

Federal banking regulators are zeroing in on consumer lending portfolios during their review of bank merger applications, and an acquirer's Home Mortgage Disclosure Act (HMDA) data foreshadows whether its residential mortgage portfolio could block a merger approval.

Regulators use HMDA data to evaluate a bank's residential mortgage lending activity and determine if the bank is providing adequate access to credit in low-to-moderate income (LMI) neighborhoods as required by the Community Reinvestment Act (CRA). HMDA data can also signal a potential redlining violation under the fair lending laws, including the Fair Housing Act (FHA) and the Equal Credit Opportunity Act (ECOA). Lastly, the quality of an acquirer's HMDA data reporting will also be reviewed during a merger application, even when the bank's lending activity is substantively meeting CRA goals and fair lending standards. Regulators give these issues serious consideration when they review a bank's merger application, and an acquirer's HMDA data holds the key to whether the acquirer's residential mortgage portfolio may complicate the merger approval process.

When the FHA was enacted in 1968, redlining allegations were based on disparate treatment – a form of intentional discrimination – and were illustrated by a bank's refusal to offer mortgages to individuals living within a certain community, i.e., a "redline" of areas the bank would not serve. Under the Obama administration, regulators began to rely more on disparate impact, which considers the discriminatory effects of the bank's lending practices and does not require that the bank had the intent to discriminate. In that vein, most recent redlining cases are based on allegations that (i) quantitative analyses of the bank's HMDA data shows statistically significant disparities in mortgage lending activity between majority-minority census tracts and majority-white census tracts; and (ii) the qualitative structure of the bank's residential mortgage program discouraged mortgage applications from majority-minority census tracts.

HMDA data shows loan solicitations, loan originations, and loan approval rates, among other things, for LMI applicants and for applicants seeking property in majority-minority census tracts. Banks should understand how this data compares to the same data for non-LMI applicants and for applicants seeking property in majority-white census tracts. Likewise, banks are expected to analyze their HMDA data in comparison to the HMDA data of their peer banks. A bank should know how its data compares to its peers' data for each minority group and each LMI census tract within the bank's assessment area, a geographic area set by the bank's primary regulator for purposes of evaluating a bank's compliance with the CRA and the fair lending laws. Given the regulatory scrutiny of these matters during a merger review, a bank with M&A activity on the horizon should analyze its HMDA data in isolation and in comparison to its peer banks.

While it may take several years to remediate HMDA data that shows inadequate LMI mortgage activity, a bank can immediately implement qualitative measures to improve the reach of its residential mortgage portfolio.

These qualitative measures can encourage more LMI applications, help a bank originate more LMI mortgages, and increase the approval rates for applications from LMI census tracts. Specifically, a bank should consider (i) reviewing the concentration of its retail branch network in LMI communities; (ii) evaluating the scope of its mortgage marketing activities to LMI applicants and in LMI communities; (iii) comparing the compensation schedules for mortgage brokers working in majority-minority census tracts versus brokers working in majority-white census tracts; (iv) creating a special-purpose credit program; and (v) funding a down-payment assistance grant. These qualitative measures – when properly implemented – can counterbalance HMDA data that trails peer banks and can reaffirm a bank's commitment to mortgage lending in LMI communities.

Earlier this year, the prudential banking regulators proposed to revise their policies and rules on merger reviews under the Bank Merger Act. Those updates would reinforce the importance of the "convenience and needs of the community" under the five statutory factors of the Bank Merger Act. The regulators explained that the prospective evaluation of the convenience-and-needs prong is distinct from the bank's CRA record and that the current state of the bank's community lending is based on contemporaneous HMDA data. These proposed policies and rules highlight the need for potential acquirers to analyze their HMDA data and, where appropriate, create remedial action plans.

All HMDA data is publicly available on the Consumer Financial Protection Bureau's website, and anyone may acquire and analyze the data. Indeed, many community interest groups use HMDA data as the cornerstone for filing objections to proposed merger transactions. A bank planning a merger should know its HMDA data better than its regulators or any potential opponents to the transaction; it is critical for an acquirer to understand what risks may lie in its HMDA data and whether the data could support public comments in opposition to the merger. Likewise, acquirers with clean and strong HMDA data, and a proven commitment to servicing the banking and credit needs of LMI communities, are less likely to receive regulatory objections or derogatory comments from community interest groups during the merger review process.

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