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Comment Intake
Bureau of Consumer Financial Protection
1700 G Street NW
Washington, DC 20552

Re: Response to Request for Information Regarding the Bureau's Inherited Regulations and Inherited Rulemaking Authorities; Docket No. CFPB-2018-0012

The undersigned associations, on behalf of our respective members, respectfully submit our response to the above Request for Information¹ by providing our comments on changes the Bureau could make to Regulation C implementing the Home Mortgage Disclosure Act as an Inherited Regulation. In submitting these comments, we recognize that the Bureau considers the 2015 and subsequent amendments to Regulation C to be Adopted Regulations and has previously announced that it intends to engage in rulemaking processes to reconsider those rules.² We encourage the Bureau to also incorporate these recommendations into that rulemaking.

Our associations, **Commercial Real Estate Finance Council, Mortgage Bankers Association, National Apartment Association and National Multifamily Housing Council**, represent various aspects of commercial real estate including lenders who originate multifamily loans. Our members experience the unwarranted regulatory burdens and privacy issues from the unnecessary application of HMDA reporting requirements to business-purpose loans secured by multifamily properties. Accordingly, as we describe in more detail below, we recommend two possible changes to Regulation C under the Bureau's Inherited Rulemaking Authority:

- **Exempt business-to-business loans secured by multifamily properties from HMDA reporting.**
- **Increase the current transaction coverage test threshold for closed-end loans from 25 to 500.**

Recommendation 1: Exempt business-to-business loans secured by multifamily properties from HMDA reporting

We believe that HMDA reporting on business-to-business loans secured by multifamily properties is not necessary to fulfill the statutory purposes of HMDA and that the burden of collecting and reporting that information therefore far outweighs the benefits of doing so.

Congress enacted HMDA in 1975 to respond to congressional findings “that some depository institutions have sometimes contributed to the decline of certain geographic areas by their failure pursuant

¹ 83 Fed. Reg. 12882 (March 26, 2018).

² See Request for Information Regarding the Bureau's Inherited Regulations and Inherited Rulemaking Authorities, 83 Fed. Reg. 12286, 12288 (March 21, 2018) (“[T]he Bureau is not requesting feedback at this time on its 2015 rule under the Home Mortgage Disclosure Act (nor that rule's subsequent amendments) ... because the Bureau has previously announced that it intends to engage in rulemaking processes to reconsider those rules”).

to their chartering responsibilities to provide adequate home financing to qualified applicants on reasonable terms and conditions”³ or, as the Bureau has characterized it, “HMDA grew out of public concern over credit shortages in certain urban neighborhoods.”⁴

Business-to-business transactions to finance multifamily properties do not involve these concerns. For example, borrowers in transactions involving business-to-business loans secured by multifamily properties are businesses, e.g., corporations, limited liability companies or partnerships, and not natural persons. In this regard, we note that the Bureau’s own explanation of why it elected to require HMDA reporting on multifamily loans provides no link to the congressional findings underlying HMDA, to the statutory purposes of HMDA, or to any of the Bureau’s authority.⁵ This strongly suggests regulatory coloring outside the lines of what HMDA was intended to cover.

Moreover, that coloring outside the lines imposes considerable cost. Multifamily lenders typically cannot readily standardize data collection around multifamily lending transactions to fit into a reporting regime designed with single-family lending in mind. For example, because many business-to-business multifamily lenders originate loans with multiple risk profiles for multiple investors, they may have a business need to document and underwrite different sets of loans differently. As a result, lenders may find that they have to develop separate HMDA processes for type of loan originated, for each investor, which results in a complex and cumbersome process. And, for smaller loan-volume multifamily lenders, this considerable burden creates a disincentive to originate more than 25 loans in a year, which could reduce the availability of capital to finance rental housing in some areas.

An additional, non-monetary cost of reporting HMDA information on business-purpose multifamily loans is the heightened risk of re-identification and loss of borrower privacy. That is, given the unique characteristics of multifamily properties and individualized loans, coupled with smaller multifamily loan volumes, multifamily borrowers are exposed to a dramatically heightened chance of being re-identified from HMDA data the Bureau intends to make public. Disclosure of HMDA information regarding denials in particular could be especially damaging to the ability of affected borrowers to conduct their businesses.

In sum, we believe the public policy benefit of collecting HMDA data for business-to-business multifamily lending does not outweigh the considerable regulatory burdens for multifamily lenders and privacy risk for multifamily borrowers.

While we believe this cost-benefit imbalance alone warrants action to exempt business-to-business loans secured by multifamily property from HMDA reporting requirement as a matter of public policy, doing so would also be consistent with other important standards. For example, exempting such loans from HMDA reporting would be consistent with the Administration’s Core Principles for regulation that regulation

³ See 12 USC § 2801(a) (“Findings of Congress – The Congress finds that some depository institutions have sometimes contributed to the decline of certain geographic areas by their failure pursuant to their chartering responsibilities to provide adequate home financing to qualified applicants on reasonable terms and conditions”).

⁴ CFPB Supervision and Examination Manual, p. HMDA 1 (updated March 2018).

⁵ See 80 Fed. Reg. 66128, 66144 (Oct. 28, 2015) (“Some commenters argued that all multifamily properties should be excluded from Regulation C. The Bureau believes that multifamily residential structures should continue to be included within Regulation C because they provide for housing needs and because, as the Bureau noted in the proposal, HMDA data highlight the importance of multifamily lending to the recovering housing finance market and to consumers.”).

should be “efficient” and “appropriately tailored.”⁶ Doing so would similarly help the Bureau fulfill its statutory objective of identifying and addressing “unnecessary” and “unduly burdensome” regulations.⁷

Recommendation 2: Increase the current transactional coverage test for HMDA reporting to 500 loans.

We believe Recommendation 1 above is necessary to address member concerns as to regulatory burden and privacy risk. However, we also note that Bureau has indicated that it may consider changes to the transaction coverage test threshold in its expected rulemaking to amend HMDA regulations.⁸ While such an action would not adequately address member concerns, it could provide relief to some. Accordingly, and with that reservation, we share our specific recommendation below regarding that possible action.

- **Transaction coverage test threshold.** We would support increasing the transaction coverage test threshold from 25 to 500 loans in each of the two preceding calendar years. We note that Congress similarly recognized 500 loans as an appropriate order-of-magnitude threshold for HMDA purposes in S. 2155, *The Economic Growth, Regulatory Relief, and Consumer Protection Act*, which was signed into law May 24, 2018.⁹
- **Scope of relief.** The recent legislation described above provides only limited relief from HMDA reporting (i.e., by providing relief only from reporting on the new 2015 data fields, and providing relief only for insured credit unions and insured depository institutions).¹⁰ In our view, relief provided by any new order-of-magnitude threshold that the Bureau may be considering should apply to all HMDA reporting, and should be applied across all types of institutions, consistent with the way the current 25-loan threshold applies under current regulations.¹¹

Again, we want to emphasize that, while increasing the transaction coverage test threshold as recommended above would provide for some of our members, that change would not adequately address

⁶ See *Presidential Executive Order on Core Principles for Regulating the United States Financial System*, Executive Order 13772, Section 1(f) (Feb. 3, 2017) (“(f) make regulation efficient, effective, and appropriately tailored”).

⁷ See 12 U.S.C. § 5511(b)(3) (“Objectives—The Bureau is authorized to exercise its authorities under Federal consumer financial law for the purposes of ensuring that, with respect to consumer financial products and services — ... outdated, unnecessary, or unduly burdensome regulations are regularly identified and addressed in order to reduce unwarranted regulatory burdens;”).

⁸ CFPB Issues Public Statement On Home Mortgage Disclosure Act Compliance, Release (Dec. 21, 2017) (“The Bureau also announced it intends to open a rulemaking to reconsider various aspects of the Bureau’s 2015 HMDA rule, such as the institutional and transactional coverage tests and the rule’s discretionary data points.”).

⁹ Public Law No. 115-174. Among other changes to the Home Mortgage Disclosure Act, section 104 of the legislation added the following exemption: “CLOSED-END MORTGAGE LOANS.—With respect to an insured depository institution or insured credit union, the requirements of paragraphs (5) and (6) of subsection (b) shall not apply with respect to closed-end mortgage loans if the insured depository institution or insured credit union originated fewer than 500 closed-end mortgage loans in each of the 2 preceding calendar years.”

¹⁰ See note 10, above.

¹¹ See 12 C.F.R. § 1003.2(g) (applying the current 25 loan threshold by way of the definition of “financial institution,” which effectively exempts lenders below the threshold from all HMDA reporting).

our members' concerns regarding HMDA reporting on business-purpose loans secured by multifamily properties.

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We appreciate the opportunity to provide our input into the Bureau's process of reviewing and reconsidering its HMDA regulation, and considering appropriate changes to those regulations consistent with the purposes of HMDA, Administration policy and the Bureau's statutory mandate. Thank you for your consideration of our comments. We look forward to engaging with the Bureau to help address this important issue.

Sincerely,

Commercial Real Estate Finance Council
Mortgage Bankers Association
National Apartment Association
National Multifamily Housing Council