

OPENING STATEMENT

Board of Governors of the Federal Reserve hearing re HMDA
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Introduction

- My name is James Zahradka, and I'm Supervising Attorney at two programs of the Law Foundation of Silicon Valley—Fair Housing Law Project and Public Interest Law Firm
- I'm also a member of the Board of Directors of the California Reinvestment Coalition, which has submitted a letter setting forth detailed comments that I contributed to and join with
 - In my remarks today I'll seek to amplify and augment—and hopefully not be too repetitive of—the comments in that letter from my perspective as a fair housing and fair lending practitioner (although I practice in many other areas as well)
- My fellow practitioners and I have found HMDA data of limited use in achieving one of the law's stated purposes; namely, to assist in identifying possible discriminatory lending patterns and enforcing antidiscrimination statutes
 - It's critical to be able to access good data to confirm the presence or absence of discrimination and, if it is present, to effectively attack it in court
 - Otherwise, we and the lenders are wasting resources on non-meritorious cases, and the lenders are unfairly suffering reputational harm
 - Or discrimination is going unchecked and lenders are profiting from that
 - And private enforcement of these laws is key because as we saw during the run-up to the subprime crisis, government does not always do an effective job of policing these issues
 - Given this history, one of the reforms we are calling for is more transparency for regulators; they should report publicly on whether they investigate problematic lending patterns based on HMDA, and what the outcomes of such investigations are
- HMDA's lacking a number of critical data points:
 - No underwriting data to allow us to discern—by comparing how borrowers of like credit profiles are treated—if suspicious lending patterns are, in fact, discriminatory or not
 - No information re loan modifications, one of the burning issues of the day and the foreseeable future
 - No information re a borrower's Limited English Proficient status and whether loan was negotiated in non-English language
 - No way to track “flipping” or “churning” of borrower into multiple re-fis as we saw during subprime heyday

- No way to track discriminatory practices by non-covered originators, especially mortgage brokers, where we saw many of the abuses begin
- No information regarding reverse mortgages
- Congress and the President have added many significant requirements in Dodd-Frank, which we support
 - I won't address these further other than those which Congress made optional or may require additional clarification
 - I will add that the Fed should make all of the data that Dodd-Frank requires to be collected publicly available

Underwriting data

- Key weakness is lack of underwriting data
- Prevents us from accurately analyzing information that seems to indicate a problematic lending pattern
 - Thus, it's likely both that meritorious claims are not given a full hearing by the court, and unmeritorious claims might be filed (and banks suffer reputational harm as well as litigation expense) which could have been weeded out pre-filing were adequate data available
 - Example: recent complaint by Pennsylvania Human Relations Commission regarding a major lender's subprime lending practices and the foreclosures that allegedly resulted from that
 - Presented a compelling case, mainly using HMDA data
 - The lender stated in press release in response that their "loan decisions are based on credit and transaction risk"
 - We can't test the veracity of that statement using HMDA, and we should be able to; cases like this would either not get filed or settled quickly and without great costs to the parties or the courts
- Consumer groups have long urged the Fed to require lenders to provide this under HMDA
- As set out in our letter, the Fed has itself acknowledged, in responses to comments about bank mergers, that HMDA data "have limitations that make them an inadequate basis, absent other information, for concluding that an institution . . . has engaged in illegal lending discrimination."
- It's past time to correct this gaping oversight
- In a nutshell, HMDA needs to include most robust credit and loan characteristics possible
- In addition to those added by Dodd-Frank, advocates have identified, among others:
 - Debt-to-income ratio
 - Critical to determining whether a borrower is in a sustainable loan and will be able to afford payments
 - Loan-to-value ratio
 - Again, a basic element of underwriting (considerably more useful than only reporting the value of the home as Dodd-Frank requires)
 - Whether the loan is "no-doc" or "low-doc"

- Dodd-Frank’s requirement that the borrower demonstrate an ability to pay the loan should ameliorate this, but originators are likely to find ways around this
- Really, what we should be aiming for is reporting anything other than plain vanilla-style loans
- The borrower’s reserves and assets
- The origination channel and amount and type of originator compensation
- Credit score, which is required by Dodd-Frank
 - Congress leaves discretion to the CFPB as to how to carry this out
 - Key is that whatever measurement is developed be on an absolute scale, not within the universe of borrowers served by a particular lender
 - Needs to be comparable in apples-to-apples fashion with other lenders

Privacy

- Of course we are in favor of protecting individual borrowers’ privacy as much as possible
- But given the consequences of not allowing public and private consumer advocates access to this critical data, we simply have to ask ourselves how the cost-benefit analysis comes out
 - I’m not an expert on this, but it seems to me that a major amount of reverse engineering would be required to actually identify an individual
 - How likely is a significant amount of this type of privacy breach vs. the chance for major amounts of problematic—and dangerous—lending?
 - For instance, we saw many instances where brokers and loan agent “flipped” or “churned” borrowers repeatedly to the detriment of the borrower in order to generate fees for themselves
 - This practice can only be tracked if the property is assigned a parcel identification number, an element which should be added to HMDA
 - For privacy purposes, clearly this should differ from the APN used by the county recorder
- And as the WSJ reported back in May, “Credit bureaus are using data-mining techniques to make detailed consumer and loan-level information easily available to residential-mortgage-backed-securities investors and analysts.”
 - If Wall Street has this data already, the toothpaste can’t be put back in the tube
 - And if credit bureaus and MBS investors can get rich off using this data, regulators like the Fed should certainly use it to protect consumers
- The Fed is equipped to require extensive data collection and reporting, while helping to reasonably maintain borrower confidentiality and privacy

Loan Modifications

- Our office has seen a flood of individuals who are desperately trying to stay in their homes by obtaining a loan modification
- It’s been extensively documented that only a fraction of borrowers who seek loan mods are getting them

- As the National Consumer Law Center has documented, the servicers' failure to effectively work with these borrowers forces them into the arms of loan modification "specialists" who are, all too often, scam artists
- The situation is so dire that we've just gotten a grant to provide legal help to these homeowners in the form of assisting them to file in small claims court or to recover their attorneys' fees via arbitration
 - And we're not surprised to see the same kind of abuses taking place in this context that we did in the subprime context
 - Particularly, monolingual Spanish speakers are being taken advantage of by bilingual loan mod scam artists, often working with attorneys
 - The usual scam is to verbally promise fantastic loan modification, with a money-back guarantee, in the homeowner's native language
 - Then the borrower signs a lengthy English-language contract that is wholly inconsistent with these promises
 - Unsurprisingly, the loan mod is denied, the scammer refuses to refund the money, and the already strapped homeowner has sunk several thousand dollars and months of precious time into a worthless effort
 - Yet again, it appears that homeowners are being targeted and ripped off based on their national origin
 - I'll also note that media reports have documented that at least one servicer sends Spanish-speakers to an entirely separate call center where the staff act like collection agents, in contrast to the English-speaking call center where actual loss mitigation specialists were staffing the phones
- And as documented in our letter, other indicators of possible discrimination in foreclosure prevention are present in California and other parts of the country
 - So this is an issue that the Fed, via HMDA, needs to engage on and has the authority to, by including the loan modification data we suggest in our letter
 - Notably, this would include a universal loan identification number, without which the Fed/CFPB would not be able to track loan performance and modification data
 - This is optional under Dodd-Frank and must be made part of HMDA.

Limited English proficient issues

- We've been talking about the huge problems with limited English proficient borrowers being victimized by brokers and lenders for years now
 - In fact, in this very room over 4 years ago, the Fed heard from a series of borrowers regarding the then-increasing prevalence of bait and switch tactics perpetrated on borrowers who negotiated their loans in a non-English language but received English-only documents with less favorable terms than promised

These practices—which, as I stated, seem to be repeating themselves in the loan mod context—call for the Fed to enhance HMDA to require the reporting of loan data that include:

- The primary language spoken by the loan or loan mod applicant; and
- The language in which the loan or loan modification application and contract were negotiated.

Reverse mortgages

- Our program serves many senior homeowners, who are uniquely vulnerable to predatory lending practices
- We need data about reverse mortgages, which have already seen a lot of abuse and are likely to see more now that the conventional mortgage market is so tight
- For example, there may well be systematic abuse of senior homeowners who do not speak fluent English taking place, and HMDA should be a tool for surfacing this

Mortgage Brokers

- As we said in our letter, brokers operate on the front lines in communities
- They can be helpful or harmful to the communities they serve, depending on the quality of the products they are selling and their individual scruples
- In our region, many of the brokers who we come in contact with are bilingual and serve as the point of entry into the mainstream financial sector for monolingual borrowers
 - Unfortunately, during the subprime era, all too many of these brokers put their own financial gain above the needs of their clients or their community as a whole, and garnered huge fees while misleading borrowers into signing loans that were completely inappropriate and dangerous for them
- These actors need to be tracked under HMDA, whether by reporting independently if a 50-loan threshold is reached or, if this is seen as too onerous for the smaller actors, perhaps via the originator identification number required under the SAFE Act

Conclusion

- Our communities are hurting from the consequences of irresponsible and abusive lending, and the government and private advocates need the tools to try to repair the damage and prevent more in the future
- HMDA hasn't been as effective a tool as it could have been to this end, and we hope that our suggestions will make it better able to meet its key purposes, especially to bring discrimination into the light and stamp it out