



October 29, 2014

Ms. Monica Jackson  
Office of the Executive Secretary  
Consumer Financial Protection Bureau  
1700 G Street NW  
Washington, D.C. 20552

RE: Multifamily Real Estate Finance Comments on Proposed Amendments to Regulation C to Implement Amendments to the Home Mortgage Disclosure Act (Docket No. CFPB-2014-0019; RIN 3170-AA10)

Dear Ms. Jackson:

The Mortgage Bankers Association<sup>1</sup> ("MBA") welcomes the opportunity to comment on the proposed rule ("Proposal") issued by the Consumer Financial Protection Bureau ("CFPB") to implement the amendments to the Home Mortgage Disclosure Act ("HMDA") made by the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act").<sup>2</sup>

The comments set forth in this letter specifically address **commercial mortgage loans secured by multifamily properties and other business purpose loans**. In preparing this response, MBA has worked with its commercial/multifamily finance membership, including mortgage bankers, life insurance companies, banks, multifamily lenders and other industry participants in real estate finance.

MBA comments addressing single-family (1-4 unit) home mortgage loans are included in a separate letter submitted by MBA and other groups.

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<sup>1</sup> The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 280,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets; to expand homeownership and extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of over 2,200 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, REITs, Wall Street conduits, life insurance companies and others in the mortgage lending field. For additional information, visit MBA's Web site: [www.mortgagebankers.org](http://www.mortgagebankers.org).

<sup>2</sup> 79 Fed. Reg. 51732 (Aug. 29, 2014).

## Overview

MBA's comments herein relate to the proposed changes involving commercial real estate mortgage loans secured by multifamily properties (properties containing 5 or more units). Multifamily mortgage loans are business loans often made to corporate and other business entities, the proceeds of which are used to purchase or refinance multifamily properties.

We appreciate the CFPB's interest in better understanding the market for multifamily mortgage loans and affordable multifamily housing. We question, however, whether reporting under the Home Mortgage Disclosure Act (HMDA) should cover multifamily mortgage loans or other business loans, and whether the information reported would advance the purposes of HMDA.

We recommend that the CFPB exclude multifamily mortgage loans and other loans made for business purposes from HMDA reporting requirements, in light of the core purposes of HMDA and the fundamentally different nature of multifamily and commercial real estate lending.<sup>3</sup>

Our letter is organized as follows:

- First, we discuss the consumer-centric focus of HMDA and its reporting regime for single-family lending, as distinct from the business-to-business lending on multifamily real estate.
- Second, we describe the characteristics of multifamily mortgage lending as a category of commercial real estate finance, and its unique attributes that differ substantially from single-family mortgage lending.
- Third, we recommend necessary program clarifications on the scope of the rule and its applicability to various property types.
- Fourth, we provide specific recommendations on HMDA data fields, identifying those fields that are not or should not be applicable to the multifamily finance context.
- Fifth, we discuss the use and applicability of industry reporting standards.
- Lastly, we discuss the importance of a substantial implementation period, if applicable.

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<sup>3</sup> As discussed below, modifications relating to various data elements in light of their inapplicability are warranted as well. These recommendations are set forth below.

## I. Consumer-Centric Focus of HMDA Reporting

MBA appreciates that the CFPB “views implementation of the Dodd-Frank Act changes to HMDA as an opportunity to assess other ways to improve upon the data collected, reduce unnecessary burden on financial institutions, and streamline and modernize the manner in which financial institutions collect and report HMDA data.”<sup>4</sup> In our view, the Proposal’s approach to the collection of data relating to multifamily mortgage loans is inconsistent with these objectives. We do not believe that loans made to businesses, such as loans on multifamily real estate properties, should be subject to HMDA reporting.

We believe that the Home Mortgage Disclosure Act of 1975 was intended to provide information related to *consumer* access to credit. In enacting HMDA, Congress found that some depository institutions had failed to provide, adequate *home* financing to qualified applicants on reasonable terms and conditions.<sup>5</sup> HMDA’s principal focus in the decades since enactment has been on single-family housing finance. The Loan Application Register (LAR) developed under HMDA is designed to collect data on single-family mortgage lending to consumers — that is, natural persons. For example, current reporting requirements include: non-owner occupied loans, home improvement loans, income, racial and other personal characteristics. As the CFPB has acknowledged, a number of HMDA data elements simply do not apply to multifamily lending transactions.

A review of the summary to the Proposed Rules demonstrates the core purpose of HMDA reporting. Virtually all of the 125 pages of the preamble in the Federal Register is devoted to matters relating to the single-family mortgage market. Superimposing the single-family reporting regime on multifamily mortgage lending has and will continue a “round peg in a square hole” situation, resulting in inapplicable data fields, data with limited value that does not take into account the conventions of the commercial real estate lending market, and burdensome reporting requirements. We note that the various amendments to HMDA by the Dodd-Frank Act also did not address the multifamily mortgage market.

Likewise, the Dodd-Frank Act established the CFPB to, among other things, “regulate the offering and provision of consumer financial products or services under Federal consumer financial laws.”<sup>6</sup> Among the general powers of the CFPB is the implementation and enforcement of consumer financial laws for “the purpose of ensuring all consumers have access to markets for consumer financial products and

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<sup>4</sup> 79 Fed. Reg. 51732 (Aug. 29, 2014).

<sup>5</sup> 12 U.S.C. 2801.

<sup>6</sup> Dodd-Frank Subtitle A Section 1011 Establishment of the Bureau of Consumer Financial Protection (a).

services ...”<sup>7</sup> In this regard, all of the Dodd-Frank Act’s amendments to HMDA are focused on consumer-facing single-family data elements.<sup>8</sup>

Accordingly, we believe that the consumer-centric character of both the core purpose of HMDA and the mission of CFPB should shape the scope of the HMDA reporting so that lenders and regulators can focus their efforts on the HMDA data that is most useful. Multifamily mortgage loans, which are commercial loans made for business purposes and other business purpose loans, should not be subject to HMDA reporting.

## **II. Multifamily Mortgage Lending is Commercial, Business-Purpose Lending**

Multifamily mortgage loan borrowers are often corporations, limited liability companies and partnerships, rather than the natural persons who obtain loans on single-family properties. These borrowers utilize commercial real estate mortgages for the commercial purpose of acquiring or refinancing an income-producing property. Multifamily mortgage loans are business purpose loans made on income-producing assets and are often non-recourse. As a result, the underwriting of these projects is very different from the underwriting associated with the extension of home mortgage loans to consumers. It appears that the CFPB is considering whether to exclude “business-purpose loans” from HMDA reporting requirements.<sup>9</sup> Given that commercial real estate loans on multifamily properties are business purpose loans, we believe that multifamily loans should be excluded from the HMDA reporting requirements as well.

In contrast to single-family home mortgage finance which currently relies heavily on government programs and standardized terms, the capital sources available for multifamily mortgage lending are diverse.<sup>10</sup> The loan programs and requirements vary based on the investment criteria of the lender and compete with other alternative non-mortgage investments. Lending programs are proprietary, the terms may be negotiated, and the loan structure may be tailored to mitigate risks associated with the property, borrower, market and loan terms, as well as the needs of the investor in the loan.

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<sup>7</sup> Subtitle B General Powers of the Bureau Section 1021 (a) Purpose.

<sup>8</sup> See Section 1094 of the Dodd-Frank Act.

<sup>9</sup> See 79 Fed. Reg. at 51748.

<sup>10</sup> In 2013, Multifamily Mortgage Originations Market Share were as follows: banks 39%; GSEs 28%; Life Insurance Companies 11%; FHA 7%; CMBS 4%; Others 11%. Source: MBA Annual Report on Multifamily Housing.

### Inapplicability of Single-family “Application Process” to Multifamily Lending

Commercial real estate lending follows a path that is less standardized than that followed by single-family lenders. For many multifamily lenders, completion of HMDA LAR sections, particularly with regard to “applications,” would be very difficult due to the fact that these commercial lenders would be asked to report data that is not applicable to multifamily real estate or data that is not available to the lender. For example, since an application may not be completed, signed and dated by a corporate (or other entity) borrower on a multifamily mortgage, the lender does not always have an application date. Furthermore, lenders do not “pre-approve” loans, and the evaluation process is not as formal or standardized as it is in the single-family home mortgage industry. Instead, a borrower inquiry may fail to meet certain program requirements or underwriting conditions or the borrower may elect to work with another commercial lender prior to delivery of required underwriting information.

Multifamily mortgage lending does not utilize an “application process” similar to that used in consumer lending. Applications for multifamily loans are generally not taken from a borrower in the same manner as those taken from or submitted by individuals in a consumer mortgage loan context. The concept of an application, as used in single-family mortgage finance, generally does not exist in multifamily finance. Rather, the process typically begins with contact between a representative of the potential borrower and identified capital sources (lenders or intermediaries, such as a correspondent or mortgage broker), in a business-to-business transaction.

In many cases, an *offering memorandum* or similar document is prepared and distributed to multiple lenders identified (often by an intermediary), as having a program(s) that could accommodate the borrower’s preferred lending terms. These unsolicited offering memoranda undergo an initial review to determine if there is a fit between the preferred terms and the lender’s program(s), e.g., property type, market, loan term, value, operator experience. The percentage of “offering memoranda” that survive this review varies depending on the capital source, but it may be very low.

Assuming that the offering terms (on the surface) seem to fit, additional analysis may be undertaken. In the event that a lender believes that it has an opportunity to make a loan to the borrower and that the borrower can meet its underwriting standards, the lender generally provides the borrower with a letter of intent<sup>11</sup> that outlines the terms of the loan, along with certain conditions that must be met prior to the closing of the loan facility. The borrower then selects a lender from the proposals received and a letter of intent is executed, a good faith deposit paid, and the extensive underwriting and due diligence process begins. In some cases, a letter of intent may not be executed, or may be executed later in the process, depending on the lender, the borrower and the transaction.

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<sup>11</sup> This initial agreement that is delivered to the borrower may be referred to as an application letter, commitment letter, letter of intent or otherwise.

### The Underwriting Process

The approach to application and underwriting can vary greatly among lenders and capital sources. Commercial real estate loan transactions are underwritten pursuant to a wide range of requirements and procedures utilized by commercial lenders and capital sources. For example, different lenders may impose different requirements based on the lender's investment criteria (e.g., three years of prior operating statements rather than two) or a single lender may impose different standards based on the requirements of the capital source (e.g., CMBS versus FHA).

However, the underwriting/due diligence process generally is extensive and involves an evaluation of the property, the borrowing entity, and the market. Property evaluation includes the financial details of the income-producing property (e.g., revenue, expenses, tenancy and lease rollover, management) and the physical condition of the property (e.g., property inspection, appraisal, engineering (structural assessments) and environmental assessments). Evaluation of the borrowing entity can include a review of the borrower entity structure, key principals, financial capabilities and experience in owning and operating income-producing properties. A review of the market involves an analysis of the property's competitive position in its market (amenities versus competitors, health of the market and submarket, degree of current and projected competition, vacancy rates, growth of market rents, employment opportunities, neighborhood amenities, etc.).

The multifamily underwriting process varies greatly from the underwriting of home mortgage loans. In the home mortgage market, borrower income, credit and the value of the home based on comparable sales are key components to the underwriting. By contrast, multifamily underwriting and loan sizing places emphasis on the cash flow of the property. While credit is an important component, cash flow and property value (which is based on mathematical calculations utilizing capitalization rates, applied to net operating income or property income) is a priority for non-recourse multifamily mortgage lending.

Fundamentally, as a commercial transaction, the lender makes an investment decision in making a loan on a multifamily real estate property. Satisfactory completion of the underwriting process results in a recommendation to the lender's investment committee to approve the loan request. If approved, the request proceeds to closing (a commitment letter may be executed). This, we believe, is inapposite to single-family loans made to individuals that are subject to HMDA reporting.

In addition, the data that would be required under the Proposal on the disposition of loan applications for multifamily property finance is not useful. The information is not comparable across lenders, because lenders' evaluation of multifamily loan inquiries varies significantly. When coupled with the difficulty of determining when an "application" has been received, there is no reason to collect information about inquiries that do not ripen into loans.

### Privacy Concerns and Proprietary Information

Because the numbers of multifamily loans originated annually are significantly fewer than the number of single-family home mortgage loans made during the same period, and because multifamily properties are more easily identifiable, it is far more difficult to ensure privacy of the borrower and lender when detailed information regarding the loan and property are made public. In the case of multifamily loans, utilizing an aggregation approach would not likely be sufficient to maintain privacy and proprietary information.

While certain loan information is made available in the public and government markets for multifamily property finance, borrowers and lenders in this market sector understand the implications of public disclosure. Other borrowers and lenders, however, have different expectations and choose to by-pass these lending platforms. Indeed, borrowers may choose a private market execution and be willing to accept more conservative underwriting in return for among other things, a right to maintain the privacy and/or the proprietary nature of the transaction. Forcing public disclosure of terms negotiated between these business parties could negatively impact these lending relationships.

### HMDA Reporting is Highly Single-Family and Consumer-Centric

Virtually the entire HMDA reporting regime is focused on consumer-facing single-family residential transactions. Institutions that have reported multifamily data in the past have recognized the lack of applicability of many data elements. In addition to the categories of information that are specified as not applicable to multifamily properties, the reporting requirements include concepts that are inapplicable in the commercial lending context and the reporting of information regarding loan types that are specifically consumer oriented.

For example, current HMDA data points such as ethnicity, race, sex, gross annual income, reason for denial, rate spread, HOEPA status, are not relevant in a multifamily and commercial mortgage loan context. Likewise, Regulation Z definitions are not applicable to commercial real estate/multifamily loans. In addition, many of the newly proposed data points would not be applicable to these commercial loans (e.g., age, credit score, debt-to-income ratio, application channel, introductory rate period, etc.), while reverse mortgages and HELOCs are specifically single-family and consumer-based concepts.

Therefore, to the extent that depository and non-depository institutions are required to submit HMDA data for multifamily mortgage loans, the data itself will have limited value. We believe that the costs and burdens associated with providing the information would be disproportionate to the value of the information provided. Our comments on specific data elements proposed are discussed below.

### **III. Program Clarifications**

We believe that the CFPB should exclude from HMDA reporting requirements multifamily mortgage loans and other loans made for business purposes. To the extent that the CFPB fails to do so, we urge the CFPB to take steps to ensure that the reporting requirements are clear and support HMDA's purposes.

#### Institutional Coverage — Loan Threshold

The Proposal provides a uniform twenty-five (25) loan reporting threshold. This would place a far greater burden on non-depository institutions. Under the proposal, depository reporting requirements retain the limitations of the current version of Regulation C. The Proposal further limits depository reporting requirements by increasing the reporting threshold from 1 loan to 25 loans. For non-depository institutions, the reporting requirements are significantly expanded. In addition to stripping non-depositories of any limitation related to asset size and origination levels, the reporting threshold is decreased from 100 loans to 25 loans. We also note that many non-depository institutions involved in multifamily mortgage lending which originate 25 to 100 loans per year may have limited capacity to absorb the added reporting time, effort and cost. Therefore, the burden of the additional reporting may fall more heavily on these small businesses, and we question whether the threshold should be modified in this manner.

#### Transactional Coverage — Business Loans

In addition to the expanded reporting for non-depository institutions, the Proposal seeks (with limited exception) to broaden the scope of the HMDA rule from Home Purchase Loans to any loan secured by a property that contains dwelling units, regardless of loan purpose. As set forth above, we question the expansion of the Regulation beyond the consumer and home mortgage focus of the Act. As in the case of commercial real estate loans, we also question the usefulness of the data to be collected and believe that the burden and cost of collecting and reporting this data is not justified by the value of the data proposed to be reported.

Business loans (including real estate loans secured by multifamily properties) are not characterized by uniform underwriting standards or loan terms due to the array of capital sources available for financing each of which is unique in its emphasis, market sensitivities, and scalability. Multifamily mortgage loans, as a type of business loan, are generally subject to approval by the ultimate lender, investor, guarantor or insurer due to the complex nature of the underwriting analysis, investment size and risk.

Additionally, expanding the reach of the HMDA reporting requirements could result in reporting of business loans and credit lines secured by dwellings, where the loan terms are a product of unrelated considerations; for example, HMDA reporting could be required of loan terms for hospitality properties,

retail properties, and other property types containing a limited number of condominium units or apartments.

#### Income Restricted Units and Total Units

MBA recognizes the importance of multifamily rental housing broadly and affordable rental housing in particular. We do not believe, however, that HMDA reporting is an appropriate means to collect information on these markets.

We do not believe that lenders are the best source for the information sought. Lenders are not party to agreements between property owners and the federal, state or local housing authorities which administer these programs, nor are they party to the specific arrangements impacting any income restricted units within a multifamily property collateralizing a multifamily loan. In addition, lenders do not have a role in monitoring or enforcing compliance with any income restriction agreements or other affordable housing arrangements.

Lenders would have access to this information only to the extent provided by the borrower for underwriting process, if for example, the arrangement impacts property cash flow. We therefore request clarification that the required reporting of income restricted units in multifamily properties be limited to contractual agreements (e.g., deed restrictions) that were provided by the borrower and considered as part of the underwriting process. To the extent that lenders are required to report the number of income restricted units, lenders should be permitted to reasonably rely on information provided to them as part of the underwriting process. As an option, lenders that choose to report affordable housing units originated under other affordable housing programs should be permitted to do so.

Moreover, we understand that one of the purposes of HMDA is to ascertain that lenders are serving the housing needs of their communities and assisting public officials in their determination of public sector investments. We respectfully submit that current and proposed data elements do not effectively serve this purpose. Information that may be useful in this regard is limited from a lender perspective. Rental market information, in our view, is better assessed using local geographic metrics (e.g., area vacancy rates, area average rents, construction and occupancy permits, and other information available at the local level). HMDA, which by definition is a mortgage-level reporting regime, is very limited in its efficacy in this regard.

### Loans Collateralized by Specialized Property Types

We recommend that loans secured by condominium and cooperative buildings, mobile home parks, assisted and senior living facilities and dedicated student housing be excluded from HMDA reporting as Excluded Transactions.<sup>12</sup>

- The individual units in condominium and cooperative buildings and the individual mobile homes in a mobile home park would be reported as single-family loans or applications as the units are purchased and financed. In the event that permanent financing is placed on the entire condominium or cooperative building or the mobile home park, following the sale of the units, it is unclear how the financing would be reported (e.g., a \$10 million loan on a multifamily property with zero units?).
- Assisted and senior living facilities are specialized properties, sometimes containing nursing facilities (which are excluded from reporting), that may combine the financing of individual residential units with a health care component. These properties may include limited hospital spaces and other specialized units. The performance of these properties is tied not only to financing but also to licensing and other state regulatory requirements.
- Dedicated student housing of all types should be excluded as temporary housing, given its unique characteristics. This restriction should not be limited to dormitories, but should include any property substantially leased to students.

### Mixed Use Properties

The Proposal requires the reporting of mixed-use properties as multifamily properties any time that the property includes five or more residential units, without consideration to the purpose of the loan. Reporting mixed-use properties in this manner will add little value to the reporting. Examples of mixed-use properties that could be subject to reporting based solely on the number of residential units include:

- Reporting of a business loan to a school as a home purchase loan due to the inclusion of five faculty housing units in the collateral for the loan;
- Reporting of a hospitality loan as a multifamily property due to the inclusion of five condominium or apartment units in the building; and,
- Reporting of a loan to a retail property as a multifamily property due to the inclusion of five condominium or apartment units in the building.

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<sup>12</sup> 79 Fed. Reg. at 51,870.

In a manner consistent with the exclusion of agricultural properties where the dwelling is incidental to the purpose of the loan,<sup>13</sup> we recommend that mortgage loans secured by mixed-use properties be reported only if the primary purpose of the loan is to finance the purchase or refinance of a multifamily property.

#### Construction Loans

The Proposal exempts temporary financing from HMDA reporting and provides that a construction loan with a term of two or more years must be made to a bona fide builder in order to be excluded.<sup>14</sup> We recommend that this time frame be extended in the case of multifamily properties. A bona fide construction loan for a multifamily property may be made to a property owner either for new construction or substantial rehabilitation, and given the size and complexity of the construction project and the time needed to meet lease up requirements prior to qualification for permanent financing, a two year limit may be insufficient.

#### Participated/Syndicated Loans

We request a clarification with respect to participated/syndicated loans. These types of loans may involve investment by multiple lenders, each of whom evaluates that investment according to its own investment criteria. The investment decision may be made prior or subsequent to loan closing. In either case a 'lead' or 'agent' bank (or similar party) manages the transaction. We request clarification that reporting of participated/syndicated loans would be made only by the 'lead' or 'agent' bank or other party managing the transaction.

#### **IV. Recommendations on Specific Proposed HMDA Data Fields**

We appreciate the CFPB's solicitation of feedback regarding "whether any existing or proposed data points should be modified or eliminated for multifamily dwellings".<sup>15</sup> The following contains our recommendations. As noted previously, and as can be seen from our observations and recommendations below, many of the existing and proposed data points should be inapplicable to commercial/multifamily real estate loans, and the associated LAR for these loans would contain little valuable information and, instead, provide that much of the information is "N/A."

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<sup>13</sup> 79 Fed. Reg. at 51,870.

<sup>14</sup> 79 Fed. Reg. at 51,870.

<sup>15</sup> 79 Fed. Reg. at 51,757.

We urge the CFPB to:

- Retain the inapplicable classification of certain data elements with respect to multifamily and other commercial loans as provided in the Proposal;
- Affirm the inapplicability of certain reporting concepts that are specific to single-family finance by regulation and therefore inapplicable to multifamily and other commercial real estate lending;
- If reporting is required, clarify the value of reporting certain proposed data elements that may have a particular meaning in single-family mortgage finance, but have a different meaning and are customary in business-to-business commercial lending, including for multifamily mortgage finance; and,
- Clarify the cost benefit value of the remaining data elements that would be reported in connection with multifamily mortgage loans.

Our specific comments on the proposed data elements are below.

1. Retain inapplicable classification for LAR reporting:

a. We agree with CFPB that:

- i. Paragraph 4(a)(10)(i) – Ethnicity, Race, Sex and Age should be reported as ‘not applicable’ for multifamily loans to non-natural persons and that
- ii. Paragraph 4(a)(10)(ii) – Income should be reported as ‘not applicable’ to multifamily loans

b. We agree that the following single-family data elements should remain applicable only to loans subject to Regulation Z or HOEPA, as reflected in the Proposed Rules. The final rules should confirm that these data elements relate only to loans subject to Regulation Z or HOEPA and therefore are not applicable to multifamily and commercial loans:

- i. Paragraph 4(a)(12) – Rate Spread
- ii. Paragraph 4(a)(13) – HOEPA Status
- iii. Paragraph 4(a)(17) – Total Points and Fees
- iv. Paragraph 4(a)(18) – Total Origination Charges
- v. Paragraph 4(a)(19) – Total Discount Points
- vi. Paragraph 4(a)(20) – Risk-Adjusted, Pre-Discounted Interest Rate
- vii. Paragraph 4(a)(38) – Qualified Mortgage Identifier

2. We urge the CFPB to categorize the following fields as 'not applicable' to multifamily mortgage loans as they relate to single-family home purchase or refinance loans and not to multifamily mortgage loans:
  - a. Paragraph 4(a)(1)(ii) – Application date: As described previously, since commercial real estate lenders may not utilize form applications, determining an application date will be extraordinarily difficult. If this data field is required, we recommend the date on which the letter of intent (or similar document) is signed be recognized as the application date.
  - b. Paragraph 4(a)(4) – Preapproval: the approval of multifamily mortgage loans is directly related to the property and the income generated from the property. Therefore, pre-approval programs do not exist.
  - c. Paragraph 4(a)(5)- Construction Method: we are unaware of any multifamily properties that would meet the HUD definition of manufactured housing.
  - d. Paragraph 4(a)(14) – Lien Status: while the lien status is reportable, the stated purpose of this data field is to allow a loan pricing comparison to determine discriminatory trends. Since multifamily and other commercial mortgages are not consumer facing, this test would be inapplicable to multifamily mortgage loans.
  - e. Paragraph 4(a)(15) – Credit Score: the approval of multifamily loans is based primarily on the cash flows generated by the property. Credit scores are not applicable to non-consumer borrowers.
  - f. Paragraph 4(a)(23) – DTI: debt to income ratios are applicable in single-family finance. As noted in the Proposal, income should be marked "inapplicable" to multifamily loans and therefore ratios related to income would also be "inapplicable".
  - g. Paragraph 4(a)(26) – Introductory Rate Period: Multifamily and other commercial ARM loans are generally not subject to preferred below market/teaser rates. We request clarification regarding reporting of ARM rates that are market rates.
  - h. Paragraph 4(a)(29)- Manufactured Home Legal Classification: This classification relates to the individual units in a mobile home park which are reported as single-family loans and is not applicable to multifamily or other commercial mortgage loans.
  - i. Paragraph 4(a)(30) – See comments on Paragraph 4(a)(29) above.
  - j. Paragraph 4(a)(34) – Mortgage Loan Originator Identifier: Not applicable to multifamily and other commercial loan originators.
  - k. Paragraph 4(a)(35) – Automated Underwriting System (AUS) and Recommendation: AUS systems are not utilized in multifamily and other commercial mortgage finance.



4. We urge the CFPB to reconsider the cost-benefit value of increased reporting related to multifamily and other commercial loans for the following data elements:
  - a. Paragraph 4(a)(1)(i) – Universal Loan Identifier: We urge the CFPB to postpone implementation of this data field until the availability and cost of obtaining this number is determined. Sufficient transition time must be allowed to enable lender to make any required system modification to accommodate a loan identifier of this size.
  - b. Paragraph 4(a)(2) – Loan or Application Type.
  - c. Paragraph 4(a)(3) – Purpose of the Loan or Application: Note that the implication of a refinance in the context of a multifamily or other commercial mortgage loan may vary significantly from the implication to a single-family borrower. Because multifamily and other commercial mortgage loans are often 7 to 10 year balloon loans, refinancing is a necessary event.
  - d. Paragraph 4(a)(6)- Occupancy: multifamily mortgage loans are limited to business properties with rental income.
  - e. Paragraph 4(a)(7) – Loan Amount: We urge against the collection and disclosure of this data element for multifamily mortgage loans where the limited number of transactions in a given locale may render it impossible to retain borrower and lender privacy.
  - f. Paragraph 4(a)(8) – Action Taken: We urge against the collection and disclosure of this data element for multifamily loans where the limited number of transactions in a given locale may render it impossible to retain borrower and lender privacy.
  - g. Paragraph 4(a)(9) – Postal Address and Location of Subject Property: We urge against the collection and disclosure of this data element for multifamily loans where the limited number of transactions in a given locale may render it impossible to retain borrower and lender privacy.
  - h. Paragraph 4(a)(11) – Type of Purchaser: With the exception of loans originated for securitization, sales of multifamily loans in the year following origination are not typical.
  - i. Paragraph 4(a)(16) – Reasons for Denial: This field raises a number of concerns and we recommend against collection of this information. First, we question the ability to maintain borrower privacy due to the limited number of transactions in a given locale; second, the reasons a lender may not offer to finance a multifamily property do not typically fit into the options provided; and, third, the reasons for declination of multifamily mortgage loans are varied and do not support trend analysis due to the various investment criteria utilized by different lenders. We urge against the collection and disclosure of this data element for multifamily mortgage loans.

- j. Paragraph 4(a)(21) – Interest Rate: The factors that influence multifamily mortgage loan interest rates vary. The value of interest rate analysis in comparing financing terms across multifamily loans is questionable and may result in misleading conclusions. We urge against the collection and disclosure of this data element for multifamily loans where the limited number of transactions in a given locale may render it impossible to retain borrower and lender privacy.
- k. Paragraph 4(a)(24) – CLTV: We urge that this reporting be eliminated with respect to multifamily and other commercial loans. If included, we recommend that the LTV (rather than the CLTV) be reported, as any secondary mortgage would be reportable when originated. In addition, we request clarification that the property value used to determine the LTV be the final value determined by the loan underwriter. We urge against the collection and disclosure of this data element for multifamily loans where the limited number of transactions in a given locale may render it impossible to retain borrower and lender privacy.
- l. Paragraph 4(a)(25) - Loan Term: We urge against the collection and disclosure of this data element for large multifamily loans where the limited number of transactions in a given locale may render it impossible to retain borrower and lender privacy.
- m. Paragraph 4(a)(28) – Property Value: We request clarification that the property value is the final value determined by the loan underwriter and used in the investment decision.
- n. Paragraph 4(a)(31) – Number of Units: Reporting of data regarding the property, rather than the loan, would be better made by the property owner. If included, we recommend that the reporting of a range of units be permissible and that the lender should be permitted to rely on the number of units reflected in the property appraisal or other report provided by the borrower.
- o. Paragraph 4(a)(32) – Multifamily Affordable Units: Affordable housing, including multifamily housing containing income-restricted units, is primarily financed with FHA insurance or through programs run by state and local governments or non-profit institutions. Reporting of this information would be better made by the property owner or the provider of the affordable housing program. If reporting is required, we urge limiting the requirement to units that are income restricted based on a contractual agreement (e.g., deed restriction) and utilized in and made available through the underwriting of the loan. We also recommend that the lender have the option to report affordable units meeting other program requirements. Commercial real estate lenders do not track the program under which the income restriction is agreed. We therefore recommend that reporting of the program under which the property owner agrees to income restricted units not be reported. We further urge that the lender be permitted

to rely on the information disclosed in the deed or covenant restrictions or on data provided by the borrower.

#### **V. Use and Applicability of Industry Reporting Standard**

We appreciate the CFPB's desire to utilize industry standards for reporting under the proposed regulation. The Mortgage Industry Standards Maintenance Organization ("MISMO") standards are developed using a voluntary consensus process in accordance with OMB Circular A119 that calls for government to leverage voluntary consensus industry standards rather than proprietary formats. As it relates to multifamily and commercial lending, the Proposal does not note that:

- there are actually separate, distinct standards for single-family and commercial (including multifamily) reporting;
- MISMO has not been widely adopted in commercial and multifamily mortgage loan finance; and,
- Adoption of MISMO for multifamily reporting would first require a review of the current commercial MISMO standards to assess conformity with HMDA reporting standards and commercial real estate mortgage convention.

While we appreciate that MISMO standards would provide a common language for exchanging data across the mortgage industry, we urge the CFPB to recognize that MISMO standard review, development and adoption will require significant cost, time and effort in the multifamily mortgage finance industry.

#### **VI. Implementation Period**

To the extent that commercial mortgage loans secured by multifamily properties are required to be reported as proposed, we urge CFPB to provide for a *multiple-year* implementation period to ensure a reasonable transition. We believe that a minimum two-year period will be necessary to educate lenders who have not previously been required to report, in order to review, modify and/or clarify current Commercial MISMO standard definitions, and to train and educate commercial real estate lenders in the use of MISMO reporting standards and format. If the Proposal is finalized in 2015, we would recommend, for example, that data collection begin in 2018, with reporting in 2019 at the earliest.

\* \* \*

## Conclusion

MBA appreciates the opportunity to comment on this Proposal. We respectfully urge the CFPB to confine the data requirements to loan data relevant to single-family mortgage loans and to exclude reporting on multifamily properties and other loans made for business purposes. We also urge the CFPB to protect and secure borrower and lender confidential and proprietary information. The proposed data elements also should be modified, as discussed above, as well as other modifications to clarify the impact and scope of the HMDA reporting regime.

MBA looks forward to working with CFPB on these important matters. If you have any questions or if additional information would be helpful, please contact Kathy Marquardt at [kmarquardt@mba.org](mailto:kmarquardt@mba.org) or 202-557-2742.

Sincerely,

A handwritten signature in black ink, appearing to read "D.H. Stevens". The signature is fluid and cursive, with a large initial "D" and "S".

David H. Stevens  
President and Chief Executive Officer