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Report

CFPB's retreat from collecting mortgage data should sound alarm bells

Makada Henry-Nickie and Aaron Klein Tuesday, January 23, 2018

Editor's Note:

This post is the second in a series analyzing potential shifts in policy at the Consumer Financial Protection Bureau (CFPB) in the months ahead. [Read the first post here.](#)

In his 1967 Southern Christian Leadership Council address, Dr. King declared access to credit a yardstick for economic progress. Fifty years later, with exponential increases in income inequality, widening wealth gaps, and growing shares of low-income communities falling behind, Dr. King's question "Where do we go from here?" remains a puzzle.

The federal government has a responsibility, as it did fifty years ago, to implement policies that reduce inequality; but doing so requires federal agencies to collect and leverage high-quality data. Last month, CFPB Acting Director Mulvaney, did the opposite, delivering a significant setback to CFPB's ability to collect and report high-quality mortgage data. This move weakens society's ability to combat lending discrimination. Here's what happened and why it matters:

In 2015, CFPB announced updates to the data the government collects under the 1975 Home Mortgage Data Act (HMDA). CFPB's 2015 HMDA rulemaking changed reporting requirements in two fundamental ways; it established CFPB's authority to collect HMDA and substantially expanded the set of reportable data points, widely referred to as HMDA Plus data.

Acting Director Mulvaney reversed the Bureau's course. He preemptively announced that CFPB will not fine anyone for errors in HMDA data reported in 2019. The 2015 rulemaking did little in the way of revising traditional HMDA data, which the Federal Reserve has

collected since 1975. Mortgage lenders have perfected submitting the same 23 data points for 43 years. Technological changes should not absolve financial institutions of their reporting responsibilities. It certainly does not warrant a “get out of jail free card” for harm done—especially when lenders have had more than four decades to get it right. Imagine the IRS waiving penalties for mistakes on your taxes because the e-File portal is under new management.

As to the HMDA Plus data points: These data are not new to mortgage lenders. They have long been intrinsic to the mortgage origination business, though not ordinarily reported under HMDA. Arguably, HMDA Plus reporting is a scenario better suited to safe-harbor or “grace period” strategies. But the industry has had three years to prepare. Had Acting Director Mulvaney provided reasoning differentiating between the two types of reporting or introduced a safe-harbor period for the HMDA Plus data, he would have been on more sound footing. Instead, the statement to eliminate all penalties for all errors sends a problematic signal.

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Beyond eliminating penalties, the announcement included a policy decision to re-examine transactional coverage and possible elimination of discretionary data; suggesting that the Bureau is retreating from its commitment to transparency and its enforcement role. CFPB’s HMDA rule sought to expand data reporting to improve fair lending oversight, and enhance accountability for the mortgage industry’s lending practices.

Combating abusive lending practices, which underpinned the subprime crisis and helped hatch the Great Recession, drove Congress’ decision to expand HMDA reporting. Under Director Cordray’s leadership, the Bureau used its additional authority to enhance transparency. Expanding HMDA reporting to include pricing and underwriting data is

consequential to understanding market trends, assessing institutional lending patterns (particularly when alleging discrimination), and policing predatory practices in niche markets.

Our regulatory and legal structure relies on publicly available HMDA data to help police against lending discrimination. The omission of some predictive variables—e.g. applicant creditworthiness and loan terms—has reduced HMDA’s utility. Accounting for an applicant’s credit score is helpful, but visibility into her assets to determine ability to repay is even more useful. For instance, a prospective minority applicant with excellent credit but sizeable debts relative to her income may be a reasonable denial, but without insight into her debt-to-income ratio, improper conclusions about discrimination may occur.

Put succinctly, a legitimate denial could look like a discriminatory denial without exactly this type of information. Inadequate data may cause underestimated fair lending risks for financial institutions that consistently deny minority applicants with quality credit scores and even better financial assets. Public analysis of pricing and originating practices in niche markets, such as reverse mortgages and manufactured homes in which seniors and low-income individuals are overrepresented, should be viewed as a public good that amplifies the government’s scarce resources.

There are legitimate reasons to be concerned about collecting too much data. Making sensitive data publicly available creates privacy risks and opportunities to re-engineer the data in a harmful way. The federal government has made improvements in data-security technology and protocols that can mitigate privacy risks and simultaneously promote access to confidential data. Whatever individuals’ stated privacy preferences are, state and local governments have long made substantial data regarding home purchases public, including addresses and price. Overall, risks must be weighed against rewards. In this case, there are rewards for additional data both in identifying discrimination that should be stopped and eliminating false positive conclusions about discrimination.

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As a final point, closing the window on public visibility into CFPB's work is inconsistent with the conservative philosophy premised on small government. Keeping government small while maintaining adequate enforcement of the law is best served by substantial and public data collection coupled with transparency into government actions. Reducing data transparency may only serve to create either a bigger government or ultimately fewer rigorous facts to support decision-making.

While in Congress, then Rep. Mulvaney opposed much of the new law he now oversees. He should be cautioned by Raymond Aron's philosophy that there are "ways of conquering that can quickly transform victory into defeat." Retreating from government data collection, like the proposed HMDA rollback, may well be a pyrrhic victory — a black-box CFPB with little public accountability.

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