

Congress of the United States
Washington, DC 20515

May 15, 2014

The Honorable Melvin L. Watt
Director
Federal Housing Finance Agency
Constitution Center
400 7th Street, SW
Washington, D.C. 20024

The Honorable Richard Cordray
Director
Bureau of Consumer Financial Protection
1700 G Street, NW
Washington, D.C. 20552

Dear Directors Watt and Cordray:

We write to express our concern regarding the expansion of the National Mortgage Database (NMDB) by the Federal Housing Finance Agency (FHFA) and Bureau of Consumer Financial Protection (CFPB) as proposed in FHFA's April 16th Federal Register (FR) notice entitled "National Mortgage Database Project (FHFA-21)" (79 FR 21460).

Section 1324 of the Housing and Economic Recovery of 2008 (HERA) requires that FHFA collect information on the sales price of the mortgaged property, the loan-to-value ratio of the mortgage and its terms, borrowers' creditworthiness, whether borrowers on subprime mortgages would have qualified for prime lending, and whether the mortgage was purchased by Fannie Mae or Freddie Mac (12 U.S.C. 4544(c)). The stated purposes of the monthly mortgage survey required under HERA are to enable FHFA to prepare a detailed annual report for our two committees on the mortgage market activities of Fannie Mae and Freddie Mac relative to the rest of the market (12 U.S.C. 4544(a) and (b)), and to compile a database of timely and otherwise unavailable residential mortgage market information to be made available to the public (12 U.S.C. 4544(c)(3)). In 2012 your two agencies entered into a formal agreement to partner on the NMDB's development.

Our principal concern is that the FR notice proposes to vastly expand the scope of FHFA's data collection under HERA to include a mortgage borrower's social security number, financial account numbers, address, zip code, telephone number, race, religion, marital status, language spoken, education, military record, employment, presence of children by various age categories, deceased indicator, financial and life events in the last few years, bankruptcy information, other assets/wealth, and performance data on all credit lines (i.e., credit cards, student loans, auto loans, and other loans reported to credit bureaus) of the mortgage borrower and all those associated with the mortgage. Moreover, the FHFA and CFPB have already publicly indicated that borrowers do not have the opportunity or right to opt out of the database.

First, while we recognize that HERA permits the FHFA director to include in its monthly mortgage survey "such other matters as the director determines to be appropriate"

(12 U.S.C. 4544(c)((2)(C)), this expansion represents an unwarranted intrusion into the private lives of ordinary Americans, and can be easily perceived as an abuse of the trust placed in your agencies by the American people. Please provide a written explanation setting forth:

1. Statutory justification for, and analysis supporting, the agencies' determination that it is appropriate to vastly expand collection of information mandated by HERA to include the information set forth in the FR notice, including intimate personal information about borrowers and their families, and mortgage borrowers' student, credit card and auto loans;
2. Why each proposed data element that is not specified in HERA is necessary and how it complies with HERA;
3. Why the agencies' need for information is not outweighed by the privacy risks accompanying each data element's addition to the database;
4. The identification of all data elements that may be populated from confidential supervisory information collected by your agencies;
5. The legal analysis your agencies relied upon to determine that collecting information on borrower's religion is not in direct violation of the Privacy Act prohibition on a federal agency to maintain records "describing how any individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute or by the individual about whom the record is maintained or unless pertinent to and within the scope of an authorized law enforcement activity" (5 U.S.C. 522a(e)(7)); and
6. What specific value borrower's religion adds to the NMDB.

Second, HERA specifically mandates that information be collected in a timely manner. The FR notice would expand the database to include "mortgages in existence at any point in time from January 1998 to the present (and continuing on into the future)" (79 FR 21459). Please explain your agencies' decision to include mortgages in existence 16 years ago that could have been originated as far back as 1969, and how mortgages originated 10 to 45 years ago satisfy HERA's statutory mandate to provide timely information. Also, please provide information about how many mortgages and borrowers you expect to be covered under this time frame, and why a database that broad is necessary to satisfy legislative intent.

Third, the FR notice states that "[i]n most cases, records will not contain personal identifiers." The FHFA and CFPB have repeatedly assured Congress and the public that the NMDB will not contain personally identifiable information that, if inadvertently released or reverse-engineered, would violate individual privacy rights and facilitate identity theft. Such assurances were provided by your agencies in the joint 2012 press releases announcing NMDB's creation, Director Cordray's testimony before the Senate Banking Committee on November 12, 2013, and Deputy CFPB Director Steven Antonakes' prepared testimony before the Financial Services Committee Subcommittee on Financial Institutions and Consumer Credit on July 9, 2013. However, the FR notice states that only some, but not all, personal identifiers in the NMDB will be removed to protect individuals' privacy, which is of grave concern to us. Our concerns are not unfounded: at the Urban Institute presentation on June 11, 2013, the FHFA's NMDB project director confirmed that the information in the database can be easily reverse engineered.

Fourth, while we recognize that the Privacy Act requires at least a 30-day comment period for data surveys, a collection this broad that vastly expands on HERA's statutory mandate warrants a much longer time period for public comment. Please explain the basis for the FHFA's decision that a 30-day comment period is sufficient.

We respectfully request that you include this letter in the official public comments docket and respond no later than May 27, 2014. Please include copies of all memoranda of understanding or other agreements between the FHFA and CFPB to share consumer information, including for purposes of including such information in the NMDB.

Sincerely,



JEB HENSARLING
Chairman
House Financial Services Committee



MIKE CRAPO
Ranking Member
Senate Committee on Banking, Housing,
And Urban Affairs