry. Deposit rates were no longer regulated, and the lack of prudence in originating fixed rate mortgages using variable rate deposits became quite apparent. At SECU, we began experimenting with various adjustable rate mortgage loans, attempting to find the proper mix of interest rate risk sharing for our membership. Finally, in 1993, we introduced our member friendly 2 year ARM which allows a maximum interest rate change of only 1% after 2 years, and each successive two year period with a maximum rate change of 8% over the life of the loan. Even during times when fixed rates of interest are at historically low levels, over 90% of our originations are in our 2 year ARM product. Most typically, even on a worst case scenario, our member comes out ahead vs. a fixed rate mortgage for at least the first ten years of the loan. Our loan program performs quite well, even in today's economy. While adjustable rate mortgage loans have received a tremendous amount of disparaging press coverage as a result of the

subprime debacle, it is important to note that not all ARM loans are structured in a consumer abusive manner. Many ARM loans are properly structured to provide reasonable consumer benefits and have provided lower rates of interest during the past decade. Thousands of consumers directly benefit from ARM loans.

The Home Mortgage Disclosure Act

As originally enacted in 1975, amongst other reasons, the Home Mortgage Disclosure Act (HMDA) was intended to assist in identifying possible discriminatory lending patterns. Subsequent revisions in 2002 were intended to facilitate the analysis of fair lending across all segments of the mortgage market, most particularly in the subprime market. While HMDA has provided much of the needed data to accomplish its purpose, it is believed to have failed to recognize the discriminatory practices being employed in the subprime crisis over the past few years. The discriminatory practices of the subprime lenders involved "reverse" redlining, as minority segments of our population became the targets of subprime lending.

Presented initially to bring about unbiased lending so that minority segments of our population could be expected to enjoy equal access to mortgage financing and national housing goals could be met, lenders and loan purchasers made credit too easy to obtain. Market over-reaction in the most recent decade brought about an abandonment of many sound lending practices. Deregulation and stronger

competition due to industry consolidation caused many lenders and Wall Street financial centers to employ short- sighted behavior in their efforts to maintain market share and increase profits. These strategies could only succeed under very favorable market conditions, and once the economy started to falter, the ramifications of these strategies became painfully apparent. All too often, per a variety of studies, the minorities became the focus of what we now see as greedy marketing strategies, as most studies reflect that as much as fifty percent of African American, and 40% of Latino, mortgages were subprime over the past eight to nine years. The initiative to create housing solutions for minorities delivered opposing results. The loan programs which were to provide better terms for lower income individuals morphed into the time bombs which destroyed untold billions of dollars of wealth across the U.S. and the world. And regrettably, much of HMDA data failed to reflect what was transpiring. Useful, accurate, and meaningful information that would have implicated the guilty parties was not included in the 2002 HMDA revision. All too often, the use of non-traditional mortgage products such as the payment option ARM and interest only ARM's, as well as deeply discounted beginning rates on some ARM loans with little or no restriction on rate and or payment increases, fell beneath the radar of HMDA. Hundreds of thousands of "unknowing" consumers, including a disproportionate number of minorities, were targeted for these products. This "reverse red lining" is perhaps more heinous than the discriminatory practices intended to be addressed in 1975 with the enactment of HMDA.

Proposed Revisions of HMDA

In regard to the specific questions posed by the Federal Reserve on revisions being considered for HMDA, I submit the following opinions:

Coverage

- **Should mortgage brokers and non-lender loan purchasers be required to report HMDA data? I am very much of the opinion that all lenders who originate loans in excess of the current threshold be required to report HMDA data. Mortgage brokers have originated a very high percentage of the national mortgage volume, and their data is important. To be sure that non-lender purchasers are not promoting discriminatory practices, they should be required to disclose the same data on any and all loans purchased.**
- **Should any types of institutions originating or purchasing mortgage loans be exempt? It is my opinion that all mortgage lenders and the purchasers of mortgage loans should be required to submit data on their originations and purchases. This should include the GSE's and Wall Street.**
- **Should the rules governing who must collect and remit HMDA data be revised? It should be revised only to be all inclusive, subject to the present minimum threshold for origination volume.**

Scope

- **Should other types of mortgage loans be reported in addition to home purchases, home improvement, and refinancing loans? I believe that these areas are the most meaningful, and other types of loans should not be included.**
- **Should any types of mortgage loans be excluded? No**
- **Should the rules governing which mortgage loans are subject to being reported be revised in other ways? Because some non-standard loan programs such as payment option ARM's and interest only ARM's fall under the HMDA radar and were in fact used in a discriminatory manner, it is my opinion that all relevant HMDA data should be reported separately on the use of these loan products in the origination of mortgage loans.**

Pre-approval Programs

- **Do lenders use pre-approval programs as defined by Regulation C? I do not believe there is widespread use of a pre-approval process by the Reg C definition as the RESPA definition now states that lenders do not technically have an application until they have a property address. It would be nice to keep these terms in sync.**

- **Is there a benefit to requiring lenders to report on these programs? I do not believe there is any clear benefit for these situations to be reported.**
- **How could the definition of pre-approval programs be modified to become more meaningful? The definition of a pre-approval event cannot be altered in a manner that will provide meaningful data without creating excessive compliance issues and costs.**

Compliance and Technical Issues

- **What are the most common compliance issues with HMDA and Regulation C? It is my opinion that there are few compliance issues of concern at this time. Compliance with Reg C is not a big issue or concern, having fully adjusted to past revisions.**
- **What parts of Regulation C would benefit from additional clarification or guidance? There are no issues of concern at this time.**
- **Are there technical issues regarding Regulation C that should be resolved? There are no issues at this time.**

Other Issues

- **Emerging issues – Consumers deserve fair access to mortgage loans. They also deserve the right to receive a loan that will enable them to enjoy the future use of their home. While subprime loans enabled many individuals to purchase a home, the loan structure in many cases created an environment**

that was destined for failure. In a June, 2010 report entitled <u>Foreclosures by Race and Ethnicity: The Demographics of a Crisis,</u> published by the Center for Responsible Lending, it is clear that borrowers of color were more likely than white borrowers to receive a subprime loan. Furthermore, they were the most likely to receive a higher cost loan and to have prepayment penalties. This study also reflects that there were on average 531 foreclosures per 10,000 loans (originated in 2005-2008), with whites averaging 452 per 10,000, African Americans averaging 790 and Hispanics 769 per 10,000 loans. Due to the lack of HMDA data which would have provided additional transparency, most of these subprime loans fell below the radar in any analysis of HMDA. For this reason, I specifically favor the collection of the following:

- **Loan to value ratio, property value**
- **Debt to income ratios**
- **Credit scores of borrowers**
- **Origination channel (direct, broker, or correspondent)**
- **Existence of prepayment penalties**
- **Existence of yield spread premiums paid to the originator**

Additionally, much concern is being expressed in the media about reverse mortgage becoming the next area of focus for predatory lenders. Unfortunately, the elderly are too often the subject of predators regardless of the type of fraudulent scheme, and fraud most often "follows the money". I am in favor of the collection of HMDA data for all reverse mortgage loans

because I am afraid that the failure to do so will either allow additional consumer abuse or deprive qualified borrowers from the opportunity to receive these important financial tools.

Given an appropriate time frame for the implementation of this additional data, this data can be collected without becoming excessively burdensome for the lender. I would recommend that the lenders need a minimum of two years notice. If the notice to lenders comes out in January, 2011, it should state that the data is to be collected for loans beginning January, 2012, and reported in early 2013.

With the inclusion of this additional data, discriminatory practices will be more transparent.

Conclusion

Over the thirty five year existence of the Home Mortgage Disclosure Act, there has been great progress in making mortgage loans available without regard to age, gender, or national origin. It is indeed unfortunate that the subprime debacle has demonstrated that discrimination can exist under the radar of HMDA data. Literally hundreds of thousands of subprime loans were originated in a discriminatory manner, resulting in tremendous financial harm to the minority segments of our population. All lenders and loan purchasers need to report sufficient data on their programs and practices such that discrimination is readily apparent.

I appreciate your current review of the Home Mortgage Disclosure Act, and encourage you to implement the needed changes to be assured that discrimination is eliminated in mortgage lending. Regardless of how the discrimination is manifested in practice, the HMDA data should expose such practices.

Respectfully Submitted

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Reshape the Design of HMDA Data to Capture the Scope of Subprime Lending

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HMDA data manifests the ambition that prompted and helped to pass the Community Reinvestment Act. One person said it this way: "We have learned from 30 years of CRA policy that what is measured gets done.[a]"

The data is important, but even in saying that, it is important to acknowledge that there is room for improvement. Mortgage lending has changed a great deal in the last decade, but HMDA data has introduced only one substantial improvement in that time. I am encouraged by the revisions to HMDA data collection that are expected in the current version of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

I would like to submit a paper that was published in connection with the conference "Revisiting the CRA: Perspectives on the Future of the Community Reinvestment Act," with my written comments.

I am very pleased to see that The Dodd-Frank bill will satisfy many of those concerns. Here is a list of some of those ideas:

- Loan-to-value
- Credit score
- Length of introductory-rate period
- New rate spread formula
- Origination channel
- Term to maturity
- Borrower age
- Prepayment penalty
- Presence of a negative amortization feature
- Points and fees

By making these data explicit requirements for collection, Congress has given HMDA users more ability to answer the questions that are posed to them by the community members that they represent. Implementing data rules for the last five features are clear cut. There is no need to clarify the age of a borrower, for instance. With the first five, however, the construction of the data remains open for interpretation. The details of how the indicators are constructed will determine their value for advocates. I will include some comments on how Congress' data plans could be best implemented.

These are helpful. More could be done.

Banks continue to tell me that HMDA data does not offer a legitimate portrayal of their lending. Here is an excerpt from a letter sent to me by Ameriquest (ACC Capital Holdings) in May 2005, after the new rate spread information was included in new reporting rules.

"The information generated by HMDA's reporting requirements is important in evaluating mortgage lending patterns nationwide. We note, however, that the HMDA data also has serious shortcomings, as it does not include key financial information that is essential to analyzing the fairness of the rate associated with a given loan. This important information might include credit score, property type, down payment, ash-out information, property value, debt-to-income ratio, loan-to-value ratio and assets. In short, such exclusions mean that HMDA data alone cannot be used to draw any conclusions about why a loan was refused or why it was priced at a particular rate[b]."

This letter is unusual for the specificity of its critique. It lists discrete data points that are missing from HMDA. Other lenders routinely downplay the value of HMDA, but they are usually dismissive in a general matter. Ameriquest went the extra mile.

More broadly, the important point is to hew to principles that can make the data more applicable. First, HMDA data should be redesigned to tell more about the quality of lending. Second, efforts should be made to make the data easier to use. Third, expand the coverage for other segments of the mortgage market. Last, add more detail to small business data.

Advocates and the communities that they represent would benefit if the Federal Reserve made additional fixes. It would reflect the new dynamics that are common with mortgage markets. Subprime lending has made capital far more available than it was thirty years ago, but it has also brought significant risks for the very households. Data can make a difference. It might have helped more to thwart the recent crisis. Going forward, these changes can help to alert the public about future risks.

Uses for HMDA Data

Community groups are taken much more seriously when they can complement their direct dialogue with a financial institution with verifiable statistics. It is one thing to say "you don't make loans in our neighborhood," and quite another to say "you only made two prime rate loans in our census tract in the last three years, and both were for investors." The former is merely an opinion, while the latter is given authority and nuance by its use of factual data.

I use HMDA data in many ways. We analyze the availability of capital by reviewing the share of loans that denied. We judge the quality of capital by the frequency of loans that exceed the rate spread threshold.

The common purpose of our questions, posed since the CRA was passed, is 'how are banks and thrifts meeting the credit needs of their local communities'? That is still a frequent impetus for the use of this data. I've answered that question not just for local community groups, but also for Mayors and County Commissioners. We routinely present our conclusions on the story told by HMDA data to the banks that have submitted the data.

Still, the data has other uses. I have used the data to construct an index for socially responsible investors. A national church group has asked us to use HMDA data in a project that interacts with data from the FDIC, the National Information Center, and other government data sources.

Of those "other uses," the most common questions ask us to distinguish between "good" loans and "bad" loans. The "old HMDA" is not designed for that question. It assumed that most mortgage loans were the same. More loans were good, and fewer loans were bad. That viewpoint, in the light of what we know now in 2010, is optimistic at best. More often than not, the new focus is qualitative. The traditional question was 'how much credit?' That has been replaced by a new concern, namely 'what type of credit?' How can we create data that will communicate the quality of lending as clearly as possible?

Many researchers use HMDA data to develop arguments about the safety and soundness of lending. Unfortunately, the most authoritative reports depended upon analyses that used private data to complement HMDA. One of HMDA's appeals is its cost. Data from First American, Core Logic, or LPS all bear costs that exclude most users.

How Congress' Expectations Should be Implemented

Loan-to-Value: Include a reference for loans with a cash-out feature. Cash-out would have to be paired with a separate LTV figure. It might be stated in terms of cash-out amount (in thousands of dollars) or as a percentage of the loan amount. Assuming that loan-to-value will be expressed as a ratio, it probably makes sense to do the same with a cash-out value.

In a similar vein, the loan-to-value indicator should also include some indicator for the presence of a second loan in a home purchase. Many borrowers used a second loan to avoid paying mortgage insurance. This was a risky practice and one that HMDA could help to spotlight.

Credit Score: Create a categorical credit score variable. Congress intends to let the Bureau determine the scope of the credit score. The ideal data point here achieves a compromise between the needs of users to control for credit quality and the right of consumers to have some degree of privacy. A credit score data point should be a categorical variable with perhaps four credit bands: two for different grades of subprime credit, one for median credit, and one for prime credit. This reduces the noise of identify a consumer by a falsely exact score, and it creates a relative "cloak" of privacy for consumers. Vantage Score already provides this kind of metric. It collapses credit scores into a range of six letter grades.

Length of Introductory Period: There is more than one relevant descriptor for the terms of an adjustable-rate loan. Some loans are marketed with interest rates that reset in just 30 days. The length of introductory period will communicate the nominal status of a loan. It is either adjustable or fixed. However, there are more relevant details. Adjustable-rate loans vary by their subsequent reset periods as well as by their maximum interest rates. Those should be accounted for as well.

A new rate spread formula: Currently, rate spreads are evaluated against the initial price of a loan. In years with higher yield curves, this design allows most adjustable-rate loans to escape the rate spread threshold. If an adjustable-rate indicator is developed, it prompts a new need for a means of assessing the cost of that loan. I would argue that just as the "comparably termed Treasury" serves to judge the price of an existing loan, so might the cost of a Treasury Inflation Protected Security (TIPS). This month, the 10-year TIPS Auction yielded 1.43 percent and the 5-year TIPS yielded 0.55 percent. By comparison, a 10-year fixed note yielded 3.55 percent. The same 300 basis point standard, if re-applied to a TIPs with a similar term, would give analysts a better sense of the risk-adjusted price of new adjustable-rate mortgage loans.

Origination Channel: The proposed CFPA changes will require loans to indicate if a loan comes through a mortgage broker or traditional retail channel. The broker flag is particularly relevant. Mortgage brokers actively participated in subprime lending. More than eighty percent of subprime loans originated in California in 2005 and 2006 were channeled through a mortgage brokers[c]. It will be valuable to have new data about the channel, but there are more ways that this indicator could be redesigned to add to ease of use for analysts.

The data should reveal the corporate parent for all loan originations. More often than not, analysts want to assess the lending of a corporation, rather than just one channel. This would add to accuracy, as well as to ease of use. Wells Fargo, for instance, issues mortgages through more than 60 channels. As it is currently constructed, it can be hard to be sure that the right LARs have been identified. This will remain important into the future. Mergers and FDIC-facilitated sales will make this a common problem in the near future. It is relatively easy to append Wachovia loans from 2008 into Wells Fargo.

The data should also identify when loans are provided through a relationship with a home builder. Many lenders used in-house financing as an incentive for the sale of newly constructed homes. Beazer, Centex, Standard Pacific, Ryland, and Pulte all have mortgage subsidiaries. The problem with in-house lenders is that it can create too much "origination risk" in a neighborhood. When all of the loans in a subdivision have a similar vintage and bear a narrow window of resets, then the community is vulnerable to a sudden crop of foreclosures. If the loans have subprime features, the risk is even greater.

The origination channel should also indicate how that loan fits into a CRA assessment. In 2008, I participated in a paper that found that CRA-regulated banks issued high-cost loans much more frequently when they operated outside of the areas in the branch network. This was a two-step process. First, we had to identify which channels were obligated for CRA. Then we had to filter those applicable loans by their MSA.

Additional Changes that Would Help

There are additional sectors of mortgage markets that deserve attention.

Manufactured Housing: In North Carolina, manufactured housing is a vital portion of our housing stock. It serves one in six households across the state, and most likely a far higher share of low-and-moderate income households. HMDA is unclear on how it differentiates between homes financed as personal property and those financed as real property. I have sought clarification from the Federal Reserve and I have received conflicting answers. Some say that only those classified as real property are in the data. Others tell me that all properties used as a habitation are reported. In the future, the data should make this distinction clear.

Net Tangible Benefit for Refinance Loans: The Federal Reserve should construct a net tangible benefit formula for refinance loans. The CFPA will most likely require this as a new consumer protection. If included in HMDA data, this indicator would enhance the fidelity between HMDA and the concerns of regulators.

Debt-to-Income: This is an important tool for evaluating how lending will influence the stability of property values in neighborhoods. When borrowers enter foreclosure, the distressed sale establishes a low "comparable" for surrounding homes[d]. It also impacts the ongoing tax base of the local municipality[e]. A debt-to-income indicator would help analysts. It would be most relevant for predicting loan performance. The indicator would ideally be broken out to indicate both the DTI that is exclusively a product of the mortgage, and then a second figure that captures the total percentage of income that is devoted to servicing all debt. This data would inform loan modification research as well. Borrowers exiting HAMP with a permanent modification have a 31 percent front-end debt-to-income ratio, but on average, they still are burdened by too much debt. The average permanent loan modification recipient had a back-end debt-to-income ratio of 61.3 percent[f].

Stated-Income or *No-Documentation Loans*: Data should flag loans where income was not verified. Currently, many loans lack income data, but that is not a satisfactory means for analysts to gauge the underwriting of loans. This was one of the riskiest innovations in the recent subprime boom. While it is rarely applied to underwriting today, it may come back in the future. By identifying loans with this feature, researchers could play a role in sounding alerts about the safety of new loans.

Loan Purpose: The existing loan purpose indicator is not capable of expressing the full spectrum of loan purposes. It does not identify home equity loans. This purpose should be added.

I believe that users would find a benefit for an expansion of the home purchase category. It would be and enhancement to distinguish between home purchase loans used to buy a newly constructed home and for those used to buy an existing home. One of the motivations for the CRA was to make sure that banks were providing capital to all neighborhoods. A lack of lending for home sales in existing neighborhoods undergirded the contentions of advocates at the time. It would allow advocates to better capture the rate of reinvestment in older neighborhoods. There would also be demand for more information about new construction. This is a strong driver of job creation.

Add geographic coordinates. In the future, more analysis will combine the power of databases with the capacity of geographic information systems. GIS can make some use of HMDA data. It can aggregate loan activity by a geographic area, such as census tract or MSA, in order to make some analysis of loan data. Census tract is the smallest level of geography. While this is a fairly narrow area, census tracts are not concurrent with neighborhoods. Most often, a census tract contains about two thousand people. Some neighborhoods are within one census tract, while others are spread out across several.

The solution would be to append data with x and y coordinates that would allow the creation of vector data. With that capacity, analysts could identify instances when specific neighborhoods have been victimized by poor lending practices.

Small Business Data: Very little research comes from the FFIEC's publication of CRA data. While there is not widespread interest in farm lending, many people would like to have a better means for understanding the provision of small business loans in their community.

The most significant change that could be made would be to re-organize small business lending onto a loan-by-loan data format. The next table includes a brief summary of potential enhancements to the small business lending database. The relevant category suggests the motives for that element. A lack of uniformity hints at some challenges for that design.

CRA small business lending data should follow the spirit of HMDA's mortgage design. HMDA data is offered both at the loan level and in aggregated reports. Given the choice, almost all users prefer loan level information. There is no relief to be had by paying for alternative data.

Small Business Variable	*Outcomes*	*Relevant?*	*Uniform?*
LOAN			
Loan purpose	capital expenditure, inventory, working capital	Heterogeneity	No
Loan decision	Originate, approve, deny, incomplete	Fair lending	Yes
Loan term	Categorical term length, or line of credit	Heterogeneity	Yes
Collateralization	Equity, real property, inventory, personal, other, none	Heterogeneity	Yes
Loan amount	Specify amount	Clarity	Yes
BORROWER			
Business type	Three-digit NAICS classification	Heterogeneity	Yes
Debt to equity	Liabilities/equity	Ability to repay	Yes
Working capital	Current assets/current liabilities	Ability to repay	Yes
Owner designation	Identify minority or female-owned business	Fair lending	Yes
Revenue	Maintain in new database	Ability to repay	Yes
Franchisee	Yes/no	Management	Yes
Firm size	Categorical indicator of number of employees	Job creation	Yes
Firm experience	Categorical indicator of firm tenure	Job creation	Yes
Job creation	No, or quantity of jobs	Job creation	Yes

The Small Business Administration has some data. Unlike mortgages, there are few private suppliers of this information. In the absence of that data, analysts have little to go on to assess small business volume.

Some Data is Not Relevant

Some data points in the existing HMDA LAR have outlived their usefulness. I have never found a reason to use the "number of owner occupied units" variable or the "number of 1 to 4 Family Units" variable. In five years, I have only used total population in tract once.

In the Near Future

Adding these credit capacity, underwriting, and loan feature data points would bring immediate help to community groups. The next big issue for these groups will be the new add-on fees that are appended to the securitization of home mortgages. The GSEs and FHA have implemented new policies that could have the unintended consequence of adding to the disinvestment in low-income neighborhoods. The Loan Level Pricing Adjustment (LLPA) and the Adverse Markets Delivery Charge (ADMC) add costs for lenders seeking to resell loans. Inevitably, these costs will be passed on to consumers.

While the intent of the LLPA and ADMC is largely to maintain the solvency of the GSEs, it could have an unintended consequence of increasing the cost of borrowing for low-income communities. The LLPA and the ADMC trigger additional origination fees for loans with low credit scores, high debt-to-incomes, and high loan-to-value measures. These are all factors that will impact the availability of credit.

The LLPA holds the possibility of limiting the supply of credit in traditionally underserved areas. Its design has no explicit bias, but it is likely that the burden of its impact will be most severe in low-income neighborhoods and to minority and low-income borrowers. This is driven by its use of credit score and down payment as inputs for pricing.

Research has documented that there are significant discrepancies in the median credit scores of non-Hispanic white borrowers compared to those of African-American and Hispanic households[g]. The impacts even extend to entire areas. The South, as a whole, has a mean credit score that is 21 points lower than the rest of the country. Counties with higher rates of minority residents are also more likely to have a lower average credit score[h]. The new costs in these policies are going to fall on the backs of minority and low-income communities. The LLPA will impose minimal costs on borrowers with credit scores about 740. For borrowers with scores that are lower, the incremental costs are steep.

By adding fees for loans with high balance LTVs, it creates an additional hurdle for borrowers with fewer assets. Many low-income and minority borrowers utilize the FHA program to overcome requirements for high down payments[i].

It is a classic CRA issue. Unfortunately, HMDA data, as currently constructed, is almost useless for the task of gauging this policy. Only three of the 13 factors in the LLPA are found within the existing HMDA LAR.

Indicator	*In HMDA?*	*In LLPA?*	*Basis Points*	*Factor*
ARM	No	Yes	Up to 25	LTV
Balloon Mortgage	No	Yes	12.5	LTV
Investment Property	Yes	Yes	175 to 375	LTV, Balloon
Multiple Unit Property	Yes	Yes	Up to 100	LTV
Manufactured Home	Yes	Yes	50	LTV
40 Year Term	No	Yes	125	LTV
Interest-Only	No	Yes	25 to 100	LTV, Balloon
Condominium or Co-Operative	No	Yes	Up to 75	LTV, Term, Balloon
Cash-Out Refinance	No	Yes	0 to 300	Credit Score
High Balance (LTV)	No	Yes	75	ARM, Cash-Out Refi
Credit Score	No	Yes	Up to 300	LTV
Subordinate Financing	Yes	Yes	25 to 75	Credit Score, I/O, LTV, CLTV
My Community Mortgage	No	Yes	75 to 125	Subordinate Financing, I/O, Term, ARM

Source: Fannie Mae

The reforms that are needed for HMDA data would answer the concerns of someone trying to model the impact of the LLPA and the AMDC.

The implicit assumption behind the LLPA is that these additional factors are likely to increase risk. These are safety and soundness factors. The policy governs loans delivered to the agencies. However, it is hard to imagine that the new policies will not carry over into origination fees paid by retail consumers. The consequence of this new dynamic will certainly fall heavily on low and moderate income constituencies.

Conclusion

HMDA data could help to identify problems in mortgage markets.

Its redesign will also help to fulfill the intentions of the Home Mortgage Disclosure Act and the Community Reinvestment Act. We want data that does not just observe the letter of the law, but that goes the extra mile to achieve a standard that honors the spirit of that legislation.

The larger lesson that can be drawn from this example should be clear. In an era of subprime lending, HMDA data no longer works. The new language in the proposed CFPA could go a long way toward reinvigorating the role of HMDA. The data still asks for more fixes, though. It can be a great tool.

HMDA data needs to be flexible. It is a natural challenge for regulators to stay even with the pace of innovation. Lenders adopted risk-based pricing, loosened their credit standards and developed new loan products in the last fifteen years. With one exception (the rate spread indicator), HMDA remained the same. It is time to update.

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