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The CFPB Seems Poised to Increase Their Scrutiny of Mortgage Banking Fair Lending Issues

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The Director of the Office of Fair Lending and Equal Opportunity within the CFPB, Patrice Alexander Ficklin, said this in last year's CFPB Fair Lending Report: "We maximize our resources by targeting our efforts on practices, products and institutions that pose the greatest risk to consumers. Data plays a critical role in helping to identify areas of risk." Back up for Ms. Ficklin's claim that data plays a big role can be found in the [CFPB's HMDA information website](#).

When the site went live in 2014, it offered the general public the ability to search, download and filter Home Mortgage Disclosure Act (HMDA) data for the first time. A user can filter by applicant sex, race, ethnicity, income, lender, loan type, lien status, if loan is high priced, property type, occupancy status and location down to the census tract. The technology is the same that the CFPB's customer complaint database runs on, and it presents the same risk to the industry in that plaintiffs' attorneys could be trolling for ammunition as the wide availability of this data and the ease of sorting it could lead to new fair lending allegations brought by borrowers. The CFPB openly states that they use public and private fair lending litigation of which they become aware as part of the prioritization process on how and what areas are targeted as consumer risks.

Late last year the CFPB finalized the HMDA Rule's changes to Regulation C. As part of their overhaul of HMDA they are requiring lenders to provide more data points in their HMDA reporting. Some of the new data points include borrower age, credit score, automated underwriting system information, unique loan identifier, property value, application channel, points and fees, borrower-paid origination charges, discount points, lender credits, loan term, prepayment penalty, non-amortizing loan features, interest rate and loan originator identifier. The complete list of data points as well as their descriptions can be found on the CFPB's [Summary of Reportable HMDA Data – Regulatory Reference Chart](#). The expansion of these data points just increases a lenders' exposure to fair lending claims as there are more opportunities for well-intentioned lenders, who were operating with no prejudice at all, to fall into a statistical anomaly on a product.

Lenders will collect the new information in 2018 and then report 2018's information by March 1, 2019, which presumably will be fed right into the CFPB's HMDA information site referenced above and just makes the risks presented by this tool that much greater. The implementation date sounds far off, but when factoring in what will be necessary changes in lender's policies, procedures, software, application forms and training, the industry should already be underway in their attempts to comply with the changes.

After looking at the steps the CFPB has taken in 2014 and 2015 to protect mortgage consumers from fair lending risks, the obvious question would be where will they be focused in 2016 when they initiate an audit or review a complaint? For this we can look back to Ms. Ficklin, who has stated, "Our work in mortgage lending includes a significant focus on HMDA data integrity and validation, as well as more in-depth mortgage lending analyses both in examinations and investigations. **Given the tight credit environment of the last few years, our focus is on underwriting and redlining**, though we also consider pricing policies and practices that present fair lending risk."

This continues the trend of policymakers and regulators in our industry reacting to a tight credit market and limited access to credit, which arguably was created by the over-regulation drafted and enforced by the very same policymakers and regulators.