

**Joint Center for Housing Studies
Harvard University**

**The Home Mortgage Disclosure Act at Thirty-Five:
Past History, Current Issues**

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August 2010
MF10-7**

The views expressed in this paper are those of the authors and do not necessarily reflect the views of the Federal Reserve Board of Governors or its staff. The authors thank Glenn Canner and Robert Avery for their helpful comments and feedback. We also wish to express our appreciation to Keith Ernst, Debby Goldberg, Dan Immergluck and Patricia McCoy, all of whom so generously shared their insights with us early on in the process of writing this paper.

Paper originally presented at *Moving Forward: The Future of Consumer Credit and Mortgage Finance* – A National Symposium held on February 18 and 19, 2010 at Harvard Business School in Boston, Massachusetts.

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Introduction

This year marks the thirty-fifth anniversary of the Home Mortgage Disclosure Act (HMDA),¹ a law designed to discourage redlining in mortgage lending and to encourage reinvestment in the nation's cities by providing greater transparency, and thus greater public scrutiny of lending activities. Enacted by Congress in 1975, HMDA requires most mortgage lenders to collect information about their home lending activities. Through public disclosure of mortgage data, HMDA implicitly sanctioned a strong role for citizen monitors whose "regulation from below" induced increased enforcement efforts by the traditional regulatory agencies. A subject of controversy for much of its history, HMDA has now become an accepted part of the mortgage industry and regulatory landscape. Today there is general agreement that HMDA has helped to bring greater fairness and efficiency to the residential home loan market.

Much has changed since HMDA was enacted. In response, the Act's purposes, requirements and coverage were broadened significantly, although often not to the extent sought by HMDA's proponents. Additional data variables have allowed for more sophisticated statistical analyses of lender activities and thereby expanded HMDA's usefulness. The data's utility is widely recognized and used for a range of purposes by community advocates, economists, social scientists, the news media, government agencies, and financial institutions. Today, HMDA data are relied upon by bank regulators and other agencies to monitor compliance and enforce the Community Reinvestment Act (CRA) and the nation's anti-discrimination lending laws. Given HMDA's success, some seek to use it as a model for requiring HMDA-like disclosures for other types of credit and financial products. Others believe that to stay relevant, HMDA will need further retooling to reflect 21st century mortgage practices and address new data needs.

Proposals to expand HMDA also create questions about reconciling the law's multiple purposes. For example, HMDA serves its principal purpose by providing statistical measures of the flow of housing-related loans to neighborhoods and by borrower groups. Yet, most would acknowledge that the dataset as presently constituted lacks key data elements that limit HMDA's utility to provide definitive proof of lending discrimination. In other words, HMDA performs more like a thermometer, providing "outcome" data, than a diagnostic tool that provides a full explanation on how those outcomes were determined. To enhance its usefulness as a tool for

¹ 12 U.S.C. Sec. 2801, et seq., 89 Stat.1125, Pub. L. 94-200 (1975)

providing proof of lending discrimination, some believe HMDA should include more reported variables, while others believe that it is unrealistic for HMDA to gather enough variables to definitively serve this purpose.

Tensions are also posed as HMDA becomes a tool for increasingly more sophisticated research. HMDA was enacted and traditionally has served as a public-use database intended to be broadly accessible for both basic and more advanced research purposes. With the changing marketplace, concerns are shifting from “access to credit” to “access to fair credit” and the main research question has become more complicated. In response, some argue for the need of new variables to fully understand these changing marketplace dynamics. Several questions remain: does the inclusion of additional data variables serve a public purpose, or inevitably lead to a diminished audience for the data that is provided? Is there a way to broaden the public use, whatever is provided?

HMDA’s success as a regulatory reporting regime makes its history and evolution well worth examining. Thus, as HMDA heads into its fourth decade this is a good time to reflect on the current issues and challenges that threaten HMDA’s continuing relevancy, and investigate possible changes to HMDA that are being advocated. While HMDA has to a great extent retained its vitality by remaining responsive to the changing economic, financial and social environments, this paper attempts to answer the question, is HMDA still relevant, and can it remain so? The HMDA experiment to date may serve as a guide for consideration of future changes to the Act and its regulations, and as a model for other similar disclosure rules. This paper reviews the origins, history, and evolution of HMDA, and considers the law’s accomplishments and key policy questions likely to affect future changes to HMDA.

What Does HMDA Look Like Today: Basic Reporting Requirements

Initially, HMDA pertained only to depository institutions: banks, thrifts, and credit unions. Disclosures were limited to summary totals covering originated and purchased home loans for each census tract, and did not include borrower-based information, loan pricing information, or counts of applications for loans that were denied by lenders. The original legislation provided for user access to each reporting institution’s loan data. It did not provide for a centralized data source for compiling individual reports for purposes of comparing different institutions’ loan patterns. Instead, paper copies of HMDA reports for individual lenders were

maintained for public access at a designated branch or other office within each metropolitan area where home loan credit was extended. Lenders were permitted to assess a reasonable charge to data requesters for duplicating their HMDA report. Consequently, the act of simply obtaining collected HMDA data was a time consuming and labor intensive process.

To overcome this access burden, amendments to the statute made in 1980 required the Federal Financial Institution Examination Council (FFIEC), an interagency coordinating body, to compile aggregate HMDA data for every institution with a home office or branch in each metropolitan area. The FFIEC was also required for the first time to establish a nationwide system of public depositories (usually libraries) to house this information and to compile and make public aggregate reports for each individual institution in each Metropolitan Statistical Area (MSA). The FFIEC was also required to produce tables for each MSA, aggregating the lending activity of institutions by census tract location and grouped according to location, age of housing stock, income level, and race characteristics of the tract. This data was forwarded each year to designated, central data depositories in each MSA area.

Subsequent amendments to HMDA and revisions to Regulation C, the Federal Reserve Board regulation that implements the provisions of HMDA, specified the schedule for reporting institutions to make their loan/application registers (LARs) available to the public (Reg. C 1993); specified the requirement for earlier public disclosure of HMDA data; required improvements to the accuracy of HMDA data; and, generally, required reporting institutions to report in machine-readable formats (Reg. C 1994).² Over the years, Congress has expanded the range of information that must be reported and disclosed and extended the reach of the law to cover a broader range of institutions. One of the more significant changes to HMDA was providing individual borrower-based data, therefore greatly improving the dataset. More recently, lending institutions have also been required to report certain price data on higher-priced loans (Avery, Canner et al. 2008).

Combined, these changes improve the ease of accessing HMDA data, thereby increasing its users among members of the public. The formatting changes enriched HMDA as an analytical tool, enhancing the ability of researchers to conduct nationwide research and use the HMDA dataset with other data sources. The application by application reporting also facilitated regulatory agency review of the accuracy of the reported data.

² Federal Reserve Board's Regulation C- Home Mortgage Disclosure, Effective January 1, 1994. Available at: <http://www.ffiec.gov/hmda/pdf/regulationc2004.pdf>

The depth of HMDA coverage today provides a broadly representative picture of home lending in the nation (Avery, et al 2009). Current HMDA regulations apply to lending institutions of a certain asset size, including banks, savings associations, credit unions, and non-depository institutions, with offices in metropolitan areas.³ Covering the largest loan originators, HMDA reporting is thought to capture a majority of the home loan market, usually about 80% of total loan volume in any given year (see table 1).⁴

Table 1. Distribution of reporters covered by the Home Mortgage Disclosure Act, by type of institution, 2006–08

Type	2006		2007		2008	
	Number	Percent	Number	Percent	Number	Percent
<i>Depository institution</i>						
Commercial bank	3,900	43.9	3,910	45.4	3,942	47.0
Savings institution	946	10.6	929	10.8	913	10.9
Credit union	2,036	22.9	2,019	23.4	2,026	24.2
All	6,882	77.4	6,858	79.7	6,881	82.0
<i>Mortgage company</i>						
Independent	1,328	14.9	1,124	13.1	968	11.5
Affiliated ¹	676	7.6	628	7.3	539	6.4
All	2,004	22.6	1,752	20.3	1,507	18.0
All institutions	8,886	100	8,610	100	8,388	100

NOTE: Here and in all subsequent tables, components may not sum to totals because of rounding.

1. Subsidiary of a depository institution or an affiliate of a bank holding company.

SOURCE: Table 1. Avery et al. 2009. The 2008 HMDA Data. *Federal Reserve Bulletin*. Here and in the subsequent tables and figures except as noted, data from the Federal Financial Institutions Examination Council, data reported under the Home Mortgage Disclosure Act (www.ffiec.gov/hmda).

³ HMDA originally covered banks, savings associations, credit unions, and their mortgage lending subsidiaries with offices in metropolitan areas (MSAs or MDs) in the preceding year. In 1989, HMDA was expanded to include non-depository independent mortgage companies, called independent mortgage banks (IMBs), with offices in metropolitan areas and more than \$10 million in assets. As of the end of 2007, a depository must have also had assets of more than \$37,000,000 to report data for 2008. Avery et al. (2009) reported that 55.7 percent of commercial banks filed 2008 HMDA data, representing 93 percent of the total mortgage dollars outstanding on commercial bank portfolios for this year. For savings institutions the percentages were 70.9 percent and 94.1 percent respectively, while credit unions had 25.4 percent and 92.5 percent respectively.

In 1992, the Federal Reserve Board adopted a standard that further expanded coverage to small IMBs, with an office in a metropolitan area, who meet either an asset-size test or a lending activity test. In 2002, HMDA was expanded to include non-depository IMBs that meet criteria related to their dollar volume of mortgage lending, share of mortgage lending of their total lending, and their lending in MSAs. Avery et al. (2009) reported that it remains difficult to know the scope of HMDA data coverage for IMBs because there is no comprehensive list of all IMBs.

⁴ Not all mortgage lenders have to provide HMDA data, such as small asset institutions or lenders serving non-MSA areas, as explained above. Not all loan types are covered by HMDA. For example, Home Equity Lines of Credit (HELOCs) are not reported. The 2008 data includes 3,942 commercial banks, 913 savings institutions, 2,026 credit unions, and 1,507 non-bank mortgage lenders. For 2008, reporting institutions submitted information on over 14 million applications for home loans of all types. This depth of coverage is thought to provide a broadly representative picture of home lending in the nation (Avery, et al. 2009).

HMDA-reporting institutions are required to collect, report, and publicly disclose data about originations and purchases of home mortgage and home improvement loans on an annual basis. Table 2 lists the loan-level data that is reported including the disposition of applications for home loans, the characteristics of loans that lenders originate or purchase during the calendar year, the census tract location of the properties related to those loans, and personal demographic and other information about the applicant, such as race or income level. This loan-level demographic data is helpful to federal financial institution regulators in examining compliance with fair lending laws and also for CRA evaluation purposes.

The HMDA data is available to the public from individual lenders annually on March 31, when lenders report the information to the FFIEC, which is responsible for collecting HMDA data and facilitating public access to the information. The Federal Reserve Board (hereafter, the Board or Federal Reserve), on behalf of FFIEC, processes and edits the transaction-level data and also creates summary reports at the national and MSA-level. The FFIEC, in turn, makes the raw data and summary reports available each September for the public to analyze for their own purposes (Olson 2006). Typically, Board economists write a Federal Reserve Bulletin article each year discussing market trends and providing an analysis of the previous year’s data.

Table 2. The Federal Reserve Board’s Regulation C reporting requirements for home-purchase, home-improvement loans and refinance loans*

For each application or loan

Application date and the date an action was taken on the application

Action taken on the application

- Approved and originated
- Approved but not accepted by the applicant
- Denied (with the reasons for denial—voluntary for some lenders)
- Withdrawn by the applicant
- File closed for incompleteness

Preapproval program status (for home-purchase loans only)

- Preapproval request denied by financial institution
- Preapproval request approved but not accepted by individual

Loan amount

Loan type

- Conventional
- Insured by the Federal Housing Administration
- Guaranteed by the U.S. Department of Veterans Affairs
- Backed by the Farm Service Agency or Rural Housing Service

Lien status

First lien
Junior lien

Loan purpose

Unsecured
Home purchase
Refinance
Home improvement

Type of purchaser (if the lender subsequently sold the loan during the year)

Fannie Mae
Ginnie Mae
Freddie Mac
Farmer Mac
Private securitization
Commercial bank, savings bank, or savings association
Life insurance company, credit union, mortgage bank, or finance company
Affiliate institution
Other type of purchaser

For each applicant or co-applicant

Race

Ethnicity

Sex

Income relied on in credit decision

For each property

Location, by state, county, metropolitan statistical area, and census tract

Type of structure

One- to four-family dwelling
Manufactured home
Multifamily property (dwelling with five or more units)

Occupancy status (owner occupied, non-owner occupied, or not applicable)

For loans subject to price reporting

Spread above comparable Treasury security

For loans subject to the Home Ownership and Equity Protection Act

Indicator of whether loan is subject to the Home Ownership and Equity Protection Act

* For the most up-to-date information on Reg C, go to: <http://www.ffiec.gov/hmda/RegC.htm>

The HMDA statute provides the Board with some discretionary authority to carry out the purposes of the Act, including requiring lenders to collect and report data as deemed necessary for supervisory purposes. Congress also has the option of amending HMDA, as it has in the past,

to require additional data collection and reporting, expand coverage, specify how the data may be accessed, or in any other way Congress deems necessary (GAO 2009).

The Conceptual Underpinnings of HMDA

The Rationale for HMDA

It would be difficult for one to fully comprehend why HMDA looks and operates the way it does today without understanding some basic background about the law. The story of HMDA's origins and history is a fascinating one. The impetus for HMDA grew out of growing public concerns in the 1970s about mortgage "redlining" and the effects of disinvestment on the nation's older urban neighborhoods. Many took the view that urban decline encouraged urban flight and created extra barriers to the rehabilitation of deteriorating urban areas. Community leaders from these areas blamed the lack of credit availability on mainstream financial institutions – banks and savings & loans – the source of most mortgage originations at the time. The perception was that these financial institutions were deliberately "disinvesting" in certain geographic areas by accepting deposits from households within certain neighborhoods but failing to "reinvest" that money in the form of loans to those same areas, notwithstanding the presence of creditworthy borrowers and sound lending opportunities. The lack of credit availability was thus seen as contributing to the deteriorating condition of the nation's cities, particularly in lower-income and minority neighborhoods.

Discriminatory mortgage lending practices had deep historic roots in mortgage industry practices, including some that were directly attributable to the policies and practices of the federal government. The term "redlining" refers to the practice of systematically deeming certain neighborhoods as ineligible for credit due to demographic factors or to the age of the housing stock. Evidence of the practice appears to go back to at least 1935, when the Federal Home Loan Bank Board asked the federal Home Owners' Loan Corporation to designate geographic areas considered to be the riskiest for lending, including many neighborhoods that were then predominately African-American or populated with other people of color. Such areas were color-coded in red on area maps – hence the term "redlining". Private lenders reportedly used similar maps to determine credit availability and loan terms (Bernanke 2007).

With the deterioration of urban neighborhoods caused in part by historic redlining, community organizations from these neighborhoods were the principal supporters of HMDA's

enactment. It was the hope of the leaders of these organizations that the new standardized reporting required by the federal mandate would provide statistical support to back-up their complaints about the prevalence of lender redlining in their communities. Opposition to HMDA came chiefly from the mortgage industry who argued that they were being singled out unfairly as the culprits for the deteriorating neighborhood conditions. Mortgage lenders objected to what they anticipated would be the increased regulatory burden HMDA would entail. Federal regulators also expressed reservations, warning that it would lead to credit allocation and other undesirable ends.

The rationale for HMDA is therefore embedded in three main purposes. Congress specified two of these in the HMDA statute: (1) to provide the public with information that will help show whether or not financial institutions are serving the housing finance needs of their communities; and (2) to help public officials target public investments, and those from the private sector, to areas of need. A third purpose emerged as a result of the 1989 amendments to HMDA: (3) to enhance the enforcement of laws prohibiting discrimination in lending by requiring the collection and disclosure of data about applicant and borrower characteristics (McCoy 2007).

Bringing Mortgage Data into the Sunlight

The decision to use transparency and public disclosure as tools to improve private market conduct was not a new idea at the time of HMDA's enactment in 1975. The philosophical underpinnings for the use of public disclosure as a corrective to certain market practices can be traced back to at least the early part of the 20th century. As expressed in the oft-quoted maxim of Justice Louis B. Brandeis, "[S]unlight is . . . the best of disinfectants." Brandeis had recommended new transparency laws to require private sector companies to disclose their profits and losses in order to deter insider deals that deceived investors. His maxim also reflected the theory behind an even earlier law, the 1906 Pure Food and Drug Act, which required the listing of ingredients on food products, as an example of government mandated "sunlight" to reduce public risks. For Brandeis "sunlight" was intended to achieve more than just providing the public with better information about products or practices. It also served as an incentive to the disclosing party to discontinue its socially harmful behavior or risk public embarrassment and reputational harm (Fung, et al. 2007).

Fung and coauthors note that President Franklin D. Roosevelt would echo Brandeis' words two decades later, in urging Congress to establish new corporate financial disclosure rules in the wake of the stock market crash of 1929. The 1933 and 1934 Securities and Exchange Acts required publicly traded companies to disclose assets and liabilities at regular intervals and in a standardized format. Corporate financial disclosure, as required by those laws, remains central to U.S. securities policy, and still serves as a leading example of targeted transparency policy. Since then targeted "sunlight" measures have been used to require the disclosure of many types of information to the public, such as the presence of toxic pollutants released by manufacturers, the ingredients and nutrients contained in various food products, and the mortality rates for hospital patients undergoing specific medical procedures.

Transparency policies of this nature have common characteristics, even though the problems they seek to address may vary considerably. Each arises out of a desire by a public body to address a perceived market imperfection or failure that is contrary to the social good. Disclosure theorists find that the common characteristics for targeted transparency and disclosure laws include the following (Fung, et al. 2007):

- Mandated public disclosure
- By private companies
- Standardized, comparable, and disaggregated information
- Regarding specific products or practices
- To further a defined public purpose

As a public disclosure law, HMDA was intended to provide "sunlight" on private-sector mortgage lending practices as a deterrent to employing policies that resulted in the redlining of neighborhoods. HMDA seeks to achieve this objective by providing public, standardized disclosures in the form of mortgage loan data made available to users on a disaggregated loan level basis. The disclosed data can then be tailored to serve a variety of different user research needs and purposes.

HMDA thus fits squarely into the tradition of using targeted transparency policies to address perceived market gaps and failures that are determined by the lawmakers as operating in a manner contrary to the broader social good. In many respects, the political environment in favor of transparency and public "right to know" laws was never greater than it was during the time of HMDA's enactment. During the decade of the 1970s Congress enacted the Truth in

Lending Act (TILA) requiring consumer disclosures regarding the cost of loans.⁵ Federal lawmakers also strengthened the Freedom of Information Act, with its presumption of openness in government, during this period. Nevertheless, the decision by Congress in 1975 to use public disclosure as a means to address perceived discrimination in mortgage lending was controversial and hotly debated.

“Regulation From Below” to Fill the Gap

The lawmakers’ willingness to experiment with public disclosure and “regulation from below” (McCluskey 1981), as embodied in HMDA, evidenced their displeasure with the slowness of the regulatory response to redlining. According to the report accompanying the 1975 House bill, the lack of data reporting created a “compelling necessity” for action on HMDA, since the Federal Home Loan Bank Board (which regulated the savings and loan industry) was unwilling to require such disclosures by regulation (Kolar and Jerison 2006).

(Subcommittee on Financial Institutions Supervision, Regulation, and Insurance
Chairman Fernand J. St. Germain):

All they want to know is what institutions have a commitment to the neighborhoods from whence they are getting their deposits.
Are they making a fair reinvestment in these neighborhoods?
Now, doesn’t the (FHLBB) have the necessary authority to require this information?

(FHLBB Chairman Thomas R. Bomar):

Mr. Chairman, our attorneys tell me that we do have the authority to require it.
We have not required it. (*Emphasis added*)⁶

Indeed, federal regulators resistance to data collection for fair monitoring purposes continued even after HMDA’s enactment. Finally, in 1976, the National Urban League and other national civil rights organizations brought suit against the regulators for the alleged failure to adopt fair lending regulations.⁷ Settlement agreements with three agencies were reached in 1977 (the suit against the Federal Reserve was dismissed due to lack of standing by the plaintiffs), and resulted in an agreement to establish internal data collection and analysis that provided more detailed information than was available at the time through HMDA. After

⁵ The Truth in Lending Act (TILA) prescribes uniform methods for computing the cost of credit, for disclosing credit terms, and for resolving errors on certain types of credit accounts. See: <http://www.federalreserve.gov/bankinfo/reg/reqlisting.htm>

⁶ H.Rep. No 94-561, at 2302, 2312

⁷ National Urban League et al. v. Office of the Comptroller of the Currency, et al. 1977

HMDA was expanded in 1989 to include individual loan applicant data, the agencies fair lending databases were phased out (Goering and Wienk 1996).

Even more so than CRA, mortgage lending disclosure is firmly rooted in the grassroots activism that was occurring at the time of HMDA's passage. This view was reflected in the House Report on the HMDA legislation:⁸

The withdrawal of private investment capital for home mortgage loans and rehabilitation loans from an increasing number of geographic areas, principally within the nation's major metropolitan centers, exacerbates the problem of providing public sector investments to stabilize and rehabilitate essentially older neighborhoods within our cities and adds to the frustration of millions of Americans denied access to credit at reasonable rates of interest for the sale, improvement and rehabilitation of residential housing. The process had led to the introduction of the word "redlining" which increasingly has served to polarize elements of our society in a manner where the dialogue has become entirely destructive, rather than constructive. As polarization intensifies, neighborhood decline accelerates. The purpose of this title is, by providing facts, (to) bring to an end more than a decade of "red-lining" charges and countercharges.

In fact, community organizing against redlining and bank disinvestment had begun well before HMDA's enactment. Activist neighborhood groups, such as those led by the Chicago community leader Gale Cincotta, sometimes used confrontational tactics. At other times, they employed more collaborative approaches to get the attention of lenders and bank regulators. These groups had long sought to document their allegations of redlining by using information sources available prior to HMDA (Immergluck 2004). They engaged in laborious searches of public records of property records to demonstrate the lack of mainstream financial institution lending. The information contained in property records varied from county to county, were difficult to replicate, and had other limitations. These deficiencies left the results of such research open to criticism by critics.

HMDA's Final Passage

The anti-redlining movement found a champion in Senator William Proxmire (D-WI), who ascended to chairmanship of the Senate Banking Committee in 1975. In the same year, Chairman Proxmire introduced a bill calling for public disclosure of loan data collection. Yet, HMDA proved controversial and opposition to its passage was considerable. The lending

⁸ H. Rep. No. 94-561, at 4

industry staunchly opposed its adoption along with federal regulators. Congressional critics charged that HMDA would inevitably distort the mortgage market and create unnecessary regulatory burdens and compliance costs for lenders (Fishbein 1993).

By successfully portraying HMDA as in the tradition of other popular consumer right-to-know laws, Senator Proxmire and his counterpart in the House of Representatives, Rep. Fernand St. Germain (DRI), Chair of the Subcommittee on Financial Institutions Regulation, obtained the necessary political support to prevail over the opposition. After legislative compromises to attract the necessary votes scaled back some of the bill's provisions, Congress ultimately approved HMDA, but only with the inclusion of a five year "sunset" provision and by a narrow margin in both the Senate (47-45) and the House (177-147).⁹

HMDA remained highly controversial and politicized even with its enactment. Opponents sought to terminate the Act or otherwise narrow its data collection requirements as the sunset period neared. The Act was extended near its termination date, but only through a series of temporary extensions. At one point, it even lapsed for a brief interval. However, HMDA was eventually reauthorized in 1980 after a series of very close votes and only for another five years. The Act would eventually become permanent in 1987, twelve years after its original enactment.

Some proponents were disappointed that the HMDA legislation that passed Congress in 1975 was significantly more limited in scope than originally sought. Community organizations supporting the legislation had hoped to include reporting on small business credit, in addition to mortgage loans. Original drafts of the bill had also included reporting on consumer deposit account data. The bill as introduced had included non-depository mortgage lenders as well as depository institutions, reporting for both urban and rural areas, and disclosures indicating the race and income of loan applicants (Immergluck 2004). All of these proposed inclusions were dropped prior to final passage. Some of them, such as individual applicant characteristics and the expansion to include reporting of loans made by independent mortgage lenders, would be added to HMDA in later years. Other provisions, such as the inclusion of rural loans by non-metro based lenders, have never been added.¹⁰

⁹ 121 Cong. Rec. 34,581 (1975) and 121 Cong. Rec. 27, 3623 (1975)

¹⁰ HMDA does pick up non-metro lending by lenders that have offices in MSAs, Those lenders with both rural and metro offices would be included while non-metro lending by lenders who have offices solely in non-metro areas would not. The HMDA statute itself focuses on metro areas and therefore a Congressional change to the HMDA law would be needed to address all rural lending.

HMDA'S Public Disclosures Are Enhanced by Other Laws

HMDA is designed to promote its purposes through public disclosure instead of through the establishment of substantive mandates or prohibitions. As mentioned above, HMDA was adopted in 1975 to “provide citizens and public officials of the United States with sufficient information to enable them to determine whether depository institutions are fulfilling their obligation to serve the housing needs of the communities in which they are located.”¹¹ The law acknowledges that financial institutions had sometimes contributed to the decline of older urban and racially diverse neighborhoods by failing to provide adequate home financing to qualified applicants on reasonable terms and conditions.

HMDA does not set forth lending standards or establish any lender responsibilities, other than reporting. In contrast, the 1977 Community Reinvestment Act (CRA) established an affirmative obligation on the part of certain banks and thrifts institutions to help meet the credit needs of the communities in which they operated, and linked community reinvestment records to approval of mergers and other expansion applications. Unlike some fair lending laws, such as the Equal Credit Opportunity Act (ECOA) and the Fair Housing Act,¹² HMDA does not authorize private lawsuits based upon HMDA violations or otherwise prohibit or restrict any lending practices (Olson 2006). Yet, the existence of companion laws, like CRA and ECOA, has had synergistic effects with HMDA. Since HMDA does not provide a necessary context for understanding a lender's restraints on extending credit, mortgage lenders might face undue pressure if appropriate standards for lending are not established through other statutes or policy means (Barr 2005, p. 632).

Even more so than CRA, mortgage lending disclosure is firmly rooted in the grassroots activism that was occurring at the time of HMDA's passage. HMDA was one of several laws passed during the 1970s intended to reduce credit-related discrimination, expand access to credit, and shed light on lending patterns. Enacted two years after HMDA in 1977, the CRA set forth the standard that commercial banks and savings and loan associations, as insured depository institutions chartered to serve the convenience and needs of the local communities in which they

¹¹ One of the stated purposes of HMDA, Section 302 of title III of the Act of December 31, 1975 (Pub. L. No. 94--200; 89 Stat. 1125), effective June 28, 1976. <http://www.fdic.gov/regulations/laws/rules/6500-3030.html#6500hmda1975>.

¹² ECOA prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age, use of public assistance, or for exercising their rights under the Consumer Credit Protection Act, available at http://www.usdoj.gov/crt/housing/housing_ecoa.php. The Fair Housing Act (Title VIII of the Civil Rights Act of 1968), as amended, prohibits discrimination in the sale, rental, and financing of dwellings, and in other housing-related transactions, based on race, color, national origin, religion, sex, familial status, and disability, available at <http://www.hud.gov/offices/ftheo/FHLaws>

operate, also have affirmative obligations to serve local credit needs and to otherwise encourage lending to previously neglected lower-income communities.¹³ Congress also amended ECOA in 1976 to prohibit discrimination based on race, national origin, and other criteria. Passage of HMDA and CRA with their emphasis on citizen action also reflected a congressional disenchantment at the time. The prevailing congressional view was that the traditional regulatory apparatus was insufficiently engaged in efforts to deter redlining, and consequently more vigorous action was needed through the elevation of the role of citizen monitors, or “regulation from below” (Fishbein 1993).

Notwithstanding congressional support for legislation to curb redlining, the detailed reporting required by HMDA for home loans - even in HMDA’s initial form – are typically not required for other types of consumer financial loan products. Public reporting of important mortgage loan data seems to have reflected the judgment that access to home loans was vital, not just for individual loan seekers, but also for the health and well being of the broader community.

Continued Improvements to HMDA: HMDA’S History and Evolution

HMDA’s history and evolution can be grouped into three major periods: 1) the period between HMDA’s enactment until the 1989 Financial Institutions Reform, Recovery and Enforcement Act (FIRREA) amendments; 2) the post-FIRREA amendments period up to 2001 during which HMDA was expanded; and 3) the period that began in 2002 with the adoption of the Board’s changes to HMDA that required the reporting of loan pricing data for some mortgage originations. Changes in mortgage lending and market structure, as well as emerging concerns about new aspects of market conduct, prompted HMDA’s continued evolution in the years since its enactment.

“Classic HMDA period”: Events leading to the 1989 HMDA Expansion

The new data that became available after HMDA’s passage in 1975 were intended to be used to help document patterns of redlining and disinvestment in the nation’s cities. Indeed, the availability of the early HMDA data precipitated a torrent of redlining research during much of

¹³ The CRA was enacted by Congress in 1977 (12 U.S.C. 2901(b)) and is implemented by Regulations 12 CFR parts 25, 228, 345, and 563e, available at <http://www.federalreserve.gov/bankinforeg/reglisting.htm>. The CRA sought to encourage depository institutions to invest in community development ventures and lending to small businesses and low- and moderate-income (LMI) people and neighborhoods in areas where the institution maintained banking operations, consistent with safety and soundness principles.

the 1980s, mostly conducted by local community groups and academic researchers assisting these organizations (Goldstein 2008). Typically, HMDA data were analyzed to show the geographic distribution of mortgage extensions during a given period. These loan data were matched with census tract level demographic and economic information from the U.S. decennial census to analyze differences in lending activity by census tract characteristics.

These studies almost always found that substantially fewer mortgage loans were originated in census tracts with a high proportion of minorities and lower income households. This empirical research, in general, was not viewed by federal banking agencies as conclusive evidence of redlining (Canner 1982). Nor could the available HMDA data at that time (and were not intended to) provide absolute evidence of discrimination against individual applicants. What these studies did help to reveal, however, was what community leaders had long alleged: that mortgage credit was not flowing into many older urban neighborhoods in the nation's cities (Goldstein 2008).

With the passage of CRA in 1977, HMDA often provided the primary statistical tool used by community groups and others challenging bank merger and branch expansion requests pending before federal regulators. CRA authorizes regulators to sanction financial institutions with weak community reinvestment records by denying these requests, although relatively few have been denied over the years. While HMDA is unlikely to be the sole basis for denying applications, the data have helped bank supervisors to establish general community reinvestment standards for these institutions. These HMDA-enriched studies were also used by local groups as the basis for discussions with lenders about local community needs and to provide an objective data source for monitoring lending commitments resulting from these CRA challenges.

The quality of HMDA research during this early period was enhanced greatly after the emergence of computerized loan data in the late 1980s. Computerized HMDA data opened the door to more sophisticated analyses of mortgage lending patterns. Using statistical techniques such as cross-tabulation and regression analysis, researchers could better measure the influence of neighborhood demographic factors and income characteristics on lending patterns. Despite the increasingly more sophisticated methods used by researchers, the early HMDA redlining research was often criticized for failing to take into account the demand for credit, and the fact that not all lenders were part of the data set. The absence of data

variables associated with lender underwriting was also cited as a limitation to research that relied only on HMDA data (Canner 1982).

A breakthrough in the methodological impasse regarding HMDA's application beyond just redlining occurred in 1988 with the publication of the Atlanta Journal Constitution's remarkably influential investigative series entitled "The Color of Money", written by Bill Dedman (1988). This Pulitzer Prize-winning series almost single-handedly helped to shift the public discussion beyond redlining to concerns about discrimination against individual loan applicants, thereby setting the stage for the important changes to come to HMDA in the following year. Using a variety of quantitative and qualitative sources, the Journal Constitution uncovered evidence indicating the existence of racial disparities in home mortgage lending in the Atlanta area. As part of the research, the newspaper compared mortgage lending activity for comparable white and minority census tracts (e.g., similar income levels). This comparison revealed that mortgage lending in predominately white middle-income census tracts occurred at a rate five times higher than that of comparable black middle-income neighborhoods.

At about the same time as the Atlanta Journal Constitution series, the Detroit Free Press published its own series on mortgage lending in the Detroit area. Comparing minority and non-minority census tracts in Detroit, the Detroit Free Press found that mortgage lending in the white tracts occurred at three times the rate of similarly situated African American neighborhoods.

The results of a third major study conducted by the Federal Reserve Bank of Boston were released in January 1989. The widely publicized Boston Fed study documented differences in lending patterns across neighborhoods grouped by racial composition. Portions of the study were first obtained by a local newspaper and eventually the results of the full study were published. The study's authors concluded that:

Lower mortgage originations in black neighborhoods cannot be explained away by lower levels of income and wealth, lower rates of housing development, or other neighborhood differences. Even after taking these factors into account, one still finds a substantial discrepancy between mortgage originations relative to the housing stock in white and black neighborhoods . . . (Bradbury, Case, and Dunham 1989, p. 31).

The collective impact of this research sparked new controversies as to whether or not lenders were discriminating against prospective home loan borrowers based on their race and income, creating doubts about the fairness of home loan decision-making. HMDA, at the time, did not collect or report information that could be used to analyze comparative treatment of

individual loan applicants by race, income, or other factors. HMDA proponents believed this new research provided the “smoking gun” needed to make the case for further changes to HMDA and the need for enhanced emphasis on fair lending enforcement.

The value of data by the individual loan applicant’s race was highlighted further through a follow-up study by the Atlanta Journal Constitution, published a year after its original series in January, 1989 (Dedman 1989). This second study relied on more detailed mortgage information obtained as a result of a Freedom of Information Act request to the Federal Home Loan Bank Board (FHLBB). The FHLBB was, at that time, the agency responsible for supervising savings & loan institutions. The information obtained by the newspaper came from the federal regulator’s fair lending data collection system and was information that was not ordinarily available to the public. Such data included information on loan rejection rates by thrift institutions sorted by borrower characteristics. The analysis revealed that African American mortgage applicants, on average, were rejected twice as frequently as white applicants (Dedman 1989), with disparities in some cities as high as ten to one.

In its original form, HMDA provided, at the individual lender level, the number and dollar amount of loans by census tract or county (in the case of small population counties located in metropolitan areas). This data was designed for the sole purpose of permitting the public and regulators to determine the geographic areas in which an institution was making - and not making – residential mortgage loans (Gramlich 2002). Publication of the 1989 Atlanta Journal study helped to convince HMDA proponents in Congress that the time was right to seek legislative changes to HMDA requiring additional loan reporting requirements for lenders.

Passage of FIRREA

Rep. Joseph Kennedy (D-MA) and House Banking Committee Chairman Henry Gonzalez (D-TX) co-sponsored expanded HMDA reporting requirements in an amendment to the House Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA).¹⁴ Although the measure was defeated initially in committee, the amendment did ultimately pass the House by a narrow vote. This amendment to HMDA required mortgage lenders to include information on the race and income of mortgage loan applicants as part of their disclosure reports. While the Senate version of the bill did not contain a comparable provision to the

¹⁴ "Public Law 101-73: Financial Institutions Reform, Recovery and Enforcement Act of 1989". The Library of Congress. 1989-08-09. <http://thomas.loc.gov/cgi-bin/bdquery/z?d101:HR01278>

Kennedy-Gonzalez amendment, the House provision was adopted by Senate conferees with only slight modification. The additional information required by the Kennedy-Gonzalez FIRREA amendment helped transform HMDA into a significantly more useful tool in the detection of discriminatory lending patterns (Fishbein 1993; Brown 1991).

The passage of FIRREA, and the resulting amendments to the HMDA statute, required reporting on a transaction level basis, fundamentally altering how HMDA data was structured. These amendments authorized reporting changes to permit loan- level analysis revealing denial rates and information on the race, ethnicity, income, and gender of mortgage applicants, leading to the period of HMDA Expansion from 1989-2001.

Post-FIRREA HMDA Expansion

The new data variables and the application by application disclosure format provided by the FIRREA amendments, allowed for the undertaking of new and more sophisticated HMDA research which was supplemented with other data sources and which prompted new concerns about disparities in denial rates for minority loan seekers. This new research drew public attention to the questions of lending discrimination and the basic fairness of loan decision-making.

In late 1991, the Federal Reserve published the first extensive analysis of the expanded HMDA dataset mandated by the 1989 FIRREA amendment. Board staff analyzed 1990 data, the first year of data with information on applications, disposition, borrower income, race, and ethnicity. The data showed that minorities were rejected two to three times more frequently than non-minorities of similar income levels (Immergluck 2004). Public disclosure of the expanded HMDA data triggered a spate of newspaper reports analyzing individual lending institutions. Federal Reserve Governor John LaWare characterized the disparities in rejection rates as “worrisome,” but emphasized that the data were not dispositive proof of discrimination and cautioned against false conclusions (LaWare 1991).

The mortgage industry also was critical of attempts to draw the conclusion that the disparities revealed by the new data demonstrated illegal discrimination. The American Bankers Association commissioned a “white paper” to elaborate on the limitations of HMDA data and to develop a critique of HMDA as a tool for detecting lending discrimination (Galster 1991). Notwithstanding these criticisms, the release of the new data renewed the public debate over the

existence of lending discrimination. Numerous studies followed, and the large differences in denial rates drew considerable media attention. Attention to race-based differences in denial rates was arguably an important factor in the increased focus on expanding lending, and increasing the homeownership rates, for minorities in the early 1990s. Furthermore, federal regulators and other enforcement agencies announced they were using the new HMDA data to augment their fair lending monitoring and enforcement procedures and issued an Interagency Policy Statement on Fair Mortgage Lending Standards in 1992.¹⁵

Concerns about large disparities between minority and white borrowers with similar incomes as demonstrated by the data prompted the Federal Reserve Bank of Boston to undertake yet another study in 1992, one of the first studies to focus on pricing variables, instead of just denials, to better understand the level of fair lending compliance. This study represented the first major attempt to supplement new HMDA data with a variety of traditional underwriting variables (absent from all other studies) in order to determine whether or not critics were correct in asserting that racial differentials in denial rates represented possible lending discrimination or could, instead, be explained as resulting from legitimate underwriting considerations regarding the riskiness of the loan. The authors of the study reported that even controlling for relevant financial risk factors, African Americans were rejected for loans 56% more frequently than whites (Munnell, et al. 1992).

The challenge with these findings is that many economists will argue that all you have found is a “smoldering gun” and that you can never add enough criteria to make a definitive statement about discrimination. Other researchers point to the fact that even after controlling for a relatively detailed list of variables, African-Americans are shown to be more likely than whites to receive higher-priced loans (Apgar, Bendimerad and Essene 2007). Still others, including some legal scholars, argue that the “smoldering gun” points to areas that may need more targeted examination and is therefore critical to the success of companion laws such as ECOA and CRA. Clearly this debate may never be entirely resolved.

Another key finding of the Boston Federal Reserve study provided new insight into how bias can enter into loan decision-making. The study found that the majority of loan applicants - both white and minority- had some flaw in their credit credentials and that in many cases these flaws were overlooked. Yet, as the authors found, whites seemed to enjoy a general presumption

¹⁵ Interagency Policy Statement on Fair Mortgage Lending Standards. 1992. Available at: <http://www.federalreserve.gov/bankinfo/reg/interagencystatement.htm>

of creditworthiness not extended to Blacks and Hispanics, with lenders more willing to overlook the flaws of whites than minority applicants (Munnell 1992; Goldstein 2008; Brown 1991). The results of the study and the methodology employed were the subject of considerable research itself. Even with some criticizing the findings (Goering and Wienk 1996), the study's main findings generally confirmed the observed racial disparity (Carr and Megbolugbe 1993).

With hindsight we know now that the publication of the expanded HMDA data, revealing disparities in denials rates between minority and non-minority loan applicants, was as shocking to many in the mortgage lending industry as it was to those outside the industry. Industry representatives continued to maintain that the disparities found could not be said to indicate the presence or absence of discrimination because key underwriting variables were not part of the HMDA data set. However, the disparities prompted considerable introspection with the mortgage industry and led many to review their underwriting criteria and loan processes and improve their employee fair lending training programs.

The public disclosure of the expanded HMDA data in 1991 also triggered an increased emphasis on government enforcement of the Fair Housing Act and ECOA. For example, in 1992, the U.S Justice Department filed suit against the Decatur Federal Savings and Loan Association¹⁶, the first case ever filed accusing a depository institutions of engaging in a pattern and practice of mortgage lending discrimination under the department's 24 year old authority to bring these actions. DOJ also went on to file twelve other pattern and practices cases against mortgage lenders over the next five years. During this period, DOJ also began to bring suits against lenders for price discrimination, charging that minority borrowers were frequently charged higher rates than white borrowers with similar credit profiles.

The federal banking regulatory agencies also made fundamental changes to their fair lending examination procedures, adopting an approach more in line with the findings from the Boston Fed study. Until 1992, the banking regulatory agencies examined loan files of individual minority applicants to determine if the denials were based on legitimate underwriting or credit-based reasons. The new procedures compared the application files of minorities and whites to see if they were treated comparably (Marsico 1999).

¹⁶ United States of America v. Decatur Federal Savings and Loan Association (N.D. Ga. No 1-92 CV2198), Sept. 17, 1992.

Concerns about Disparities in Subprime Lending and 2002 Changes to HMDA

With the exception that HMDA coverage was extended to independent non-bank mortgage banks (IMBs) in 1992, HMDA reporting requirements remained largely unchanged in the decade following the 1989 FIRREA amendments. Yet, the slew of new studies also raised new concerns: Did mortgage credit always reflect the lender's risk or cost? Was it being tied in any way to the race, ethnicity, or gender of the borrower? Was it otherwise connected to predatory lending practices believed by some to be prevalent in subprime lending?

This third period, commencing in 2002, was focused on the substantial changes to the marketplace and the concern over the concentrations of subprime lending to minorities and lower income households and communities. Analyses of mortgage pricing based on HMDA data were not possible during this period, due to the absence of reported variables on loan pricing. Nevertheless, many studies during this period examined whether certain borrower groups were disproportionately served by subprime lenders (Fishbein and Bunce 2000). The resulting revisions to the HMDA rules in 2002, discussed later, were aimed at permitting enhanced monitoring of pricing variations for subprime.

Significant changes in mortgage lending facilitated by automated underwriting, deregulation, and other financial innovations facilitated the rapid growth of the subprime mortgage market. Views differed during this period as to whether or not the growth of the subprime market represented a healthy development for borrowers. Subprime lenders and many analysts argued that the expanded access to mortgage credit that subprime represented was a boon for minorities, lower-income, and other historically under-represented households with traditionally limited access to prime mortgages. However, expansion of subprime credit also led to an increasingly complex market. Throughout the period of subprime growth there were frequent warnings by consumer and community advocates, in particular, that abusive and predatory practices were stripping borrower equity and leading to unusually high default rates.

Subprime mortgages were, in general, priced significantly above the rates charged for prime loan products regardless of whether or not the borrowers possessed prime-level credit scores. This prompted concerns that borrowers were being steered to more expensive products and were not necessarily obtaining the best priced loans for their needs. Concerns were also expressed that price variations in the subprime market reflected discrimination against borrowers by race, ethnicity, income, and gender, and were not a result of legitimate risk-based pricing.

factors. The fact that subprime loans appeared to be disproportionately concentrated in communities of color and made to African American and Latino borrowers also provided indication of possible fair lending concerns (HUD/Treasury Joint Report 2000).

Recognizing the need for a better understanding of the pricing of subprime loans and the need for greater oversight in this area, in 2002 the Board adopted new HMDA rules that added information on the pricing of certain mortgage loans. Lenders for the first time were required to report on the spread to the comparable-maturity Treasury for first-lien mortgages with an annual percentage rate (APR) three percentage points over the Treasury benchmark and for junior liens with an APR five percentage points over the benchmark. Mortgages with a reported spread were called “higher-priced loans” and were generally intended to be a proxy for subprime. The relative nature of this measure was thought to enable comparisons over time, regardless of changes in the level of interest rates (Avery et al. 2007).

Before the APR rate spread data were added to HMDA, researchers commonly labeled a loan in the HMDA data as subprime if it was originated by a lender on the Subprime and Manufactured Home Lender list maintained by the U.S. Department of Urban Development (HUD). The list identifies lenders that specialize in subprime or manufactured home lending, and was designed to be used as a companion to the HMDA data (Mayer and Pence 2008). The list, named after the HUD employee who developed the list, was used as a proxy for subprime in many of the HMDA studies developed during the decade of 1990s. Yet the Scheessele list was thought to underestimate the size of the subprime market, since only those lenders “specializing” in subprime were listed (Bradford, 2002).

The first analysis of the 2004 pricing data revealed pricing disparities between minority and non-minority borrowers for higher-priced loans (Avery et al. 2005). This research found that the gaps between borrower groups remained significant even after the data are adjusted to reflect differences in income, loan size and property location. Board staff authoring this research cautioned that there could be other possible explanations for the racial and ethnic disparities that were revealed in the pricing of mortgages. It was suggested again that credit risk of the borrowers, loan to value ratios, and a variety of other cost factors can all contribute to price variation for borrowers and that these variables are not part of the HMDA data set. To examine the additional risk factors that could explain these disparities, the authors referenced other research that did attempt to control for several important risk factors, such as credit scores and

loan-to-value ratios, not part of HMDA's disclosure requirements. This analysis examined data from eight unnamed subprime lenders. There are different opinions about the conclusions that should be drawn from this research. The authors concluded that controlling for the additional credit-related factors not included in the data can make a difference, in their view fully accounting for the racial or ethnic differences found for some products. Others have concluded, however, that the disparities between African American and whites and Latino and whites, while reduced, still persisted. (Apgar, Bendimerad and Essene 2007; Goldstein 2008).

Not unexpectedly, the initial public focus was once again on the higher incidence of higher-priced lending among minorities (particularly African Americans) compared to non-Hispanic whites. The Federal Reserve developed statistical screens using the new pricing data, which were used for supervisory purposes, to identify mortgage lenders with significant pricing disparities by race and ethnicity. This list of lenders is then shared with other federal and state agencies. The initial analysis found that about 2 percent of the lenders (or 260 institutions) covered by HMDA had statistically significant disparities in either the amount of rate spread or incidence of higher-priced lending. Of this number, IMBs accounted for almost half of the list, although as a group these lenders account for only about 20 percent of all HMDA data reporters (Avery, Canner, and Cook 2005; U.S. GAO 2009). This analysis, since 2005, has led the federal banking regulatory agencies to refer more than 100 lenders to the Justice Department for further investigations of potential fair lending violations, as required by ECOA (U.S. GAO 2009).

What HMDA Data Can and Cannot Reveal about Discrimination

For a long time, differences in denial rates across various borrower groups provided a useful means for regulators to target areas of potential discrimination in the mortgage market. The advent of new loan products, especially over the past decade, has meant that this limited measure has become less useful as the focus has shifted away from access to credit and more towards comparing access to fairly priced credit. By providing new information on loan prices beginning in 2005, HMDA data provided an opportunity to test for potential discrimination via pricing differentials. Loan pricing data is crucial for understanding more precisely what can and cannot be determined about discrimination in this new marketplace.

As in the case of information on denials, pricing data may provide an indication of whether or not discrimination is occurring through differentiation, but this data alone is limited

in its utility to provide definitive proof. There are other factors that bear on the price of a home loan. While HMDA reporting today captures some of these factors such as lien status of the property, many more factors are not identified in the data. For example, some of the most pertinent measures of a borrower's credit risk are not reported under HMDA, including a borrower's credit score and debt-to-income ratio. Additionally, there is a consensus that many important factors related to the property are omitted from HMDA, such as the ratio of the loan amount to the value of the property (loan-to-value ratio) and whether home prices in the neighborhood are rising or falling. Furthermore, HMDA does not include information about a lender's costs, including those associated with loan origination, default and prepayment risk. While it would be helpful for the public and regulators to have access to these and other pricing factors, lawmakers and the Board must weigh the benefit of such information with the burden of the additional data collection reporting for lenders.

Without these additional pricing and underwriting factors, it has been the judgment of federal banking and other enforcement agencies that it cannot be determined definitively from HMDA data alone whether lenders are engaged in discriminatory lending activity. However, the data do provide an initial means for screening for the potential presence of discrimination in mortgage lending. Should a particular pattern of pricing or other disparities be revealed from the HMDA data for particular lenders, loan products, or geography, regulators can decide if the matter warrants a deeper investigation. In such cases, depository institution regulators can and do review actual loan application files which include many of the pricing and other factors discussed above, to seek to determine the cause of the disparity. HMDA data also enable regulators to monitor broader trends in loan pricing within the higher-priced home loan market (Afshar 2005).

What Has HMDA Accomplished?

It is generally acknowledged that the experience under HMDA over the past thirty-five years has led to constructive outcomes. But what are the appropriate metrics for determining the effectiveness of pure disclosure laws such as HMDA? Transparency laws are viewed as effective by experts if the disclosures have significantly affected the behavior of most users and resulted in disclosers moving closer to the intention of the overarching public policy the transparency law seeks to achieve. In contrast, an ineffective disclosure law is thought to be one

that has failed to appreciably change the behavior of users or disclosers or has changed behavior in directions other than those intended by the requirement (Fung, et al. 2007).

HMDA seems to meet the first test of an effective disclosure law. HMDA's history demonstrates how the simple disclosure of mortgage loan data can affect enforcement practices (users) and market conduct (disclosers). However, some argue that the conclusions drawn from HMDA data may sometimes lead to unfair accusations about discrimination. Where institutions are accused unfairly of discrimination, reputational costs to institutions can be real.

Congress thought that requiring lenders to disclose information about their mortgage lending records would motivate them to increase their lending in redlined neighborhoods rather than face embarrassing publicity and reputational risk. It was hoped that the information emerging in the "sunlight" of disclosure would assist community groups and other data users to identify institutions with poor lending records and thereby encourage those institutions to devise strategies to curtail redlining and promote reinvestment (Marsico 1999).

HMDA also would appear to meet the second test for determining a public disclosure law's effectiveness: the disclosures provide an incentive for behavior consistent with the law's public purpose. In the case of HMDA, the purpose is to promote a fairer and more efficient mortgage lending. Available evidence suggests that HMDA has met this purpose by exposing "low-roader," practices that are potentially discriminatory. In fact, the scale of initiatives by financial institutions in response to HMDA disclosures suggests that this law, in conjunction with CRA and other anti-discrimination laws and policies, has spurred changes in market behavior.

Yet research in this area has had difficulties distinguishing the effect of HMDA and CRA apart from other policy and market changes. Nevertheless, HMDA proponents often cite the increase in lending to minority borrowers in the years immediately after 1991, as evidence that expanded HMDA reporting contributed to this outcome (Marsico 1999). For example, the disclosure of data showing that African Americans and Latinos loan applicants were denied significantly more frequently than comparable white loan applicants generated considerable public attention. Community leaders viewed these disclosures as pivotal to shifting the focus back to the mortgage lending industry to explain why the rejection rate disparities did not reflect bias in loan decision-making.

HMDA plays an integral role in connection with the determination of lenders' compliance with federal laws, such as CRA, ECOA, and FHA. The Federal Reserve and the other federal banking agencies with supervision over insured depository institutions use this data as part of the compliance examinations they conduct on a scheduled basis. Further, federal banking regulators strengthened their CRA enforcement efforts, denied a greater number of expansion applications and initiated enforcement actions against banks based on CRA, HMDA, and fair lending concerns more frequently than they had prior to 1991 (Marsico 1999). By providing more detailed information that exposed differential lending patterns disclosure of HMDA certainly seems to have played a significant role in driving this expanded activity.

Increased attention to federal oversight of fair lending continued for most of the rest of the decade. In 1993, the federal banking agencies initiated a rule making process that resulted in the strengthening of the CRA regulations to emphasize an institution's lending performance to a greater extent than under the previous rules. Furthermore, in 1994 nine federal agencies adopted their joint policy statement on lending discrimination.

The Expanding Demand for HMDA Data

A myriad of users rely on HMDA data to help identify whether disparities do or do not exist in lending, including researchers, media, community groups, regulatory agencies and the lenders themselves. The data is used for the purposes of focusing attention on both the records of individual lenders and in the aggregate; to assist bank regulatory agencies with CRA and fair lending compliance examinations and enforcement; and to monitor local mortgage lending patterns. It is also used to document CRA challenges to bank expansion requests; to direct public sector investments in ways that would improve the environment for private investment; to provide information for news reports on a variety of mortgage lending and lending discrimination topics; and, to otherwise provide a better understanding of the housing finance market. Not as commonly known, HMDA data are also relied upon as an important part of the method used to help estimate of the size of the mortgage market for purposes of establishing affordable housing lending goals for the government sponsored housing enterprises -- Fannie Mae and Freddie Mac.

Notwithstanding HMDA's past value, rising choruses of users complain of the diminished utility of these data resulting from changes in mortgage lending over the past decade.

In particular, these critics point to the increasing importance of pricing factors in determining fairness in mortgage lending and the lack of variables that explain pricing variations for higher priced loans. HMDA usage has also been impacted by an increased reliance on loan data provided by fee-based private proprietary database providers.

The attractiveness of these proprietary databases is that they often include data variables not featured in the HMDA database. Private providers collect loan-level mortgage data from individual financial institutions and those servicing loans and then repackage the data for consumption by other lenders, analysts, academics, and government agencies. Some large non-profits are able to buy this information but most cannot because the cost is out of reach. The attractiveness of these proprietary databases is understandable. One expert summed up the situation this way: “HMDA is a limited data set for groups without financial resources to pay for better information.” (Rust 2009).

Did Expanded HMDA Data Result In Expanded Lending?

Only a few studies have attempted to isolate HMDA’s influence on mortgage lending (Marsico 1991). This research mostly examines lending trends for the decade after release of the expanded HMDA data, when the race, ethnicity, and income of individual applicants for the first time were publicly disclosed. These data for this period invariably showed significant increases in mortgage lending for previously under-represented borrower groups. One typical analysis, for example, found that from 1993 to 1999, the number of home purchase loans made to Hispanics increased 121.4%; to Native Americans, 118.9%; to African American, 91%; to Asians, 70.1% and to whites, 33.5%. Over that period, the number of home purchase loans extended to applicants with income under 80% of the median increased 86.2%, a much higher rate of growth than any other income group experienced (Barr 2005). Yet isolating the independent affects of HMDA have proven difficult and no doubt many other factors --e.g., the impact of other regulations, relatively low interest rate environment, good economic conditions, of the advent of automated underwriting and other new technologies, etc. -- contributed to the surge in lending to these borrower groups during this period.

Similarly, until the FIRREA changes to HMDA were made, it was difficult to obtain a quantitative sense of CRA’s impact on overall lending markets (Immergluck 2004). This research has tended to show that CRA has had positive effects on lending to lower-income

households. One comprehensive study investigating CRA's impact on mortgage lending examined differences in prime lending between bank and non-bank institutions and found that CRA-covered institutions and their affiliates made more loans to lower-income geographies and households in areas that were scrutinized in CRA evaluations (Apgar and Duda 2003). In this same vein, the HMDA data have been a central element in research to challenge the assertion by some critics of CRA that the law contributed to the subprime crisis. For example, a Federal Reserve Board staff analysis using HMDA data found that of all the higher-priced loans issued in 2006, only six percent were made by depository institutions to low- and moderate-income borrowers or neighborhoods, with the major portion of these loans issued by non-CRA covered mortgage companies (Bernanke 2008; Kroszner 2009).

A combination of factors led many more financial institutions to improve their lending practices to minorities and lower income communities in the 1990s. HMDA proponents point to the shift resulting at least in part from HMDA's expanded reporting requirements contributing to the impetus for strengthened fair lending and CRA enforcement, increased citizens' activism, and increased recognition by financial institutions that community reinvestment requirements had proven less burdensome than initially anticipated and fostered new opportunities for profitable lending.

Increased Public Awareness and Engagement

Perhaps the broadest area of agreement about HMDA's impact is that annual disclosure of loan information helps to promote heightened public awareness about lending discrimination and market fairness concerns. In this sense, public disclosure plays a valuable role in shaping efforts aimed at the promotion of fair lending practices. Few could have anticipated that annual release of this data set would generate the news stories and public exposure that it often does. This attention ultimately contributed to improving fairness in lending and stimulating stepped up efforts by lenders to expand housing finance opportunities and address apparent market failures. HMDA's critics, on the other hand, might contend that the annual disclosures draw more heat than light. But even these critics -- those who believe the reported data is too limited to be of much use -- acknowledge that the data are useful for providing some additional insights about mortgage market activities. Furthermore, release of the 1991 expanded HMDA data is viewed as having increased community activism, as reflected by an increase in challenges to bank

expansion request and a surge in lending agreements and commitments by banks that occurred over the next decade (Marsico 1999).

The annual release of HMDA data is now anticipated by its many stakeholders. Its release helps shine the public spotlight each fall on any lending disparities that the data reveals. Industry and community stakeholders now anticipate the data's annual release, with many issuing press releases or otherwise making themselves available to the press to offer their insights and commentaries on the significance of the just released data set (Bostic and Surette 2004). Some likely by-products of the public's scrutiny is that it provides incentives for lenders to try to manage their reputational risk by paying attention to the distribution of their originations, particularly in regard to their lending to lower-income and minority consumers and communities. In this sense, HMDA works better than the Act's original sponsors likely ever imagined. Moreover, it has been argued that this public focus also produces a certain prophylactic effect, discouraging discriminatory lending and encouraging lenders to re-examine potential barriers to credit (Bostic and Surette 2004).

The Need for Periodic Updating of HMDA

The Difficult Business of Change

While the changes to HMDA can be described as evolutionary, no one would dispute that the process of revising HMDA has often been quite difficult and arduous to achieve. The arc for changing HMDA usually follows a similar protracted process: HMDA proponents, mostly community, civil rights, and other advocacy organizations, seek the support of federal lawmakers to expand HMDA in some way, such as expanding the reported data variables or addressing gaps in coverage for lenders. Representatives from the mortgage industry voice opposition to the proposed expansions sought by advocates. Industry opposition frequently centers on estimations of additional reporting costs and regulatory burdens. More recently, mortgage trade groups have also expressed concerns about potential infringements to their proprietary interests and dangers to consumer privacy (Duncan 2007).

Consequently, changes to HMDA sometime give the appearance of happening in spurts. However, major changes to HMDA are more evolutionary than spasmodic. In fact, expansions to HMDA often lag behind new developments in mortgage lending and new concerns about market conduct and fairness to have resulted from these developments. This sometimes lengthy

gestation period is a reflection of the difficulties that often exist in reconciling these different points of view about whether or how HMDA should be expanded. The resolution of these differences, therefore, usually requires the expenditure of considerable political capital by lawmakers and other decision makers. Many of the most important changes to HMDA were decided by the slimmest of margins on one side or the other. The fact that making changes to HMDA has proven so difficult and time consuming poses an ongoing challenge to keeping the law up-to-date with changing circumstances.

Periodic Review

Updating transparency laws, like HMDA, and engaging in periodic review is generally considered necessary. Yet, the HMDA statute itself does not provide for any formal periodic review by Congress. The Federal Reserve, as the agency responsible for HMDA rulemaking, does undertake regulatory reviews on a periodic basis.

We have seen how different market developments and new concerns have led to the expansion of HMDA's purposes, requirements, and coverage. Almost without exception, these changes have improved the law's utility and have been regarded as positive changes by the user community. In fact, it is difficult to conceive of HMDA continuing to provide any particular value if the reporting of race and income of individual applicants, the reporting by non-bank mortgage lenders, or the centralized reporting and processing by the Board, had never occurred.

HMDA in its original form was of value as long as the principal concern was redlining and the data could be used to illustrate gross patterns of geographic disinvestment. However, it wasn't until fifteen years after the passage of HMDA that the law was amended to address concerns about the fairness of loan decision-making. By then, the issue was whether minority borrowers were denied mortgage loans more frequently than white borrowers and whether those disparities reflected discrimination in mortgage lending. The public disclosure of some pricing information under HMDA occurred via rulemaking more than thirteen years after the 1989 amendments.

Would HMDA have benefitted from more frequent Congressional oversight, as some have suggested?

Challenges to HMDA's Continuing Relevancy

Since the last significant changes were made to HMDA seven years ago, much has changed in the world of mortgage lending. The development of risk-based pricing increased the complexity of mortgages while credit scoring technology allowed for faster desktop processing of loans. Yet, these loan and borrower characteristics were not captured by HMDA. While this data is collected to some extent by private data collectors, the lack of relevant public data during the boom may well have contributed to the difficulty of regulators and mortgage market analysts to identify the toxic trends that were emerging. As subprime lending ballooned from a relatively small percentage of mortgage lending to a significant one, new concerns about the fairness of pricing and marketing of loan products, not just loan availability, emerged. After the bust, concerns about access to credit have re-emerged as the most recent HMDA data reveals the impact of lending patterns resulting from the tightened mortgage credit conditions and the growth of government-backed mortgages as a share of the origination market. Regulators and mortgage market analysts are now focused on the issues of both fairness and access to credit.

Notwithstanding these recent trends, many HMDA proponents continue to advocate for additional data variables to ensure HMDA's ongoing relevancy. One community advocacy organization described the situation this way: "Originally HMDA helped regulators and community groups to paint a vibrant picture of lending, but now that picture is sketchy and out of focus" (NPA 2009). On the other hand, major financial trade groups in the recent past have expressed skepticism about the expansions that have been proposed, while also acknowledging the limitations of the present database (Duncan 2006).

At the time of this writing, legislation is pending in Congress that includes amendments to require additional HMDA reporting. Both the House and Senate bills, as well as the draft conference bill, amend HMDA to require the reporting of many variables commonly cited as limiting the utility of the present database. Therefore, HMDA expansion may be on the horizon should these changes be enacted through the financial regulatory reform efforts currently underway. The Wall Street Reform and Consumer Protection Act (HR 4173)¹⁷ cleared the House of Representatives in December, 2009 and includes provisions amending HMDA in a number of significant respects. The Senate version of this legislation, the "Restoring American

¹⁷ Wall Street Reform and Consumer Protection Act (HR 4173). Available at: http://financialservices.house.gov/Key_Issues/Financial_Regulatory_Reform/Financial_Regulatory_Reform.html The House bill requires additional data elements including applicant age, loan points and fees, APR reporting for all loans, loan-to value ratio, and use of third party broker, among other provisions.

Financial Stability Act of 2010”,¹⁸ introduced by the Senate Banking, Housing, and Urban Affairs Committee Chairman Christopher Dodd, was approved by the Senate in May, 2010 and also includes provisions to amend HMDA by giving the Board’s HMDA function to the newly envisioned Bureau of Consumer Financial Protection and adding additional variables.

The conference committee base text (HR 4173) entitled, “Restoring American Financial Stability Act of 2010” relies primarily on the Senate bill draft in terms of additional HMDA variables. The draft also transfers HMDA rule-making authority from the Federal Reserve Board to the new “Bureau of Consumer Financial Protection” and establishes a new public database at HUD that, in consultation with the other Federal banking agencies, collects and distributes information about foreclosures and defaults on one- to four-unit residential properties. Available at the census tract level, this default and foreclosure database (Sec. 1447) requires banks and financial institutions involved in mortgage lending and servicing to report the number and percentage of 1) delinquent mortgage loans both 30 and 90 day late, 2) mortgage loans in foreclosure, 3) properties that are real estate owned, and 4) mortgage loans that are underwater, i.e. where the value of the property is less than the mortgage amount.

Additionally, the Federal Reserve Board of Governors’ Division of Consumer and Community Affairs (DCCA), as part of a regulatory review of Regulation C, is holding a series of public hearings on HMDA in the summer/fall of 2010 to solicit feedback from interested stakeholders on possible revisions to the HMDA rules.

Proposals Suggested for Keeping HMDA Current

In addition to the pending congressional changes to HMDA, more than a few observers have proposed additional data variables and made suggestions for revisions to HMDA. Some of these are intended to add criteria in underwriting that are not presently part of the HMDA database. Others would permit the tracking of new features in mortgages, including characteristics of higher-priced loans. Still others include information pertaining to the full life cycle of an originated loan, including its performance. Many are intended for use for fair lending

¹⁸ Senate Banking, Housing and Urban Affairs committee draft “Restoring American Financial Stability Act”. Available at: <http://banking.senate.gov/public/>. The Senate bill includes additional data elements including applicant’ age; loan points and fees; “benchmark rate” for the APR; the value of the property; information on prepayment penalties, the proposed term of the introductory period and non-fully amortizing payments disclosure; term; channel; a unique identifier; a universal identifier; parcel number; and the applicant’s credit score as modified by the Bureau to protect the public. These same elements are in the conference committee draft.

enforcement and consumer protection purposes and to otherwise promote the usefulness and access to the HMDA database. The suggestions generally include:

Variables pertaining to borrower characteristics.

The reporting of certain variables used for loan underwriting, such as the loan applicant's credit score¹⁹, household debt-to-income ratio, loan-to-value ratio, and other variables related to borrower characteristics, such as the loan applicant's age.²⁰

Variables pertaining to mortgage characteristics.

The reporting of APR data for all loans (not just for higher-priced loans) including certain information regarding loan product type (e.g., adjustable rate, fixed rate, balloon, interest only, etc), downpayment, the presence of a piggyback loan, PMI, points and fees, originator compensation, loan term, transaction costs for closing, and prepayment penalties, appraised value, among others.

Variables pertaining to loan purpose.

Variables intended to distinguish between mortgages taken out by borrowers for cash-out refinances, home equity loans, and home equity lines of credit (HELOCs). Currently, credit card debt that is rolled into a mortgage loan is captured by HMDA but HELOCs and reverse mortgages are not.

Variables pertaining to loan origination channel.

The use of separate coding to distinguish between the channel used by a lender to originate the loan; i.e. mortgage broker, retail branch, or correspondent channel.

Variables related to the property.

The use of a unique property identifier to enable the linking of HMDA data to other property related databases, such as local property transfer records that contain information on foreclosure starts, linking junior lien loans to their first lien counterparts to determine Combined Loan to Value ratio (CLTV) or loan performance.²¹

¹⁹ Obtaining the credit score when there are multiple credit scoring companies with different scoring methodologies can cause methodological problems and could raise privacy concerns. One idea that has been suggested to address both concerns is to use "buckets" of top 20%, bottom 20% etc. or to have the lender report where the individual ranks compared to the population distribution.

²⁰ "Missing" borrower characteristic data, like race or income, can also challenge researchers. Missing race/ethnicity was a growing problem, up to 28% in 2002. Reporting rules for the 2003 data required lenders to ask about race in telephone applications and these missing variables fell to 16% by 2005 (Avery, Brevoort and Canner 2007). However, the challenge remains.

²¹ Howell Jackson (2010), for one, argues for greater loan-level disclosures as securitized transactions are compiled to improve the transparency of loan pricing, allow for policing of loan abuses and discriminatory practices in loan origination and for facilitating loan modifications and reducing foreclosures. This would include all materially

Establishment of a unique loan identifying number.

More sweeping changes have been proposed to allow links with other loan level databases, such as those featuring information about individual loan performance and loss mitigation efforts applied to loan delinquencies and defaults. This objective would necessitate the establishment of a unique identifying number for every loan that is originated.

Customized HMDA reports.

At present, customized reports can only be realized through the purchase of the raw data set from the FFIEC, which requires fairly detailed technology and research capabilities by the user. The availability of online reports that can be individually-crafted, like census bureau reports, would be more user-friendly.

Other considerations for determining expansions to HMDA reporting

At least three additional considerations are necessary for determining the expansion of HMDA: considering the increased regulatory burden, addressing consumer privacy concerns and addressing the public-use objectives with an increasingly complex database.

Enhanced HMDA disclosures may improve the data's utility, but lawmakers and regulators will need to balance the purported public benefits of each new data element against the estimated increased marginal reporting costs and compliance burdens for reporting institutions. Certainly technological developments have eased the compliance costs and timelines for gathering data, yet challenges remain. While concerns about costs are warranted, it has been difficult to gather data on the marginal increased cost of specific additions to HMDA. Often, lenders purchase software from HMDA data vendors who may be unwilling to share the actual cost of these additions. The annual format may also cause timeliness challenges, and one solution could be quarterly electronic submissions, with the allowance for later data corrections.

Before a decision is made regarding possible expansions to HMDA, policy makers -- whether congressional lawmakers or Federal Reserve officials -- may wish to weigh potential consumer privacy concerns posed by additional data collection and reporting. When considering these questions in 2002, the Federal Reserve signaled that it will pay close attention to these concerns, particularly where data fields are susceptible to matching with other

important information on loan and borrower characteristics with a unique loan identification code that could be linked to HMDA.

information that may reveal the identity of individual borrowers or loan applicants. Congress, too, has indicated similar concerns going as far back as 1989 when it directed the Federal Reserve to withhold from public disclosure certain calendar-specific loan application information at the transaction-level.

Thus far Congress and the Federal Reserve have not heard much from consumers regarding possible compromises to their privacy posed by HMDA disclosures. Part of the reason for this is that considerable information already exists, whether as property records in the public domain, or as a result of data collection from lenders facilitated by private vendors. However, this dynamic could change should HMDA data be expanded to include reporting on potentially consumer sensitive items, such as borrower creditworthiness or information that provides basic metrics regarding a borrower's likely ability to repay a mortgage loans.

Some possible options have been suggested to help resolve the conflict between the privacy interests of individual consumers and the legitimate public interest that HMDA is a robust database. One possibility suggested by Engel and McCoy would be to require lenders to limit access to certain data variables deemed as "sensitive" to individual consumer privacy. In such cases the Federal Reserve, or another federal agency, could be designated to analyze this data and provide aggregated reports to the public in order to protect consumers' privacy. Another option would require the development of procedures to provide access to sensitive data elements only to certified researchers who meet appropriate criteria. Such a method is in place at the U.S. Bureau of the Census. The Census Bureau has established Research Data Centers in which carefully screened researchers sign confidentiality agreements in order to be permitted access to individual level census data (Engel and McCoy 2009).

Nature of Public-Use

An important question is whether providing a more comprehensive database poses a conflict with the objective of providing a broadly accessible public-use database, and whether this conflict can be reconciled. One possible way to greatly enhance the use of HMDA, while addressing privacy concerns, would be to provide additional customized HMDA reports within set parameters. An example is the Census Bureau's "American FactFinder" where population, housing, economic and geographic data can be pulled using dropdown tabs and maps can be created as well. Census Bureau data users can also have custom tabulations created on a cost-

reimbursable basis, for those who need more information than the standard data products provide. While there would certainly be a substantial governmental cost to this kind of information, it could improve data transparency. However, it would also create the challenge of helping the average data user to understand the statistical underpinnings to summary charts, such as the need to do regression analysis for borrower characteristics to control for multiple variables. To improve the public use and ensure timely analysis of the mortgage market, policy makers may also need to address the time lag between the collection of the data and the public release.

Lessons from Proprietary Databases

One of the greatest strengths of HMDA is the demographic and geographic loan data that is collected and reported in a disaggregated form. Yet HMDA is also a limited data set, in that it does not provide loan performance, provides only limited pricing data, and excludes other important variables helpful for distinguishing the reasons behind lending disparities for different borrower groups. These types of variables are not publicly available but are gathered by private companies and sold to researchers and government entities with contractual agreements about the use of these data.

Two national, proprietary and fee-driven databases are First American LoanPerformance (LP) and Lender Processing Services Inc.'s Applied Analytics (LPS), formerly known as McDash. At least until recently, the LP database captured about 70 percent of the subprime securitized mortgage market with limited coverage of the prime market. The data is collected from the administrative records of large mortgage servicers, and are originated by a wide variety of institutions and include both prime and subprime loans. It includes all mortgages purchased or guaranteed by Fannie Mae or Freddie Mac, and also includes non-agency securitized loans. It is assumed then that securitized mortgages are likely over-represented in the LP data. The LPS database includes 18 large servicers (9 of the top 10) as of September 2008. It does not include portfolio loans, and may be missing smaller servicers that may disproportionately service the prime market. LPS claims to cover 57% of the market, with greater shares in some marketplaces.

Both datasets have limitations, including limited demographic information in the manner provided under HMDA. Academic and regulatory researchers who have purchased the data have

had some success in matching HMDA with these proprietary data sources in order to get a clearer picture of the mortgage market. One example is the successful match between HMDA and LPS data used for a recent Federal Reserve Bank of San Francisco study (Ladermann and Reid 2009). This research created a cross walk between zip codes and census tracts using HMDA census data, used loan characteristics variables for matching, and then added lender variables from HMDA. The combination of variables provides a clear picture of the mortgage market. For example, the Ladermann and Reid study found that borrower characteristics, loan terms and original channel had an effect on loan performance. Bocian and Ernst also matched loan data from HMDA and a proprietary database that included variables pertaining to loan risk at origination to reach similar conclusions (Bocian, Ernst, et al, 2006).

More recently, Bank of America/Merrill Lynch (BofA/ML) analysts Vipul Jain and Tim Isgro used matching to better understand the dynamics of underwater borrowers and to determine which borrowers have a low probability of default. They used new data provided by credit bureau Equifax and matched it with LP data, not by identifying borrowers or addresses but with complex matching algorithms.²² By matching original loan amount, zip code and other data items in the LoanPerformance (LP) loan level security databases to those Equifax data, the BofA/ML researchers were able to ascertain if the borrower had other first-lien or second lien-mortgages (both closed end and HELOC), the extent of other credit lines and revolving debt, and current delinquent status on other debt.

While marrying the HMDA and proprietary data sets seems to hold out promise to researchers, policy makers and regulators, combining such data may create conflicts with proprietary interests. There are suggestions that some private vendors have cautioned that such matches are in violation of their contract terms, and that paid subscribers and researchers have been requested to refrain from using their data in such a fashion. These actions are perhaps understandable from the perspective of the data providers who may be providing other services, such as risk management services, to their clients, i.e. the lenders and servicers who provide the data. These lenders and servicers could be reasonably concerned about providing data to a firm that could be used potentially as evidence in fair lending disputes. Often, these lenders provide the data to the firm in order to manage their lending risks.

²² Lowell, Linda. 2010. Who, in the End, Will Default? *Housing Wire*. April 9. Available at: <http://www.housingwire.com/2010/03/01/who-in-the-end-will-strategically-default/>

Conclusion

As we have seen, transparency and public disclosure regimens, such as HMDA, begin as imperfect compromises and must evolve to stay abreast of changing markets and new political priorities. Yet keeping pace is not a simple proposition. New developments alter the competitive playing field and change the benefits and costs to disclosers. Making changes in a timely manner is difficult, given the rapidity of changes in market conditions.

It is the contention of this paper that as effective as HMDA has been over its thirty-five year history, its continued relevancy as a data tool for detecting problems with market conduct is far from assured. The focus on HMDA has shifted over time from a concern with depository institutions that were not lending to communities in which they received deposits, to a more general inquiry into whether lenders of all types were discriminating, to the more recent emphasis on whether vulnerable population groups, including minorities, are being targeted for unfavorable rates and products. This shift in emphasis generally reflected market trends and new concerns about market fairness. The challenge in light of current market conditions is to anticipate data needs for a market that still is emerging in the wake of the present mortgage crisis.

Mortgage lending was highly localized in 1975 when HMDA enacted, but has become a nationwide industry dominated by a relative handful of very large mortgage originators and this consolidation continues in the industry. Changes have been made to HMDA in response to some aspects of the changing mortgage market, but not to others. However, past changes to HMDA may not provide sufficient information to analyze the constantly evolving mortgage lending market.

With future changes to HMDA, one issue that needs to be considered is whether the HMDA database should only provide information to screen and identify patterns that warrant closer view. Another view that some have suggested is that the database should become a more effective tool for proving discrimination, by collecting data elements that are needed to present a prima facie case of lending discrimination. Clearly, policy makers will need to grapple with determining the highest and best use of HMDA data when deciding whether and which variables may need to be added. Policy makers will also need to consider how best to implement the goal of public access to the data, whether addressing the time lag issues or the format of the public data.

Another challenge to the relevancy of HMDA is the effect of the increasing reliance by those who can afford to purchase loan data provided by private proprietary sources. These private data sets include important variables not presently part of the HMDA data set, but they

also do not obviate the need for HMDA. HMDA's comparative advantage is the size of the database and the unique combination of variables, such as those for race, gender, income, and census tract location, that are not commonly featured in the proprietary data sets. The virtue of HMDA, therefore, still rests on the premise that the data remain broadly accessible to a broad audience at a comparatively inexpensive cost. In view of this, future decisions to expand the HMDA data set should also take into consideration the effect of such changes on HMDA's continuing usefulness as a valuable data source for the broadest possible public use.

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