October 29, 2014

Monica Jackson
Office of the Executive Secretary
Consumer Financial Protection Bureau
1700 G Street N.W.
Washington, DC 20552
Re: Docket No. CFPB-2014-0019

Dear Ms. Jackson:

The undersigned organizations are writing to comment on the proposed modifications to Regulation C, which will implement changes to the Home Mortgage Disclosure Act (HMDA). For forty years, HMDA has provided critical insights and information regarding the functioning of mortgage markets. The law has served as a powerful spotlight and public accountability mechanism, exposing illegal and discriminatory lending patterns and practices and illuminating the lending activities of covered financial institutions.

As a group of non-profit organizations committed to fair housing and consumer protection, we applaud the Consumer Financial Protection Bureau (CFPB) for significantly expanding the data elements that financial institutions will be required to report under HMDA. These data elements will enhance the effectiveness of HMDA data by giving a fuller picture of a financial institution's performance in meeting communities' needs in a non-discriminatory manner. If these data had been collected and made public prior to the foreclosure crisis, they would have shed light on the problematic lending practices that were occurring, and the immensity of the problem could have been understood earlier on.

By its very design, HMDA embraces the principle that markets produce better outcomes when better information about how they function exists. By allowing citizens, advocates, industry participants and others to use and analyze the data, HMDA promotes a more efficient and fairer marketplace. Thus, we ask the CFPB to preserve all of the current data disclosure elements included in HMDA. Additionally, we thank the CFPB for publishing HMDA data in Excel tables on the Federal Financial Institutions Examination Council (FFIEC) website, expanding its usability consistent with the purpose of the law.

Public accountability through data disclosure represents the fundamental objective of HMDA data, ensuring that members of the public can address whether financial institutions extend credit in a responsible manner. However, we emphatically ask the CFPB to reconsider its decision to delay the public release of all of the new data elements.  Furthermore, some of the new data elements pose no privacy concerns, while those that may – such as the Universal Loan ID and credit scores – could be released with additional measures to protect privacy, or separately studied and released at a later date. This need not hold up disclosure of many of the new and valuable data elements.

Additionally, we urge the CFPB to reconsider the thresholds proposed in the rule regarding which depository institutions must submit HMDA data. We believe that changing the lending threshold to 25 loans will reduce the ability of policymakers and the public to scrutinize the performance of lenders who may have a significant presence in underserved or rural communities. Additionally, we ask the CFPB to remove the requirement that all lenders must make at least one one-to-four family loan to meet the HMDA reporting requirement to ensure that multifamily lenders that make no single family loans will not be exempted.

In addition to the issues mentioned above, we discuss below other portions of the proposed rule that need further improvement. Our comments are broken down into six sections, with specific recommendations listed in bullet points at the end of each section. The sections are "The Value of Expanded Data Collection and Enhanced Public Disclosure," "Improving the Usefulness of HMDA Data to the Public," "Incorporating Loan Performance and Modification Information," "Lender Coverage Thresholds," "Multifamily-Related Issues," and "Additional Data Disclosures." We appreciate your careful consideration of our comments, and look forward to the speedy implementation of the final rule.

## I. The Value of Expanded Data Collection and Enhanced Public Disclosure

The purpose of HMDA is to provide citizens and public officials with sufficient information:

"(i) To help determine whether financial institutions are serving the housing needs of their communities;
"(ii) To assist public officials in distributing public sector investment so as to attract private investment to areas where it is needed; and
"(iii) To assist in identifying possible discriminatory lending patterns and enforcing antidiscrimination statutes."[1]

HMDA, implemented by Regulation C, has been instrumental in reducing the incidence of redlining, and in encouraging homeownership and asset building in lower-income communities and communities of color. Expanded data collection or reporting, like what is proposed by the CFPB, would only better serve the purpose of HMDA if it goes along with enhanced, detailed public disclosure that brings increased transparency to the mortgage market.

### Prior Expansions of HMDA and Increased Transparency

Prior expansions of HMDA have resulted in greater transparency and accountability in the mortgage market, and the current proposed expansions promise to give an even clearer picture of inequalities or abuses that may be occurring in the market today. The expanded data collection proposal here is part of the response, laid out in the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank), to the foreclosure crisis. Previous revisions to Regulation C in 2002 were a response to widespread concerns about the extent of subprime and predatory lending in our lower-income communities and communities of color.

[1] 12 U.S.C. 2801–2810 and Regulation C, which implements HMDA, 12 CFR part 1003.

The 2002 revisions required lenders to report price information on high cost loans and other data enhancements, and for such data to be disclosed to the public, starting in 2004. These pricing enhancements substantially increased information available to the public and public officials about the mortgage market and allowed community advocates (including many of the organizations signing this letter) to identify disparities in access to affordably priced loans. Even before the addition of the rate spread data that was first disclosed to the public in 2004, community-based, civil rights and consumer groups used HMDA data and the U.S. Department of Housing and Urban Development (HUD)'s list of subprime lenders to warn of the impending crisis related to subprime lending. Studies by these groups date back to the late 1990s. After the release of the additional pricing data, organizations were able to isolate subprime lending and its concentration in communities of color and low- and moderate-income markets. By merging the HMDA data with public records, organizations were able to document the impact of subprime lending on these communities. This formed the basis of the demands for public disclosure data on defaults and foreclosures so that strategies could be developed for interventions before these abuses reached a crisis level – though the warnings were ignored.

Public use of the HMDA data also provided information for studies that refuted the false claims that Community Reinvestment Act (CRA) lending had caused the mortgage meltdown and focused on the real abuses in the lending markets both before the meltdown and since. For example, the "Paying More for the American Dream" collaborative reports by California Reinvestment Coalition (CRC), Community Reinvestment Association of North Carolina (CRA-NC), Empire Justice Center, Massachusetts Affordable Housing Alliance (MAHA), The New Economy Project, Ohio Fair Lending Coalition, and Woodstock Institute used the enhanced pricing data to examine disparities in high cost and prime lending across borrower race/ethnicity, borrower income, and neighborhood racial/ethnic composition.[2]

The enhanced public HMDA data, as well as a special lender file, gave "Paying More for the American Dream" collaborative members the tools to participate in a national conversation, backed by data analysis, around the Community Reinvestment Act and the foreclosure crisis. The group involved in the collaborative was given access to a special Federal Reserve HMDA lender file to allow members to categorize lenders (and their affiliates) into depositories with CRA obligations, depositories without CRA obligations, and other mortgage lenders to examine the extent of high cost lending by CRA-obligated lenders as compared to other lenders. Access to this lender file, along with the pricing data in HMDA, allowed the collaborative to debunk the myth that lending covered by CRA to low- and moderate-income communities caused the foreclosure crisis.[3] Research from the Federal Reserve has confirmed these findings, showing that loans made within a bank's assessment area in 2006 consistently performed better than all loans made in that year combined.[4]

Fortunately, public access to this lender information has increased; as of the 2010 HMDA data release, the public HMDA reporter panel files include several of the data elements related to top

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[2] The six "Paying More for the American Dream" reports can be found at: http://www.empirejustice.org/publications/reports/rpts-filtered.html?issue_area=consumer.
[3] This report can be found at: http://onlineresources.wnylc.net/EJC/Reports/AmericanDream/AmerDreamIII.pdf.
[4] http://www.federalreserve.gov/pubs/bulletin/2013/pdf/2012_HMDA.pdf

holder information that were in the Federal Reserve's HMDA lender file. [5] These new fields make it significantly easier for advocates to group and assess lenders by their top holding company. The CFPB's proposal to include parent company and a unique lender ID in HMDA is an important step forward that will substantially simplify lender-specific HMDA analysis.

## II. Improving the Usefulness of HMDA Data to the Public

### Quarterly Data Reporting Facilitates Timeliness of HMDA Data

The CFPB's proposal that financial institutions making at least 75,000 covered loans report their HMDA data on a quarterly, rather than an annual, basis would enhance the usefulness of HMDA data. According to the CFPB, this requirement would permit processing of a substantial portion of the reported transactions throughout the year, which would expedite the annual release of the data to the public. We urge the CFPB to release the data as soon as is feasible. The earlier the data is available to the public, the more useful it becomes for timely assessments of how well financial institutions are serving the housing and credit needs of our communities.

### Improving Public Accessibility and Ease-of-Use

As the CFPB develops its final rules around the expanded HMDA data reporting and writes its draft public disclosure rules, it is very important that the CFPB and the FFIEC demonstrate their commitment to the principle that data should be easily available to and useable by the general public. This means that every effort needs to be made to release the current and new data elements on a loan-level basis. Loan-level data allows expert data users to do flexible and targeted data analyses (like those described above), increasing the understanding of lending patterns across different demographic and geographic communities.

The CFPB and FFIEC also need to do more to improve access to and use of the data by the broader public, not just experts or academics. This means ensuring that all of the HMDA-related public interfaces and reports are user-friendly, include clear instructions, and provide relevant information about geographic and institutional lending patterns. Most of the organizations that have engaged the CFPB on the issues of access and use of the public formats are skilled in the analysis of data and have considerable technical resources. Yet, the concern about lending patterns in one's local community stretches far beyond the work of these groups. As additional fields of data are added, the possibilities for HMDA analyses increase, but so do the barriers to those with limited technical resources. The CFPB needs to engage in extensive surveying of the capacities, concerns, and perceived needs of local organizations all across the nation in order to ensure that the public formats for the release of the HMDA data are structured in such a way as to draw in a much wider range of concerned groups. This would also require a more robust technical support process, beginning with a more friendly set of software programs and manuals to explain how the data can be used. Making the data more accessible also requires a rethinking of the order in which data are extracted and exported as well as the options for extracting the data.

[5] These files and their documentation can be found at: http://www.ffiec.gov/hmda/hmdaflat.htm.

Neither the CFPB nor the prudential regulatory agencies have the resources they need to identify all the lending patterns in local markets that raise issues of discrimination or abuse. In the past, community-based organizations, civil rights groups, and consumer groups have done their part in investigating and identifying legitimate issues in their communities, but limited technical resources combined with public data sets that were not easy to use and that did not meet their needs frustrated and discouraged public sector organizations from engaging in the kinds of local work that is necessary to ferret out lending discrimination and abuse. The CFPB now has a chance to change that dynamic and provide a public resource that can be used by a much wider range of users.

***Recommendations***

To improve the usefulness of the data to the public, the CFPB should:

- Collect loan information from large lenders on a quarterly basis and strive to release data to the public earlier each year.

- Improve the accessibility of HMDA-related information to the general public and community-based researchers by creating useful public interfaces for data.

## III. Incorporating Loan Performance and Modification Information

### Loan Modifications

Dodd-Frank requires the CFPB to collect and make public loan performance and modification data, in addition to updating HMDA data. The performance of financial institutions in modifying loans is, and will continue to be, a major factor in determining whether they are meeting local housing needs and complying with fair housing and fair lending laws. We urge the CFPB to include in its final rule amending Regulation C the requirement that financial institutions report data on all loan modification applications, denials, and modification terms, broken out by race, ethnicity, gender, age, and census tract of applicants; and that these data be publicly disclosed.

The CFPB has the authority to require detailed reporting of loan modification data. The HMDA statute speaks to the CFPB's broad authority to provide for any "adjustments …for any class of transactions" (see 12 USC §2804) it deems proper to serve the goals of the Act. Loan modifications represent the very kind of transaction Congress contemplated when crafting HMDA, as they go to the heart of current efforts to serve the housing needs of our communities and to protect homeownership and equity in our neighborhoods.

A major housing need of the last several years has been, and over the next several years will be, the ability of struggling homeowners and communities to secure loan modifications. The federal Home Affordable Mortgage Program (HAMP) and recent U.S. Department of Justice settlement agreements with large servicers are evidence of the prominence of loan modifications as part of federal housing policy and enforcement.

The need for data on this issue is compelling. With millions of foreclosures expected in the coming years, on top of the millions that have taken place over the last couple of years, transparency is needed relating to whether financial institutions are helping homeowners avoid foreclosure by restructuring loans as they should.

These data will also help answer the very serious question of whether discrimination is occurring in the foreclosure prevention context. The California Reinvestment Coalition and the National Housing Resource Center have conducted surveys from 2012-2014 of non-profit housing counseling agencies serving thousands of consumers a month, and found that housing counselors report repeatedly that borrowers of color receive worse loss mitigation outcomes than white borrowers.[6]

Similarly, the National Community Reinvestment Coalition found that people of color in Washington, D.C., were more likely to go into foreclosure, even after controlling for borrower, loan, and neighborhood characteristics. NCRC also surveyed homeowners seeking loan modifications in 2010 and found that the foreclosure process was faster for African-American borrowers than white borrowers, and that white HAMP-eligible borrowers were more likely to receive a loan modification than African-American and Latino HAMP-eligible borrowers.[7]

Community groups nationally have decried the uneven distribution of loan modifications, including loan modification relief offered as part of implementation of the National Mortgage Settlement and more recent U.S. Department of Justice settlement agreements with JPMorgan Chase, Citibank and Bank of America. Indeed, in March of last year, over 100 groups under the umbrella of Americans for Financial Reform signed a letter to the Office of Mortgage Settlement Oversight calling for greater transparency and accountability to ensure that banks comply with their fair lending obligations, and remedy the damage of foreclosures in communities of color and low- and moderate-income communities.[8]

Assisting distressed borrowers and saving homes from foreclosure is integral to reviving the housing market. Yet, a February U.S. Government Accountability Office (GAO) report that analyzed nonpublic HAMP data confirmed the concerns of community groups in finding statistically significant differences in the rate of denials and cancellations of trial modifications, and in the potential for re-defaults of loan modifications for limited-English proficient (LEP) and African-American borrowers and other populations.

Despite these fair lending concerns, publicly available data are very limited. HAMP data currently only provide limited transparency (no census tract or servicer-specific data) for limited transactions (HAMP only) of a limited number of institutions (HAMP participants). Although the public disclosures are currently limited, the HAMP program does require loan modification

[6] CRC surveys can be found here: http://bit.ly/1rS2Rq3 and here http://bit.ly/RXdeh5. The NHRC survey can be found here: http://www.hsgcenter.org/wp-content/uploads/2013/06/NMS_Findings.pdf

[7] The NCRC study can be found here: http://www.ncrc.org/resources/reports-and-research/item/27-foreclosure-in-the-nations-capital-how-unfair-and-reckless-lending-undermines-homeownership . The NCRC survey can be found here: http://www.ncrc.org/images/stories/mediaCenter_reports/hamp_report_2010.pdf.

[8] The AFR letter is posted here: http://ourfinancialsecurity.org/2013/03/fair-housing-letter-to-mortgage-settlement-administrator/

reporting and disclosure with the added requirement that servicers report data by race and ethnicity in the public disclosure.

Directly consistent with the statutory purposes of HMDA, local governments are keen to understand whether, where, and to whom loan modification relief is offered so that they can determine if financial institutions are meeting the needs of their communities and identify whether further policy responses are necessary. As one example, the City and County of San Francisco, in its Request for Proposals for the city's banking and credit card business, requests that bank applicants provide local data on the race, ethnicity, and census tract of foreclosure filings and loan modifications, broken out by type of modification.

The San Francisco experience suggests not only that local governments are interested in such data, but also that banks are capable of providing it. To its credit, Bank of America has provided such data to the City and County, and these data are not available to the public. Bank of America should not be the only institution to provide this critical data. All financial institutions must be required to provide that information nationally.

In this context, the CFPB should require financial institutions to report loan modification information on the same annual or quarterly basis under which they would be required to do under HMDA and Regulation C. Loan modifications are substantially the same as data currently collected under HMDA in that loan modifications are transactions secured by homes and require underwriting. Ideally we seek to have all loan modifications reported separately in HMDA data. They would be reported as a separate category under "Loan Purpose."

If reporting in the same HMDA database is not feasible, we urge the CFPB to collect and publicly disclose loan modification information separately. The FFIEC currently does separate data collection and public disclosure of Private Mortgage Insurance (PMI).[9]

**Housing Counseling Information**

Another important element of tracking loan performance is knowing whether the borrower(s) participated in housing counseling and/or education.[10] The available research shows that loans made to borrowers who participated in housing counseling and/or education perform better than loans made to similarly situated borrowers who do not participate in counseling or education. Therefore, a full understanding of loan performance requires knowledge of whether or not the borrower(s) participated in pre-purchase housing counseling and/or education. For this reason, we urge CFPB to include housing counseling type, housing counseling mode, and the housing counseling agency HUD ID as data fields. These data fields will be included in the National Mortgage Database starting in 2015.

[9] See publicly disclosed reports at: http://www.ffiec.gov/Hmda/mica.htm.
[10] In this context, counseling refers to one-on-one homebuyer counseling, while education refers to group, classroom, or on-line homebuyer education. Counseling must also be tailored to the client's unique circumstances, for example by reviewing the client's credit report and income.

In addition to providing a more complete understanding of loan performance, tracking housing counseling would provide other useful information. For example, it would be valuable to compare the loan terms offered to borrowers with similar credit profiles who did and did not participate in housing counseling and/or education. Another use of tracking housing counseling data would be to better understand the availability of mortgage credit to certain borrowers, such as low- and moderate-income borrowers and borrowers of color. Understanding what portion of low- or moderate-income borrowers or borrowers of color who receive mortgage credit come through housing counseling would provide a valuable understanding of how these communities access the mortgage credit market.

**Universal Loan Identifier**

The data fields in the new National Mortgage Database arising from Dodd-Frank will include data complementary to the data in the expanded HMDA mortgage application database. Because the new data are to be compiled in two separate databases, the CFPB should require that both HMDA and the National Mortgage Database include a Universal Loan Identification indicator that would allow the data in the separate database to be linked.

The benefits from a Universal Loan ID are clear. The ability to link the application, performance, and modification data across databases would make it possible to monitor loan performance over time and determine whether loan modifications are being handled in compliance with fair lending obligations. As noted in the section on loan modifications, two separate survey research studies, one by the California Reinvestment Coalition and National Housing Resource Center and the other by the National Community Reinvestment Coalition, found disparities in loss mitigation and loan modification outcomes that correlated with the race or ethnicity of the borrower. The Universal Loan ID is essential to allow for more inclusive, broad studies of who is receiving loan modifications, in what kinds of neighborhoods, and whether there are statistically significant differences among different groups on the rate and quality of modifications they receive. Without a Universal Loan ID much of the potential benefit from collecting the new data will be lost.

Over time, the use of Universal Loan IDs would also reduce the number of data points that would need to be reported by financial institutions. If the ID is used in both the reporting of the loan when it was originated and when a loan modification was requested, much of the applicant demographics, housing type and geography information would not need to be recollected and re-reported; this information, as well as important information about the original loan terms, can be gathered through the Universal Loan ID.

The Universal Loan ID also raises potential concerns that the CFPB will need to address. As with any indicator that allows members of the public – such as researchers, advocates, and marketers – to aggregate data from multiple sources, the Universal Loan ID does create some level of risk that the aggregated data will increase the public's ability to identify individual borrowers, especially in less-populated geographies. Those concerns, however, are almost exclusively related to the public release of the data, not to the collection of the data.

The CFPB should collect a Universal Loan ID because of the significant potential benefits that it offers for the public, policy makers, and regulators. Decisions about how to ensure that the Universal Loan ID does not create an unacceptable level of re-identification risk can be made before the data are released. The alternative, not requiring a Universal Loan ID, forfeits the potential benefits without any comprehensive and inclusive discussion of the multitude of options and examples of ways to release data while protecting privacy.

***Recommendations***

To promote greater transparency and give greater clarity to links between factors at loan origination and loan performance, the CFPB should collect the following performance-related data points as a part of HMDA:

- Whether or not a loan modification was offered to a loan modification applicant.
- The key terms of a loan modification, such as the amount of principal reduction, extent of reduced interest rate and payment, etc.
- The race, ethnicity, age and gender of a loan modification applicant.
- The census tract in which a property that is attached to a loan modification is located.
- The reason for a loan modification denial, if the loan modification is denied.
- Housing counseling type,(counseling or education).
- Housing counseling mode (in-person, phone-based, or online)..
- The housing counseling agency HUD ID.
- Universal Loan Identification number, which would enable the CFPB to track loan performance and modification data.

## IV. Lender Coverage Thresholds

### General Lender Coverage

The proposal to require non-depository institutions to report HMDA data if they make 25 covered loans would help give a clearer picture of non-depository institution's performance in the mortgage market. As the CFPB notes, this requirement would significantly increase the number of non-depository institutions that must report, thus holding these lenders accountable for serving the public in a responsible fashion.

However, the CFPB should refrain from adopting the proposed 25 covered loan threshold for depository institutions. Banks making less than 25 loans have already been reporting for years and are therefore accustomed to reporting. Moreover, should the data no longer be required, the public would no longer have the ability to scrutinize the performance of smaller volume lenders that may still have a significant impact and market share in underserved counties and neighborhoods.

In fact, we urge the CFPB to amend the proposed definition of a depository institution, which is presently defined as a lender that makes at least “one home purchase loan or refinancing of a home purchase loan, secured by a first lien on a one-to four-unit dwelling” to one that makes at least “one covered loan.” This would better align the definition of a depository institution with that of a non-depository institution, and would address the ongoing non-reporting issue of multifamily lenders as described below.

**Multifamily Lender Coverage**

Additionally, the change in the requirement for a depository financial institution to only have to report if they made 25 covered loans could problematically still exempt major multifamily lenders from HMDA reporting.

The current regulations require banks to report if they meet certain location and asset criteria and if they “originated at least one home purchase loan or refinancing of a home purchase loan secured by a first-lien on one-to-four unit dwelling.” The new regulations keep this definition and further limit reporting to banks that make at least 25 covered loans, which do include multifamily loans.

This means that a bank that meets any threshold requirement through multifamily (or other newly covered) loans, but makes no one-to-four family loans, would still be exempt from HMDA reporting. For example, New York Commercial Bank made well over 25 multifamily loans in 2012 and 2013, but because they do not make one-to-four family loans, they do not report any HMDA data. Similarly, Dime Savings Bank of Williamsburgh, a well-established lender that specializes in rent-regulated multifamily buildings, announced that as of mid-2013, they would no longer make one-to-four family loans and thus would no longer be required to report to HMDA.

***Recommendations***

The CFPB should make the following adjustments to the proposed lender coverage guidelines:

- Require depository financial institutions to report to HMDA when they make one or more covered loans. Lenders in rural or underserved areas that make a relatively small number of loans can have an outsized impact on the market.

- Remove the one-to-family loan requirement (iii) under the definition of depository financial institutions.

## V. Multifamily-Related Issues

We appreciate the steps the CFPB has already made an effort to improve multifamily data reporting. We are particularly pleased that the proposed HMDA regulations would replace the property type with the number of units financed, document the number of dwelling units that are deed-restricted, and require any building with five or more units to report to HMDA as a multifamily building, making it subject to the affordability reporting. We also appreciate the expansion of covered loans to include nearly all dwelling-secured loans. However, Modification, Extension, and Consolidation Agreement (MECA), also known as Consolidation, Extension and Modification Agreement (CEMA), loans are not explicitly included in the expanded disclosure, but they are very commonly used in New York State as a way for borrowers to reduce the cost of very high mortgage recording fees. The proposed updates for multifamily disclosures are very meaningful steps forward, but not enough for evaluating lenders' responsiveness to credit and community needs.

The CFPB should gather HMDA data for all loans secured by a residence to capture the totality of a bank's residential lending as well as how equitably that lending serves low- and moderate-income communities.

### Covered Loans

MECAs/CEMAs are "dwelling-secured loans" that are not currently HMDA reportable. Due to the very high mortgage recording taxes in New York State, they are very often used in lieu of traditional refinance loans and often evaluated along with HMDA loans on CRA exams. The lack of disclosure in HMDA leads to the exclusion of the many loans in the state, and especially the larger dollar multifamily apartment building loans, which are a central component of the private stock of affordable housing.

We recommend that the CFPB explicitly include MECA/CEMA loans secured by a dwelling in the same form as they are currently gathered by federal regulators for CRA exams. The CFPB should add a code to indicate the use of this type of transaction so that the purpose can match the existing categories of "home improvement, home purchase, refinance, or other."

Unlike HMDA loans, MECAs/CEMAs are optional for banks to provide for CRA exams. When they are, they may be considered with residential loans or separately by regulators and are not publicly available in the level of detail that is provided in HMDA, or may not be at all if they are not included in the bank's final CRA exam. This makes it difficult or impossible to know where and how much credit a bank is extending for residential buildings, or how equitably that credit is extended. For the largest residential lenders, most of which are national banks with multiple assessment areas outside of New York City, they are less likely to provide this additional data for evaluation under the lending test for New York.

Please see the appendix at the end of this letter for more background information on MECAs and CEMAs.

## Affordability in Multifamily Buildings

Housing projects that are not designed to be affordable for the long-term are not well underwritten or are speculatively underwritten are more likely to have a destabilizing effect on communities. Too often, banks claim community development credit on CRA exams for affordable housing that ultimately is of poor quality or destabilizes communities.

In order to gain a clear picture of how well multifamily projects are addressing long-term housing affordability and access, it must be determined if a building is affordable – either through a deed restriction or naturally – and responsibly underwritten. A building may be deed restricted but still not affordable to low- and moderate-income tenants, such as in middle-income projects directed at families making 80 to 100 percent (or even 120 percent) of area median income (AMI). Additionally, whether due to market conditions or systems like rent-regulation, a building may be affordable at the time of origination but not be deed restricted, which means though it could eventually fall out of affordability, it is still an important source of housing for many low- and moderate-income people in the immediate term. It is important to know which financial institutions are financing such buildings in order to monitor and encourage responsible lending to preserve all stocks of affordable housing. Loans by banks seeking CRA credit for affordable units deserve even more scrutiny to encourage them to follow both the letter and the spirit of the law.

In addition to noting the number of units and deed restrictions in a multifamily building, the CFPB could capture how many units are affordable, to whom the units are affordable, and if the borrower is a non-profit organization. Unlike single-family homes, multifamily loans are actually commercial loans, and as such, the building owner is a strong factor in the quality of the affordable housing. Non-profit developers are mission-driven to maintain affordability and to ensure that housing reaches low-income people.

Please see the appendix at the end of this letter for further information on affordability measures.

## Multiple Buildings Within a Single Loan

We appreciate the intent of the CFPB to simplify reporting for banks that make one loan secured by multiple properties. However, the proposed solution could lead the public to believe that the bank financed more affordable housing than they did. We recommend that to reduce confusion, the number of affordable units related to a loan that covers multiple properties be apportioned to each individual property that makes up the loan. This should be done in a way such that the total number of affordable units aggregated across the multiple properties equals the total number of affordable units covered by the loan.

### *Recommendations*

To give better clarity around the availability of long-term, affordable multifamily housing, we recommend that the following data points are collected:

- Modification, Extension, and Consolidation Agreements (MECAs), also known as Consolidation, Extension and Modification Agreement (CEMAs). These loans can be used for any for any residential transaction, and they are particularly pertinent to the multifamily market.

- The particular purpose code for construction loans. Currently, some construction loans are HMDA reportable, whereas others are not. We would like all construction loans included with a specific purpose code.

- The number of units in a multifamily building that are deed restricted.

- The percentage of units that are or will be affordable to a family of four at various income levels.[11]

- Whether or not the housing is targeted at specific populations.

- The percentage of units by bedroom size to determine if the housing needs of low- and moderate-income people of all household sizes are being served. It can be very difficult for families with children to find affordable homes appropriate to their size, with some experiencing discrimination by landlords who do not want to rent to children. These data would help identify discrimination against families, and also help show how well the housing stock is meeting the needs of families. The data should indicate whether the unit is a studio, one-bedroom, two-bedroom, or three or more-bedroom unit.

- The presence of commercial tenants in the building and the number of commercial tenants.

- The debt service coverage ratio at the time of origination. A debt service coverage ratio that is below 1.2 suggests that the loan could be speculative and possibly based on the expected removal of many of the existing tenants paying moderate rents. Such loans deserve particular scrutiny as they could undermine the affordable housing or cause financial pressure that could result in physical deterioration due to neglect of needed repairs. However, buildings that are deed restricted and/or managed by non-profit developers may also have low debt service coverage ratios, but because of government subsidies and guarantees, they are much less concerning than loans to for-profit developers for buildings without those characteristics. The proposed regulations include debt-to-income ratios, but those do not pertain to a multifamily building. A better indicator that is most similar to debt-to-income is the debt service coverage ratio.

[11] The Government Sponsored Enterprises (GSEs) use the following income categories: extremely-low income (less than 30 percent AMI), low-income (less than 50 percent AMI), low-income (60 percent AMI), low-income (80 percent AMI), and moderate-income (100 percent AMI). This could easily be used to match CRA evaluation guidelines that define income bands as: low-income (less than 50 percent AMI), moderate-income (50 percent to 80 percent AMI), middle-income (80 percent -120 percent AMI) and upper-income (greater than 120 percent AMI).

## VI. Additional Data Reporting

### Asian-American and Pacific Islander Borrower Demographic Information

The HMDA race and ethnicity data as currently reported has been ineffective in capturing the varied experiences of Asian-American and Pacific Islander (AAPI) borrowers. While the aggregated data has generally shown that Asian borrowers have similar experiences to non-Hispanic white borrowers, it has masked the reality of lending disparities and discrimination practices experienced within Asian subpopulations.

For example, between 2008 and 2009, U.S. Census data shows that homeownership rates in California dropped from 38 percent to 28 percent for the Hmong community and 45 percent to 43 percent for the Korean community despite homeownership rates for Asian Americans in aggregate increasing slightly from 57 percent to 58 percent. Analysis of 2008 foreclosure data by surname in Queens, New York, also found that South Asian households received a disproportionate share of risky mortgages – representing between 3.5 to 7 times more than their share of the population.[12]

Further, with 40 percent of Asians and 15 percent of Native Hawaiians and Other Pacific Islanders speaking English "less than very well," limited-English proficient (LEP) AAPI borrowers are more vulnerable to predatory lending and abusive servicing.

In prior public hearings, including the 2006 Home Ownership and Equity Protection Act hearings, LEP borrowers and advocates raised concerns with the Federal Reserve regarding borrowers who negotiated their loans in a non-English language but received English-only documents with less favorable terms than promised. A recent Government Accountability Office report found statistically significant disparities in the rate of loan modification denials, cancellations, and re-defaults for LEP borrowers and other protected groups as compared to non-Hispanic white borrowers after analyzing certain loan modification data under the HAMP program.

To address these concerns, we recommend that the reporting of loan data should include the primary language of the borrower, the language spoken to negotiate the loan and the language of the loan documents, and disaggregated data for Asian-American and Pacific Islander borrowers. The new data collection standards implemented by the Department of Health and Human Services (HHS) as required by the Affordable Care Act Section 4302 can serve as a model for HMDA. Section 4302 required HHS to establish data collection standards for race, ethnicity, sex, primary language, and disability status. The new standards include additional subcategories that roll-up to the Office of Management and Budget minimum standard categories – Asian (Asian Indian, Chinese, Filipino, Japanese, Korean, Vietnamese, and Other Asian), Native Hawaiian and Other Pacific Islander (Native Hawaiian, Guamanian or Chamorro, Samoan, and Other Pacific Islander).

[12] "Queens Neighborhoods with High Percentages of South Asian Owners in Default", Chhaya CDC, January 12, 2009 (analysis of June-December 2008 Notice of Default).

The Voting Rights Act provides another model to ensure HMDA captures the needs of additional subpopulations. Section 203 of the Voting Rights Act requires certain jurisdictions to provide bilingual voting materials in communities that meet a certain threshold of limited-English proficient residents. Section 203 covers localities where there are more than 10,000, or more than 5% of the total voting age, citizens who are members of a single minority language group. Similarly, requiring the data collection of additional racial and ethnic subcategories in HMDA can be added for specific regions that meet a certain threshold.

**Credit Scores and Automated Underwriting Systems**

The CFPB's proposal to collect both credit score information and automated underwriting system recommendations (AUS) in HMDA represents a major step forward for fair lending analysis. For years, analyses of HMDA data have shown major and troubling disparities in mortgage access and loan pricing between white mortgage borrowers and borrowers of color, but it has been difficult to use HMDA data to prove that lenders have engaged in discriminatory lending practices, despite the widespread evidence of discrimination exposed in the media and through litigation. The collection and public dissemination of credit score and automated underwriting system recommendation data points would help regulators, policy makers and the public to more precisely investigate discriminatory mortgage lending and redlining while also illuminating the continuing harms caused by structural racism.

The CFPB's proposal to collect credit score information contains the data fields necessary for meaningful HMDA reporting, and both loan originators and purchasers should be required to disclose this critical data. The CFPB should not exempt purchased covered loans from the credit score information reporting requirement. Purchasers of covered loans should either look up credit score (as well as demographic and underwriting) information from the HMDA data associated with the loan's origination using the Universal Loan ID, or should request the information from the originator if the loan was not made by a lender required to report under HMDA.

The CFPB should collect the credit score or scores that lenders relied on to make or inform credit decisions as well as the name and version of the scoring models used. The alternative proposal, to require lenders to report the range of possible scores without disclosing the name and version of the scoring model used, would not provide sufficient information to allow the CFPB to normalize credit score information and may result in incorrect analysis—especially now that Vantage has adjusted its score range to match the FICO score range but still uses a substantially different scoring algorithm.

The CFPB's proposal for reporting credit score information for multiple borrowers or multiple scores for a single borrower strikes the right balance of requiring lenders to report relevant information without the burden of reporting as many as six different scores for a single loan application. The CFPB, however, should require that lenders disclose what method they use to select which scores are used for underwriting, particularly if a lender uses different methods in different lending divisions. For example, if a lender considers only the middle of three credit scores for each borrower in one division, but uses the average of three credit scores for each borrower in another division, the lender should report those methodological differences to the CFPB as well as reporting the numerical score and scoring model information used.

The CFPB should also collect the date on which the credit score was created and the name of the credit reporting agency that provided the underlying data to create the score. Collecting the name of the credit reporting agency would allow regulators, policy makers and the public to assess whether there are racial or other disparities in the provision of credit report data by specific credit reporting agencies or whether lenders choose to use data from different agencies for borrowers with differing protected class characteristics. These two additional data points will allow the CFPB to better understand the credit score information used in mortgage lending decisions and ensure that lenders are treating borrowers equally when using credit score information.

The CFPB proposed defining "credit score" using the same definition used in the Fair Credit Reporting Act. This definition is appropriate and would best ensure lender compliance with credit score information reporting. The CFPB's alternative definitions for credit score are either too ambiguous (probability of default) or too narrow (the Regulation B definition of credit scoring system) to ensure full compliance from reporting lenders.

Additionally, the CFPB should include in the final rulemaking its proposal to collect automated underwriting system (AUS) recommendations in HMDA. AUS data is complementary to credit score data, and collecting and making it public will improve the accuracy of fair lending analysis. By collecting and making public AUS usage and recommendations, the CFPB would allow the public and regulators to determine if a lender makes different lending decisions based on age, gender, race or other factors when deciding whether to lend to, or what kind of loans to make to, borrowers who have the same risk profile under the lender's automated underwriting system, but differing protected class characteristics.

The CFPB's proposed rule, however, defines automated underwriting system too narrowly. The definition should be expanded to include all automated underwriting systems in use by lenders, and not be limited to "an electronic tool developed by a securitizer, Federal government insurer, or guarantor that provides a recommendation regarding whether the application is eligible to be purchased, insured, or guaranteed by that securitizer, Federal government insurer, or guarantor." Lenders also use automated underwriting systems developed and sold by companies that are not securitizers, federal government insurers or guarantors to determine whether or not loans will be eligible for government guarantee, insurance programs or sale to private investors, and lenders should be required to report the use of and recommendations from those systems as well. Some examples of private AUS providers include Calyx Software, Insight Lending Solutions, and Financial Industry Computer Systems, Inc.

Lenders should report the name of the AUS they used in evaluating each loan application, and should report the actual recommendation generated by the system. If lenders generate multiple AUS recommendations, they should report the recommendation relied on in evaluating the application, whether or not it was the most recently generated AUS recommendation. Once the CFPB collects this information, it should determine whether the AUS recommendations reported by lenders fall into consistent, meaningful categories, and, if so, make public the recommendations in categories. If AUS recommendations cannot be categorized, the CFPB should report the actual AUS recommendations. Lenders should not determine which categories AUS recommendations fall into as that process could easily allow different divisions or employees to report AUS recommendation categories inconsistently.

Although the CFPB's proposed rule addresses only HMDA data collection and not dissemination, we urge the CFPB to make public loan-level credit score and AUS recommendation data in its next HMDA rulemaking. These data are vital to fair lending analysis, and local governments, community groups and fair housing advocates rely on HMDA data to assess whether banks are meeting credit needs in their communities. During the subprime lending boom, lenders hid behind the missing credit score information to deflect fair lending concerns, but researchers with access to credit score data have since shown that lenders did in fact target people of color with good credit for predatory subprime mortgages. Similarly, during the ongoing foreclosure crisis, lenders have steered mortgage applicants in communities of color into FHA loans, claiming they are ineligible for conventional loans as a result of poor credit. Actions like Wells Fargo's 2012 refunding of unnecessary fees paid by FHA borrowers who qualified for conventional loans, combined with in-depth mortgage market research by academics and regulators, show that steering continues to be a serious problem that the CFPB can help regulators and policy makers address by collecting and making public loan-level credit score and AUS recommendation data in HMDA.

We look forward to offering suggestions on how the CFPB can make public this critical information and adequately protect mortgage applicants' privacy.

**Channel and Broker Identification**

We urge the CFPB to include two additional data fields, loan channel and broker ID (from the Secure and Fair Enforcement for Mortgage Licensing [SAFE] Act). We also recommend amendments to the current reporting of points and fees in order to more accurately distinguish between charges that are reported as points but are actually fees.

Comparisons of internal lender data on total points and fees with race and ethnicity data reveal statistically significant disparities in lender compensation. Specifically, disparities in lender compensation are found to exist based on loan channel (i.e. retail, wholesale, etc.) and at the broker level. The public availability of this information is critical to the fair lending analyses of both regulatory and enforcement agencies and the public.

Analysis of internal lender data reveals statistically significant racial and ethnic disparities in lender compensation according to loan channel. In most cases, retail fees appear to be fixed and do not normally show much variation by race or ethnicity. Therefore, the ability to break out loans according to the loan channel is critical. In addition to wholesale and retail, there may also be other channels that are important to report. For example, with correspondent loans, where the lender does the back-room underwriting for a smaller or remote lender, some lenders do not place restrictions on the fees charged by the correspondent. The availability of data on loan channel would allow HMDA users to identify these disparities in lender compensation according to loan channel.

Disparate impact by race and ethnicity is also seen in fees, particularly on the broker side, where lenders often allow the broker to charge fees (generally a direct set of fees or a yield-spread premium [YSP]), either with no set boundaries or within a specified range. While the disclosure of total fees is included in the HMDA amendments, lender reporting practices necessitate more information to make fee data useful. For example, many lenders report what is actually fee income as “discount points,” even though it is not related to the risk of the loan or to actually buying down the contract interest rate. Lenders may also report these fees as “underages” or “overages” when parts are risk-based and parts are actually lender compensation. Accordingly, fee disclosure must distinguish between legitimate discount points and overages/underages that relate either to the risk of the loan or buying down the interest rate from charges that are actually lender compensation. Specifically, there should be separate fields for direct fees, YSPs, and points that are fees. Additionally, what is ultimately useful to HMDA users is the disparity, if any, in the total of all sources of lender compensation.

Additionally, reporting broker ID would allow for broker-level analyses of disparities in lender compensation. There are two main ways in which broker-level analyses of lender compensation can reveal racial and ethnic disparities. First, broker-level analyses could reveal disparate impacts by race and/or ethnicity as a result of individual brokers simply charging higher fees to borrowers from particular racial or ethnic groups. Additionally, broker-level analyses could identify brokers who serve primarily minority borrowers and treat all borrowers equally, but have higher compensation charges than brokers who primarily serve other racial or ethnic groups. Reporting by unique broker ID would also address the problem of having too small of a sample of loans and applications from a broker to a particular lender as it would allow for analyses of individual brokers across all lenders.

***Recommendations***

Related to additional data reporting, we ask that the CFPB collect the following data points or modify collection in the following ways:

- Disaggregated data for Asian-American and Pacific Islander borrowers.
- The primary language spoken by the loan or loan modification applicant.
- The language in which the loan or loan modification was negotiated.
- The language of the loan documents.
- Credit scores information for all loans reported in HMDA. Credit scores in HMDA should be consistent with the FCRA definition of credit scores.
- All relevant credit score information, including the name and version of the scoring models used and the date that the credit score was created.
- The name of the credit reporting agencies that provided credit scoring data.

- Automated Underwriting System recommendations.

- Loan-level credit score information and AUS recommendations should be made public using workable methods that will protect borrower privacy.

- The loan channel through which the loan was originated.

- Additional disclosures concerning fees. Specifically, the inclusion of separate fields for direct fees, yield-spread premiums, and discount points that are fees.

- The unique broker identifier, which will allow practices and compensation to be tracked at the broker level.

- The identification of whether a loan secured by residential property was for a small business or commercial purpose. This is important because low wealth immigrant communities and other communities use this type of financing to expand or start businesses

- Separate identification of cash-out and rate- and term-refinances. Both types of refinance loans serve different purposes and credit needs.

- The continued reporting of home improvement lending data. The HMDA data should continue to identify home improvement lending since such lending serves important needs for financing home repairs, which is a significant housing need of many communities.

- Improved disclosures of borrower's age. Robust reporting on the age of the borrower (a required element per Dodd-Frank) is vital to evaluate age biases in lending, and especially in reverse mortgage lending. At the very least, the age of the borrower should be reported in terms of five year cohorts, and should be aligned with other data sets, such as the American Community Survey (i.e., 55-59, 60-64, etc.).

## Conclusion

The undersigned organizations believe strongly in the power of HMDA data to promote public accountability, expose discrimination, and spur corrective action when necessary. We believe that finalizing the HMDA rulemaking as soon as possible is critical to ensure that financial institutions are meeting the needs of communities with responsible credit. Again, we applaud the expansion of collected data points in the proposed rule, and feel confident that increased knowledge related to lending activity will promote safer and more equitable practices in the future. Yet, we also believe that the public, including non-profit agencies dedicated to protecting consumers, plays a crucial role in uncovering patterns of abusive and deceptive practices, and therefore, we urge the CFPB to immediately release data that does not pose privacy concerns and to make every effort to quickly find means to protect borrower privacy on the few remaining data points so that all of the expanded data can be made available to the public.

If you have any questions, please contact Jesse Van Tol, the Chief of Membership and Policy at the National Community Reinvestment Coalition at jvantol@ncrc.org. Thank you for the opportunity to comment on this important matter.

Sincerely,

Americans for Financial Reform

Association for Neighborhood and Housing Development

California Reinvestment Coalition

Housing Assistance Council

Manna, Inc.

National Coalition for Asian Pacific American Community Development

National Community Reinvestment Coalition

National Fair Housing Alliance

National Housing Resource Center

National People's Action

New Economy Project

Pathstone Corporation

Woodstock Institute

## Appendix

***Background Information on MECAs/CEMAs***

The proposed regulations indicate that MECAs/CEMAs could be included, but they are not explicitly referenced. Thus, we would like to clarify and ask that MECAs/CEMAs be included in HMDA data.

The proposed regulations state:
*"The Bureau is proposing § 1003.2(d), which defines a "closed-end mortgage loan" as a debt obligation secured by a lien on a dwelling that is not an open-end line of credit under § 1003.2(o), a reverse mortgage under § 1003.2(q), or excluded from coverage pursuant to § 1003.3(c)." and further goes on to say that "Establishing clearly delineated boundaries between loan types and loan purposes will help clarify the regulation, and a new defined term that includes all types of loans subject to Regulation C should make subsequent references in the regulation easier to understand."*

At the same time, the definition of a "refinance loan" has not changed and still requires that the loan satisfy and replace a loan on the same property to the same borrower.

Without further clarification, this could inadvertently exclude refinance loans done through a MECA/CEMA, or lead to inconsistent data when some banks report and others do not. This is particularly important to New York State where MECAs/CEMAs are often used in lieu of traditional refinance loans. They are especially important in New York City multifamily apartment buildings and are prevalent and central to the private stock of affordable housing. These loans are larger than one-to-four family and thus would be subject to higher taxes absent a MECA/CEMA.

We recommend that the agencies include MECA/CEMA loans secured by residential properties and that the purpose be recorded like any other loan, ideally categorizing a MECA/CEMA refinance like any other refinance, but if not, then add an additional purpose to capture these refinance loans.

MECAs/CEMAs are not restricted to multifamily homes and can be used to consolidate, modify, and/or extend any loan. They are used in multiple transactions, which may or may not be HMDA reportable. When MECAs/CEMAs are HMDA-reportable, they are reported as home purchase loans or possibly home improvement loans if the refinance includes new money to be used towards home improvement, but they are not reported in HMDA data when they serve as cash-out refinance loans or refinances with no new money. This creates a confusing and inconsistent system for both bankers and advocates. It would be clearer for regulators and advocates if all dwelling-secured loans - whether done through a standard transaction or a MECA/CEMA – were reported under their primary purpose in HMDA data.

Multiple agencies recognize that, due to the high mortgage transfer taxes, many loans, including refinance loans, in New York State are often made using a MECA or CEMA. For example, a

Freddie Mac[13] document states, “Sellers often document refinance mortgages secured by property located in New York State using a New York Consolidation, Extension and Modification Agreement (the “NY CEMA”).” Since major institutions such as Freddie Mac recognize MECAs as the equivalent of loans, we believe that MECAs should be reported in HMDA.

HMDA data is typically the primary source of home lending data for CRA exams, but banks may present MECA/CEMA loans as “other loans” to be reviewed on their CRA exams. Because they are so often used in lieu of traditional refinance loans in New York State, MECA/CEMA loans are often reviewed along with the loans reported on the HMDA Loan Application Register (LAR). An example from an FDIC CRA exam demonstrates that non-HMDA reportable MECAs/ CEMAs are treated the same as traditional refinancing by the FDIC (page 8, NY Community Bank, 2010 FDIC exam):

*In addition to its HMDA-reportable residential lending, the bank offers credit in the form of Modification, Extension, and Consolidation Agreements (MECAs). MECAs are essentially refinance transactions in which the original loans are not satisfied and replaced. Although these transactions are not considered refinancings, as defined by HMDA, and are not reported on the HMDA Loan Application Register (LAR), they achieve the same purpose and are, therefore, evaluated as such for CRA purposes…These transactions are common in NY due to the high cost of mortgage transfer taxes associated with traditional refinancings, particularly those transactions with high loan amounts, such as multi-family loans.*

The following are examples from CRA exams of the difficulties and confusion encountered when considering HMDA-reportable loans and MECAs/CEMAS:

- New York Community Bank’s (NYCB’s) 2010 FDIC CRA exam showed 372 MECA multifamily loans in 2009 within the New York/New Jersey assessment area, as compared to 63 HMDA loans. The New York State Department of Financial Services also evaluated NYCB, and over the course of their evaluation, from 2007 to 2010, they documented a total of 2,110 HMDA loans (one-to-four single family and multifamily) and 1,375 MECAs in NYCB’s NY assessment area.

- Signature Bank’s 2013 FDIC exam showed 141 MECA/CEMA multifamily loans within the Assessment area, as compared to 42 HMDA loans.

- Apple Bank for Savings’ 2010 FDIC exam documents 889 single family HMDA loans and 128 MECAs used for single family lending. The exam also shows 222 HMDA multifamily loans and 72 MECAs used for multifamily lending**.**

- Astoria Federal Savings and Loan Association’s 2009 OCC exam also states that “Astoria also extends credit in the form of MECAs” which it explains by saying, “These transactions do not involve new monies added to the loan balances outstanding, so they

[13] http://www.freddiemac.com/cim/pdf/nycemaqa.pdf

fall outside HMDA reporting requirements." Astoria made 920 MECAs in residential loan refinances on top of the 4,000 HMDA reportable loans in the same period.

### *Background on GSE Affordable Housing Goals*

In accordance with the affordable housing goals, the Government Sponsored Enterprises (GSEs), Fannie Mae and Freddie Mac, must determine how many units in each building are affordable to a range of tenants with lower incomes and family sizes. They offer a model that could be replicated in HMDA, where Area Median Income (AMI) is determined by HUD guidelines for area and family size. Affordability is defined as paying 30 percent or less of one's income on rent and utilities.

- For each occupied unit, first see if the tenant's income and family size are available and if so, compare the income and family size to determine into which income band the tenant falls and if the rent is affordable to that family. Based on these calculations assign an income band for the loan such as low-income.

- If family size is unknown, use HUD's guidelines based on apartment size (studio, one-bedroom, two-bedroom, three or more-bedroom)

- For each occupied unit where the tenant's income is not available and the building is not deed restricted to specific income levels, determine affordability based on the rent, utilities, and apartment size. The GSEs have guidelines to calculate the maximum rent that can be charged in order to be affordable to renters in each income band (see below for specific formulas), based on the number of bedrooms as a proxy for family size.

- Given the variability, it would be helpful to capture how many affordable units were determined based on actual incomes versus how many were based on the rent, utilities and apartment size. This would give a sense as to whether the unit is actually serving low- or moderate-income tenants, or simply priced to do so (meaning the tenant is not necessarily low- and moderate-income).

- For an unoccupied unit, if it is deed restricted, then the deed-restricted income band should be used (eg. if a unit is deed restricted to 60 percent AMI, then the unit would be affordable to 50-80 percent AMI). If not, then the determination would be based on the rent to be charged to prospective tenants, which might be the market-rate rent or a rent based on the maximum legal rent-regulated rent for the unit.

### *Formulas for GSE Income Guidelines*

12 CFR Part 1282, Subpart B - Housing Goals
(12 CFR Part 1282: ENTERPRISE HOUSING GOALS AND MISSION)
Retrieved online from: http://www.law.cornell.edu/cfr/text/12/part-1282/subpart-B

§ 1282.17 Affordability—Income level definitions—family size and income known (owner-occupied units, actual tenants, and prospective tenants).

In determining whether a dwelling unit is affordable where income information (and family size, for rental housing) is known to the Enterprise, the affordability of the unit shall be determined as follows:

(a) *Moderate-income* means:
(1) In the case of owner-occupied units, income not in excess of 100 percent of area median income; and
(2) In the case of rental units, where the income of actual or prospective tenants is available, income not in excess of the following percentages of area median income corresponding to the following family sizes:

| **Number of persons in family** | **Percentage of area median income** |
|---|---|
| 1 | 70 |
| 2 | 80 |
| 3 | 90 |
| 4 | 100 |
| 5 or more | * |
| *100% plus (8% multiplied by the number of persons in excess of 4). | |

(b) *Low-income (80%)* means:
(1) In the case of owner-occupied units, income not in excess of 80 percent of area median income; and
(2) In the case of rental units, where the income of actual or prospective tenants is available, income not in excess of the following percentages of area median income corresponding to the following family sizes:

| **Number of persons in family** | **Percentage of area median income** |
|---|---|
| 1 | 56 |
| 2 | 64 |
| 3 | 72 |
| 4 | 80 |
| 5 or more | * |
| *80% plus (6.4% multiplied by the number of persons in excess of 4). | |

(c) *Low-income (60%)* means:
(1) In the case of owner-occupied units, income not in excess of 60 percent of area median income; and

(2) In the case of rental units, where the income of actual or prospective tenants is available, income not in excess of the following percentages of area median income corresponding to the following family sizes:

| Number of persons in family | Percentage of area median income |
|---|---|
| *60% plus (4.8% multiplied by the number of persons in excess of 4). | |
| 1 | 42 |
| 2 | 48 |
| 3 | 54 |
| 4 | 60 |
| 5 or more | * |

(d) *Very low-income* means:
(1) In the case of owner-occupied units, income not in excess of 50 percent of area median income; and
(2) In the case of rental units, where the income of actual or prospective tenants is available, income not in excess of the following percentages of area median income corresponding to the following family sizes:

| Number of persons in family | Percentage of area median income |
|---|---|
| 1 | 35 |
| 2 | 40 |
| 3 | 45 |
| 4 | 50 |
| 5 or more | * |
| *50% plus (4.0% multiplied by the number of persons in excess of 4). | |

(e) *Extremely low-income* means:
(1) In the case of owner-occupied units, income not in excess of 30 percent of area median income; and
(2) In the case of rental units, where the income of actual or prospective tenants is available, income not in excess of the following percentages of area median income corresponding to the following family sizes:

| Number of persons in family | Percentage of area median income |
|---|---|
| 1 | 21 |
| 2 | 24 |
| 3 | 27 |
| 4 | 30 |
| 5 or more | * |

| Number of persons in family | Percentage of area median income |
|---|---|
| *30% plus (2.4% multiplied by the number of persons in excess of 4). | |

§ 1282.18 Affordability—Income level definitions—family size not known (actual or prospective tenants).
In determining whether a rental unit is affordable where family size is not known to the Enterprise, income will be adjusted using unit size, and affordability determined as follows:

(a) *For moderate-income,* the income of prospective tenants shall not exceed the following percentages of area median income with adjustments, depending on unit size:

| Unit size | Percentage of area median income |
|---|---|
| Efficiency | 70 |
| 1 bedroom | 75 |
| 2 bedrooms | 90 |
| 3 bedrooms or more | * |
| *104% plus (12% multiplied by the number of bedrooms in excess of 3). | |

(b) *For low-income (80%),* income of prospective tenants shall not exceed the following percentages of area median income with adjustments, depending on unit size:

| Unit size | Percentage of area median income |
|---|---|
| Efficiency | 56 |
| 1 bedroom | 60 |
| 2 bedrooms | 72 |
| 3 bedrooms or more | * |
| *83.2% plus (9.6% multiplied by the number of bedrooms in excess of 3). | |

(c) *For low-income (60%),* income of prospective tenants shall not exceed the following percentages of area median income with adjustments, depending on unit size:

| Unit size | Percentage of area median income |
|---|---|
| Efficiency | 42 |
| 1 bedroom | 45 |
| 2 bedrooms | 54 |
| 3 bedrooms or more | * |
| *62.4% plus (7.2% multiplied by the number of bedrooms in excess of 3). | |

(d) *For very low-income,* income of prospective tenants shall not exceed the following percentages of area median income with adjustments, depending on unit size:

| **Unit size** | **Percentage of area median income** |
|---|---|
| Efficiency | 35 |
| 1 bedroom | 37.5 |
| 2 bedrooms | 45 |
| 3 bedrooms or more | * |
| *52% plus (6.0% multiplied by the number of bedrooms in excess of 3). | |

(e) *For extremely low-income,* income of prospective tenants shall not exceed the following percentages of area median income with adjustments, depending on unit size:

| **Unit size** | **Percentage of area median income** |
|---|---|
| Efficiency | 21 |
| 1 bedroom | 22.5 |
| 2 bedrooms | 27 |
| 3 bedrooms or more | * |
| *31.2% plus (3.6% multiplied by the number of bedrooms in excess of 3). | |

§ 1282.19 Affordability—Rent level definitions—tenant income is not known.
For purposes of determining whether a rental unit is affordable where the income of the family in the dwelling unit is not known to the Enterprise, the affordability of the unit is determined based on unit size as follows:

(a) *For moderate-income*, maximum affordable rents to count as housing for moderate-income families shall not exceed the following percentages of area median income with adjustments, depending on unit size:

| **Unit size** | **Percentage of area median income** |
|---|---|
| Efficiency | 21 |
| 1 bedroom | 22.5 |
| 2 bedrooms | 27 |
| 3 bedrooms or more | * |
| *31.2% plus (3.6% multiplied by the number of bedrooms in excess of 3). | |

(b) *For low-income (80%)*, maximum affordable rents to count as housing for low-income (80%) families shall not exceed the following percentages of area median income with adjustments, depending on unit size:

| **Unit size** | **Percentage of area median income** |
|---|---|
| Efficiency | 16.8 |
| 1 bedroom | 18 |
| 2 bedrooms | 21.6 |
| 3 bedrooms or more | * |
| *24.96% plus (2.88% multiplied by the number of bedrooms in excess of 3). | |

(c) *For low-income (60%)*, maximum affordable rents to count as housing for low-income (60%) families shall not exceed the following percentages of area median income with adjustments, depending on unit size:

| **Unit size** | **Percentage of area median income** |
|---|---|
| Efficiency | 12.6 |
| 1 bedroom | 13.5 |
| 2 bedrooms | 16.2 |
| 3 bedrooms or more | * |
| *18.72% plus (2.16% multiplied by the number of bedrooms in excess of 3). | |

(d) *For very low-income*, maximum affordable rents to count as housing for very low-income families shall not exceed the following percentages of area median income with adjustments, depending on unit size:

| **Unit size** | **Percentage of area median income** |
|---|---|
| Efficiency | 10.5 |
| 1 bedroom | 11.25 |
| 2 bedrooms | 13.5 |
| 3 bedrooms or more | * |
| *15.6% plus (1.8% multiplied by the number of bedrooms in excess of 3). | |

(e) *For extremely low-income*, maximum affordable rents to count as housing for extremely low-income families shall not exceed the following percentages of area median income with adjustments, depending on unit size:

| **Unit size** | **Percentage of area median income** |
|---|---|
| Efficiency | 6.3 |
| 1 bedroom | 6.75 |

| Unit size | Percentage of area median income |
|---|---|
| 2 bedrooms | 8.1 |
| 3 bedrooms or more | * |
| * 9.36% plus (1.08% multiplied by the number of bedrooms in excess of 3). | |

(f) *Missing Information.* Each Enterprise shall make every effort to obtain the information necessary to make the calculations in this section. If an Enterprise makes such efforts but cannot obtain data on the number of bedrooms in particular units, in making the calculations on such units, the units shall be assumed to be efficiencies except as provided in § 1282.15(e)(1).