

Federal Reserve Releases Aggregate HMDA Data

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In the 30 years since the enactment of the Home Mortgage Disclosure Act (HMDA), its requirements have stirred more than a fair share of controversy. As the mortgage market has evolved, Congress and the Board of Governors of the Federal Reserve System (Federal Reserve) have amended the statute or its implementing regulation to require that additional information about the loans and/or the borrowers be reported.

In this connection, initially, HMDA required the collection of information about the application taken for a home loan or the purchase of a home loan in the prior year. The release of the aggregate data in the early 1990's that included additional data such as race, ethnicity, gender and income resulted in a number of studies that helped to show where there was discrimination in the mortgage markets. In the years since then, the release of the Federal Reserve report has been met with interest but with less controversy year after year.

In mid September, 2005, however, the Federal Reserve staff released its annual report of the new aggregate HMDA data discussed below. Based on the new data requirements, this year the report was much anticipated by the media, consumer groups and other experts. The Loan Application Registers (LARs) were due to the Federal Reserve and the other federal banking agencies on March 1, 2005. Beginning on March 31, the modified LARs for each lender that filed data were available within 30 days to anyone who requested them. Community groups and the media requested data from a number of institutions in various metropolitan areas to do their own analysis of the new data.

While the result from the release of the data was a number of news articles and statements from community groups, the anticipation felt by many mortgage lenders was not rewarded with the bad press that many feared.

Background

Originally, HMDA was enacted to meet two primary goals: (1) to determine whether financial institutions were meeting the housing credit needs of their communities; and (2) to assist in attracting private capital to areas where it is needed. HMDA data were also used in fair lending analyses to identify possible disparities in lending patterns. After the enactment of the Community Reinvestment Act, the data were also used to determine whether an institution was meeting all of the credit needs of its community.

Over the years, changes were made to expand the data collected and the lenders who are required to collect and report data. In 1989, for example, lenders were required to report all mortgage and home improvement loan applications, identify the race, ethnicity, gender and income of applicants; and report the disposition of applications.

During 2002, the Federal Reserve made a number of changes to the reporting obligations required by the implementing regulation for the HMDA. Effective in 2004 lenders that are HMDA filers were required to collect and report pricing data on higher priced loans, whether the loan was a HOEPA loan, the lien status on the loan and whether loan was for a manufactured house. There were additional changes relating to borrower characteristics and several definitions were changed to clarify whether the loan should be reported. These included loan preapprovals and home improvement loans. Finally, the number of filers that are not insured depositories was expanded.

One of the goals of the Federal Reserve in adopting these revisions is to gather information about the size of the subprime mortgage market. The changes in the definitions requiring that institutions report some loans differently are intended to generate more accurate data. Finally, requiring that a loan's lien status, whether a loan is a HOEPA loan and whether it is a manufactured housing loan are all intended to make the pricing information more understandable.

Another important goal of the Federal Reserve in adding the data is to obtain more accurate information on which to base a fair lending analysis of the activities of the lender. These data will be used by all of the federal regulators as part of their fair lending examinations.

The Report

The Federal Reserve report looked at all of the disclosure statements. There were almost 9,000 filed by lenders of all charter types, including credit unions and mortgage lenders that are not affiliated with an insured depository institution. The analysis looked at the incidence of higher priced lending, the differences in the pricing spreads that were reported and the incidence of HOEPA lending. Generally, there are a low number of loans originated by insured depository institutions for which pricing information is reported.

The report makes a number of general observations including that government loans are less often higher priced than conventional loans; first liens loans are less often higher priced than junior liens; manufactured loans have the greatest incidence of higher interest rates; and higher priced loans are concentrated with a small number of lenders. These observations support theories that were the foundation for some of the changes made to the reporting requirements.

Other observations about the pricing data included that the average rate spreads were within two percentage points of the reporting thresholds. The report also contains several observations about pricing that are based on geographic trends. For example,

higher priced lending varies significantly across metropolitan statistical areas; the highest incidence of higher priced lending is in the south; the lowest incidences are geographically dispersed; and there is a close association between metropolitan statistical areas with a greater incidence of residents with low credit scores and higher priced lending.

Community groups and industry critics are particularly interested in any pricing differences among racial and ethnic groups. The report finds that the incidence of higher priced lending varies substantially across racial and ethnic groups, especially for African American borrowers. Without taking the borrowers' characteristics available from the HMDA data and the lender into account, it appears that there is a difference of almost 24 percentage points between the number of African American borrowers who received higher priced first lien purchase money mortgages.

However, taking borrower characteristics and lender into account reduces that number to seven percentage points. Additional borrower/transaction characteristics can reduce the differences further. The Federal Reserve tested comprehensive loan data from eight subprime lenders and found that using the HMDA data and the additional loan data further reduces the difference in borrowers for certain loan products.

The conclusion reached by the Federal Reserve is that with regard to pricing differences among racial and ethnic groups, institution-specific analysis using comprehensive information is needed to draw conclusions about differences in pricing.

While proponents of the expanded data believe that they will be able to make judgments about lenders using the data, there is much information that the HMDA data cannot show. For example, without having information on a number of factors that are elements of the pricing decision, it is difficult to prove that higher pricing is based on discrimination. Such other factors include the origination channel, the type of loan product, the borrower's credit history, the loan to value ratio and the documentation type. Even lenders with no concerns based on their HMDA data may have price disparities.

Lenders that report HMDA data should look carefully at their data and be prepared to respond to inquiries from community groups, the media and regulators. Regulators will use the data as part the fair lending reviews. If warranted, regulators will use procedures to solicit more information, to gather additional loan level data, review files, and interview bank lender personnel and borrowers.

Lenders can use the HMDA data to identify red flags in their lending programs. For example, the data can help identify if a high concentration of higher priced loans exists, and if there are disparities in the incidence of higher priced loans by protected class. Other areas of fair lending risk including discretionary pricing can also be identified.

While the results of the data are still being review and understood, lenders that report HMDA data have an opportunity to look at their own data and determine how they

can use it to better their lending programs. The results can be used for purposes of ensuring compliance as well as developing a revised marketing strategy.

The vast majority of insured depository institutions did not report loans that included pricing data. Those that did can look at whether new loan products should be developed that meet the needs of the group of borrowers that received the higher priced loans. Outreach programs can be developed based on the geographic distribution of specific types of loans.

The real impact of the expanded information is yet to be seen. Given that each of the financial institution agencies has indicated that it plans on using the expanded data in fair lending reviews, the regulatory result may be tougher fair lending examinations. Borrowers and others may also look on the results as an opportunity to bring a fair lending or fair housing suit against one of more lenders.

In a recent development, prior to the release of the aggregate data by the Federal Reserve, New York Attorney General Eliot Spitzer announced his intention to request additional data from several national banks that he believed were engaged in discriminatory practices based on a review of each the institution's raw data. The OCC filed a motion seeking declaratory and injunctive relief barring the Attorney General from infringing on the OCC's authority over national banks in this area.

In a recent decision, the court upheld the right of the OCC to bar State Attorney Generals from investigating or taking legal action against national banks and their operating subsidiaries. As a result of this case and its companion, the New York Attorney General is enjoined from investigating or taking enforcement actions against national banks. In the context of the investigation of the HMDA collected and disclosed by national banks in New York, the Attorney General is barred from obtaining any information that is not publicly available.