Home Mortgage Disclosure Act (Regulation C) – 3170-AA10

Regulations.gov: [HYPERLINK "https://www.regulations.gov/document?D=CFPB-2014-0019-0422"]

Summary:

1. Establishes loan volume thresholds for reporting HDMA data.
2. Modifies universe of transactions subject to reporting requirements
3. Expansion of reportable data elements
4. Small changes on reporting timing and agency

Checklists

Sec. 1022 (and GIPRA):

1. ***Universe – Does the analysis assess the costs and benefits to persons identified by the Act, including consumers, covered persons, 1026 covered persons, and consumers in rural areas?***

   Yes.

2. ***Content – Does the analysis assess the potential loss of access to consumer financial products and services?***

   Yes.

Cost-benefit analysis best practices (based on OMB Circular A-4):

3. ***Is there a clear statement of the problem the rule is intended to address?***

   Yes. The analysis contains a strong statement on the inadequacies of previous HMDA data at meeting the enforcement and data quality needs of various Government agencies.

4. ***Does the analysis identify a market failure?***

   The final rule claims two market failures. The first is that HMDA data are public goods (HDMA data are non-rival and non-excludable). The second is information asymmetry (mortgages are complicated).

   The market failure section also mentions the rule will improve government enforcement efforts.

5. ***Does the analysis present evidence of a market failure?***

   No.

6. ***Does the analysis define an appropriate baseline? Does it use the baseline consistently?***

   Yes. The Bureau uses a pre-statute baseline, as appropriate.

Commented [RR(1]: High-level notes:

1.The market failure analysis is weak, and arguably a misapplication of economic theory.
2.The benefits of the rule are only weakly connected with the identified market failure. A good analysis would show a connection (for instance a rule that reduces pollution externalities would estimate reductions in external economic damages.)
3. The strongest justification for the rule is to improve enforcement with anti-discrimination rules. While anti-discrimination laws involve real economic benefits and transfers, the purpose of these rules go beyond economic issues and into the realm of justice and human dignity, which can be difficult to deal with in a CBA. In such rules I've analyzed in the past, agencies have at least sought to quantify some of the benefits and transfers involved.
4.Benefits are addressed only qualitatively, and no break-even analysis is attempted. Perhaps related to note #3. Effectiveness is not assessed.
5.The Alternative analysis isn't sufficiently quantified and monetized.
6.I haven't extensively analyzed all of the cost estimates, but the analysis appears to function primarily as a cost transparency exercise, rather than contribute to decision-making amongst competing alternatives.
7.Qualitative Benefits could be more founded in literature and evidence. E.g. a discussion of disparities in access or disparate treatment summarizing academic literature.

Commented [RR(2]: Note: It is very difficult to see a connection between these hypothetical market failures and the actions taken by this rule. The rule requires/changes reporting requirements from lenders to the Government, rather than informing consumers. And HMDA seems to create a public good, rather than the market. Absent government intervention, mortgage data may be non-rivalrous, but certainly not non-excludable. Thus, mortgage data is a "club good," which are typically provided privately – though could lead to a natural monopoly.

Thus, I consider the information asymmetry argument weak, and the public goods argument to be wrong.

Note 2: The enforcement angle of this is a much better justification for the rule. Rules that improve enforcement improve compliance with other laws – so you get more of the benefits and costs of those rules.

7. Does the analysis define an appropriate time horizon?

Five years, but no discussion of why this is appropriate.

8. Does the analysis identify a range of regulatory alternatives, including potential alternatives to regulation? What alternatives to regulation were identified?

Alternatives are identified and discussed for the following provisions:

1. Reporting thresholds for closed-end mortgages
2. Exclude pre-approvals from covered transactions
3. Exclude discretionary new data points
4. Include lien status in new data points.

Commented [RR(3]: The first item is an example of a true process of identifying regulatory alternatives that vary by regulatory stringency or scope. The others are more like one-off discussions of excluding or including various small provisions.

No alternatives to regulation were found, e.g. increased enforcement with existing standards.

9. Are benefits connected to market failure?

One explicit connection is made between qualitative benefits and market failures. In discussing newly required data elements, the Bureau asserts that more information may help the government identify and fix information problems with additional policy.

Commented [RR(4]: I've never seen the potential identification of market failures used as a justification for a rule before. Highly speculative.

Creates a difficulty in attribution of benefits – to this rule, or the hypothetical future rules you justify with the new data?

10. Does the analysis assess the potential effectiveness of the regulation?

No. They claim they are unable to. The analysis cites this this inability as the reason benefits are not quantified.

11. Does the analysis correctly identify and account for costs, benefits, and transfers for each alternative? Does it explicitly identify and account for impacts on credit access and availability?

Benefits – Many identified benefits to consumers would involve at least some transfers ("detection and remediation of discrimination; promote public and private investment in certain under-served markets, potentially increasing access to mortgage credit; and promote more stable and competitive markets." Does not appear to go into justice and/or human dignity arguments. Benefits to covered persons include reduced "false positive" fair lending exams, complaints, and lawsuits; as well as reductions in systemic risk. Will better inform public policy. Analysis claims expansion in the transactions covered by HMDA will reduce future financial crises.

Costs – Upfront and operating costs to industry. Assumes some costs will be passed through to consumers. It seems as though the analysis misses some time costs to consumers associated with more data fields to report. In one instance, the rule would create a cost savings for an eliminated category of covered transactions, but the analysis seems to miss the cost savings to consumers and instead focuses on the lost benefits of government monitoring that market sector.

Access – The Bureau does estimate the revised threshold will increase per-application costs up to $25, and uses that to conclude that the rule would not impact access. The analysis states the $25 would be amortized over the life of the loan. The analysis of the transactional coverage provisions includes a similar assessment – this time up to $41.50 per application. The analysis of changes to existing HMDA data elements is assessed in the saw way – this time up to $10 per application. New HMDA data elements assessed at $22 per application, conclusion is the same.

Commented [RR(5]: These were not robust analyses of access using tools such supply and demand elasticities.

12. ***Are costs, benefits, and transfers quantified for each alternative? Does it explicitly identify and account for impacts on credit access and availability?***

    Benefits are discussed qualitatively. No attempts were made to conduct break-even assessments or identify the potential pool of benefits available.

    Costs are quantified to the extent possible.

    For the most part, alternatives are not analyzed in depth. Alternative loan volume thresholds are assessed somewhat quantitatively, through an assessment of how much data the various thresholds would exclude. The "alternative" to exclude preapprovals from transactional coverage is quantified and monetized.

13. ***Are costs, benefits, and transfers monetized for each alternative? Does it explicitly identify and account for impacts on credit access and availability?***

    Costs are quantified and monetized. Note that they aren't helpfully summarized in tabular form.

    Benefits are discussed qualitatively (update if any are discussed quantitatively), some benefits have a transfer element that is not identified.

    Costs and benefits of alternatives are not monetized – except for preapproval coverage, which includes a monetized assessment of cost savings.

    Access – See #12

14. **Are future costs and benefits discounted to present value using appropriate rates?**

    Yes. The analysis uses a 7% discount rate.

15. **Does the analysis identify key sources of uncertainty?**

There is no formal treatment of uncertainty.

16. **Does the analysis conduct sensitivity analyses for sources of uncertainty?**

    There is no formal treatment of uncertainty.

17. **Was the analysis put out for public comment prior to finalizing?**

    Yes.

18. **The following questions should be included in a thorough evaluation, but are more difficult, time-consuming, and/or less-objective: Is the analysis transparent and reproducible? Is it transparent in its assumptions? Does it rely on the best available science and evidence? Does it comply with data quality standards?**

    Would require a more in-depth review.