



MORTGAGE BANKERS ASSOCIATION

March 26, 2019

The Honorable Kathleen L. Kraninger
Director
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

Re: Request to exclude business-to-business multifamily loans from Regulation C

Dear Director Kraninger:

The Mortgage Bankers Association (MBA) is writing on behalf of our commercial/multifamily members to urge the Consumer Financial Protection Bureau to exclude business-to-business multifamily loans from the reporting requirements of the Home Mortgage Disclosure Act (HMDA).¹ Specifically, we request that the Bureau propose to exclude business-to-business multifamily loans as part of the upcoming notice of proposed rulemaking to amend Regulation C.²

We make this request because HMDA reporting of business-to-business multifamily loans imposes a substantial and unwarranted regulatory burden on our commercial/multifamily members. HMDA reporting on multifamily loans is particularly burdensome because it requires institutions to adapt complex, bespoke commercial lending into a reporting framework designed for consumer-facing single-family mortgage lending. As a result of the impact of that burden, we understand that some lenders may curtail their multifamily lending in order not to be subject to HMDA reporting requirements.

HMDA reporting on business-to-business multifamily loans is unwarranted because collecting information on such transactions is not necessary to achieve the Bureau's core consumer mission.³ Multifamily borrowers are by and large corporations or other business entities, not

¹ 12 U.S.C. § 2801 et seq.

² 12 C.F.R. Part 1003.

³ See 12 U.S.C. § 5511(b) ("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"). MBA's position has been consistent on this matter since the CFPB first proposed changes to the HMDA regulation in 2014. See, e.g., MBA comments in response to the CFPB Request for Information Regarding Bureau Data Collections (Dec. 21, 2018), and MBA Response to Request for Information Regarding the Bureau's Inherited Regulations and Inherited Rulemaking Authorities (June 21, 2018).

“consumers;”⁴ the transactions do not involve “consumer financial products or services;”⁵ and, in some cases, the lending institutions are not “covered persons.”⁶ In addition, key HMDA data points (e.g., racial characteristics, gender, age, and income level) that apply to consumers are inapplicable to multifamily business-to-business loans under Bureau guidance.⁷ Moreover, the Bureau’s own justification in connection with the 2015 final rule did not articulate a connection between multifamily lending and consumer financial products and services.⁸

Accordingly, as you reconsider and reevaluate prior Bureau decisions and actions that may be inconsistent with the Bureau’s core mission of addressing consumer financial products and services, together with the statutory objective of addressing unwarranted regulatory burdens,⁹ we believe it is appropriate to amend Regulation C to exclude business-to-business multifamily loans, and to do so as part of the upcoming notice of proposed rulemaking.¹⁰

⁴ 12 U.S.C. § 5481(4) (defining “consumer”).

⁵ 12 U.S.C. § 5481(5) (defining “consumer financial product or service”).

⁶ 12 U.S.C. § 5481(6) (defining “covered person”); see also 12 U.S.C. § 5514(a)(1) (supervision of nondepository covered persons). The application of Regulation C to institutions that are not covered persons also has created a practical reporting issue that MBA reported to HMDAHELP, which remains unresolved (HMDAHELP Case # 190201-3799335). MBA requested assistance on February 1, 2019, asking how lenders that are not regulated or supervised by a federal financial institution regulatory agency, HUD or the CFPB should populate the Agency Code field when the field is mandatory and the allowable values contain no correct response. We received an initial call from a staff attorney on February 6, 2019, and were told that the matter would be escalated. To date, we have received no further response.

⁷ See Appendix B to Part 1003 — Form and Instructions for Data Collection on Ethnicity, Race, and Sex, item 7; Supplement I to Part 1003—Official Interpretations, Comment for 1003.4—Compilation of Reportable Data, Paragraph 4(a)10(ii)—5 (age); Paragraph 4(a)(10)(iii)—7 (income data). Other data fields generally inapplicable to multifamily lending include: *preapproval*; *rate spread*; *HOEPA status*; *credit score*; *total loan points/total points and fees*; *origination charges*; *discount points*; *lender credits*; *prepayment penalty*; *debt-to-income ratio*; *manufactured home secured properties type*; and *manufactured home land properties interest*.

⁸ 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.”).

⁹ 12 U.S.C. § 5511(b)(3).

¹⁰ We note that HMDA and Regulation C effectively exempt multifamily loans where (1) the multifamily lender is a bank, savings association or credit union; and (2) the lender has made no single-family mortgage loans in the preceding year (the Loan Activity Test). See 12 U.S.C. § 2801(3)(A); see also 12 C.F.R. § 1003.2(g)(1)(iii); HOME MORTGAGE DISCLOSURE (REGULATION C), *Small Entity Compliance Guide*, § 3.1.1—3, Banks, savings associations, and credit unions; Loan Activity Test, p. 21 (CFPB; v. 3.0, Oct. 2018).

MBA request to exclude business-to-business multifamily loans from Regulation C

March 26, 2019

Page 3

This exclusion could be accomplished by adding business-to-business loans secured by multifamily properties as one of the excluded transactions under existing 12 C.F.R. § 1003.3(c), which enumerates 13 other categories of “excluded transactions.” For continuity, the Bureau should also make conforming changes to the definition of “dwelling” and to related official interpretations at 12 C.F.R. § 1003.2(f) and official interpretations 2(f)—2 and 2(f)—4. We believe this could be accomplished relatively quickly.

We appreciate your consideration of this request as the Bureau engages in the process of proposing amendments to Regulation C. Please feel free to contact Thomas Kim, Senior Vice President, Commercial/Multifamily at tkim@mba.org or Bruce Oliver, Associate Vice President, Commercial/Multifamily Policy, at boliver@mba.org if you or your staff have any questions about this request.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Broeksmit', with a stylized flourish at the end.

Robert D. Broeksmit, CMB
President and Chief Executive Officer
Mortgage Bankers Association