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BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1003

Docket No. CFPB-2014-0019

RIN 3170-AA10

Home Mortgage Disclosure (Regulation C)

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Proposed rule with request for public comment.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is publishing for public comment a proposed rule amending Regulation C to implement amendments to the Home Mortgage Disclosure Act (HMDA) made by section 1094 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). Consistent with section 1094 of the Dodd-Frank Act, the Bureau proposes to add several new reporting requirements and to clarify several existing requirements. The Bureau is also proposing changes to institutional and transactional coverage under Regulation C.

DATES: Comments must be received on or before October 22, 2014.

ADDRESSES: You may submit comments, identified by Docket No. CFPB-2014-0019 or RIN 3170-AA10, by any of the following methods:

- *Email*: FederalRegisterComments@cfpb.gov.
- *Electronic*: http://www.regulations.gov. Follow the instructions for submitting comments.

- *Mail*: Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1700 G Street, NW, Washington, DC 20552.
- *Hand Delivery/Courier*: Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1275 First Street, NE, Washington, DC 20002.

Instructions: All submissions should include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. Because paper mail in the Washington, DC area and at the Bureau is subject to delay, commenters are encouraged to submit comments electronically. In general, all comments received will be posted without change to http://www.regulations.gov. In addition, comments will be available for public inspection and copying at 1275 First Street, NE, Washington, DC 20002, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect the documents by telephoning (202) 435-7275.

All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information, such as account numbers or Social Security numbers, should not be included. Comments will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: David Jacobs, Terry J. Randall, or James Wylie, Counsels; or Elena Grigera Babinecz, Joan Kayagil, Thomas J. Kearney, Amanda Quester, or Laura Stack, Senior Counsels, Office of Regulations, at (202) 435-7700.

SUPPLEMENTARY INFORMATION:

I. Summary of Proposed Rule

For almost 40 years, HMDA[1] has provided the public with information about how financial institutions are serving the housing needs of their communities. This information has helped to promote access to fair credit in the housing market. Section 1094 of the Dodd-Frank Act amended HMDA to improve the utility of the HMDA data and revise Federal agency rulemaking and enforcement authorities.[2] The Bureau 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. Accordingly, the Bureau is proposing to implement the Dodd-Frank Act amendments and to make other changes in the Bureau's Regulation C,[3] which implements HMDA.

Specifically, the Bureau is proposing several changes to revise the tests for determining which financial institutions and housing-related credit transactions are covered under HMDA. The Bureau also is proposing to require financial institutions to report new data points identified in the Dodd-Frank Act, as well as other data points that the Bureau believes may be necessary to carry out the purposes of HMDA. Further, the Bureau is proposing to better align the requirements of Regulation C to existing industry standards where practicable. To improve the quality and timeliness of HMDA data, the Bureau is proposing to require financial institutions with large numbers of reported transactions to submit their HMDA data on a quarterly, rather than an annual, basis. To minimize costs to HMDA reporters associated with making certain

[1] 12 U.S.C. 2801-2810.
[2] Dodd-Frank Act, Public Law 111-203, section 1094, 124 Stat. 1376, 2097 (2010).
[3] 12 CFR part 1003.

data available to the public, the Bureau is proposing that reporters may direct members of the public to a publicly available website to obtain the data. The Bureau is also proposing several changes to clarify and provide additional guidance on existing requirements of Regulation C that financial institutions and other stakeholders have identified as confusing or unclear. The Bureau solicits public comment on all issues involved with this proposal, including each of its specific proposals to amend Regulation C.

A. Proposed Modifications to Institutional and Transactional Coverage

The Bureau is proposing modifications to institutional and transactional coverage to better achieve HMDA's purposes in light of current market conditions and to reduce unnecessary burden on financial institutions. The Bureau is proposing to adjust Regulation C's institutional coverage test to simplify the institutional coverage requirements by adopting, for all financial institutions, a uniform loan-volume threshold of 25 loans. Currently, Regulation C contains different coverage criteria for depository institutions (banks, savings associations, and credit unions) and nondepository institutions. Depository institutions that originate one first-lien home purchase loan or refinancing secured by a one-to-four family dwelling and that meet other criteria for a financial institution under Regulation C must collect and report HMDA data, while some nondepository institutions that originate as many as 99 home purchase loans, including refinancings of home purchase loans, annually do not have to collect and report HMDA data.

Under the proposal, depository and nondepository institutions that meet all other criteria for a financial institution under Regulation C would be required to report HMDA data if they originated 25 covered loans, excluding open-end lines of credit, in the previous calendar year. The Bureau believes that this proposal would improve the quality of HMDA data by increasing visibility into the practices of nondepository institutions. In addition, the Bureau is concerned

that the requirement for depository institutions to report even if they originate only one mortgage loan may impose costs not justified by the benefits. The proposal would relieve depository institutions that originate a small number of mortgage loans from the burden of reporting HMDA data without significantly impacting the data's quality for analysis at the national, community, or institutional level.[4]

The Bureau is also proposing to generally expand the types of transactions subject to Regulation C, while eliminating the requirement to report unsecured home improvement loans. Currently, Regulation C requires reporting of three types of loans: home purchase, home improvement, and refinancing. Reverse mortgages that are home purchase loans, home improvement loans, or refinancings are reported under Regulation C, but they are not separately identified and many data points do not currently account for the features of reverse mortgages. Home-equity lines of credit may be reported at financial institutions' option, but are not required to be reported. As a result, HMDA data currently contains gaps in data regarding important segments of the housing market.

Under the proposal, financial institutions generally would be required to report all closed-end loans, open-end lines of credit, and reverse mortgages secured by dwellings. Unsecured home improvement loans would no longer be reported. Thus, financial institutions would no longer be required to ascertain an applicant's intended purpose for a dwelling-secured loan to determine if the loan is required to be reported under Regulation C, though they would still itemize dwelling-secured loans by different purpose when reporting. Certain types of loans

[4] The proposed modifications to institutional coverage are discussed in more detail below in the section-by-section analysis of proposed § 1003.2(g).

would continue to be excluded from Regulation C requirements, including loans on unimproved land and temporary financing. Reverse mortgages and open-end lines of credit would be identified as such to allow for differentiation from other loan types. Further, many of the data points would be modified to take account of the characteristics of, and to clarify reporting requirements for, different types of loans. The Bureau believes these proposals will yield more consistent and useful data and better align Regulation C with the current housing finance market.[5]

B. Proposed Modifications to Reportable Data Requirements

The Bureau believes that it can make HMDA compliance and data submission easier for HMDA reporters by aligning, to the extent practicable, Regulation C requirements with existing industry standards for collecting and transmitting data on mortgage loans and applications. Therefore, the Bureau is proposing to align many of the HMDA data requirements with the widely-used Mortgage Industry Standards Maintenance Organization (MISMO) data standards for residential mortgages.[6] The Bureau believes that having consistent data standards for both industry and regulatory use promotes regulatory compliance, improves regulatory clarity, market efficiency, and data utility.[7]

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[5] Covered loans generally are discussed in more detail below in the section-by-section analysis of proposed § 1003.2(e). Home improvement loans are discussed in more detail below in the section-by-section analysis of proposed § 1003.2(i). Open-end lines of credit and home-equity lines of credit are discussed in more detail below in the section-by-section analyses of proposed §§ 1003.2(o), 1003.4(a)(37), 1003.4(a)(39), and 1003.4(c)(3). Reverse mortgages are discussed in more detail below in the section-by-section analyses of proposed §§ 1003.2(q) and 1003.4(a)(36).

[6] MISMO is the federally registered service mark of the Mortgage Industry Standards Maintenance Organization, a wholly-owned subsidiary of the Mortgage Bankers Association.

[7] The use of data standards, and the MISMO data standards in particular, are discussed in more detail below in part II.B.

The Bureau is proposing to add new data points to the reporting requirements established in Regulation C, as well as to modify certain existing data points. Some of the new data points are specifically identified by the Dodd-Frank Act. Others are proposed pursuant to the Bureau's discretionary rulemaking authority to carry out the purposes of HMDA by addressing data gaps. The data points that the Bureau is proposing to add or modify can be grouped into four broad categories:

- Information about applicants, borrowers, and the underwriting process, such as age, credit score, debt-to-income ratio, reasons for denial if the application was denied, the application channel, and automated underwriting system results.
- Information about the property securing the loan, such as construction method, property value, lien priority, the number of individual dwelling units in the property, and additional information about manufactured and multifamily housing.
- Information about the features of the loan, such as additional pricing information, loan term, interest rate, introductory rate period, non-amortizing features, and the type of loan.
- Certain unique identifiers, such as a universal loan identifier, property address, loan originator identifier, and a legal entity identifier for the financial institution.[8]

C. Proposed Modifications to Disclosure and Reporting Requirements

Regulation C requires financial institutions to submit their HMDA data to the appropriate Federal agency by March 1 following the calendar year for which the data are compiled. The Bureau is proposing to require financial institutions that report large volumes of HMDA data to

[8] The data points the Bureau is proposing to add or modify are discussed in more detail below in the section-by-section analysis of proposed § 1003.4(a).

submit their data to the appropriate agency on a quarterly, rather than an annual basis. The Bureau believes that quarterly reporting would allow regulators to use the data to effectuate the purposes of HMDA in a more timely and effective manner, would reduce reporting errors and improve the quality of HMDA data, and may facilitate the earlier release of annual HMDA data to the public.[9]

The Bureau also is proposing to allow HMDA reporters to make their disclosure statements available by referring members of the public that request a disclosure statement to a publicly-available website. Currently, a financial institution is required to make its disclosure statement available to the public in its home offices and, in addition, to either make it available in certain branch offices or to post notice of its availability and provide it in response to a written request. The Bureau believes that this proposal will facilitate public access to HMDA data while minimizing burdens to financial institutions.[10]

D. Proposed Modifications to Clarify the Regulation

Financial institutions and other stakeholders have, over time, identified aspects of Regulation C that are unclear or confusing. The Bureau believes that the implementation of the Dodd-Frank Act amendments is an opportunity to address many of these longstanding issues through improvements to the regulatory provisions, the instructions in appendix A, and the staff commentary. Examples of these clarifications include guidance on what types of residential structures are considered dwellings; the treatment of manufactured and modular homes and multiple properties; coverage of preapproval programs and temporary financing; how to report a

[9] Quarterly reporting is discussed in more detail below in the section-by-section analysis for proposed § 1003.5(a).
[10] The disclosure statement is discussed in more detail below in the section-by-section analysis for proposed § 1003.5(b).

transaction that involved multiple financial institutions; reporting the action taken on an application; and reporting the type of purchaser for a covered loan.[11]

II. Background

A. HMDA's Role in the Mortgage Market

Overview of HMDA and Regulation C

The Home Mortgage Disclosure Act (HMDA), 12 U.S.C. 2801 *et seq.*, requires certain depository institutions and for-profit nondepository institutions to collect, report, and disclose data about originations and purchases of mortgage loans, as well as mortgage loan applications that do not result in originations (for example, applications that are denied or withdrawn). As originally adopted, HMDA identifies its purposes as providing the public and public officials with information to help determine whether financial institutions are serving the housing needs of the communities in which they are located, and to assist public officials in their determination of the distribution of public sector investments in a manner designed to improve the private investment environment.[12] Congress later expanded HMDA to, among other things, require financial institutions to report racial characteristics, gender, and income information on applicants and borrowers.[13] In light of these amendments, the Board of Governors of the Federal Reserve System (Board) subsequently recognized a third HMDA purpose of identifying possible discriminatory lending patterns and enforcing antidiscrimination statutes, which now appears with HMDA's other purposes in Regulation C.[14]

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[11] The proposed guidance is discussed throughout the section-by-section analysis.
[12] HMDA section 302(b), 12 U.S.C. 2801(b); *see also* 12 CFR 1003.1(b)(1)(i)-(ii).
[13] Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Public Law 101-73, section 1211 ("Fair lending oversight and enforcement" section), 103 Stat. 183, 524-26 (1989).
[14] 54 FR 51356, 51357 (Dec. 15, 1989), *codified at* 12 CFR 1003.1(b)(1).

The Bureau's Regulation C, 12 CFR part 1003, implements HMDA. Regulation C currently requires depository institutions (*i.e.*, banks, savings associations, and credit unions) and for-profit nondepository mortgage lending institutions to submit and publicly disclose certain HMDA data if they meet criteria set forth in the rule. Whether a depository institution is required to report and publicly disclose data depends on its asset size, the location of its home and branch offices, the extent to which it engages in residential mortgage lending, and the extent to which the institution or its loans are federally-related. Whether a for-profit nondepository mortgage lending institution is required to report and publicly disclose data depends on its size, the location of its home and branch offices, including the extent of its business in metropolitan statistical areas (MSAs), and the extent to which it engages in residential mortgage lending.

Covered financial institutions are required to report originations and purchases of mortgage loans (home purchase and refinancing) and home improvement loans, as well as loan applications that do not result in originations. The information reported under Regulation C currently includes, among other items: application date; loan or application type, purpose, and amount; property location and type; race, ethnicity, sex, and annual income of the loan applicant; action taken on the loan application (approved, denied, withdrawn, etc.), and date of that action; whether the loan is subject to the Home Ownership and Equity Protection Act of 1994 (HOEPA); lien status (first lien, subordinate lien, or unsecured); and certain loan price information.

Financial institutions report HMDA data to their supervisory agencies on an application-by-application basis using a register format referred to as the loan application register. Institutions must make their loan application registers available to the public, with certain fields redacted to preserve applicants' and borrowers' privacy. At present, the Federal Financial

Institutions Examination Council (FFIEC),[15] on behalf of the supervisory agencies, compiles the reported data and prepares an individual disclosure statement for each institution and aggregate reports for all covered institutions in each metropolitan area. These disclosure statements and reports are available to the public. On behalf of the agencies, the FFIEC also annually releases a loan-level dataset containing all reported HMDA data for the preceding calendar year with certain fields redacted to protect the privacy of applicants and borrowers.

History of HMDA's Role in the Mortgage Market

For nearly 40 years, HMDA has provided the public with information about mortgage lending activity within communities throughout the nation. Public officials use the information available through HMDA to develop and allocate housing and community development investments,[16] to respond to market failures when necessary,[17] and to monitor whether financial

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[15] The FFIEC is a formal interagency body empowered to prescribe uniform principles, standards, and report forms for the Federal examination of financial institutions by the Bureau, the Board, the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), and the Office of the Comptroller of the Currency (OCC), and to make recommendations to promote uniformity in the supervision of financial institutions. In 2006, the State Liaison Committee was added to the Council as a voting member.

[16] As one example of many, in 2008 the City of Albuquerque used HMDA data to characterize neighborhoods as "stable," "prone to gentrification," or "prone to disinvestment" for purposes of determining the most effective use of housing grants. *See* City of Albuquerque, Five Year Consolidated Housing Plan and Workforce Housing Plan 100 (2008), *available at* http://www.cabq.gov/family/documents/ConsolidatedWorkforceHousingPlan20082012final.pdf. As another example, Antioch, California, monitors HMDA data, reviews it when selecting financial institutions for contracts and participation in local programs, and supports home purchase programs targeted to households purchasing homes in Census Tracts with low loan origination rates based on HMDA data. *See* City of Antioch, California, Fiscal Year 2012-2013 Action Plan 29 (2012), http://www.ci.antioch.ca.us/CitySvcs/CDBGdocs/Action%20Plan%20FY12-13.pdf. Similarly, Lawrence, Massachusetts, identified a need for homebuyer counseling and education based on HMDA data, which showed a high percentage of high-cost loans compared to surrounding communities. *See* City of Lawrence, Massachusetts, HUD Consolidated Plan 2010-2015, at 68 (2010), http://www.cityoflawrence.com/Data/Sites/1/documents/cd/Lawrence_Consolidated_Plan_Final.pdf.

[17] For example, under section 2301 of the Housing and Economic Recovery Act of 2008, Public Law 110-289, 122 Stat. 2654 (July 30, 2008), the U.S. Department of Housing and Urban Development (HUD) created the Neighborhood Stabilization Program. Under this program, funds were provided for stabilizing communities that suffered from foreclosures and abandonment. The statute required HUD to swiftly devise a funding formula based on foreclosures, subprime loans, and loans in default or delinquency. HMDA data on loans, and particularly high-

institutions may be engaging in discriminatory lending practices.[18] The data are used by the mortgage industry to inform business practices,[19] and by local communities to ensure that lenders are serving the needs of individual neighborhoods.[20] To maintain the data's usefulness, HMDA and Regulation C have been updated and expanded over time in response to the changing needs of homeowners and evolution in the mortgage market. What is currently a critical source of nationwide home finance information began as a method of empowering neighborhoods by providing visibility into community mortgage lending practices.

Community Deterioration and Access to Mortgage Credit. In the decades that followed World War II, the standard of living sharply declined in many U.S. cities as people left central cities for the suburbs. A significant cause of this decline was the gradual deterioration in the

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cost loans, in communities were used to develop the formula. *See* http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_14172.pdf.

[18] *See, e.g.*, Yana Kunichoff, *Lisa Madigan Credits Reporter with Initiating Largest Discriminatory Lending Settlements in U.S. History* (June 14, 2013), http://www.chicagonow.com/chicago-muckrakers/2013/06/lisa-madigan-credits-reporter-with-initiating-largest-discriminatory-lending-settlements-in-u-s-history/ ("During our ongoing litigation . . . the Chicago Reporter study looking at the HMDA data for the City of Chicago came out. . . . It was such a startling statistic that I said . . . we have to investigate, we have to find out if this is true. . . . We did an analysis of that data that substantiated what the Reporter had already found. . . . [W]e ultimately resolved those two lawsuits. They are the largest fair-lending settlements in our nation's history."); Press Release, New York State Office of the Attorney General, *Attorney General Cuomo Obtains Approximately $1 Million For Victims Of Greenpoint's Discriminatory Lending Practices* (July 16, 2008), http://www.ag.ny.gov/press-release/attorney-general-cuomo-obtains-approximately-1-million-victims-greenpoints (describing settlement arising from review of HMDA data).

[19] "I have been analyzing HMDA data for 14 years and believe that HMDA is an invaluable tool to understand how the mortgage market works in practice. Our HMDA work at [the Mortgage Bankers Association] helps our members reach new customers and develop products and underwriting tools to better serve new and established portions of the market." *Home Mortgage Disclosure Act: Newly Collected Data and What It Means, Hearing Before the Subcomm. on Fin. Servs. and Consumer Credit of the H. Comm. on Fin. Servs.*, 109th Cong. (2006) (oral testimony of Douglas G. Duncan, Senior Vice President and Chief Economist, Research and Business Development, Mortgage Bankers Ass'n), *available at* http://www.gpo.gov/fdsys/pkg/CHRG-109hhrg31528/html/CHRG-109hhrg31528.htm.

[20] "In recent years . . . scores of community groups have used HMDA data to document the emergence and dramatic expansion of the subprime mortgage market and its concentration in minority communities." *Home Mortgage Disclosure Act: Newly Collected Data and What It Means, Hearing Before the Subcomm. on Fin. Servs. and Consumer Credit of the H. Comm. on Fin. Servs.*, 109th Cong. 4 (2006) (written testimony of Calvin Bradford, President, Calvin Bradford Associates, Ltd., on behalf of the Nat'l Fair Hous. Alliance), *available at* http://archives.financialservices.house.gov/media/pdf/061306cb.pdf.

urban housing supply. Congress committed to improving the nation's housing stock in the Housing Act of 1949, which established a goal of "a decent home and suitable living environment for every American family" through development and redevelopment of communities and elimination of slums and blighted areas.[21] To achieve this goal, Congress envisioned a partnership between private enterprise, governments, and local public bodies.[22] However, during the 1950s, construction of new housing happened overwhelmingly outside the central cities.[23]

By the 1960s, despite improvements in the housing supply throughout the country, there were neighborhoods and areas within many cities where the housing situation continued to deteriorate.[24] During the 1960s, several efforts were made to improve urban housing. These efforts included the creation of the U.S. Department of Housing and Urban Development (HUD) and its elevation to cabinet-level agency status in 1965.[25] In addition, Congress enacted the Fair Housing Act of 1968, which prohibited discrimination in the sale, rental, or financing of housing.[26] However, by the 1970s it was clear that the lack of credit in urban communities was one of the major factors contributing to the decline in these communities.

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[21] Housing Act of 1949, Public Law 81-171, section 2, 63 Stat. 413 (1949).
[22] *Id.*
[23] The National Advisory Commission on Civil Disorders, *The Kerner Report: The 1968 Report of the National Advisory Commission on Civil Disorders* 467 (Pantheon Books, 1988) [hereinafter *The Kerner Report*].
[24] *Id.*
[25] HUD replaced the Housing and Home Finance Agency. Congress elevated the agency to cabinet-level status in order to more effectively coordinate affordable housing and urban renewal programs. Department of Housing and Urban Development Act, Public Law 89-174, section 3, 79 Stat. 667 (1965).
[26] Civil Rights Act of 1968, Public Law 90-284, title VIII, 82 Stat. 73 (1968). Segregation, discrimination, and poverty had prevented minorities from moving to the suburbs and achieving the economic gains and improved housing conditions that other Americans had, and they disproportionately bore the burden of the deteriorating urban housing stock. *See The Kerner Report* at 467.

Congressional hearings revealed that many financial institutions were unwilling to provide mortgage loans for the purchase of homes in urban areas.[27] In many cases, potential homebuyers were told by their financial institution that financing would not be available for an existing urban home, but a mortgage loan could be provided for a new home in the suburbs.[28] In other cases, financial institutions were willing to provide mortgage loans for homes located in both urban and suburban areas, but the cost of credit for the urban home was significantly higher than that for the suburban home.[29] As a result of these practices, the supply of buyers for urban homes dwindled, weakening the urban real estate market and contributing to a decline in the value of urban homes.

The unavailability of home improvement financing also was a significant problem. Financial institutions generally were unwilling to provide home improvement loans, which tend to be smaller and less risky than home purchase loans, in urban neighborhoods.[30] Some financial institutions adopted policies that prohibited financing secured by homes beyond a certain age or other proxies for year of construction.[31] As a result, urban residents were unable to obtain financing to maintain, repair, or remodel their homes.[32] As these homes fell into disrepair,

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[27] "The Committee heard from neighborhood representatives, community leaders and public officials from fifteen major cities in which disinvestment in older neighborhoods is considered a serious problem." Comm. on Banking, Hous. and Urban Affairs, report on S. 1281, Home Mortgage Disclosure Act of 1975, S. Rep. 94-187, at 279 (1975).

[28] "Typically, a potential buyer with a good credit rating attempting to purchase a sound home in an older urban neighborhood often meets a cool reception from local lenders. . . . Conversely, the same buyer finds 90 percent-30 year mortgages plentiful in the adjoining suburbs." *Id.* at 280.

[29] "A [Milwaukee] resident was told by a loan officer that she could get only a 12 year mortgage because of the age of the property and its location. 'Go west of 60th Street and then we can talk 20 to 25 years.'" *Id.* at 283.

[30] *Id.* at 280.

[31] "[Baltimore] lending institutions adopted policies related to property that eliminated a large segment of city houses on the market, e.g. loans not available on houses over 20 years old or those which are less than 18 feet wide. By the way, almost two-thirds of [Baltimore] houses were built before 1939, and many . . . are row houses 12, 14, and 16 feet wide." *Id.* at 285.

[32] "Home improvement loans become difficult if not impossible to obtain, causing housing to deteriorate prematurely. Prospective home buyers are encouraged to buy their home in a new suburban development rather

appraisers under-valued them, potential buyers found them less attractive, and financial institutions viewed them as riskier, thereby contributing to a cycle of neighborhood decline.[33]

While these market failures were generally acknowledged and understood, Congress was unable to determine the extent and severity of the situation.[34] Over the course of several hearings, representatives from industry, communities, and various Federal agencies provided wide-ranging testimony as to the scope of the problem, and these witnesses generally cited a lack of reliable data as an impediment to finding a solution.[35] To address the lack of reliable data, Congress enacted HMDA in 1975.[36] The Board implemented HMDA by promulgating Regulation C in 1976.[37]

As originally enacted and implemented, HMDA applied to depository institutions with over $10,000,000 in assets that made federally related mortgage loans and that were located in standard metropolitan statistical areas.[38] HMDA required the disclosure of the number and dollar amount for both home improvement loans and residential mortgage loans, broken down

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than in an urban neighborhood which according to the lending official is on the decline. Existing homeowners begin to panic and sell to speculators." Comm. on Banking, Currency and Hous. Report on H.R. 10024, Depository Institutions Amendments of 1975, H. Rep. 94-561, at 117 (1975).

[33] *Id.* "Given the lack of money to make the necessary repairs, the neighborhood rapidly takes on the characteristics of a slum – severe property maintenance problems, high rate of foreclosures, housing abandonment, not to mention the attendant negative social and economic consequences for the area. Owner/occupants representing good, stable families move out; absentee landlords and speculators move in. The prophecy fulfills itself." *Id.* *See generally* S. Rep. 94-187, at 307.

[34] With respect to home improvement loans: "Despite intensive efforts to devise a way to measure rehabilitation activity, we have not been successful in developing a feasible system, primarily due to the fact that there is no known way to measure the volume or quality of private rehabilitation efforts." H. Rep. 94-561, at 115. With respect to home purchase loans, Congress identified difficulties in analyzing claims regarding disinvestment, which it believed "illustrate[d] the need for reliable data, which can be obtained only through disclosure." S. Rep. 94-187, at 287.

[35] *See* H. Rep. 94-561, at 116.

[36] Public Law 94-200, sections 301-310, 89 Stat. 1124, 1125-28 (1975). HMDA was originally set to expire after four years, but was temporarily extended several times before Congress made it permanent in 1988. Public Law 100-242, section 565, 101 Stat. 1815, 1945 (1988).

[37] 41 FR 23931 (June 14, 1976). The Board also issued interpretations in 1977 to clarify two aspects of the rule. 42 FR 19123 (Apr. 12, 1977).

[38] 41 FR 23931, 23936-38 (June 14, 1976).

into a number of categories.[39] Depository institutions were required to make their mortgage loan disclosure statements available to the public for copying and inspection.[40]

Deteriorating urban housing conditions and inadequate private investment led Congress to enact other laws as well. These laws included the Housing and Community Development Act of 1974, which allocated funds to States and units of general local development to address urban conditions,[41] and the Community Reinvestment Act of 1977 (CRA), which was intended to ensure that depository institutions were meeting the credit needs of their communities.[42] In conjunction with laws such as these, HMDA was intended to promote neighborhood stability by empowering communities through information disclosure.

HMDA created a degree of transparency that immediately improved the public's understanding of the relationship between mortgage lending and community stability. The data enabled community groups to understand the magnitude of disinvestment within minority neighborhoods.[43] Studies of the HMDA data by academic researchers demonstrated the extent to which lending disparities existed between communities.[44] Public officials also relied on the HMDA data to study and analyze whether financial institutions were serving the credit needs of

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[39] *Id.*
[40] *Id.*
[41] Public Law 93-383, section 101, 88 Stat. 633 (1974) ("The Congress finds and declares that the Nation's cities, towns, and smaller urban communities face critical social, economic and environmental problems arising in significant measure from . . . inadequate public and private investment and reinvestment in housing . . . resulting in the growth and persistence of urban slums and blight and the marked deterioration of the quality of the urban environment.")
[42] 12 U.S.C. 2901-2908. "The [CRA] reflected the congressional judgment that many banks were neglecting important credit needs within their communities and that regulators' efforts were inadequate to deter banks from continuing to engage in these practices." Allen Fishbein, *The Ongoing Experiment with "Regulation from Below:" Expanded Reporting Requirements for HMDA and CRA*, 3 Housing Policy Debate 601, 609 (1992).
[43] *See* John Goering and Ron Wienk (eds), *Mortgage Lending, Racial Discrimination and Federal Policy* 10 (1996).
[44] *See, e.g.*, Ira Goldstein & Dan Urevick-Ackelburg, The Reinvestment Fund, *Subprime Lending, Mortgage Foreclosures, and Race: How Far Have We Come and How Far Have We to Go?* 2-3 (Ohio State Univ. Kirwan Institute for the Study of Race and Ethnicity 2008), http://kirwaninstitute.osu.edu/docs/pdfs/goldstein_trf_paper.pdf.

their communities.[45] Even with the limited amount of data HMDA provided, the data's disclosure lessened the information asymmetry between industry and the public, which improved the ability of communities to monitor industry and determine whether mortgage lenders were providing loans in a manner that facilitated stable and sustainable neighborhoods.

Individual Discrimination and Market Evolution. Although HMDA improved the public's understanding of the mortgage market, it became evident that critical data elements were missing. The HMDA data did not include information related to demand for mortgage credit or the creditworthiness of individual applicants.[46] This led to many cases where community groups asserted that the HMDA data evidenced community disinvestment, but lenders countered that the data were misleading because they lacked information related to creditworthiness.[47] Several studies conducted during the late 1970s and early 1980s used the HMDA data in conjunction with data obtained from surveys or through the examination process to analyze the relationship between community disinvestment and potential discrimination in mortgage lending.[48] Congress also realized that the data provided were not adequate to fulfill HMDA's statutory goals, and

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[45] *See, e.g.,* Glen B. Canner & Joe M. Cleaver, *The Community Reinvestment Act: A Progress Report*, Fed. Reserve Bulletin, vol. 66, no. 2, 87-96 (Feb. 1980); Robert B. Avery & Thomas M. Buynak, *Mortgage Redlining: Some New Evidence*, 21 Fed. Reserve Bank of Cleveland, Economic Review 18-32 (Summer 1981).

[46] *See* George J. Benston, Fed. Reserve Bank of Boston, *Mortgage Redlining Research: A Review and Critical Analysis Discussion*, 12 Journal of Bank Research 144 (Oct. 1979).

[47] *See* Mark S. Sniderman, Fed. Reserve Bank of Cleveland, *Economic Commentary: Issues in CRA Reform* (Mar. 1991).

[48] *See* Harold Black, Robert L. Schweitzer, & Lewis Mandell, *Discrimination in Mortgage Lending*, 68 American Econ. Review 186, 189 (May 1978); Robert Schafer & Helen F. Ladd, MIT-Harvard Joint Center for Urban Studies, *Discrimination in Mortgage Lending* 287-300 (1981); Thomas A. King, New York Univ., *Discrimination in Mortgage Lending: A Study of Three Cities* 50 (1981).

encouraged agency cooperation and combined implementation and enforcement of various statutes with similar goals.[49]

Beginning in the early 1980s, Congress made a number of significant changes to HMDA to expand the types of institutions covered, the data collected, and public access to such data. In 1980, Congress amended HMDA to require the newly established FFIEC to prepare and publish aggregate data tables for each standard MSA.[50] The 1980 amendments also required the Board to prescribe a standard format for HMDA disclosures, which it did in 1982.[51]

While HMDA was successful in helping the public understand mortgage lending discrimination between neighborhoods, events in the late 1980s shifted public attention to discrimination between individual applicants and borrowers. Community groups had argued that individuals within a particular neighborhood were experiencing discrimination during the mortgage lending process. These groups lacked sufficient evidence to prove the extent and severity of the problem, until a series of investigative reports supported their arguments by demonstrating significant racial disparities in mortgage lending between several neighborhoods in both Atlanta and Detroit.[52] At the same time, a Federal Reserve Bank of Boston study that

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[49] *See* Staff of S. Comm. on Banking, Hous., & Urban Affairs, 95th Cong., *Second Report on Enforcement of the Equal Credit Opportunity and Home Mortgage Disclosure Acts* 2-3 (Comm. Print 1977) ("The committee's principal recommendation called for promulgation of regulations to establish . . . the requirement that lenders keep records indicating the race and sex of loan applications. . . . The committee called for a thorough periodic review by examiners of a lender's pattern of mortgage loans, making use of both racial and sex notations and the data provided under the Home Mortgage Disclosure Act."). The Committee also supported development of an "objective test for discrimination that can be inferred from a comparison of the racial and economic characteristics of successful and unsuccessful loan applicants." *Id.* at 4.

[50] Housing and Community Development Act of 1980, Public Law 96-399, section 340, 94 Stat. 1614, 1657-58 (1980).

[51] 47 FR 750 (Jan. 7, 1982).

[52] *See* Bill Dedman, *The Color of Money*, Atlanta-Journal Constitution, May 1-4, 1988; David Everett et al., *The Race for Money*, Detroit Free Press, July 24-27, 1988; Bill Dedman, *Blacks Turned Down for Home Loans from S&Ls Twice as Often as Whites*, Atlanta Journal-Constitution, Jan. 22, 1989.

cross-referenced HMDA data, census data, and individual deed transfer data confirmed that similar racial disparities existed in the Boston mortgage market.[53] These major reports and studies confirmed the arguments advanced by community groups and fair housing advocates that HMDA needed to be updated to improve the publicly available information about lending practices.[54]

These revelations coincided with the savings and loan crisis of the late 1980s, during which many depository institutions throughout the country failed.[55] Concerns over mortgage lending discrimination, coupled with the need to respond to the savings and loan crisis, motivated Congress to amend HMDA significantly.[56] In 1988, Congress amended HMDA to expand institutional coverage to include mortgage banking subsidiaries of bank holding companies and savings and loan holding companies, and savings and loan service corporations that originate or purchase mortgage loans.[57] As amended, HMDA applied to depository institutions, mortgage banking subsidiaries of holding companies, and savings and loan service corporations with over $10 million in assets and offices in MSAs or primary MSAs.

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[53] "The data show that mortgages were originated on 6.9 percent of separately owned structures and condominiums in majority white neighborhoods during an average year between 1982 and 1987. The figure drops to 3.5 percent for majority black neighborhoods and to 2.7 percent for neighborhoods with populations that were more than 80 percent black." Katharine Bradbury et al., *Geographic Patterns of Mortgage Lending in Boston, 1982–1987*, New Eng. Econ. Rev., Sept./Oct. 1989, at 23.

[54] "HMDA proponents believed that this new research provided the 'smoking gun' needed to make the case for further changes to HMDA and the need for enhanced emphasis on fair lending enforcement." Ren Essene & Allen Fishbein, Harvard Univ. Joint Center for Hous. Studies, *The Home Mortgage Disclosure Act at Thirty-Five: Past History, Current Issues* 17 (Aug. 2010).

[55] *See* FDIC, *History of the Eighties — Lessons for the Future: Volume I: An Examination of the Banking Crises of the 1980s and Early 1990s*, at 241 (Dec. 1997), *available at* www.fdic.gov/bank/historical/history/vol1.html.

[56] *See* Ren Essene & Allen Fishbein, Harvard Univ. Joint Center for Hous. Studies, *The Home Mortgage Disclosure Act at Thirty-Five: Past History, Current Issues* 17-18 (Aug. 2010).

[57] Public Law 100-242, section 565, 101 Stat. 1815, 1945 (1988); 53 FR 31683 (Aug. 19, 1988) (implementing these amendments and making other revisions to Regulation C).

One year later, the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) fundamentally changed HMDA in several other ways.[58] FIRREA amended HMDA to cover certain mortgage lenders that are not affiliated with depository institutions or holding companies.[59] To provide greater transparency into the mortgage lending process, HMDA was amended to require disclosure, on a transaction-level basis, of data on applications received in general, as well as data on the race, gender, and income of individual applicants and borrowers.[60] These changes marked a substantial shift in the statutory approach to the public disclosure of mortgage market data.[61]

This shift from aggregate to transaction-level reporting, and from limited to more detailed loan data, substantially increased the usefulness of the HMDA data. Studies conducted using the expanded HMDA data confirmed that, in many cases, an applicant's race alone influenced whether the applicant was denied credit.[62] These studies led the Federal financial institution regulators to announce that the new HMDA data would be used to determine whether financial institutions were fulfilling their fair lending obligations.[63] While the new data strengthened fair

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[58] Public Law 101-73, section 1211, 103 Stat. 183, 524-26 (1989).

[59] *Id*. The Federal Deposit Insurance Corporation Improvement Act of 1991 subsequently authorized the Board, in consultation with HUD, to develop a new exemption standard for nondepository mortgage lenders that is comparable to the exemption for depository institutions with $10 million or less in total assets. Public Law 102-242, section 224, 105 Stat. 2236, 2307 (1991). In 1992, the Board adopted a standard that expanded coverage of nondepository institutions by providing that a nondepository mortgage lender with an office in an MSA would be covered if it met either an asset-size test or a lending activity test. 57 FR 56963 (Dec. 2, 1992).

[60] Public Law 101-73, section 1211, 103 Stat. 183, 524-26 (1989); *see* Allen J. Fishbein, *The Ongoing Experiment with "Regulation from Below:" Expanded Reporting Requirements for HMDA and CRA*, 3 Housing Policy Debate 601, 615-16 (1993).

[61] The Board implemented these changes in a final rule later that year. 54 FR 51356 (Dec. 15, 1989).

[62] *See* Alicia H. Munnell, et al., *Mortgage Lending in Boston: Interpreting the HMDA Data*, American Econ. Review. Fed. Reserve Bank of Boston Working Paper 92-7, at 22 (1992); James H. Carr & Isaac F. Megbolugbe, *The Federal Reserve Bank of Boston: Study on Mortgage Lending Revisited*, 4 Journal of Housing Research 2, 277 (1993).

[63] *See e.g.*, Richard D. Marisco, *Shedding Some Light on Lending: The Effect of Expanded Disclosure Laws on Home Mortgage Marketing, Lending, and Discrimination in the New York Metropolitan Area*, 27 Fordham Urb. L.

lending oversight and enforcement, it also had a powerful effect on the relationship between communities and financial institutions. Community groups used the data to monitor lending within their communities and enter into agreements with financial institutions to ensure that the local needs were being served in a responsible manner.[64] By increasing the degree of transparency in the mortgage market, the FIRREA amendments to HMDA dramatically improved the public's understanding of how mortgage lending decisions affected both communities and individual applicants and borrowers.

Market Evolution, Subprime Lending, and Its Aftermath. After the FIRREA amendments, three major developments prompted rapid changes in the mortgage industry. First, the deregulation of the banking industry in 1994 led to a substantial number of bank mergers and reorganizations.[65] Second, the expansion of the secondary market increased the availability of mortgage loans while enabling lenders to offer new types of mortgage loans to a wider range of borrowers.[66] Third, advances in mortgage lending technology enabled the mortgage market to move from lengthy, manual origination processes to less burdensome and more efficient, computerized processes.[67] These developments increased the availability of mortgage loans to

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J. 481, 506 (1999); Bd. of Governors of the Fed. Reserve Sys., Interagency Policy Statement on Fair Mortgage Lending Practices, Oct. 9, 1992, *available at* http://www.federalreserve.gov/bankinforeg/interagencystatement.htm; Interagency Task Force on Fair Lending Policy Statement on Discrimination in Lending, 73 FR 18266 (Apr. 15, 1994).

[64] *See* Adam Rust, Fed. Reserve Bank of Boston and Fed. Reserve Bank of San Francisco, *A Principle-Based Redesign of HMDA and CRA Data in Revisiting the Community Reinvestment Act: Perspectives on the Future of the Community Reinvestment Act* 179 (Feb. 2009).

[65] *See* Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, Public Law 103-328, 108 Stat. 2338.

[66] *See* Patricia A. McCoy & Elizabeth Renuart, Harvard Univ. Joint Center for Hous. Studies, *The Legal Infrastructure of Subprime and Nontraditional Home Mortgages* 8-10 (Feb. 2008).

[67] U.S. Fin. Crisis Inquiry Comm'n, *The Financial Crisis Inquiry Report: Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States* 72 (Official Gov't ed. 2011), *available at* http://www.gpo.gov/fdsys/pkg/GPO-FCIC/pdf/GPO-FCIC.pdf.

all borrowers, but they also increased the sophistication of lending institutions and the complexity of the mortgage lending process.

HMDA data, coupled with amendments to the CRA, helped communities engage with financial institutions to address issues stemming from deregulation. Community groups used HMDA data to challenge proposed bank mergers, and many depository institutions developed lending programs dedicated to addressing the needs of their communities.[68] However, HMDA data were not sufficient to help communities fully understand and address one major development that grew out of increased securitization and technological advances – the expansion of the subprime market. Between the mid-1990s and the mid-2000s, subprime lending dramatically increased.[69] While subprime lending increased access to credit to many borrowers and in many communities, studies suggested that many subprime lenders offered loans in a predatory and discriminatory manner.[70] Studies conducted by Federal agencies in the early 2000s concluded that there were significant concerns about discrimination in the subprime market, but that the HMDA data did not provide enough transparency to help communities and public officials understand the scope of the problem and devise effective solutions.[71]

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[68] *See* Ben Bernanke, Chairman, Fed. Reserve Bd. (Speech), "The Community Reinvestment Act: Its Evolution and New Challenges," Mar. 30, 2007, *available at* http://www.federalreserve.gov/newsevents/speech/bernanke20070330a.htm.

[69] "From essentially zero in 1993, subprime mortgage originations grew to $625 billion by 2005, one-fifth of total mortgage originations in that year, a whopping 26 percent annual rate of increase over the whole period." Edward M. Gramlich, Urban Institute and Fed. Reserve Bank of Kansas City, *Booms and Busts: The Case of Subprime Mortgages* 107 (Aug. 31, 2007).

[70] Allen Fishbein & Harold Bunce, HUD, *Subprime Market Growth and Predatory Lending*, Hous. Policy in the New Millennium 274-76 (2000), http://www.huduser.org/publications/pdf/brd/13fishbein.pdf.

[71] "While HMDA data have been a crucial tool allowing policy makers, regulators and the public to understand mortgage lending patterns, additional data not now required to be reported would more completely describe mortgage markets – the subprime market, in particular. Greater transparency in this market would promote more informed policy making and regulation, and may itself help to improve practices of lenders." HUD, U.S. Dep't of Treas., Curbing Predatory Home Mortgage Lending: A Joint Report 100 (June 2000), http://archives.hud.gov/reports/treasrpt.pdf.

The Board responded by amending Regulation C to provide greater visibility into the subprime market. The Board initiated its last comprehensive review of Regulation C through an advance notice of proposed rulemaking in 1998[72] and notices of proposed rulemakings in 2000[73] and 2002,[74] which culminated in final rules promulgated in 2002.[75] Among other things, the Board's 2002 revisions to Regulation C:

- Required financial institutions to report pricing information for higher-priced mortgage loans;
- Required financial institutions to identify loans subject to HOEPA;
- Required financial institutions to report denials of applications received through certain preapproval programs and permitted financial institutions to report requests for preapproval that were approved but not accepted;
- Expanded the coverage of nondepository financial institutions by adding a loan origination dollar-volume threshold of $25 million to the loan-percentage test;
- Required financial institutions to report whether a loan involves a manufactured home; and
- Required financial institutions to ask applicants their ethnicity, race, and sex in applications taken by telephone and conform the collection of data on ethnicity and race to standards established by the Office of Management and Budget (OMB) in 1997.

[72] 63 FR 12329 (Mar. 12, 1998).
[73] 65 FR 78656 (Dec. 15, 2000).
[74] 67 FR 7252 (Feb. 15, 2002).
[75] 67 FR 7222 (Feb. 15, 2002); 67 FR 30771 (May 8, 2002); 67 FR 43218 (June 27, 2002).

The 2002 revisions to Regulation C focused on the data elements that are required rather than the institutions or transactions that are covered. In adopting the revisions, the Board considered changes that had occurred in the home mortgage market, including the growth of subprime lending. The revisions improved the usefulness of the HMDA data, especially with respect to fair lending concerns, but adding a limited number of loan pricing variables only modestly addressed the need for increased transparency in the subprime mortgage market.[76]

However, discrimination was only one of the problems caused by the predatory practices employed by certain subprime lenders. Evidence demonstrated that predatory subprime lending in the late 1990s resulted in high rates of delinquency and foreclosure, threatening the stability of many communities.[77] This threat only increased as underwriting standards deteriorated throughout the 2000s. But when communities needed more granular loan data the most, HMDA did not provide it. As a result, communities could not understand the magnitude of the risk to which they were exposed. Neither could many community groups or public officials, who could not afford to purchase the detailed loan datasets available to the financial industry.[78]

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[76] *See* Patricia A. McCoy, *The Home Mortgage Disclosure Act: A Synopsis and Recent Legislative History*, 29 Journal of Real Estate Research, no. 4 at 388 (2007).

[77] "The growing incidence of abusive practices in a segment of the mortgage lending market has been stripping borrowers of home equity and threatening families with foreclosure, destabilizing the very communities that are beginning to enjoy the fruits of our Nation's economic success." Allen Fishbein & Harold Bunce, HUD, *Subprime Market Growth and Predatory Lending*, Hous. Policy in the New Millennium 278 (2000), http://www.huduser.org/publications/pdf/brd/13fishbein.pdf. "In the three markets with data available on trends in foreclosures over time, it was found that foreclosures by subprime lenders grew sharply during the 1990s even as foreclosures by other lenders declined or grew at a much more moderate pace." Harold L. Bunce et al., HUD, *Subprime Foreclosures: The Smoking Gun of Predatory Lending?* 268 (2000).

[78] "HMDA is a limited data set for groups without financial resources to pay for better information. A set of data providers . . . buy loan-level home mortgage data and then repackage the data for consumption by other lenders, analysts, and academics. Some nonprofit groups buy this information, but for the most part, it is too expensive for them." Adam Rust, Fed. Reserve Bank of Boston and Fed. Reserve Bank of San Francisco, *A Principle-Based Redesign of HMDA and CRA Data* in *Revisiting the Community Reinvestment Act: Perspectives on the Future of the Community Reinvestment Act* 181 (Feb. 2009), http://www.frbsf.org/community-development/files/revisiting_cra.pdf.

Communities throughout the nation were devastated when the housing and financial markets collapsed in 2007. The financial crisis resulted in the loss of nearly $7 trillion in household wealth, and an unprecedented number of homeowners faced foreclosure.[79] Federal, State, and local officials created relief programs intended to assist distressed homeowners, prevent a complete collapse of local housing markets, and to assist communities impacted by foreclosure and abandonment.[80] While the crisis initially affected subprime borrowers, the problems eventually extended to the entire mortgage market.[81] Both prime and subprime borrowers experienced high levels of delinquency and foreclosure, which destabilized communities across the country.[82] In the wake of the unprecedented number of foreclosures, communities were forced to grapple with numerous abandoned homes, properties stripped of fixtures, and vandalism, which contributed to the downward spiral in neighborhood property values.[83] Furthermore, although the crisis affected homeowners across the nation, a disproportionate share of wealth was lost by minority and low-income households.[84]

Communities and public officials used HMDA data, including the data on subprime lending, to identify at-risk neighborhoods and to develop foreclosure relief and homeownership

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[79] *See The U.S. Housing Market: Current Conditions and Policy Conditions* 1 (Fed. Reserve Bd. White Paper Jan. 4, 2012), http://www.federalreserve.gov/publications/other-reports/files/housing-white-paper-20120104.pdf.

[80] For example, the U.S. Department of the Treasury's Hardest Hit Fund provides funds for homeownership stabilization programs in Alabama, Arizona, California, Florida, Georgia, Illinois, Indiana, Kentucky, Michigan, Mississippi, Nevada, New Jersey, North Carolina, Ohio, Oregon, Rhode Island, South Carolina, Tennessee, and Washington, DC. http://www.treasury.gov/initiatives/financial-stability/TARP-Programs/housing/hhf/Pages/Program-Purpose-and-Overview.aspx. *See also supra* note 17.

[81] *See* Cong. Budget Office, Options for Responding to Short-Term Economic Weakness 21-22 (Jan. 2008), *available at* http://www.cbo.gov/sites/default/files/cbofiles/ftpdocs/89xx/doc8916/01-15-econ_stimulus.pdf.

[82] *See* Joint Center for Hous. Studies Harvard Univ., The State of the Nation's Housing 2010, at 19 (2010), http://www.jchs.harvard.edu/research/publications/state-nations-housing-2010.

[83] *See* Fed. Reserve Bank of Cleveland, *Facing the Foreclosure Crisis in Greater Cleveland: What Happened and How Communities are Responding* 13-14 (June 2010).

[84] *See supra* note 82.

stabilization programs.[85] However, the limited data points reported under HMDA presented several challenges for public officials attempting to create effective and responsive relief programs.[86] In some cases, cities and counties were able to purchase mortgage data from commercial providers to complement the HMDA data and obtain a more complete picture of the risks posed to their communities.[87] To begin addressing the need to improve publicly available mortgage market data, Congress amended HMDA and the Board revised Regulation C shortly after the mortgage crisis began. Specifically, in 2008, the Board revised the rules for reporting price information on higher-priced mortgage loans.[88] These revisions conformed Regulation C requirements to the definition of "higher-priced mortgage loan" adopted by the Board under Regulation Z in July 2008.[89]

At the same time, Congress began preparing a legislative response to the financial crisis.[90] In 2010, Congress amended HMDA in the Dodd-Frank Act, which also transferred HMDA rulemaking authority and other functions from the Board to the Bureau.[91] Among other changes, the Dodd-Frank Act expands the scope of information relating to mortgage applications and loans that must be compiled, maintained, and reported under HMDA. New data points

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[85] *See, e.g.*, Hearing Before the Federal Reserve Board on Regulation C on Implementing the Home Mortgage Disclosure Act of 1975 (2010) (testimony of Claudia Monterrosa, Director, Policy & Planning, Los Angeles Housing Department, City of Los Angeles), *available at* http://www.federalreserve.gov/communitydev/files/monterrosa.pdf. *See also supra* note 17.
[86] *Id.*
[87] For example, the Atlanta Regional Commission and the Office of University-Community Partnerships at Emory University used the HMDA data and a purchased dataset to understand the full scope of the properties at risk of foreclosure in the greater Atlanta area. *See* G. Thomas Kingsley et al., Urban Institute, *Addressing the Foreclosure Crisis: Action-Oriented Research in Three Cities* 17-18 (2009), http://www.urban.org/publications/412001.html.
[88] 73 FR 63329 (Oct. 24, 2008).
[89] *Id.* at 63331; 73 FR 44522 (July 30, 2008).
[90] *See* Mortgage Reform and Anti-Predatory Lending Act of 2007, H.R. 3915, 110th Cong.; H.R. Rep. No. 110-441 (2007); Mortgage Reform and Anti-Predatory Lending Act, H.R. 1728, 111th Cong. (2009); H.R Rep. No. 111-94 (2009).
[91] Public Law 111-203, 124 Stat. 1376, 1980, 2035-38, 2097-101 (2010). In 2010, the Board also conducted public hearings on potential revisions to Regulation C, which are discussed below.

include the age of loan applicants and mortgagors, information relating to the points and fees payable at origination, the difference between the annual percentage rate (APR) associated with the loan and a benchmark rate or rates for all loans, the term of any prepayment penalty, the value of real property to be pledged as collateral, the term of the loan and of any introductory interest rate for the loan, the presence of contract terms allowing non-amortizing payments, the origination channel, and the credit scores of applicants and mortgagors.[92] The Dodd-Frank Act also authorizes the Bureau to require, "as [it] may determine to be appropriate," a unique identifier that identifies the loan originator, a universal loan identifier, and the parcel number that corresponds to the real property pledged or proposed to be pledged as collateral for the mortgage loan.[93] The Dodd-Frank Act also provides the Bureau with the authority to require "such other information as the Bureau may require."[94]

While the Dodd-Frank Act added new reporting requirements that will increase the level of transparency in the mortgage market, many argue that more publicly available information is needed to help inform communities of lending practices that affect local economies and may endanger neighborhood stability.[95] The Board convened public hearings in 2010 to gather feedback on how to improve the HMDA data. To ensure that HMDA continues to empower communities by providing transparency into mortgage lending practices, the Bureau believes that the HMDA data must be updated to address the informational shortcomings exposed by the financial crisis, to meet the needs of homeowners, potential homeowners, and neighborhoods

[92] Dodd-Frank Act section 1094(3), *amending* HMDA section 304(b), 12 U.S.C. 2803(b).
[93] *Id.*
[94] *Id.*
[95] See part III.A for a discussion of several public hearings conducted by the Board in 2010, during which many participants requested that additional information be made publicly available through HMDA.

throughout the nation, and to reflect changes in business practices and the technological evolution of the mortgage market.

B. Mortgage Technology and Data Standards

As discussed above, Congress made major amendments to HMDA in the Dodd-Frank Act, including specifying new data points for collection and providing the Bureau with broad authority to, among other things, require the collection of other data points and change the format and submission requirements for HMDA reporting. The collection and reporting of improved loan-level mortgage data has drawn strong interest from both market participants and regulators in the wake of the financial crisis. In light of its authorities, the Bureau has investigated potential uses of and alignments with industry data standards as a means to improve the quality of HMDA data that is collected and reported, and to reduce the processing and compliance costs on financial institutions.

Federal policy strongly favors agency use of voluntary consensus standards, and reliance on appropriate existing standards would allow the Bureau to draw on the expertise and resources of other data standards developers to serve the public interest.[96] In particular, reliance on existing voluntary consensus standards would be consistent with the National Technology Transfer and Advancement Act of 1995[97] and OMB Circular A-119,[98] which direct Federal agencies to use such standards in lieu of government-unique standards except where inconsistent

[96] *See* Administrative Conference of the United States Recommendation 2011-5 (adopted December 8, 2011), at 1.
[97] National Technology Transfer and Advancement Act, Public Law 104-113 (1996), 110 Stat. 775, 783, 15 U.S.C. 272 note.
[98] "Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities," http://www.whitehouse.gov/omb/circulars_a119/. OMB Circular A-119 defines "voluntary consensus standards" to mean standards created by organizations whose processes provide attributes of openness, balance, due process, an appeal, and decisionmaking by general agreement.

with law or otherwise impractical. The Office of Financial Research within the U.S. Department of the Treasury has stated that, for the financial services market, appropriate data standards would provide data transparency, comparability, and quality, and also promote sound risk management by the industry by reducing costs, fostering automation, facilitating the aggregation of data from disparate sources, and enabling the end-to-end tracking of a financial transaction.[99] As discussed further below, the Bureau believes that HMDA compliance and data submission can be made easier, and HMDA data quality improved, by aligning the requirements of Regulation C to the extent practicable with existing industry standards for collecting and transmitting mortgage data.

Currently, HMDA data are submitted in the loan application register format, consistent with the instructions in appendix A to Regulation C.[100] The data points reported on each loan application register entry are defined by Regulation C, its appendices, and commentary.[101] Financial institutions also seek further information in other materials.[102] Financial institutions submit the data in an electronic, machine-readable format that conforms to the loan application register format, except for financial institutions that report 25 or fewer entries, which may submit their loan application register entries in paper format.[103]

Financial institutions maintain records of mortgage loan applications and originations in many forms and in many systems outside of those used for HMDA reporting. In many cases,

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[99] *See* Dept. of Treas. Off. of Fin. Research, 2012 *Annual Report to Congress*, "*Chapter 5: Promoting Data Standards*," 107, http://www.treasury.gov/initiatives/wsr/ofr/Documents/OFR_Annual_Report_071912_Final.pdf.
[100] 12 CFR part 1003, App. A.
[101] 12 CFR part 1003.
[102] *E.g.*, FFIEC, A Guide to HMDA Reporting: Getting it Right!; FFIEC, *Home Mortgage Disclosure Act Regulatory and Interpretive FAQs* [hereinafter FFIEC FAQs], *available at* http://www.ffiec.gov/hmda/.
[103] Comment 5(a)-2.

these systems use or define data points in ways that differ from Regulation C requirements. As a result, those systems are not directly compatible with the HMDA loan application register format, so that financial institutions have to use additional software and modify data in existing systems in order to submit HMDA data in the proper format.

The Bureau believes that the burden associated with Regulation C compliance and data submission can be reduced by aligning the requirements of Regulation C to the extent practicable with existing industry standards for collecting and transmitting data on mortgage loans and applications. The Bureau believes that promoting consistent data standards for both industry and regulatory use has benefits for market efficiency, market understanding, market oversight, and improved data quality.[104] In light of these considerations, the Bureau is proposing to align the HMDA data requirements, to the extent practicable, with the widely used Mortgage Industry Standards Maintenance Organization (MISMO) standards for residential mortgages, including the Uniform Loan Delivery Dataset (ULDD) that is used in the delivery of loans to the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the government-sponsored entities (GSEs)).

MISMO, a wholly owned non-profit subsidiary of the Mortgage Bankers Association, has developed an extensive set of data standards for electronic delivery of loan-level mortgage data.[105] MISMO's mission includes: "Fostering an open process to develop, promote, and

[104] The Department of Treasury's Office of Financial Research has identified the lack of consistent data standards as a key source of risk during the recent financial crisis, and has noted the benefits of consistent data standards for both industry and regulators. *Supra* note 99.

[105] MISMO is an all-volunteer non-profit organization governed by a committee elected from its more than 150 subscribers, which include mortgage bankers, lenders, servicers, vendors, service providers, and the GSEs. *See* http://www.mismo.org/AboutMISMO.

maintain voluntary electronic commerce procedures and standards for the mortgage industry."[106] As part of MISMO's standardization efforts, it has developed an XML architecture for mortgage data and a data dictionary to provide data point names, definitions, and enumerations.[107] The mortgage industry has been increasingly adopting the MISMO data standard since its inception and this development has spurred the interest of Federal regulators in MISMO as well.

When the Federal Housing Finance Agency (FHFA) assumed oversight of the GSEs, it mandated that they align to the MISMO data standard. The FHFA directed the GSEs to develop a Uniform Mortgage Data Program (UMDP) to enhance the accuracy and quality of mortgage loan data delivery to each GSE.[108] A key component of the UMDP is the ULDD, which refers to MISMO to identify the data points and the data delivery format required in connection with the delivery of single-family loans to each GSE.[109] As of July 23, 2012, all loans delivered to the GSEs have been required to meet ULDD requirements. Given that a majority of mortgages originated in 2013 conformed to GSE guidelines – and that a large segment of the market sells at least some of their originated loans to the GSEs directly or indirectly – a significant portion of the market is already operating in accordance with the MISMO data standard.[110]

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[106] *About MISMO*, http://www.mismo.org/AboutMISMO.

[107] XML is an open standard developed, maintained, and updated by the World Wide Web Consortium. *See* http://www.w3.org/standards/xml/. An enumeration is a value associated with the defined data point. An example in the current HMDA data is the enumeration for "loan originated" within the data point of "action taken."

[108] Federal Housing Finance Agency, Fannie Mae and Freddie Mac Launch Joint Effort to Improve Loan and Appraisal Data Collection (May 24, 2010), *available at* http://fhfa.gov/Media/PublicAffairs/Pages/Fannie-Mae-and-Freddie-Mac-Launch-Joint-Effort-to-Improve-Loan-and-Appraisal-Data-Collection.aspx.

[109] *See* Fannie Mae, Uniform Loan Delivery Dataset, https://www.fanniemae.com/singlefamily/uniform-loan-delivery-dataset-uldd; Freddie Mac, Uniform Loan Delivery Dataset, http://www.freddiemac.com/singlefamily/sell/uniform_delivery.html.

[110] *See* Inside Mortgage Fin., *Mortgage Originations by Product*, Inside Mortgage Finance Newsletter, Issue 2014:04 (Jan. 31, 2014).

The Bureau recognizes that not every mortgage industry member would support alignment of the HMDA data requirements with MISMO/ULDD data standards – particularly small financial institutions that do not sell loans to the GSEs or that conduct only portfolio lending. Financial institutions that do not currently use the MISMO/ULDD data standards may have reservations about the alignment of the HMDA data requirements with such industry standards. However, the Bureau believes that the efficiencies achieved by aligning HMDA data with widely used industry data standards justify potential burdens and that the efficiencies will grow over time. Aligning with MISMO/ULDD data standards means relying on uniform data standards that are already familiar to financial institutions and data vendors. A HMDA reporter or data vendor using MISMO for business purposes would be able to use the same standard for its HMDA submission, thereby reducing the resources required to translate data into a different standard, such as the particular government standards currently used only for purposes of HMDA compliance. In addition, the Bureau believes that grounding HMDA in the common vocabulary and data standards of the industry will continue to reduce burdens should the need arise to modify Regulation C in the future. Alignment with MISMO/ULDD is also consistent with the policies discussed above that encourage use of voluntary consensus standards by Federal agencies.

C. Applicant and Borrower Privacy

As discussed above, HMDA's purposes are to provide the public and public officials with sufficient information to enable them to determine whether institutions are serving the housing needs of the communities and neighborhoods in which they are located, to assist public officials in distributing public sector investments in a manner designed to improve the private investment environment, and to assist in identifying possible discriminatory lending patterns and enforcing

antidiscrimination statutes. Today, HMDA data are the preeminent data source for regulators, researchers, economists, industry, and advocates analyzing the mortgage market both for HMDA's purposes and for general market monitoring. In implementing HMDA to effectuate its purposes, the appropriate protection of applicant and borrower privacy in light of the goals of the statute is a significant priority for the Bureau. The Bureau is mindful that privacy concerns may arise both when financial institutions compile and report data to the Bureau and other agencies and when HMDA data are disclosed to the public. The Bureau has considered both types of potential concerns in developing this proposal, and it continues to assess the implications for applicant and borrower privacy of the public disclosure of HMDA data both by financial institutions and by Federal agencies.

Compiling and Reporting of HMDA Data

Financial institutions collect various types of information from consumers in the course of processing loan applications. To promote HMDA's goals, HMDA and Regulation C require financial institutions to compile and report to the Bureau and other agencies some of this information and other information obtained or generated concerning the application or loan. As discussed above, the Dodd-Frank Act both expanded the scope of information that financial institutions must compile and report and authorized the Bureau to require financial institutions to compile and report additional data. The Bureau has considered applicant and borrower privacy in developing its proposal to implement the Dodd-Frank amendments and otherwise amend Regulation C. The Bureau's proposals are intended to ensure that data compiled and reported by financial institutions fulfill HMDA's purposes while appropriately protecting applicant and

borrower privacy.

During the Small Business Review Panel process,[111] some small entity representatives expressed concerns about the privacy implications of reporting certain current and proposed HMDA data.[112] Several small entity representatives suggested that applicant and borrower age and credit score, two new data points added to HMDA by the Dodd-Frank Act, should be reported to the Bureau and other appropriate agencies in ranges, rather than exact values, to mitigate privacy concerns.[113] The Small Business Review Panel recommended that the Bureau evaluate ways to address any privacy risks that may be created by the reporting of HMDA data to the Bureau and other agencies.[114] Consistent with this recommendation, the Bureau's consideration of applicant and borrower privacy in developing this proposal has included consideration of the format in which current and proposed HMDA data should be reported. The Bureau's proposal simultaneously seeks to address any potential privacy risks that may be created by the reporting of HMDA data to the Bureau and other agencies to ensure that the data are reported in a format that is useful in fulfilling HMDA's purposes, that avoids imposing undue burden on financial institutions or increasing the risk of errors in reporting; and that aligns to the

[111] The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), as amended by section 1100G(a) of the Dodd-Frank Act, requires the Bureau to convene a Small Business Review Panel before proposing a rule that may have a substantial economic impact on a significant number of small entities. *See* Public Law 104–121, tit. II, 110 Stat. 847, 857 (1996) (as amended by Public Law 110–28, section 8302 (2007)). As discussed in part III.C below, the Bureau convened a Small Business Review Panel concerning this proposal in February 2014.

[112] *Final Report of the Small Business Review Panel on the CFPB's Proposals Under Consideration for the Home Mortgage Disclosure Act (HMDA) Rulemaking* (Apr. 24, 2014) [hereinafter Small Business Review Panel Report], http://files.consumerfinance.gov/f/201407_cfpb_report_hmda_sbrefa.pdf at 24 (loans made to financial institutions' employees), 26 (loan originator identifier, parcel identifier), 27-28 (age, credit score, debt-to-income ratio), 30-31 (property value, total points and fees, interest rate), 35 (data disclosed on the modified loan application register), 41 (combined loan-to-value).

[113] *See* Small Business Review Panel Report at 27, 40. Small entity representatives suggested that age could be reported in ranges (*e.g.*, 20-49, 50-62, and 63 and up). *Id.* at 27.

[114] *See* Small Business Review Panel Report at 40.

extent practicable with existing industry standards for collecting and transmitting mortgage data. The Bureau seeks comment on alternatives to addressing any potential risks to privacy interests created by the reporting of HMDA data to the Bureau and other agencies, including the impact of such alternatives on the utility of the data, on burden to financial institutions and risks of errors in reporting, and on alignment with existing industry standards for transmitting mortgage data. As discussed below, the Bureau's assessment of any potential risks to privacy interests created by the public disclosure of HMDA data is ongoing.

The Bureau also has received feedback from industry expressing concern about the security of the data to be reported under this proposal during its submission. As part of its efforts to improve and modernize HMDA operations, the Bureau is considering various improvements to the HMDA data submission process, including further advancing encryption if necessary to protect the security of HMDA data to be reported under this proposal.

Disclosures of HMDA Data

As discussed above, HMDA is a disclosure statute. To fulfill HMDA's purposes, the types of data a financial institution is required to compile and report under HMDA and Regulation C have been expanded since the statute's enactment in 1975, and the formats in which HMDA data have been disclosed to the public also have evolved. At present, HMDA and Regulation C require data to be made available to the public in both aggregate and loan-level formats. First, each financial institution must make its "modified" loan application register available to the public, with three fields deleted to protect applicant and borrower privacy.[115]

[115] Section 1003.5(c); HMDA section 304(j)(2)(B). Section 1003.5(c) requires that, before making its loan application register available to the public, a financial institution must delete three fields to protect applicant and

Each financial institution must also make available a disclosure statement prepared by the FFIEC that shows the financial institution's HMDA data in aggregate form.[116] In addition, the FFIEC makes available disclosure statements for each financial institution[117] as well as aggregate reports for each MSA and metropolitan division (MD) showing lending patterns by certain property and applicant characteristics.[118] Since 1991, on behalf of the agencies receiving HMDA data, the FFIEC also has released annually a loan-level dataset containing all reported HMDA data for the preceding calendar year. To reduce the possibility that data users could identify particular applicants or borrowers in these data, the same three fields that are deleted from the modified loan application register that financial institutions make available are deleted from this release.[119]

The Dodd-Frank Act amendments to HMDA added new section 304(h)(1)(E), which directs the Bureau to develop regulations, in consultation with other appropriate agencies, that "modify or require modification of itemized information, for the purpose of protecting the privacy interests of the mortgage applicants or mortgagors, that is or will be available to the public." Section 304(h)(3)(B), also added by the Dodd-Frank Act, directs the Bureau to "prescribe standards for any modification under paragraph (1)(E) to effectuate the purposes of [HMDA], in light of the privacy interests of mortgage applicants or mortgagors. Where

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borrower privacy: application or loan number, the date that the application was received, and the date action was taken.

[116] Section 1003.5(b); HMDA section 304(k).

[117] Section 1003.5(f); HMDA section 304(f).

[118] Section 1003.5(f); HMDA section 310.

[119] The agencies first released loan-level HMDA data in October 1991. In announcing that the loan-level data submitted to the agencies on the loan application register would be made available to the public, the FFIEC noted that "[a]n unedited form of the data would contain information that could be used to identify individual loan applicants" and that the data would be edited prior to public release to remove the application identification number, the date of application, and the date of final action. 55 FR 27886, 27888 (July 6, 1990).

necessary to protect the privacy interests of mortgage applicants or mortgagors, the Bureau shall provide for the disclosure of information . . . in aggregate or other reasonably modified form, in order to effectuate the purposes of [HMDA]."[120]

The Bureau interprets HMDA, as amended by these provisions, to call for the use of a balancing test to determine whether and how HMDA data should be modified prior to its public release in order to protect applicant and borrower privacy while also fulfilling the public disclosure purposes of the statute.[121] This proposed rule only addresses financial institutions' disclosures of HMDA data to the public; it does not address the FFIEC's release of HMDA data. The Bureau, in consultation with other appropriate agencies, will use the balancing test to evaluate potential privacy risks created by HMDA data made available to the public by both financial institutions and the FFIEC, including the loan-level data that the FFIEC currently makes available on behalf of the Bureau and other agencies. The Bureau intends to provide a process for the public to provide input on the application of the balancing test to the data currently made available by the FFIEC at a later date.

Using the balancing test to evaluate particular HMDA data points, individually and in combination, and various options for providing access to HMDA data, the Bureau will balance the importance of releasing the data to accomplish HMDA's public disclosure purposes against the potential harm to an applicant or borrower's privacy interest that may result from the release

[120] Section 304(h)(3)(A) provides that a modification under section 304(h)(1)(E) shall apply to information concerning "(i) credit score data . . . in a manner that is consistent with the purpose described in paragraph (1)(E); and (ii) age or any other category of data described in paragraph (5) or (6) of subsection (b), as the Bureau determines to be necessary to satisfy the purpose described in paragraph (1)(E), and in a manner consistent with that purpose."

[121] Section 1022(c)(8) of the Dodd-Frank Act provides that, "[i]n collecting information from any person, publicly releasing information held by the Bureau, or requiring covered persons to publicly report information, the Bureau shall take steps to ensure that" certain information is not "made public under this title." The Bureau interprets "under this title" to not include data made public pursuant to HMDA and Regulation C.

of the data without modification. Modifications the Bureau may consider where warranted include various disclosure limitation techniques, such as techniques aimed at masking the precise value of data points,[122] aggregation, redaction, use restrictions, query-based systems, and a restricted access program.[123] The Bureau understands that the diverse populations of HMDA data users have different data needs, including with respect to the granularity of data, and recognizes that mitigating privacy risks in data disclosed to the public may decrease the data's utility to its users. The Bureau interprets HMDA, as amended by the Dodd-Frank Act, to require that public HMDA data be modified only when the release of the unmodified data creates risks to applicant and borrower privacy interests that are not justified by the benefits of such release to the public for the statutory purposes. The Bureau believes that privacy interests arise where the data's disclosure may both substantially facilitate the identification of an applicant or borrower *and* disclose information about the applicant or borrower that is not otherwise public and may be harmful or sensitive.

The Bureau believes that its interpretation of HMDA to call for the use of the balancing test described herein best effectuates the purposes of the statute. HMDA's purposes are to provide the public and public officials with sufficient information to enable them to determine whether institutions are serving the housing needs of the communities and neighborhoods in which they are located, to assist public officials in distributing public sector investments in a

[122] Examples of disclosure techniques that may mitigate privacy concerns include binning, coarsening, perturbing, and top- and bottom-coding. Data binning, for example, is a technique wherein the original data value (for example, a number reported to the agencies on the loan application register) is placed in an interval, or bin, and is then represented by the value of that bin. Binning allows data to be shown clustered into ranges rather than as precise values.

[123] A restricted access program could allow access to privacy-sensitive information, otherwise unavailable to the general public, for research purposes.

manner designed to improve the private investment environment, and to assist in identifying possible discriminatory lending patterns and enforcing antidiscrimination statutes. The Bureau believes that access to loan-level HMDA data, in particular, enhances the use of HMDA data by members of the public and public officials and thus best effectuates HMDA's purposes.[124] At the same time, the Dodd-Frank Act amendments and the Bureau's proposals would require that financial institutions report on the loan application register submitted to the Bureau and other agencies additional data points that may raise potential privacy concerns if made available to the public.[125] The Bureau believes that the balancing test described above provides for the appropriate protection of applicant and borrower privacy in light of the public disclosure goals of the statute.

During the Small Business Review Panel process, some small entity representatives expressed concerns about the privacy implications of certain current and proposed HMDA data.[126] The Small Business Review Panel recommended that the Bureau evaluate ways to address any privacy risks that may be created by the disclosure of HMDA data.[127] The Bureau's analysis under the balancing test concerning whether and how HMDA data should be modified

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[124] The Bureau agrees with the 1990 findings of the FFIEC agencies that "the release of the raw [loan-level] data is consistent with the congressional intent to maximize the utilization of" the HMDA data. 55 FR 27886, 27888 (July 6, 1990). The importance of loan-level data to HMDA's purposes is also reflected in Congress's use of the term "loan application register information" in HMDA section 304(j) to describe the data financial institutions must make available to the public upon request. At the time HMDA was amended to add section 304(j), the term "loan/application register" was used in Regulation C to describe the loan-by-loan, register format for reporting HMDA data to the agencies. Section 304(j)(2)(A), as originally adopted, provided that, subject to deletions to protect privacy, "the loan application register information described in paragraph (1) may be disclosed by a depository institution without editing or compilation and in the format in which such information is maintained by the institution." Housing and Community Development Act of 1992, Public Law 102-550, section 932(a), 106 Stat. 3672, 3889 (1992).

[125] Congress specifically identified credit score and age as new data points that may raise privacy concerns. *See* HMDA section 304(h)(3)(A).

[126] *See supra* note 112.

[127] *See* Small Business Review Panel Report at 40.

prior to public release is ongoing. The Bureau also continues to investigate available strategies and techniques to protect applicant and borrower privacy, where warranted, while preserving the data's utility for HMDA's purposes. The Bureau solicits feedback on the balancing test described herein, including whether other interpretations of HMDA section 304(h)(1)(E) and (h)(3) would better effectuate HMDA's purposes. As discussed below in the section-by-section analysis of proposed § 1003.5(c), in order to avoid creating new privacy risks and imposing burdens on financial institutions, the Bureau is proposing that financial institutions release on the modified loan application register only those data fields that are currently released, and is seeking comment on any privacy risks created by and disclosure benefits of those data fields. As noted above, the Bureau intends to provide a process for the public to provide input on the application of the balancing test for purposes of the data made available to the public by the FFIEC, including the loan-level data it currently makes available on behalf of the Bureau and other agencies, and on any proposed modifications to such data, at a later date.

III. Outreach

In 2010, when the Board had rulemaking authority over HMDA, the Board conducted a series of public hearings that elicited feedback on improvements to Regulation C. After the rulemaking authority for HMDA was transferred to the Bureau, the Bureau conducted outreach on implementing the Dodd-Frank Act amendments to HMDA and other potential changes to Regulation C by soliciting comments in Federal Register notices and by meeting with a variety of stakeholders, including trade associations, financial institutions, community groups, and other Federal agencies. The Bureau also convened a Small Business Review Panel to obtain feedback from small financial institutions as well as the general public. To prepare this proposal, the

Bureau considered both the comments presented to the Board during its public hearings and feedback provided to the Bureau during its outreach.

A. The Board's 2010 Public Hearings

In 2010, the Board convened public hearings on potential revisions to Regulation C (the Board's 2010 Hearings).[128] The Board began the reassessment of HMDA in the aftermath of the financial crisis, as Congress was considering the legislation that later became the Dodd-Frank Act. The Board stated that there were three purposes of the hearings: (1) to provide information that would assist the Board in its review of Regulation C, (2) to help assess the need for additional data, and (3) to identify emerging issues in the mortgage market that could warrant additional research.[129] Representatives from community organizations, consumer advocates, industry, academia, State and Federal agencies, and others participated in the hearings. The Board did not commence a rulemaking to consider any of the feedback provided during the hearings before HMDA rulemaking authority was transferred to the Bureau.

Institutional Coverage

The Board identified institutional coverage as one of the topics for discussion at the hearings. Participants addressed whether the Board should require reporting from additional types of institutions, whether certain types of institutions should be exempt from reporting, and whether any other changes should be made to the rules for determining which types of institutions must report data. For example, representatives from Federal agencies, lenders, and consumer advocates urged the Board to adopt a consistent minimum loan threshold across all

[128] *See* 75 FR 35030 (June 21, 2010).
[129] *Id*.

types of institutions, including banks, savings associations, credit unions, and nondepository institutions.[130] In particular, industry representatives noted the limited value derived from data reported by lower-volume depository institutions.[131] Industry and community advocate representatives also asserted that loan volume, rather than asset size, should trigger reporting, particularly for nondepository lenders because they tend to have a different capital structure than banks, savings associations, and credit unions.[132] Participants also urged the Board to expand coverage of nondepository institutions.[133] In addition, participants commented that the coverage scheme for nondepository institutions was too complex and should be simplified.[134]

Data Elements

The Board solicited feedback on ways to improve the quality and usefulness of HMDA data, including whether any data elements should be added, modified, or deleted. Participants provided suggestions about ways to improve the utility of HMDA data. Participants discussed modifications to the data fields currently collected in Regulation C that may clarify reporting

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[130] Transcript, Fed. Reserve Board Public Hearing on Potential Revisions to the Home Mortgage Disclosure Act, Washington D.C., Sept. 24, 2010 [hereinafter Washington Hearing], (remarks of Faith Schwartz, Senior Advisory, HOPE Now Alliance at Washington, DC hearing) ("I think everyone should have the burden of reporting that has any meaningful originations out there…."), http://www.federalreserve.gov/communitydev/files/full_transcript_board_20100924.pdf *; id*. (remarks of Josh Silver, Vice President of Research and Policy, National Community Reinvestment Coalition) ("[I]n terms of your threshold, it is very confusing because you have depository institutions that have different thresholds and nondepository institutions … I suggested just make it the same for everybody. If you make more than [50 reportable loans under HMDA], you disclose.… So that's a threshold I would propose across the board for nondepository institutions and depository institutions.").

[131] *See, e.g.*, Transcript, Fed. Reserve Board Public Hearing on Potential Revisions to the Home Mortgage Disclosure Act, Atlanta, Georgia, July 15, 2010 [hereinafter Atlanta Hearing], http://www.federalreserve.gov/communitydev/files/full_transcript_atlanta_20100715.pdf.

[132] *See, e.g., id*. (remarks of Faith Anderson, Vice President and General Counsel, American Airlines Federal Credit Union) ("[A]n exemption from HMDA reporting should be based on the volume of mortgage loans that are given. Exemptions should not be based on the asset size of a financial institution.").

[133] *See, e.g.*, Transcript Fed. Reserve Board Public Hearing on Potential Revisions to the Home Mortgage Disclosure Act, San Francisco, California, Aug. 5, 2010 [hereinafter San Francisco Hearing], http://www.federalreserve.gov/communitydev/files/full_transcript_sf_20100805.pdf; Washington Hearing, *supra* note 130; Atlanta Hearing, *supra* note 131.

[134] *See, e.g.*, Washington Hearing, *supra* note 130.

requirements and improve the usefulness of HMDA data. For example, participants urged the Board to augment the information collected concerning multifamily properties[135] and manufactured housing [136] and to expand the reporting of rate spread to all originations.[137] Participants also urged the Board to clarify specific reporting requirements, such as how to report modular homes[138] and conditional approvals.[139] Participants discussed the reluctance of applicants to provide demographic information, such as race and ethnicity, and the challenges financial institutions face in collecting the information.[140]

In addition, participants commented on data fields that could be added to the data collected under HMDA to improve its utility. For example, participants suggested collecting information regarding points and fees, including prepayment penalties,[141] information concerning the relationship of the loan amount to the value of the property securing the loan,[142] and information concerning whether an application was submitted through a mortgage broker.[143]

B. Early Stakeholder Outreach

Title X of the Dodd-Frank Act established the Bureau and, on July 21, 2011, transferred rulemaking authority under HMDA from the Board to the Bureau. As discussed below, the

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[135] *See, e.g.,* San Francisco Hearing, *supra* note 133; Washington Hearing, *supra* note 130.
[136] *See, e.g., id*.
[137] *See, e.g.,* Atlanta Hearing, *supra* note 131; Transcript, Fed. Reserve Board Public Hearing on Potential Revisions to the Home Mortgage Disclosure Act, Chicago, Illinois, Sept. 16, 2010 [hereinafter Chicago Hearing], http://www.federalreserve.gov/communitydev/files/full_transcript_chicago_20100916.pdf; *id*. (remarks of Professor Jim Campen, University of Massachusetts).
[138] *See, e.g.,* Atlanta Hearing, *supra* note 131.
[139] *See, e.g.,* Washington Hearing, *supra* note 130.
[140] *See, e.g.,* Atlanta Hearing, *supra* note 131; San Francisco Hearing, *supra* note 133; Chicago Hearing, *supra* note 137.
[141] *See, e.g.,* San Francisco Hearing, *supra* note 133; Chicago Hearing, *supra* note 137.
[142] *See, .e.g.,* Atlanta Hearing, *supra* note 131; San Francisco Hearing, *supra* note 133; Chicago Hearing, *supra* note 137; Washington Hearing, *supra* note 130.
[143] *See, e.g.,* Chicago Hearing, *supra* note 137.

Dodd-Frank Act also amended HMDA to add additional data points and make other statutory changes. However, pursuant to section 1094(3)(F) of the Dodd-Frank Act, financial institutions are not required to report new data under paragraphs (5) or (6) of HMDA subsection (b) until after the Bureau publishes final regulations with respect to such disclosures.

On May 31, 2011, the Bureau published a notice for public comment providing a preliminary list of rules that would be enforced by the Bureau upon the designated transfer date.[144] The list included Regulation C and invited public comment on the list. On July 21, 2011, the Bureau published the final list of rules, which included Regulation C.[145] The Bureau received general comments requesting the Bureau not to impose duplicative regulatory burdens, that it take into account differences between regulated entities in rulemaking, and that it involve stakeholders in the Bureau's rulemaking process.

Since the Bureau's inception and its assumption of authority over Federal consumer financial laws, it has tried to be responsive to those early comments regarding regulatory burden, differences in regulated entities, and outreach to stakeholders in its rulemaking process. Building on the feedback received during the Board's 2010 Hearings, the Bureau has conducted outreach and obtained significant feedback on the Dodd-Frank amendments and other potential changes to Regulation C through Federal Register notices and meetings with stakeholders. The Bureau met with various stakeholders during the proposal development process through in-person meetings and conference calls, and solicited feedback through correspondence.

[144] 76 FR 31222 (May 31, 2011).
[145] 76 FR 43570 (Jul. 21, 2011).

On December 5, 2011, the Bureau published a request for information in the Federal Register seeking feedback on regulations that it had inherited from other agencies (the Bureau's 2011 Streamlining Proposal).[146] In the Bureau's 2011 Streamlining Proposal, the Bureau stated that it believed there may be opportunities to streamline inherited regulations by updating, modifying, or eliminating outdated, unduly burdensome, or unnecessary provisions.[147] The Bureau solicited general feedback on such opportunities. The Bureau noted that, under current Regulation C, a depository institution that did not ordinarily originate home purchase loans, but that occasionally refinanced a home purchase loan to accommodate a customer, would be required to report under Regulation C. The Bureau solicited feedback on whether small numbers of refinancings should not trigger Regulation C coverage.[148] The Bureau's 2011 Streamlining Proposal provided for an initial comment period and a reply period to allow commenters to respond to each other's comments.[149] The initial comment period closed March 5, 2012 and the reply period closed June 4, 2012.[150]

The Bureau received comments regarding its specific solicitation for feedback, as well as general suggestions for streamlining Regulation C. Comments were received from consumer advocates, fair housing advocates, financial institutions, State bank supervisory organizations, State industry trade associations, and national industry trade associations. Comments from consumer and fair housing advocates generally focused on adding additional data and types of covered loans, and generally opposed any exemptions or reporting thresholds for Regulation C

[146] 76 FR 75825 (Dec. 5, 2011).
[147] *Id*.
[148] 76 FR 75825, 75828.
[149] 76 FR 75825.
[150] The reply period was initially scheduled to close on April 3, 2012, but was later extended to June 4, 2012 in response to a request from industry trade associations and consumer advocates. 77 FR 14700 (Mar. 13, 2012).

on the basis that the data are critical for fair lending enforcement and determining if community housing needs are being met. Other comments focused on various potential streamlining changes to Regulation C including establishing loan-volume or asset reporting thresholds, exempting some types of loans from coverage or adding others, making definitions consistent with other regulations, tiered reporting requirements, consolidating guidance sources, and clarifying certain definitions and reporting issues.

On December 19, 2011 the Bureau published an interim final rule establishing Regulation C in 12 CFR part 1003, implementing the assumption of HMDA authority from the Board (the Bureau's 2011 Regulation C Restatement).[151] The Bureau's 2011 Regulation C Restatement substantially duplicated the Board's Regulation C and made only non-substantive, technical, formatting, and stylistic changes. The Bureau also solicited comment through that notice on any technical issues and any provisions that are outdated, unduly burdensome, or unnecessary. The Bureau received a few comments from financial institutions, State industry trade associations, and national industry trade associations. The comments focused on aligning Regulation C definitions with other regulations, providing a tolerance for enforcement actions based on low error rates in reported data, and establishing a loan-volume threshold.

In an effort to better understand existing and emerging industry data standards and whether Regulation C could be aligned with them, the Bureau met with staff from MISMO regarding the MISMO residential reference model dataset and staff from the GSEs regarding ULDD. In an effort to better understand financial institutions' internal HMDA compliance processes and compliance costs, the Bureau, through arrangements with a national industry trade

[151] 76 FR 78465 (Dec. 19, 2011).

association, met with community banks to obtain feedback. The Bureau also met with consumer and fair housing advocates and industry trade associations to understand their concerns with current HMDA data, current Regulation C, and possible changes to Regulation C.

C. Small Business Review Panel

In February 2014, the Bureau convened a Small Business Review Panel (Panel) with the Chief Counsel for Advocacy of the Small Business Administration (SBA) and the Administrator of the Office of Information and Regulatory Affairs with the Office of Management and Budget (OMB).[152] As part of this process, the Bureau prepared an outline of proposals under consideration and the alternatives considered (Small Business Review Panel Outline), which the Bureau posted on its website for review by the small financial institutions participating in the panel process, as well as the general public.[153]

Prior to formally convening, the Panel participated in teleconferences with small groups of the small entity representatives to introduce to the materials and to obtain feedback. The Panel conducted a full-day outreach meeting with the small entity representatives in March 2014 in Washington, D.C. The Panel gathered information from the small entity representatives and made findings and recommendations regarding the potential compliance costs and other impacts of the proposed rule on those entities. Those findings and recommendations are set forth in the Small Business Review Panel Report, which will be made part of the administrative record in

[152] *Supra* note 111.

[153] Press Release, CFPB Takes Steps to Improve Information About Access to Credit in the Mortgage Market (Feb. 7, 2014) http://www.consumerfinance.gov/newsroom/cfpb-takes-steps-to-improve-information-about-access-to-credit-in-the-mortgage-market/. The Bureau also gathered feedback on the Small Business Review Panel Outline from other stakeholders and members of the public, and from the Bureau's Consumer Advisory Board and Community Bank Advisory Council.

this rulemaking.[154] The Bureau has carefully considered these findings and recommendations in preparing this proposal and addresses certain specific examples below.

IV. Legal Authority

The Bureau is issuing this proposed rule pursuant to its authority under the Dodd-Frank Act and HMDA. Section 1061 of the Dodd-Frank Act transferred to the Bureau the "consumer financial protection functions" previously vested in certain other Federal agencies, including the Board.[155] The term "consumer financial protection function" is defined to include "all authority to prescribe rules or issue orders or guidelines pursuant to any Federal consumer financial law, including performing appropriate functions to promulgate and review such rules, orders, and guidelines."[156] Section 1022(b)(1) of the Dodd-Frank Act authorizes the Bureau's Director to prescribe rules "as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof."[157] Both HMDA and title X of the Dodd-Frank Act are Federal consumer financial laws.[158]

HMDA section 305(a) broadly authorizes the Bureau to prescribe such regulations as may be necessary to carry out HMDA's purposes.[159] These regulations can include "classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for any class of transactions, as in the judgment of the Bureau are necessary and

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[154] *Supra* note 111.
[155] 12 U.S.C. 5581. Section 1094 of the Dodd-Frank Act also replaced the term "Board" with "Bureau" in most places in HMDA. 12 U.S.C. 2803 *et seq.*
[156] 12 U.S.C. 5581(a)(1)(A).
[157] 12 U.S.C. 5512(b)(1).
[158] Dodd-Frank Act section 1002(14), 12 U.S.C. 5481(14) (defining "Federal consumer financial law" to include the "enumerated consumer laws" and the provisions of title X of the Dodd-Frank Act); Dodd-Frank Act section 1002(12), 12 U.S.C. 5481(12) (defining "enumerated consumer laws" to include HMDA).
[159] 12 U.S.C. 2804(a).

proper to effectuate the purposes of [HMDA], and prevent circumvention or evasion thereof, or to facilitate compliance therewith."[160]

A number of HMDA provisions specify that covered institutions must compile and make their HMDA data publicly available "in accordance with regulations of the Bureau" and "in such formats as the Bureau may require."[161] HMDA section 304(j)(1) authorizes the Bureau to issue regulations to define the loan application register information that HMDA reporters must make available to the public upon request and to specify the form required for such disclosures.[162] HMDA section 304(j)(2)(B) provides that "[t]he Bureau shall require, by regulation, such deletions as the Bureau may determine to be appropriate to protect—(i) any privacy interest of any applicant . . .; and (ii) a depository institution from liability under any Federal or State privacy law."[163] HMDA section 304(j)(7) also directs the Bureau to make every effort in prescribing regulations under the subsection to minimize the costs incurred by a depository institution in complying with the subsection and regulations.[164]

HMDA section 304(e) directs the Bureau to prescribe a standard format for HMDA disclosures required under HMDA section 304.[165] As amended by the Dodd-Frank Act, HMDA section 304(h)(1) requires HMDA data to be submitted to the Bureau or to the appropriate agency for the reporting financial institution "in accordance with rules prescribed by the

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[160] *Id.*
[161] *See, e.g.*, HMDA section 304(a)(1), (j)(2)(A), (j)(3), (m)(2), 12 U.S.C. 2803(a)(1), (j)(2)(A), (j)(3), (m)(2); *see also* HMDA section 304(b)(6)(I), 12 U.S.C. 2803(b)(6)(I) (requiring covered institutions to use "such form as the Bureau may prescribe" in reporting credit scores of mortgage applicants and mortgagors). HMDA section 304(k)(1) also requires depository institutions covered by HMDA to make disclosure statements available "[i]n accordance with procedures established by the Bureau pursuant to this section." 12 U.S.C. 2803(k)(1).
[162] 12 U.S.C. 2803(j)(1).
[163] 12 U.S.C. 2803(j)(2)(B).
[164] 12 U.S.C. 2803(j)(7).
[165] 12 U.S.C. 2803(e).

Bureau."[166] HMDA section 304(h)(1) also directs the Bureau, in consultation with other appropriate agencies, to develop regulations after notice and comment that:

(A) prescribe the format for such disclosures, the method for submission of the data to the appropriate agency, and the procedures for disclosing the information to the public;

(B) require the collection of data required to be disclosed under [HMDA section 304(b)] with respect to loans sold by each institution reporting under this title;

(C) require disclosure of the class of the purchaser of such loans;

(D) permit any reporting institution to submit in writing to the Bureau or to the appropriate agency such additional data or explanations as it deems relevant to the decision to originate or purchase mortgage loans; and

(E) modify or require modification of itemized information, for the purpose of protecting the privacy interests of the mortgage applicants or mortgagors, that is or will be available to the public.[167]

HMDA also authorizes the Bureau to issue regulations relating to the timing of HMDA disclosures.[168]

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[166] 12 U.S.C. 2803(h)(1); *see also* HMDA section 304(n), 12 U.S.C. 2803(n) (discussing submission to the Bureau or the appropriate agency "in accordance with regulations prescribed by the Bureau"). For purposes of HMDA section 304(h), HMDA section 304(h)(2) defines the appropriate agencies for different categories of financial institutions. The agencies are the Federal banking agencies, the FDIC, the NCUA, and the Secretary of HUD. 12 U.S.C. 2803(h)(2).

[167] 12 U.S.C. 2803(h)(1). The Dodd-Frank Act also added new HMDA section 304(h)(3), which directs the Bureau to prescribe standards for any modification pursuant to HMDA section 304(h)(1)(E), to effectuate HMDA's purposes, in light of the privacy interests of mortgage applicants or mortgagors. 12 U.S.C. 2803(h)(1)(E), 2803(h)(3).

[168] HMDA section 304(*l*)(2)(A), 12 U.S.C. 2803(*l*)(2)(A) (setting maximum disclosure periods except as provided under other HMDA subsections and regulations prescribed by the Bureau); HMDA section 304(n), 12 U.S.C. 2803(n).

As amended by the Dodd-Frank Act, HMDA section 304 requires itemization of specified categories of information and "such other information as the Bureau may require."[169] Specifically, HMDA section 304(b)(5)(D) requires reporting of "such other information as the Bureau may require" for mortgage loans, and section 304(b)(6)(J) requires reporting of "such other information as the Bureau may require" for mortgage loans and applications. HMDA section 304 also identifies certain data points that are to be included in the itemization "as the Bureau may determine to be appropriate."[170] It provides that age and other categories of data shall be modified prior to release "as the Bureau determines to be necessary" to satisfy the statutory purpose of protecting the privacy interests of the mortgage applicants or mortgagors.[171]

The Dodd-Frank Act amendments to HMDA also authorize the Bureau's Director to develop or assist in the improvement of methods of matching addresses and census tracts to facilitate HMDA compliance by depository institutions in as economical a manner as possible.[172] The Bureau, in consultation with the Secretary of HUD, may also exempt for-profit mortgage-lending institutions that are comparable within their respective industries to a bank, savings association, or credit union that has total assets of $10,000,000 or less.[173]

In preparing this notice of proposed rulemaking, the Bureau has considered the proposed changes below in light of its legal authority under HMDA and the Dodd-Frank Act. The Bureau has determined that each of the changes proposed below is consistent with the purposes of

[169] HMDA section 304(b)(5)(D), (b)(6)(J), 12 U.S.C. 2803(b)(5)(D), (b)(6)(J).
[170] HMDA section 304(b)(6)(F), (G), (H), 12 U.S.C. 2803(b)(6)(F), (G), (H).
[171] HMDA section 304(h)(3)(A)(ii), 12 U.S.C. 2803(h)(3)(A)(ii).
[172] HMDA section 307(a), 12 U.S.C. 2806(a) (authorizing the Bureau's Director to utilize, contract with, act through, or compensate any person or agency to carry out this subsection).
[173] HMDA section 309(a), 12 U.S.C. 2808(a).

HMDA and is authorized by one or more of the sources of statutory authority identified in this part.

V. Section-by-Section Analysis

Section 1003.1 Authority, Purpose, and Scope

1(c) Scope

As discussed further in the section-by-section analysis of proposed § 1003.2(d), 2(g), and 2(o) the Bureau proposes substantive modifications to Regulation C's transactional and institutional coverage. The Bureau proposes technical changes to § 1003.1(c) to conform to those substantive changes.

Institutional Coverage

As discussed in detail below in the section-by-section analysis of proposed § 1003.2(g), the Bureau proposes to adjust Regulation C's institutional coverage to adopt a uniform loan volume threshold of 25 covered loans, excluding open-end lines of credit, applicable to all financial institutions (25-loan volume test). Under the proposal, depository and nondepository institutions that meet all of the other applicable criteria for a "financial institution" would be required to report HMDA data if they originated at least 25 covered loans, excluding open-end lines of credit, in the previous calendar year. The Bureau believes that this proposal would improve the quality of HMDA data by increasing visibility into the practices of nondepository institutions. In addition, the proposal would appropriately relieve institutions that originate a small number of mortgage loans from the burden of reporting HMDA data without impacting the quality of HMDA data. Furthermore, the proposed 25-loan volume test would simplify the reporting regime by providing a consistent loan volume benchmark across all financial institutions.

Transactional Coverage

As discussed below, the Bureau is proposing to expand the types of transactions for which covered financial institutions must report data under Regulation C by including all mortgage loans, reverse mortgages, and lines of credit secured by a dwelling within the transactional scope of the regulation. Regulation C currently determines transactional coverage according to the purpose of the loan; if a covered financial institution receives an application or originates or purchases a loan that is, among other things, for the purchase of a home, home improvement, or refinancing, the financial institution must collect and report data on the application or loan. As discussed below in the section-by-section analysis to § 1003.2(d), the Bureau is proposing to expand transactional coverage to include all mortgage loans secured by a dwelling, regardless of the purpose of the loan. This proposed modification includes several types of transactions that are not currently covered by Regulation C, including home-equity loans and commercial loans that are secured by a dwelling but do not satisfy the current purpose-based transactional coverage test. In addition, as discussed below in the section-by-section analysis to § 1003.2(o), the Bureau is proposing to expand transactional coverage to include all dwelling-secured lines of credit, regardless of the purpose of the line of credit. This proposed modification includes all home-equity lines of credit, which are currently reported at the option of a financial institution if the purpose-based test is satisfied, as well as commercial lines of credit secured by a dwelling. Finally, as discussed below in the section-by-section analysis to § 1003.2(q), the Bureau is proposing to expand transactional coverage to include all reverse mortgages secured by a dwelling, regardless of the purpose of the reverse mortgage. This proposed modification includes all reverse mortgages, many of which do not satisfy the current purpose-based transactional coverage test, and therefore are not currently reported under

Regulation C. The Bureau believes that these modifications would simplify the regulation, improve the quality and usefulness of the HMDA data, and align with current business practices, among other things. See the section-by-section analysis to these sections below for a detailed discussion of these proposed modifications.

In addition, to reduce burden created by redundancy in Regulation C, the Bureau proposes a modest reorganization of Regulation C. For the reasons discussed in the section-by-section analysis below, the Bureau proposes to move and consolidate comments 1(c)-2 through 1(c)-9.

Section 1003.2 Definitions

Section 1003.2 of Regulation C sets forth definitions that are used in the regulation. As discussed below, the Bureau proposes substantive changes to several of these current definitions. In addition to these proposed substantive changes, the Bureau proposes technical revisions to § 1003.2 to enumerate the terms defined therein. The Bureau believes that these proposed technical revisions will facilitate compliance with Regulation C by making defined terms easier to locate and cross-reference in the regulation and its commentary and appendices. The Bureau includes in this proposal enumerations only for those definitions that it proposes to add or revise. The Bureau intends to provide enumerations for all definitions in § 1003.2, including the defined terms not addressed in this proposal, when the Bureau finalizes this proposal.

2(b) Application

2(b)(1) In General

Section 303(4) of HMDA defines a completed application as an application in which the creditor has received the information that is regularly obtained in evaluating applications for the amount and type of credit requested. Regulation C defines an application as an oral or written

request for a home purchase loan, a home improvement loan, or a refinancing that is made in accordance with procedures used by a financial institution for the type of credit requested.

As discussed in the section-by-section analysis of proposed § 1003.2(e) the Bureau is proposing to require financial institutions to report activity only for dwelling-secured loans, regardless of whether the loans are for home purchase, home improvement, or refinancing. The Bureau is proposing to make technical corrections and minor wording changes to conform the definition of application to the proposed changes in transactional coverage.

The Bureau is not proposing other changes to the definition of application at this time. When the Bureau's 2011 Regulation C Restatement was published, industry trade associations asked the Bureau to align key definitions among various regulations, including the definition of application. The commenters noted the difference between the definition of application in Regulation C and Regulation X, for example. The Bureau responded to similar comments in the Bureau's 2013 TILA-RESPA Final Rule.[174] During the Small Business Review Panel process, small entity representatives also suggested that the Regulation C definition of application be aligned with the definition used in the Bureau's 2013 TILA-RESPA Final Rule.[175] As discussed in the Bureau's 2013 TILA-RESPA Final Rule, the definition in that rule serves a different purpose from the definition in Regulation C, and the Bureau did not expand that definition to regulations that implement ECOA, FCRA, and HMDA.[176] Consistent with the Bureau's determination in the TILA-RESPA rulemaking, the Bureau is not proposing to align the Regulation C definition with the definition adopted in the Bureau's 2013 TILA-RESPA Final

[174] 78 FR 79730, 79767 (Dec. 31, 2013).
[175] *See* Small Business Review Panel Report at 87, 95.
[176] 78 FR 79767 (Dec. 31, 2013).

Rule. While the Bureau is not proposing to make any changes to the Regulation C definition for alignment purposes at this time, the Bureau will continue to consider the comments received on this topic as it evaluates further follow up to the Bureau's 2011 Streamlining Notice and other comments received. The proposal revises comments Application-1 and Application-2 to make technical and minor wording changes.

2(b)(2) Preapproval Programs

Regulation C incorporates certain requests under preapproval programs into the definition of application under § 1003.2. Requests for preapprovals may provide more complete data on the availability of home financing and be useful as a fair lending screening device.[177] Such programs are only covered if they involve a comprehensive analysis of the creditworthiness of the applicant and include a written commitment for up to a specific amount, subject only to certain limited conditions.[178] Institutions must report requests reviewed under covered preapproval programs that were denied or that resulted in originations (with a specific enumeration that preapproval was requested). Institutions may, at their option, report covered preapprovals that were approved but not accepted. The FFIEC has published some additional guidance on preapprovals in the form of frequently asked questions (FFIEC FAQs).[179]

The Bureau is proposing to make minor wording changes to the definition of a preapproval program under § 1003.2(b)(2) and technical and clarifying changes to comment Application-3. The Bureau is proposing to delete language in the definition related to a certification of a clear termite inspection because it duplicates language in the commentary. The

[177] 67 FR 7222, 7224 (Feb. 15, 2002).
[178] Section 1003.2 (definition of preapproval programs).
[179] FFIEC FAQs.

proposal adds language adapted from the FFIEC FAQs to the comment Application-3. This language specifies that a program that meets the definition in § 1003.2(b)(2) is a preapproval program for purposes of Regulation C regardless of its name, and that a program described as a "preapproval program" that does not meet the definition in § 1003.2(b)(2) is not a preapproval program for purposes of Regulation C. The language also specifies that an institution need not treat *ad hoc* requests for preapprovals as part of a preapproval program for purposes of Regulation C, but also notes that institutions should be generally consistent in procedures for considering such requests.

During the Small Business Review Panel process, small entity representatives expressed concern about reporting preapprovals and determining whether certain requests are reportable as preapprovals. The Small Business Review Panel recommended that the Bureau specifically solicit public comment on whether clarification on the coverage of preapprovals is needed and, if so, how the coverage of preapprovals should be determined in light of HMDA's purposes.[180] When the Bureau's 2011 Regulation C Restatement was published, some commenters requested additional guidance on preapproval programs and others requested that the Bureau eliminate the requirement to report activity under covered preapproval programs. The Bureau believes that preapproval data are valuable for HMDA's fair lending purpose, as it permits visibility into how applicants are treated in an early stage of the lending process. The Bureau is not proposing to eliminate reporting of covered preapproval programs, and, as discussed below in the section-by-section analysis of proposed § 1003.4(c)(2), is proposing to require reporting of preapproval requests that are approved by a financial institution but not accepted by an applicant. However,

[180] Small Business Review Panel Report at 38.

the Bureau notes that, as discussed above, the proposal does incorporate additional guidance into comment Application-3 regarding preapproval programs. Consistent with the recommendation of the Small Business Review Panel, the Bureau solicits feedback on whether additional clarification on the coverage of preapprovals is needed and, if so, how the coverage of preapprovals should be determined in light of HMDA's purposes.

2(c) Branch Office

Section 1003.2 currently provides a definition of branch office, which includes separate definitions for branches of (1) banks, savings associations, and credit unions and (2) for-profit mortgage-lending institutions (other than banks, savings associations, and credit unions). The Bureau proposes technical and nonsubstantive modifications to the definition of branch office and to comments Branch Office-2 and -3, renumbered as comments 2(c)-2 and -3, respectively, to clarify the definition and to conform to technical changes that the Bureau is proposing throughout Regulation C. The Bureau solicits feedback on whether the proposed modifications are appropriate generally.

2(d) Closed-End Mortgage Loan

HMDA section 303(2) defines a "mortgage loan" as a loan which is secured by residential real property or a home improvement loan. The Board interpreted HMDA section 303(2) to refer to three types of loans: home purchase loans, home improvement loans, and refinancings. As a result, Regulation C currently does not apply to mortgage loans that do not fall under one of these definitions, such as a loan secured by a dwelling that is used for business expenses, but is not considered a refinancing under § 1003.2. For the reasons discussed below, the Bureau is proposing a new definition for "closed-end mortgage loans," which would include

all dwelling-secured loans that are not currently covered by Regulation C, regardless of the purpose of the loan.

In the original implementation of Regulation C, the Board's proposed scope included all loans secured by real property.[181] However, the Board subsequently decided to adopt a narrower scope based on the purpose of the loan.[182] At that time, the Board reasoned that focusing on the purpose of the loan would provide more useful data.[183] While this approach was successful for some time, the Bureau believes that it now may be appropriate to include all dwelling-secured loans. Research indicates that closed-end home-equity lending was a significant factor in the financial crisis.[184] In the years leading up to the crisis, closed-end home-equity loans were often provided to non-prime borrowers, many of whom defaulted after the crisis began.[185] Thus, data on these closed-end mortgage loans may have helped the public better understand the risks posed to local housing markets. Furthermore, distressed homeowners with closed-end subordinate-lien mortgage loans encountered several challenges when seeking assistance from public and private mortgage relief programs.[186] Data on these loans may have helped public officials improve the effectiveness of these relief programs.

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[181] *See* 41 FR 13619, 13620 (Mar. 31, 1976).
[182] *See* 41 FR 23931, 23932 (June 14, 1976).
[183] "There was general agreement among depository institutions and consumer and public interest groups that inclusion of mortgage loans unrelated to housing needs would distort the data from the standpoint of the purposes of the Act . . . . The Board believes that repeated references to in the legislative history of the Act to 'homeownership and home repair' support a narrower definition of mortgage loan than was proposed." *Id.*
[184] "A significant part of the default crisis is driven by existing homeowners borrowing heavily against the rising value of their house." Atif Mian & Amir Sufi, *House Prices, Home Equity-Based Borrowing, and the U.S. Household Leverage Crisis*, 101 Am. Econ. Rev. 2132, p. 2154 (Aug. 2011).
[185] "The largest share of [closed-end second-lien] mortgages went to borrowers with relatively low quality non-prime mortgages. The large growth of [closed-end second-lien] mortgages in 2006 to 2007 primarily went to borrowers with non-prime first liens that would eventually default at very high rates." Donghoon Lee, et al., *A New Look at Second Liens*, Fed. Reserve Bank of New York Staff Report No. 569, at 11 (Aug. 2012).
[186] *See* Vicki Been, et al., Furman Center for Real Estate & Urban Policy, *Essay: Sticky Seconds - The Problems Second Liens Pose to the Resolution of Distressed Mortgages*, 13-18 (Aug. 2012).

For these reasons, the Bureau believes that including dwelling-secured loans that are not currently covered by Regulation C may provide valuable information to the public and to public officials. Accordingly, 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). The Bureau solicits feedback regarding whether this proposed modification is appropriate. The Bureau also seeks additional information to ensure that this modification would provide useful data to the public. Specifically, the Bureau solicits feedback regarding whether this proposed modification would be as valuable to the public as the Bureau's preliminary analysis suggests, whether there would be unique costs or burdens associated with this proposed modification, and whether there are additional considerations that should be included in the Bureau's analysis. Furthermore, the Bureau is not proposing commentary to proposed § 1003.2(d) because the Bureau believes that this proposed definition is straightforward and clear. However, the Bureau solicits feedback regarding whether commentary is needed to clarify the definition or to facilitate compliance.

During the Small Business Review Panel process, several small entity representatives expressed concerns about requiring reporting of dwelling-secured commercial credit.[187] Some small entity representatives expressed concern about the potential compliance challenges associated with applying several of the HMDA requirements to commercial loans.[188] The Small Business Review Panel recommended that the Bureau solicit public comment on whether any

[187] *See* Small Business Review Panel Report at 24, 37, 59, 78, and 85.
[188] *See id.* at 24, 27, 30, 33, 38, 39, 40. 42, 52, 62, 75, 81, 94, 95, 101, 126, and 129.

types of dwelling-secured loans should be excluded from Regulation C's data collection and reporting requirements and, if so, which types of loans should be excluded.[189] The Small Business Review Panel also encouraged the Bureau to consider and seek public comment on how categories of loans that would be affected by the proposal might be related to a financial institution's Community Reinvestment Act reporting obligations.[190] Based on this feedback and consistent with the Small Business Review Panel's recommendation, the Bureau solicits feedback regarding whether any types of dwelling-secured loans should be excluded from the requirements of the regulation, which types of loans should be excluded, and how this proposed modification might affect a financial institution's Community Reinvestment Act reporting requirements. In addition, to address the concerns raised about commercial credit, the Bureau solicits feedback regarding the extent to which members of the public would use data related to business-purpose loans to determine whether financial institutions are fulfilling their obligations to serve community housing needs, whether dwelling-secured loans used for business purposes should be excluded from the scope of the regulation, and information related to the potential compliance costs associated with business-purpose loans. Finally, with respect to the concerns raised by small financial institutions about applying the reporting requirements to loans for business purposes, the Bureau solicits feedback regarding whether any modifications to or exclusions from the requirements of proposed § 1003.4(a) would be appropriate if the Bureau decides against excluding business-purpose loans from the reporting requirements.

2(e) Covered Loan

[189] *See id.* at 38.
[190] *Id.*

While HMDA section 303(2) defines a "mortgage loan" as a loan which is secured by residential real property or a home improvement loan, Regulation C does not currently contain a defined term that includes all mortgage loans within the scope of the regulation. The Bureau has received feedback indicating that many members of industry find the regulation confusing and experience compliance challenges when determining whether and how to report the data. The Bureau believes that some of this confusion results from the current structure of the regulation, which links certain requirements to loan types, such as home-equity lines of credit, and other requirements to loan purposes, such as refinancings. 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.

Accordingly, the Bureau is proposing § 1003.2(e), which defines a "covered loan" as a transaction that is, as applicable, a closed-end mortgage loan under § 1003.2(d), an open-end line of credit under § 1003.2(o), or a reverse mortgage under § 1003.2(q). The Bureau solicits feedback regarding whether this new proposed definition is appropriate. The Bureau is not proposing commentary to proposed § 1003.2(e) because the Bureau believes that this proposed definition is straightforward and clear. However, the Bureau solicits feedback regarding whether commentary is needed to clarify this proposed definition or to facilitate compliance.

2(f) Dwelling

Although HMDA does not use or define the term "dwelling," the term has been included in some form in Regulation C since 1976[191] and is important to scope, reporting, and coverage under Regulation C. Regulation C defines a dwelling as a residential structure (whether or not attached to real property) located within a U.S. State, the District of Columbia, or Puerto Rico. Regulation C provides that the definition of a dwelling includes, but is not limited to, condominium units, cooperative units, and mobile or manufactured homes.[192] Regulation C commentary interprets the term dwelling to include vacation and second homes, rental properties and multifamily structures.[193] Recreational vehicles such as boats or campers, and transitory residences such as hotels, hospitals, and dormitories are not included in the definition.[194]

Financial institutions have reported that they experience compliance burden in determining whether certain properties are dwellings under Regulation C, and whether the loan or application associated with such properties should be reported on the loan application register. Financial institutions report difficulty in determining coverage for loans secured by homes that are converted to commercial purposes, such as homes converted to daycare centers or professional offices; recreational vehicles that are used as residences; park model recreational vehicles; houseboats and floating homes; and certain mobile homes that do not meet the definition of a manufactured home.[195]

The Bureau is proposing to revise the definition of dwelling in § 1003.2 to provide additional clarity. Specifically, the Bureau proposes to move the geographic location

[191] 41 FR 23932 (June 14, 1976).
[192] 12 CFR 1003.2 (definition of dwelling).
[193] 12 CFR 1003.2, comment Dwelling-1.
[194] 12 CFR 1003.2, comment Dwelling-2.
[195] Specifically, financial institutions report difficulty in determining coverage for mobile homes built prior to June 15, 1976, which are not covered by the HUD standards for manufactured homes.

requirement currently in the definition of dwelling to § 1003.1(c) and to add examples of dwellings to the commentary. The proposed examples have long been understood to be dwellings under Regulation C, and the revision is intended solely for clarity and illustration. The proposal revises comment Dwelling-1 to refer to investment properties rather than rental properties for consistency with terms used in the proposal regarding reporting of owner-occupancy status under § 1003.4(a)(6). The proposal also revises comment Dwelling-1 to list condominium and cooperative buildings as additional examples of multifamily residential structures, and to provide that both multifamily complexes and individual buildings are covered. The Bureau solicits feedback on whether additional guidance is necessary to distinguish when multiple multifamily buildings should be considered part of the same complex and multifamily dwelling or when they should be considered separate properties and how to distinguish these scenarios.

The proposed definition in § 1003.2 would no longer refer to mobile homes, to reduce any confusion with the current definition of manufactured home. The HUD standards for manufactured homes do not cover mobile homes constructed before June 15, 1976, and these would not be covered by the proposed definitions of manufactured home or dwelling for purposes of Regulation C.[196] Comment Dwelling-1 would be revised accordingly. The Bureau believes that reported information about covered loans and applications secured by pre-1976 mobile homes may not be useful given the limited volume of such loans and the difference in pricing and terms when compared to covered loans related to manufactured homes. Additionally, the Bureau believes that even if these dwellings were identified separately from

[196] 24 CFR 3282.8(a).

manufactured homes, financial institutions would experience compliance burden in determining whether the homes are manufactured homes or pre-1976 mobile homes. However, the Bureau solicits feedback on whether this exclusion is appropriate or whether such homes should be included in the definition of dwelling under Regulation C and, if so, whether an additional enumeration should be added to the construction method reporting requirement under proposed § 1003.4(a)(5) for such loans.

The proposal clarifies that recreational vehicles are not considered dwellings under Regulation C even if they are used as residences. The current commentary provides that recreational vehicles such as campers and boats are not dwellings for purposes of Regulation C. However, financial institutions have reported confusion with the comment where the recreational vehicle is used as a residence. For example, in some cases borrowers use campers or boats that were not designed as permanent dwellings as residences. Financial institutions have also reported confusion about park model recreational vehicles, which are recreational vehicles which share some characteristics of manufactured homes but are excluded from the HUD standards for manufactured housing as recreational vehicles.[197] Proposed comment 2(f)-2 provides that recreational vehicles, including boats, campers, travel trailers, and park model recreational vehicles, are not considered dwellings for purposes of § 1003.2(f), regardless of whether they are used as residences.

Regarding houseboats and floating homes that may be used as residences, certain financial institutions in areas where houseboats and floating homes are more common report loans related to floating homes and houseboats on their loan application registers. These

[197] 24 CFR 3282.8(g).

institutions may receive consideration under the CRA for financing houseboats or floating homes. The Bureau recognizes that while these loans may provide housing for certain communities, the Bureau believes that financing of such loans is different from other home loans and the incidence of such housing is highly localized. Unlike manufactured housing, discussed below, usage and financing of houseboats and floating homes is not as prevalent, and the small number of houseboats used as residences suggests that loans secured by such properties should not be included in HMDA data.[198] Therefore, the Bureau believes that excluding houseboats and floating homes will facilitate compliance with HMDA. However, the Bureau solicits feedback on whether these exclusions are appropriate.

The proposal would differ from Regulation Z's definition of dwelling, which treats recreational vehicles used as residences as dwellings. 12 CFR part 1026, comment 2(a)(19)-2. When the Bureau's 2011 Regulation C Restatement was published, industry trade associations asked the Bureau to align key definitions among various regulations, including the definition of dwelling. As discussed above, the proposal does not align the Regulation C definition with Regulation Z. Instead, it would exclude certain structures which may be covered by Regulation Z and provide more clarity on certain structures. The Bureau believes that additional guidance in this area and an exclusion for certain structures will reduce burden for financial institutions. However, the Bureau solicits feedback on whether financial institutions would prefer to report loans and applications for these types of structures that may be considered dwellings under

[198] The Bureau understands that relatively few houseboats and recreational vehicles are used as residential dwellings. Based on 2008-2012 American Community Survey estimates, 108,654 of the total 131,642,457 total housing units in the United States (0.1 percent) were vans, recreational vehicles, or boats.

Regulation Z rather than having them excluded from the Regulation C reporting requirements as proposed.

The proposal revises the sentence in the comment Dwelling-2 regarding transitory residences to delete the reference to principal residences elsewhere because the explanation is inconsistent with the standard articulated in the commentary regarding non-principal residences such as second homes. The Bureau believes that this exclusion is better explained by the transitory nature of such structures. The proposal provides that structures designed for residential purposes but used exclusively for commercial purposes would not be dwellings under Regulation C and provides examples of daycare facilities and professional offices. The Bureau solicits feedback regarding whether the proposed revisions provide institutions with sufficient clarity to identify transactions that must be reported and whether any additional exclusions or examples would be appropriate.

During the Small Business Review Panel process, one small entity representative requested guidance on how to account for mixed-used buildings.[199] Commentary under the definitions of home improvement loan and home purchase loan provides guidance on whether loans secured by mixed-use property are reportable by allowing institutions to use any reasonable standard to determine the primary use of the property. The Bureau is proposing to add new comment 2(f)-3 regarding mixed-use property, which is adapted from the comments currently provided. The Bureau believes that the issues associated with identifying mixed-use property are common to all types of dwelling-secured loans and it may facilitate compliance to include the discussion of the issue under the definition of dwelling. The comment also provides

[199] *See* Small Business Review Panel Report at 80.

that if a property contains five or more individual dwelling units, a financial institution should consider it to have a primary residential use. The Bureau believes that even if such properties also contain commercial space, five individual dwelling units is sufficient residential use to require coverage. This would be consistent with the proposal's new definition of a multifamily dwelling, discussed below in the section-by-section analysis of proposed § 1003.2(n). The Bureau solicits feedback on whether it would be preferable to establish a bright-line rule for mixed-use property. Specifically, the Bureau solicits feedback on whether a mixed-use property should be reported if it includes any individual dwelling units, or whether a clear standard can be provided for mixed-used property with a *de minimis* residential component to be excluded.

Proposed section§ 1003.2(f) is proposed to implement, in part, the definition of "mortgage loan" in HMDA section 303(2). That term would be implemented through other terms in Regulation C as well, including the proposed definitions of "closed-end mortgage loan" and "covered loan." In combination with other relevant provisions in Regulation C, the Bureau believes that the proposed definition of "dwelling" is a reasonable interpretation of the definition in that provision. Section 1003.2(f) is also proposed pursuant to the Bureau's authority under section 305(a) of HMDA. Pursuant to section 305(a) of HMDA, the Bureau believes that this proposed definition is necessary and proper to effectuate the purposes of HMDA. The proposed definition will serve HMDA's purpose of providing information to help determine whether financial institutions are serving the housing needs of their communities by providing information about various types of housing that are financed by financial institutions. The definition will facilitate compliance with HMDA requirements by providing clarity regarding what transactions must be reported for purposes of Regulation C.

2(g) Financial Institution

Regulation C requires institutions that meet the definition of financial institution to collect and report HMDA data. HMDA and Regulation C establish different coverage criteria for depository institutions (banks, savings associations, and credit unions) than for nondepository institutions (for profit-mortgage-lending institutions).[200] Depository institutions that originate one first-lien home purchase loan or refinancing secured by a one-to-four unit dwelling and that meet other criteria for "financial institution" must collect and report HMDA data, while certain nondepository institutions that originate many more mortgage loans annually do not have to collect and report HMDA data. The Bureau believes that this approach may exclude important data about nondepository institutions' practices and may inappropriately burden depository institutions that originate a small number of mortgage loans.

The Bureau proposes to adjust Regulation C's institutional coverage to adopt a uniform loan volume threshold of 25 loans applicable to all financial institutions (25-loan volume test). Under the proposal, depository and nondepository institutions that meet all of the other criteria for a "financial institution" would be required to report HMDA data if they originated at least 25 covered loans, excluding open-end lines of credit, in the preceding calendar year.

The proposed loan volume test would improve the availability of data concerning the practices of nondepository institutions, where information is needed. The Bureau estimates that the proposed coverage criteria may increase the number of nondepository institutions covered by HMDA by as much as 40 percent and the number of reported originations and applications by nondepository institutions by as much as 6 percent. As discussed below, this information is important because Congress and other stakeholders have raised concerns about the practices of,

[200] *See* Section 1003.2 (definition of financial institution); HMDA sections 303(3), 309(a).

and loan products offered by, nondepository institutions generally and their role in the broader financial crisis. With data from additional nondepository institutions, the public and public officials would be better able to evaluate whether those institutions are serving the housing needs of their communities and whether those institutions' practices pose possible fair lending risks. In addition, the data would allow the public and public officials to identify emerging products and practices in the nondepository mortgage market that may pose risks to consumers.

Furthermore, the Bureau believes that the proposed 25-loan volume test may appropriately reduce the burdens on depository institutions that make very few loans while maintaining coverage of a relevant, diverse set of reporting institutions and reported transactions. The Bureau believes that eliminating reporting by lower-volume depository institutions may be a way to reduce burden without impacting the quality of HMDA data. As discussed below, the Bureau believes that the loss of data from depository institutions that originate fewer than 25 loans in a calendar year would not significantly impact the utility of HMDA data for analyzing mortgage lending at the national, local, and institutional levels.

In addition, the proposed 25-loan volume test may simplify the reporting regime by providing a consistent loan volume benchmark across all financial institutions. Institutions that originate 25 loans likely face similar burdens associated with HMDA reporting, regardless of whether the institution is a depository or nondepository institution. Thus, setting a consistent loan volume threshold across all financial institutions may spread the burden of reporting more evenly among lower-volume institutions. The specific proposed changes to the definition of financial institution applicable to nondepository and depository institutions are discussed below separately.

Coverage of Nondepository Financial Institutions

HMDA extends reporting responsibilities to certain nondepository institutions, defined as any person engaged for profit in the business of mortgage lending other than a bank, savings association, or credit union.[201] HMDA section 309(a) also authorizes the Bureau to adopt an exemption for covered nondepository institutions that are comparable within their respective industries to banks, savings associations, and credit unions with $10 million or less in assets in the previous fiscal year.[202]

Under the current definition of financial institution in § 1003.2, a nondepository institution is a financial institution if it meets three criteria. First, the institution satisfies the following loan volume or amount test: in the preceding calendar year, the institution originated home purchase loans, including refinancings of home purchase loans, that equaled either at least 10 percent of its loan-origination volume, measured in dollars, or at least $25 million.[203] Second, on the preceding December 31, the institution had a home or branch office in an MSA.[204] Third, the institution meets one of the following two criteria: (a) on the preceding December 31, the institution had total assets of more than $10 million, counting the assets of any parent corporation; or (b) in the preceding calendar year, the institution originated at least 100 home

[201] *See generally* HMDA sections 303(5) (defining other lending institutions), 303(3)(B) (including other lending institutions in the definition of depository institution), and 304(a) (requiring depository institutions to collect, report, and disclose certain data if the institution has a home or branch office located in an MSA), 12 U.S.C. 2802(5), 2802(3), 2803(a).
[202] *See* HMDA section 309(a), 12 U.S.C. 2808(a).
[203] The Board adopted the 10 percent loan volume test in 1989 to implement the 1989 FIRREA amendments, which extended HMDA's reporting requirements to institution's "engaged for profit in the business of mortgage lending." *See* 54 FR 51356, 51358-59 (Dec. 15, 1989). In 2002, the Board modified the test and added the $25 million loan volume test to require reporting by additional nondepository institutions. *See* 67 FR 7222, 7224 (Feb. 15, 2002).
[204] Under § 1003.2 (definition of branch office), a nondepository institution has a branch office in an MSA if it originated, received applications for, or purchased five or more covered loans in that MSA.

purchase loans, including refinancings of home purchase loans.[205]

As discussed below, the Bureau proposes to modify the coverage criteria applicable to nondepository institutions by replacing the current loan volume or amount test with the same 25-loan volume test that the Bureau proposes for depository institutions. Under this approach, a nondepository institution would be required to report HMDA data if it had a home or branch office in an MSA on the preceding December 31 and it originated at least 25 covered loans, excluding open-end lines of credit, in the preceding calendar year. For the reasons discussed below, the Bureau believes that it may be appropriate to adopt a different formulation for determining whether a nondepository institution is "engaged for profit in the business of mortgage lending" than the formulation adopted by the Board and to eliminate the asset-size and loan volume exemption for nondepository institutions pursuant to its discretionary authority under HMDA section 309(a).

The need for greater visibility into nondepository institution practices. During the years leading up to the financial crisis, many stakeholders expressed concern over the lack of visibility into nondepository institution activity in the mortgage market. Concerns about nondepository institution involvement in the subprime market motivated the Board to expand nondepository institution coverage in 2002.[206] A 2007 report by the U.S. Government Accountability Office (GAO) also raised concerns that nondepository institutions, which were not subject to regular

[205] In 1989, the $10 million asset test, derived from section 309, applied to both depository and nondepository institutions. *See* 54 FR 51356, 51359 (Dec. 15, 1989). Because the 1989 amendments failed to cover as many nondepository lenders as Congress had intended, in 1991, Congress amended the asset test in HMDA section 309 to apply only to depository institutions, and it granted the Board discretion to exempt comparable nondepository institutions. *See* Public Law 102-242, section 224 (1991). Pursuant to that authority, the Board added the 100 loan volume test for nondepository institutions in 1992. *See* 57 FR 56963, 56964-65 (Dec. 2, 1992).
[206] *See* 65 FR 78656, 78657 (Dec. 15, 2000) (proposing changes to coverage of nondepository institutions); 67 FR 7222, 7224-25 (Feb. 15, 2002) (finalizing changes to coverage of nondepository institutions).

Federal examination at the time, "may tend to originate lower-quality loans."[207] GAO found that 21 of the 25 largest originators of subprime and Alt-A loans in 2006 were nondepository institutions and that those 21 nondepository institutions had originated over 80 percent in dollar volume of the subprime and Alt-A loans originated in 2006.[208]

In the aftermath of the financial crisis, Congress and other stakeholders expressed concerns about the lending practices of nondepository institutions generally and called for greater oversight of those institutions.[209] In the Dodd-Frank Act, Congress granted Federal supervisory authority to the Bureau over certain nondepository institutions because it was concerned about nondepository institutions' practices generally and believed that the lack of Federal supervision of those institutions had contributed to the financial crisis.[210] In addition, a 2009 GAO study found that nondepository institutions that reported HMDA data had a higher incidence of potential fair lending problems than depository institutions that reported HMDA data.[211] GAO also suggested that the loan products and marketing practices of those nondepository institutions may have presented greater risks for applicants and borrowers.[212] Moreover, community advocates and Federal agencies urged the Board during the Board's 2010

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[207] *See* U.S. Gov't Accountability Office, GAO-08-78R, *Briefing to the Committee on Financial Services House of Representatives, "Home Mortgage Defaults and Foreclosures: Recent Trends and Associated Economic Developments* 54 (2007), http://www.gao.gov/assets/100/95215.pdf.
[208] *Id*.
[209] *See, e.g.,* House Consideration of HR 4173, 155 Cong. Record H14430 (daily ed. Dec. 9, 2009) (statement of Cong. Ellison (MN), "One of the most important causes of the financial crisis, as I mentioned, is the utter failure of consumer protection. The most abusive and predatory lenders were not federally regulated, were not regulated at all in some cases, while regulation was overly lax for banks and other institutions that were covered."); U.S. Gov't Accountability Office, GAO-09-704, Fair Lending: Data Limitations and the Fragmented U.S. Financial Regulatory Structure Challenge Federal Oversight and Enforcement Efforts 28-29 (2009), *available at* http://www.gao.gov/new.items/d09704.pdf.
[210] *See* Dodd-Frank Act section 1024.
[211] *See* GAO-09-704, at 28-29 ("[I]ndependent lenders and nonbank subsidiaries of holding companies are more likely than depository institutions to engage in mortgage pricing discrimination.").
[212] *Id*. at 29-30. *See also* GAO-08-78R , at 54.

Hearings to expand HMDA's institutional coverage to include lower-volume nondepository institutions because they were active in the mortgage market and the lack of visibility into their practices created risks for communities.[213] In addition, officials that participated in the Financial Crisis Inquiry Commission hearings in 2010 noted that practices that originated in the nondepository mortgage sector, such as lax underwriting standards and loan products with potential payment shock, created competitive pressures on depository institutions to follow the same practices, which may have contributed to the broader financial crisis.[214]

Because of this history, the Bureau believes that it may be appropriate to increase transparency into mortgage lending by nondepository institutions. Currently, there are fewer publicly available data about nondepository institutions than about depository institutions. The differing institutional coverage criteria currently in Regulation C result in HMDA data including more information about lower-volume depository institutions, which may be required to report even if they originated only one mortgage loan in the preceding calendar year, than about lower-volume nondepository institutions, which may not be required to report unless they originated

[213] *See, e.g.*, San Francisco Hearing, *supra* note 133; Washington Hearing, *supra* note 130 (remarks of Faith Schwartz, Senior Advisor, HOPE NOW Alliance) (urging reporting by all institutions that have "any meaningful originations"); *id*. (remarks of Allison Brown, Acting Assistant Director, Division of Financial Practices, Federal Trade Commission) (urging expanded reporting by nondepository institutions "to ensure that all nondepositories that made significant numbers of mortgage decisions report these essential data, providing the government and the public an accurate, timely picture of mortgage lending activity"); *id*. (remarks of Michael Bylsma, Director for Community and Consumer Law, Office of the Comptroller of the Currency) (urging the Board to "review whether its rule-making authority" would permit it to expand HMDA coverage to additional institutions); Atlanta Hearing, *supra* note 131.

[214] *See* Official Transcript, First Public Hearing of the Financial Crisis Inquiry Commission, 97-98 (Jan. 10, 2010), (remarks of Sheila C. Bair, Chairman, Federal Deposit Insurance Corporation, and Mary L. Schapiro, Chairman, U.S. Securities and Exchange Commission), *available at* http://fcic-static.law.stanford.edu/cdn_media/fcic-testimony/2010-0114-Transcript.pdf.

100 applicable loans in the preceding calendar year and met other loan amount thresholds.[215] In addition, outside of HMDA, there are less publicly available data about nondepository institutions than about depository institutions. Depository institutions, even those that do not report HMDA data, report detailed financial information at the bank level to the Federal Deposit Insurance Corporation (FDIC) or to the National Credit Union Association (NCUA), much of which is publicly available.[216] Nondepository institutions, on the other hand, report some data to the Nationwide Mortgage Licensing System and Registry (NMLSR), but detailed financial information and data on mortgage applications and originations are not publicly available.[217]

As a result, the public and public officials face challenges analyzing whether lower-volume nondepository institutions are serving the housing needs of their communities. The lack of data from lower-volume nondepository institutions may also hinder the ability of the public and public officials to understand access to and sources of credit in particular communities. For example, HMDA data users cannot as easily identify a higher concentration of risky loan products in a given community. In addition, with the current HMDA data, the public and public officials cannot readily understand whether a lower-volume nondepository institution's practices pose potential fair lending risks. The lack of data from lower volume nondepository institutions

[215] Banks, savings associations, and credit unions are required to report if they originate at least one home purchase or refinancing of a home purchase loan secured by a first lien on a one-to-four family dwelling and if they meet the other criteria in the definition of financial institution. *See* Section 1003.2 (definition of financial institution).

[216] Every national bank, State member bank, and insured nonmember bank is required by its primary Federal regulator to file consolidated Reports of Condition and Income, also known as Call Report data, for each quarter as of the close of business on the last day of each calendar quarter (the report date). The specific reporting requirements depend upon the size of the bank and whether it has any foreign offices. *See, e.g.*, FDIC, Call and Thrift Financial Reports, http://www2.fdic.gov/call_tfr_rpts/. Credit unions are also required to report Call Report data to NCUA. *See, e.g.*, NCUA, 53000 Call Report Quarterly Data, http://www.ncua.gov/DataApps/QCallRptData/Pages/default.aspx.

[217] NMLSR is a national registry of nondepository institutions. Nondepository institutions report information about mortgage loan originators, mortgage loan originations, the number and dollar amount of loans brokered, and HOEPA originations.

may also make it more difficult for the public and public officials to identify trends in the nondepository mortgage market that pose potential risks, such as the emergence of new loan products or underwriting practices. Requiring additional nondepository institutions to report HMDA data may help resolve many of these problems and may provide greater visibility into the nondepository mortgage market sector.

The 25-loan volume test. Due to the questions raised about potential risks posed to applicants and borrowers by nondepository institutions and the lack of other publicly available data sources about nondepository institutions, the Bureau believes that requiring additional nondepository institutions to report HMDA data may better effectuate HMDA's purposes. The Bureau estimates that the proposed 25-loan volume test, in place of Regulation C's current loan volume and amount and asset thresholds for nondepository coverage, would increase the number of nondepository institutions required to report HMDA data by as much as 40 percent and the number of originations and applications reported by those institutions by as much as 6 percent. This additional data may provide valuable information about the nondepository sector of the mortgage market, such as emerging products or underwriting practices or a higher concentration of particularly risky loan products in a given community.

In addition, the proposed change in coverage may support the Bureau's supervision of nondepository institutions. The Dodd-Frank Act granted Federal supervisory authority to the Bureau over certain nondepository institutions.[218] The proposed change in coverage will increase the number of nondepository institutions that report HMDA data and may provide HMDA data for nondepository institutions that the Bureau now supervises. This data may assist

[218] *See* Dodd-Frank Act section 1024.

the Bureau in identifying lower-volume nondepository institutions that pose possible fair lending risks.

Loan volume or amount test. The Bureau's proposal would eliminate the existing loan volume or amount test for nondepository institutions (*i.e.*, the test that provides that, in the preceding calendar year, the institution must have originated home purchase loans, including refinancings of home purchase loans, that equaled either at least 10 percent of its loan-origination volume, measured in dollars, or at least $25 million.) The Bureau believes that replacing the existing loan volume or amount test with the proposed 25-loan volume test may be appropriate. The current loan volume or amount test implements HMDA sections 303(3)(B) and 303(5), which require persons other than banks, savings associations, and credit unions that are "engaged for profit in the business of mortgage lending" to report HMDA data. When the Board initially implemented this provision, it explained that it interpreted the provision to evince the intent to exclude from coverage institutions that make a relatively small volume of mortgage loans.[219] The Bureau agrees with the Board's interpretation but believes that Regulation C's current coverage test for nondepository institutions may inappropriately exclude nondepository institutions that are engaged for profit in the business of mortgage lending. The Bureau estimates that financial institutions that reported 25 loans in HMDA for the 2012 calendar year originated an average of approximately $5,359,000 in covered loans. Given this level of mortgage activity, and consistent with the policy reasons discussed above, the Bureau believes that it may be appropriate to interpret "engaged for profit in the business of mortgage lending" to

[219] *See* 54 FR 51356, 51358-59 (Dec. 15, 1989).

include nondepository institutions that originated 25 or more covered loans, excluding open-end lines of credit, in the preceding calendar year.

As discussed below under the coverage criteria for depository institutions, the Bureau believes that it may not be appropriate to require institutions that originate fewer than 25 covered loans annually, excluding open-end lines of credit, to report HMDA data. The Bureau believes that the costs to institutions that originate fewer than 25 covered loans may not be justified by the benefit from the data collected from those institutions.

Replacing the current loan volume or amount test for nondepository institutions with the proposed 25-loan volume test may also simplify the nondepository coverage criteria. The Bureau has received feedback that the current loan volume or amount test, which is in part based on the percentage of an institution's total loan origination volume in dollars, is difficult both for institutions and public officials to calculate because many institutions do not otherwise measure or report their overall loan origination volume.[220]

Nondepository asset-size or loan volume exemption. As discussed above, Regulation C's current coverage criteria for nondepository institutions includes the following asset-size or loan volume thresholds: the institution must either have had total assets of more than $10 million (including assets of any parent corporation) on the preceding December 31, or it must have originated at least 100 home purchase loans, including refinancings of home purchase loans, in the preceding calendar year.[221] The Board implemented this coverage requirement as an exercise of its discretion to exempt certain nondepository institutions.[222] HMDA section 309(a) states

[220] *See* Washington Hearing, *supra* note 130.
[221] *See* § 1003.2(2)(iii) (definition of financial institution).
[222] *See* 54 FR 51356, 51358-59 (Dec. 15, 1989); 57 FR 56963, 56964-65 (Dec. 2, 1992).

that, after consultation with the HUD Secretary, the Bureau may, but is not required to, exempt other lending institutions that are comparable within their respective industries to a bank, savings association, or credit union that had total assets of $10,000,000 or less as of its last fiscal year, not adjusted for inflation. Due to changes in the mortgage market and for the reasons given above, the Bureau believes that it may be appropriate to exercise its discretion under HMDA section 309(a) to no longer exempt certain nondepository institutions. The Bureau solicits feedback on whether, and if so to what extent, an asset-size exemption for nondepository institutions should be retained.

The Bureau's proposal. For the reasons discussed above, the Bureau proposes to modify the current definition of financial institution in § 1003.2 as it relates to for-profit mortgage-lending institutions. Proposed § 1003.2(g)(2) provides that the term financial institution includes a nondepository financial institution, which means a for-profit mortgage-lending institution (other than a bank, savings association, or credit union) that meets the following two requirements: First, on the preceding December 31, the institution must have had a home or branch office in an MSA. Second, in the preceding calendar year, the institution must have originated at least 25 covered loans, excluding open-end lines of credit. The Bureau seeks comment on the benefits and burdens associated with the proposed modification to nondepository institution coverage. The Bureau seeks comment on whether it has appropriately calibrated the loan volume test in terms of the number of loans included. There may be advantages to setting the loan volume test at higher or lower levels in terms of the quality and quantity of the data collected. In addition, the Bureau solicits comment on whether the loan volume test excludes important data about particular types of transactions, such as multifamily loans. The Bureau also solicits feedback on whether nondepository institutions that do not

satisfy the proposed 25-loan volume test are comparable within their respective industries to depository institutions with $10 million or less in assets.

By requiring data from a broader range of nondepository institutions, the Bureau believes that this proposed provision would ensure that the public and public officials are provided with sufficient information to enable them to determine whether financial institutions are fulfilling their obligations to serve the housing needs of communities and neighborhoods in which they are located. Furthermore, these data would assist public officials in their determination of the distribution of public sector investments in a manner designed to improve the private investment environment. In addition, because nondepository institutions pose different fair lending risks than depository institutions, the proposed changes would ensure that the public and public officials are provided with sufficient information to identify potential fair lending concerns.

Coverage of Depository Financial Institutions

HMDA extends reporting responsibilities to depository institutions that satisfy certain location, asset-threshold, and federally related requirements.[223] Regulation C implements HMDA's coverage criteria in the definition of financial institution in § 1003.2. Under the definition of financial institution in § 1003.2, a bank, savings association, or credit union meets the definition of financial institution if it satisfies all of the following criteria: (1) on the preceding December 31, it had assets of at least $43 million;[224] (2) on the preceding December 31, it had a home or branch office in an MSA; (3) during the previous calendar year, it originated at least one home purchase loan or refinancing of a home purchase loan secured by a first-lien on

[223] *See* 12 U.S.C. 2802(3).
[224] *See* Comment Financial institution-2 to § 1003.2.

a one-to-four unit dwelling; and (4) the institution is Federally insured or regulated, or the mortgage loan referred to in item (3) was insured, guaranteed, or supplemented by a Federal agency or intended for sale to Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.[225] For the reasons discussed below, the Bureau proposes an additional loan-volume threshold to the coverage criteria for depository institutions. The new criterion would require reporting only by depository institutions that meet the current criteria in § 1003.2 and that originated at least 25 covered loans, excluding open-end lines of credit, in the preceding calendar year.

As part of this rulemaking, the Bureau is seeking ways to reduce burden without impairing the quality of HMDA data. Participants in the Board's 2010 Hearings urged the Board to eliminate reporting by lower-volume depository institutions.[226] The Bureau believes that eliminating reporting by lower-volume depository institutions may be a way to reduce burden without impacting the ability of HMDA to achieve its purposes. Cumulatively, the loans made by depository institutions that originated fewer than 25 covered loans account for a very small percentage of all loans reported under HMDA. For example, the loans reported by depository institutions that originated fewer than 25 covered loans, excluding open-end lines of credit, accounted for less than one percent of originations reported by depository institutions for the 2012 calendar year. Depository institutions that originated fewer than 25 covered loans, excluding open-end lines of credit, accounted for approximately 25 percent of depository institutions that reported HMDA data for the 2012 calendar year. Moreover, as discussed below

[225] See Section 1003.2(financial institution)(1).
[226] *See, e.g.,* Atlanta Hearing, *supra* note 131, (remarks of Phil Greer, Senior Vice President of Loan Administration, State Employees Credit Union) (noting that the burden of reporting only one loan would be low, but that the data reported would not provide "meaningful information").

in part VI, loans made by these depository institutions do not represent a significant portion of lending in most local markets. Therefore, eliminating reporting by these depository institutions may not affect HMDA's ability to provide data to analyze whether communities or markets could benefit from private or public sector investment. In addition, HMDA data collected from depository institutions with fewer than 25 loans may not be useful for statistically analyzing an individual institution's lending to identify possible discriminatory lending patterns and enforce antidiscrimination statutes. Finally, the proposed 25-loan volume test may not impact HMDA's utility as a tool to evaluate whether depository institutions are serving the needs of the communities that they serve. Therefore, the Bureau believes that adding a 25-loan volume test to the current coverage criteria for depository institutions may appropriately balance the burden of HMDA reporting with the benefits to the public and public officials provided by the reported data.

Eliminating reporting by depository institutions that originate fewer than 25 loans annually also is consistent with the Bureau's proposal discussed below to require electronic reporting by all institutions. Currently, only institutions that report 25 or fewer entries annually are permitted to submit the loan application register in paper form.[227] As discussed in the section-by-section analysis of proposed § 1003.5(a), the Bureau proposes to eliminate that option.

For the reasons discussed above, the Bureau proposes that § 1003.2(g)(1), the proposed definition of depository financial institution, include a new criterion: in the preceding calendar year, the institution originated at least 25 covered loans, excluding open-end lines of credit. The

[227] *See* Comment 5(a)-2.

Bureau is also proposing technical changes to paragraph one of the definition of financial institution included in § 1003.2. The Bureau solicits comment on the proposed 25-loan volume test, including (1) the extent to which it may exclude valuable data, (2) whether it would prevent public officials and the public from understanding if the institutions excluded by the proposed 25-loan volume test are serving the needs of their communities, and (3) whether it would prevent public officials and the public from identifying geographic areas that may benefit from private and public sector investment. The Bureau also solicits comment on whether the proposed 25-loan volume test may exclude data that are valuable for identifying possible fair lending issues.

The Bureau also solicits comment on whether the loan-volume test for depository financial institutions excludes important data about particular types of transactions, such as multifamily loans. As discussed more fully below in part VI, the applications and originations reported in 2012 by depository institutions that originated 25 or fewer covered loans have different characteristics than overall HMDA data. For example, applications and originations reported by lower-volume depository institutions were more likely to have higher interest rates, lower loan amounts, relate to manufactured housing or to multifamily properties, and to be portfolio loans than those reported by depository institutions that originated more than 25 covered loans. The Bureau also seeks comment on whether it has appropriately calibrated the proposed loan-volume test for depository financial institutions in terms of the number of loans included. There may be advantages to setting the volume test at higher or lower levels in terms of the quality and quantity of the data collected.

The Bureau proposes § 1003.2(g)(1), the proposed definition of depository financial institution, pursuant to its authority under section 305(a) of HMDA to provide for such adjustments and exceptions for any class of transactions that the Bureau judges are necessary and

proper to effectuate the purposes of HMDA. Pursuant to section 305(a) of HMDA, for the reasons given above, the Bureau believes that this proposed exception is necessary and proper to effectuate the purposes of HMDA. By reducing burden on financial institutions and establishing a consistent loan-volume test applicable to all financial institutions, the Bureau believes that the proposed provision would facilitate compliance with HMDA's requirements.

Composition of Loan-Volume Test

The Bureau analyzed HMDA data to determine the optimal loan volume threshold to propose. As discussed above, the Bureau aims to propose a loan volume test that would reduce burden while maintaining sufficient data for meaningful analysis at the institution, local, and national levels. The Bureau excluded open-end lines of credit from the data it used for this analysis because HMDA data currently does not include comprehensive data on open-end lines of credit. Specifically, under the current rule financial institutions may but are not required to report data on home-equity lines of credit. In addition, other open-end lines of credit, such as commercial lines, are not currently reported. As a result, the Bureau's proposed loan volume threshold also excludes open-end lines of credit from the loans that count toward the proposed 25-loan volume test.

The Bureau solicits feedback on whether it should include open-end lines of credit in the types of loans that count toward the proposed loan volume threshold in light of the potential value of information about open-end lines of credit discussed further in the section-by-section analysis of proposed § 1003.2(o) below. The Bureau solicits information that would allow it to estimate the impact on HMDA data if open-end lines of credit were excluded from or included in the loan volume threshold. The Bureau is particularly interested in determining the types of institutions that would be covered or not covered, the types of mortgage businesses in which they

engage, and the communities they serve.

During the Small Business Review Panel process, small entity representatives generally supported the proposal to establish a uniform loan-volume threshold. The Panel recommended that the Bureau consider revisions to Regulation C that would simplify and clarify whether a financial institution is required to report HMDA data.[228] In addition, the Panel recommended that the Bureau solicit feedback to help the Bureau establish an appropriate loan-volume threshold that would minimize the burden on small entities while ensuring adequate data collection to fulfill HMDA's objectives.[229] The Panel also recommended that the Bureau solicit feedback on the types of mortgage loans that should count toward the loan-volume test.[230] In addition, the Panel recommended that the Bureau consider whether a multiyear look-back period would establish more predictable coverage obligations for small financial institutions.[231] Consistent with the Panel's recommendation, as discussed above, the Bureau solicits feedback on all aspects of the proposed 25-loan volume test, including the number and types of loans that should be included. The Bureau solicits feedback on whether a multiyear look-back period would ease the burdens associated with unpredictable compliance obligations that may result from the proposed 25-loan volume test.

To clarify the definition of financial institution and facilitate compliance, the Bureau also proposes to modify and to renumber the commentary to the definition of financial institution. Proposed comment 2(g)-1 discusses the meaning of the preceding calendar year and the preceding December 31 and provides an illustrative example. Proposed comment 2(g)-3

[228] *See, e.g.,* Small Business Review Panel Report at 37.
[229] *See id.*
[230] *See id.*
[231] *See id.*

discusses coverage after a merger or acquisition and provides several illustrative examples. Proposed comment 2(g)-4 provides cross references to commentary that are helpful in determining whether activities with respect to a particular loan constitute an origination. Proposed comments 2(g)-5 and -6 provide guidance on whether branches and offices of foreign banks meet the definition of financial institution.

2(i) Home Improvement Loan

HMDA section 303(2) defines a "mortgage loan" as a loan that is secured by residential real property or a home improvement loan. However, HMDA does not expressly define "home improvement loan." Regulation C currently defines "home improvement loan" to mean a loan secured by a lien on a dwelling that is for the purpose, in whole or in part, of repairing, rehabilitating, remodeling, or improving a dwelling or the real property on which it is located. The current definition also includes a non-dwelling secured loan that is for the purpose, in whole or in part, of repairing, rehabilitating, remodeling, or improving a dwelling or the real property on which it is located, and that is classified by the financial institution as a home improvement loan. For the reasons discussed below, the Bureau is proposing to exclude loans that are not secured by a lien on a dwelling from the definition of home improvement loan.

During the 2010 Board Hearings, several participants provided feedback that financial institutions encounter substantial compliance challenges when reporting home improvement loans that are not secured by a dwelling.[232] These unsecured loans are often processed, underwritten, and originated through different loan origination systems than are used for secured lending. For financial institutions that focus on portfolio lending, unsecured home improvement

[232] *See* Chicago Hearing, *supra* note 137, and Atlanta Hearing, *supra* note 131.

loans may be handled by different staff than handle secured lending, which increases the training cost and compliance burden. Thus, the compliance burden associated with unsecured home improvement lending appears to be significant.

The Bureau acknowledges that unsecured home improvement loan data was useful when Regulation C was originally implemented. However, it appears that the current value of unsecured home improvement loan data is limited. For example, in 2012 unsecured home improvement loans comprised only approximately 1.8 percent of all HMDA records.[233] The Bureau is not aware of any instances where a community group relied on unsecured home improvement loan data to determine if a financial institution was serving the housing needs of a neighborhood, such as through discussions related to bank merger or branch expansion requests. In addition, few fair lending cases appear to use unsecured home improvement loan data, and the Bureau is not aware of any research studies or public or private investment programs that relied on unsecured home improvement loan data. Therefore, unsecured home improvement loan data may not provide useful information to the public.

Based on these considerations, the burden associated with reporting unsecured home improvement loan data appears to outweigh the value of the information, and it may be appropriate to exclude unsecured loans from the reporting requirements of Regulation C. Accordingly, the Bureau is proposing to modify § 1003.2(i) to define home improvement loan as a covered loan that is for the purpose, in whole or in part, of repairing, rehabilitating, remodeling, or improving a dwelling or the real property on which it is located. The Bureau

[233] In 2012, out of 18,691,551 total HMDA records, only 340,097 were identified as unsecured home improvement loans.

solicits feedback regarding whether this proposed exclusion is appropriate. In addition to general feedback, the Bureau specifically requests comment regarding the extent to which members of the public use unsecured home improvement loan data to determine whether financial institutions are fulfilling their obligations to serve community housing needs, whether financial institutions rely on unsecured home improvement loan data for purposes of fair lending examinations, and whether there are any other considerations that the Bureau should analyze in determining whether this proposed exception is appropriate.

Current comment Home improvement loan-1 discusses the classification requirement for loans not secured by a lien on a dwelling. To conform to the proposed exclusion of unsecured home improvement loans, the Bureau is also proposing to remove this comment. The Bureau is proposing to replace the current comment with new comment 2(i)-1, which clarifies that a home improvement loan is defined by reference to the purpose of the obligation, and also explains that an obligation is a home improvement loan even if only a part of the purpose is for repairing, rehabilitating, remodeling, or improving a dwelling. Proposed comment 2(i)-1 also provides several illustrative examples. Proposed comment 2(i)-4 is similar to current comment Home improvement loan-4, but with modifications to conform to the proposed exclusion of unsecured home improvement loans.

Current comment Home improvement loan-5 discusses reporting requirements for home improvement loans. The Bureau believes that the most appropriate location for information related to reporting requirements is in the commentary to the reporting requirements under § 1003.4. Thus, the Bureau is proposing to delete comment Home improvement loan-5.

Section 1003.2(i) is proposed pursuant to the Bureau's authority under section 305(a) of HMDA. Pursuant to section 305(a) of HMDA, the Bureau believes that these proposed

modifications and exceptions are necessary and proper to effectuate the purposes of HMDA and to facilitate compliance therewith. The Bureau believes that unsecured home improvement loan data may distort the overall quality of the HMDA dataset. Excluding unsecured home improvement loans from the set of reportable data would improve the quality of the data, which would provide the citizens and public officials of the United States with sufficient information to enable them to determine whether depository institutions are filling their obligations to serve the housing needs of the communities and neighborhoods in which they are located and to assist public officials in their determination of the distribution of public sector investments in a manner designed to improve the private investment environment. The Bureau also believes that this proposed exception would facilitate compliance by removing a significant compliance burden. The Bureau also believes that it is reasonable to interpret HMDA section 303(2) to include only loans that are secured by liens on dwellings, as that interpretation aligns with common definitions of the term mortgage loan and such loans will include home improvement loans.

2(j) Home Purchase Loan

HMDA section 303(2) defines a "mortgage loan" as a loan which is secured by residential real property or a home improvement loan. However, HMDA does not expressly define "home purchase loan." Regulation C currently defines "home purchase loan" to mean a loan secured by and made for the purpose of purchasing a dwelling. As discussed above, the Bureau is proposing several technical modifications to clarify the regulation and facilitate compliance. To further these goals, the Bureau proposes § 1003.2(j), which modifies the current definition of "home purchase loan" to replace "loan" with "covered loan," to make conforming edits in several of the comments applicable to proposed § 1003.2(j), and to add illustrative

examples to these comments. The Bureau is also proposing to add a new comment 2(j)-1, which discusses the definition of home purchase loan and provides illustrative examples.

As part of the effort to clarify Regulation C, the Bureau is proposing to move, modify, or delete several existing comments. Current comment Home purchase loan-3 discusses loans to purchase property used primarily for agricultural purposes. As discussed in the section-by-section analysis to § 1003.2(b), the Bureau is proposing to move comment Home purchase loan-3 to the commentary under that section. Current comment Home purchase loan-7 discusses reporting requirements for home purchase loans. The Bureau believes that the most appropriate location for information related to reporting requirements is in the commentary to the reporting requirements under § 1003.4. Thus, the Bureau is proposing to delete comment Home purchase loan-7. As discussed in the section-by-section analysis to § 1003.4(a)(3), the Bureau is proposing new comments that are substantively similar to existing comment Home purchase loan-7, but with modifications for clarity and additional illustrative examples. Finally, the Bureau is proposing to add new comment 2(j)-7, which clarifies that, for purposes of § 1003.2(j), an assumption is a home purchase loan when a financial institution enters into a written agreement accepting a new borrower as the obligor on an existing obligation for a covered loan. This proposed comment would further clarify that if an assumption does not involve a written agreement between a new borrower and the financial institution, it is not a home purchase loan for purposes of § 1003.2(j). This proposed comment is substantively similar to current comment 1(c)-9, which the Bureau is proposing to delete, as discussed in the section-by-section analysis to § 1003.1(c). The Bureau solicits feedback regarding these proposed relocations, modifications, and deletions, and solicits feedback regarding whether additional comments or examples would help clarify proposed § 1003.2(j) or facilitate compliance.

2(k) Loan Application Register

Regulation C requires financial institutions to collect and record reportable data in the format prescribed in appendix A of the regulation. This format is referred to as the "loan application register," but that name is not currently defined in the regulation. To improve the readability of the regulation, the Bureau is proposing § 1003.2(k), which defines the term "loan application register" to mean a register in the format prescribed in appendix A to this part. The Bureau solicits feedback on this technical modification, and whether additional changes could be made to improve the clarity of the regulation.

2(l) Manufactured Home

Regulation C requires financial institutions to report the property type to which a loan or application relates, including whether the property is a manufactured home as defined in § 1003.2. The Bureau is proposing to make technical corrections and minor wording changes to the definition of manufactured home. Manufactured homes would continue to be defined by referring to the manufactured home construction and safety standards promulgated by HUD. The Bureau is proposing to require financial institutions to report additional information about manufactured home loans and applications, as discussed in the section-by-section analysis of proposed § 1003.4(a)(29) and (30).

The proposal revises comment Manufactured home-1 for clarity and consistency with the HUD standards. It provides that the definition in § 1003.2(l) refers to the Federal building code for manufactured housing established by HUD, and that modular or other factory-built homes that do not meet the HUD code standards are not manufactured homes for purposes of § 1003.2(l). It would provide that recreational vehicles, which are excluded from the HUD code standards pursuant to 24 CFR 3282.8(g), are also excluded from the definition of dwelling for

purposes of § 1003.2(f). Proposed new comment 2(l)-2 provides information on identifying manufactured homes with reference to the data plate and certification label required by HUD standards. The Bureau believes this comment will facilitate compliance by providing general guidance on distinguishing manufactured homes from other types of factory-built residential structures. The Bureau solicits feedback on whether additional guidance would provide greater clarity in this area.

2(n) Multifamily Dwelling

Section 1003.4(a)(5) of Regulation C requires financial institutions to report the property type of the dwelling to which a loan or application relates. Property type includes multifamily dwellings pursuant to appendix A. However, the term "multifamily dwelling" is not specifically defined in Regulation C. Multifamily residential structures are included within the definition of dwelling as provided by comment 1 to the definition of dwelling. Because multifamily lending is different from single-family lending, appendix A provides that certain data points are reported as not applicable for loans or applications related to multifamily dwellings, including owner-occupancy status and the applicant or borrower's gross annual income. Additionally, the applicant or borrower's ethnicity, race, and sex are reported as not applicable for applications and loans involving applicants that are not natural persons, which include many applicants for loans related to multifamily dwellings. The Bureau is proposing to add a new definition of multifamily dwelling as § 1003.2(n). The proposal would define a multifamily dwelling as a dwelling, regardless of construction method, that contains five or more individual dwelling units. The Bureau believes this definition will facilitate compliance by providing a clear definition for multifamily dwelling for reporting and exception purposes. The Bureau is proposing to require additional information about multifamily dwellings as discussed in the section-by-section

analysis of proposed § 1003.4(a)(31) and (32). The Bureau solicits feedback on whether the proposed definition of a multifamily dwelling is appropriate, and whether any existing or proposed data points should be modified or eliminated for multifamily dwellings.

2(o) Open-End Line of Credit

Currently, neither HMDA nor Regulation C provides a definition for the term "open-end line of credit." Section 1003.4(c)(3) of Regulation C currently provides that a financial institution may report, but is not required to report, home-equity lines of credit made in whole or in part for the purpose of home improvement or home purchase. Regulation C does not currently require reporting for commercial lines of credit secured by a dwelling. For the reasons discussed below, the Bureau is proposing to require mandatory reporting of home-equity line of credit data, and to require reporting of dwelling-secured commercial line of credit data.

The Board's original implementation of Regulation C did not address home-equity lines of credit because depository institutions rarely offered them to consumers.[234] However, home-equity lines of credit gained popularity after several legislative changes in the 1980s.[235] As home-equity lines of credit became increasingly common, the Board adopted several modifications to permit home-equity line of credit reporting in the late 1980s and 1990s.[236] In

[234] Prior to the enactment of the Depository Institutions Deregulation and Monetary Control Act of 1980, depository institutions' ability to engage in residential real estate lending was significantly limited. *See* Public Law 96-221, 94 Stat. 132 (Mar. 31, 1980).

[235] The Alternative Mortgage Transaction Parity Act of 1982 preempted State law restrictions on variable-rate mortgage loans, among other things, making it easier for depository institutions to offer HELOCs to consumers. *See* 12 U.S.C. 3801 *et. seq.* The Tax Reform Act of 1986 eliminated interest deductions for most types of credit, but not for credit secured by real estate, thereby making HELOCs more attractive for consumers. *See* Public Law 99–514, 100 Stat. 2085 (Oct. 22, 1986).

[236] In 1988, the Board added an instruction permitting financial institutions to report HELOCs that were home improvement loans. 53 FR 31683, 31685 (Aug. 19, 1988). The Board subsequently clarified that HELOC reporting was optional. 53 FR 52657, 52660 (Dec. 29, 1988). In 1995, the Board extended optional HELOC reporting to home purchase loans. 60 FR 63393, 63398 (Dec. 11, 1995).

response to the increasing importance of home-equity lines of credit, in 2000 the Board proposed to require mandatory reporting of all such transactions.[237] However, in 2002 the Board decided to retain optional reporting.[238] While mandatory reporting would have improved the usefulness of the data, the burden seemed to outweigh the benefit.[239]

As the mortgage market continued to evolve, the need for data about the home-equity line of credit market increased. During the mid-2000s home-equity line of credit originations expanded significantly.[240] Research indicates that home-equity lines of credit were often used by speculative real estate investors both before and after the financial crisis.[241] Studies also suggest that home-equity lines of credit were particularly popular in areas where house prices significantly increased prior to the market collapse.[242] Thus, home-equity line of credit data may have helped the public better understand the risks posed to local housing markets. Furthermore, during the housing crisis many public and private mortgage relief programs encountered unique difficulties assisting distressed consumers who had obtained subordinate-lien loans, including home-equity lines of credit.[243] Public officials remain concerned about the potential effect of home-equity lines of credit on the economic recovery because home-equity lines of credit

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[237] 65 FR 78656, 78660 (Dec. 15, 2000).
[238] 67 FR 7222, 7225 (Feb. 15, 2002).
[239] *Id*.
[240] In the fourth quarter of 1999, approximately $20 billion in HELOCs were originated. By the fourth quarter of 2005, approximately $125 billion in HELOCs were originated. *See* Donghoon Lee, Christopher Mayer, and Joseph Tracy, *A New Look at Second Liens*, Fed. Reserve Bank of New York Staff Report No. 569, p. 30 (August 2012).
[241] "There is evidence indicating HELOC use helped fund speculative purchases of nonowner-occupied investment properties resulting in higher first mortgage defaults and house price depreciation during 2006–2009." Michael LaCour-Little, Libo Sun, and Wei Yu, *The Role of Home Equity Lending in the Recent Mortgage Crisis*, Real Estate Economics, p. 182 (Aug. 2013).
[242] "[B]oth HELOC lending and [closed-end second] lending grew faster in high house price appreciation ZIP codes, but HELOC lending has a much stronger association with house price appreciation than [closed-end second] lending." Michael LaCour-Little, Libo Sun, and Wei Yu, *The Role of Home Equity Lending in the Recent Mortgage Crisis*, Real Estate Economics, p. 164 (Aug. 2013).
[243] *See* Vicki Been, Howell Jackson, and Mark Willis, *Essay: Sticky Seconds - The Problems Second Liens Pose to the Resolution of Distressed Mortgages*, Furman Center for Real Estate and Urban Policy, pp. 13-18 (Aug. 2012).

generally permit interest-only payments for ten years after account opening.[244] Thus, although permitting optional reporting of this data was appropriate in the past, it now may be appropriate to require mandatory reporting of data for home-equity lines of credit.

Similar concerns exist for dwelling-secured commercial lines of credit. Many people obtain lines of credit secured by their dwelling with the intention of using the line of credit for business purposes.[245] These dwelling-secured lines of credit are especially important for small businesses,[246] including small businesses started by immigrant entrepreneurs.[247] However, many people who had obtained dwelling-secured lines of credit for business purposes faced foreclosure after the mortgage crisis began.[248] In addition, as the mortgage crisis decreased the availability of traditional business credit, some small business entrepreneurs turned to dwelling-secured credit to maintain business operations.[249] The foreclosures and delinquencies resulting from these lending practices affected many neighborhoods throughout the country, including many

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[244] "Approximately 58 percent of all HELOC balances are due to start amortizing between 2014 and 2017." Office of the Comptroller of the Currency, *Semiannual Risk Perspective*, p. 20 (Spring 2012).

[245] "As one example, Korean Churches for Community Development in Los Angeles reports that 80% of the borrowers it counsels have HELOCs, and that many community members rely on HELOCs to purchase inventory and maintain cash flow." California Reinvestment Coalition *et al.* comment letter, Board of Governors of the Fed. Reserve System docket number OP-1388, p. 6, submitted Aug. 4, 2010.

[246] "Lines of credit (LOC) are the dominant credit instrument used by small businesses and account for more than 52% of the most recent loans in our data set." Ken S. Cavalluzzo, Linda C. Cavalluzzo, & John D. Wolken, *Competition, Small Business Financing, and Discrimination: Evidence From a New Survey*, 75 Journal of Business 641, 659 (2002).

[247] A 2012 study commissioned by the Small Business Administration found that home-secured lending was the source of expansion capital for 5 percent of all small businesses, but this lending accounted for 6 percent of expansion capital for immigrant-owned small businesses, and 7.1 percent of expansion capital for small businesses owned by Asian immigrants. *See* Robert W. Fairlie, *Immigrant Entrepreneurs and Small Business Owners, and Their Access to Financial Capital*, p. 23 (May, 2012).

[248] *See e.g.* San Francisco Hearing, *supra* note 133.

[249] "Asian Pacific Islander (API) small businesses rely heavily on personal real estate for their financing, and the significant decline in residential property values has led to a reduction in credit and rising delinquencies for API small business loans." Ben Bernanke (speech), "Semiannual Monetary Policy Report to the Congress," July 21, 2010, *available at* http://www.federalreserve.gov/newsevents/testimony/bernanke20100721a.htm.

low- to moderate-income neighborhoods.[250] Thus, dwelling-secured commercial line of credit data would have helped the public better understand the risks posed to local housing markets, thereby helping enable the public to determine whether financial institutions were filling their obligations to serve the housing needs of the communities and neighborhoods in which they are located.

In addition to improving the usefulness of the HMDA data, the Bureau believes that expanding the scope of Regulation C to include all dwelling-secured lines of credit would be necessary to prevent evasion of HMDA. From the perspective of an individual applicant or borrower, a closed-end mortgage loan and an open-end line of credit are often interchangeable, as people seeking credit need to go through an application process of similar length and complexity. If the reporting requirements applied to closed-end mortgage loans, but not open-end lines of credit, unscrupulous financial institutions could attempt to evade HMDA's requirements by persuading applicants to obtain an open-end line of credit instead of a closed-end mortgage loan.[251] Feedback provided at the 2010 Board Hearings suggested that lenders currently sell lines of credit to applicants seeking mortgage loans, even when an applicant was not initially interested in obtaining an open-end line of credit.[252] Given sales practices such as

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[250] "Our paper graphically illustrates the spillover effects of the mortgage crisis into another vital sector—for the economy as a whole as well as for LMI areas in particular. Our findings suggest that in order to reverse the cycle of disinvestment in neighborhoods hit hard by foreclosures, we need to address the small business sector as well as housing." Elizabeth Laderman & Carolina Reid, *The Community Reinvestment Act and Small Business Lending in Low- and Moderate-Income Neighborhoods during the Financial Crisis*, Fed. Reserve Bank of San Francisco Working Paper 2010-05, p. 9 (Oct. 2005).

[251] Concerns over potential evasion were raised during the 2010 Board Hearings. *See* Washington Hearing, *supra* note 130.

[252] *See* Washington Hearing, *supra* note 130 (Remarks of Lisa Rice, Vice President, National Fair Housing Alliance) ("When I purchased my home I wasn't even thinking about getting a HELOC and my mortgage originator – I purchased a home with a loan from a depository institution, retail, and the loan officer said to me, you need to get a HELOC and gave me all of these reasons why. And so I was sold my mortgage and my HELOC at the same time by

these and the potential interchangeability of these products, the Bureau believes that there is a serious risk that financial institutions may steer applicants seeking a reportable loan, such as a subordinate lien purchase-money loan or a home improvement loan, into an open-end line of credit to avoid the HMDA and Regulation C reporting requirements. This risk may be even greater should the Bureau determine that the proposed expansion to all closed-end mortgage loans, discussed in the section-by-section analysis to § 1003.2(d) above, is appropriate. Thus, the Bureau believes that some financial institutions would likely attempt to evade the requirements of Regulation C if the reporting requirements were not extended to open-end lines of credit, and that this adjustment is necessary and proper to prevent evasion of HMDA.

For these reasons, the Bureau believes that expanding the reporting requirements of Regulation C to all dwelling-secured, open-end lines of credit would provide valuable information to the public and to public officials. Accordingly, the Bureau is proposing § 1003.2(o), which defines an open-end line of credit as a transaction that: is an open-end credit plan as defined in § 1026.2(a)(20) of Regulation Z, but without regard to whether the credit is for personal, family, or household purposes, without regard to whether the person to whom credit is extended is a consumer, and without regard to whether the person extending credit is a creditor, as those terms are defined under Regulation Z, 12 CFR part 1026; is secured by a lien on a dwelling, as defined under § 1003.2(f); is not a reverse mortgage under § 1003.2(q); and is not excluded from Regulation C. Proposed comment 2(o)-1 discusses the definition of open-end line of credit and provides several illustrative examples. This proposed comment also clarifies that

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the same originator. Every institution doesn't do it the same way. I didn't ask for it. It was something that the lending institution sold to me, and she did a very, very good job of selling it to me.").

financial institutions may rely on § 1026.2(a)(20) and the related commentary in determining whether a transaction is open-end credit under § 1003.2(o)(1). This Bureau solicits feedback regarding whether this proposed modification is appropriate, and whether this proposed modification would provide useful data to the public and otherwise serve the purposes of HMDA. The Bureau also solicits feedback regarding the costs, burdens, and compliance challenges that would be associated with expanding the transactional coverage of the regulation to include home-equity lines of credit and dwelling-secured commercial lines of credit. Importantly, the Bureau requests that commenters differentiate between home-equity lines of credit and dwelling-secured commercial lines of credit when providing feedback, as precise feedback about these different products would assist in the Bureau's efforts to develop an effective and appropriately tailored final rule.

As part of the Bureau's efforts to reduce regulatory burden by aligning to existing industry or regulatory standards, it may be appropriate to define open-end line of credit by reference to the existing definition of open-end credit plan under Regulation Z, with modifications to conform to the differences in scope between Regulations C and Z, because the Bureau believes that definition is clear and is understood by industry. However, the Bureau solicits feedback regarding whether this proposed definition is appropriate and whether there are other clarifications that would facilitate compliance. Finally, as discussed in the section-by-section analysis to proposed § 1003.4(c)(3) below, the Bureau is also proposing modifications to § 1003.4(c)(3) to conform to the proposed modifications in this section.

During the Small Business Review Panel process, several small entity representatives expressed concerns about requiring mandatory reporting of home-equity lines of credit,[253] and about requiring reporting of dwelling-secured commercial credit.[254] The Small Business Review Panel recommended that the Bureau solicit public comment on whether any types of dwelling-secured loans should be excluded from Regulation C's data collection and reporting requirements and, if so, which types of loans should be excluded.[255] Based on this feedback and consistent with the Small Business Review Panel's recommendation, the Bureau solicits feedback regarding whether any types of dwelling-secured loans or lines of credit should be excluded from the requirements of the regulation, and which types of loans or lines of credit should be excluded.

Proposed § 1003.2(o) is issued pursuant to the Bureau's authority under section 305(a) of HMDA. For the reasons given above, the Bureau believes that including dwelling-secured lines of credit within the scope of the regulation is a reasonable interpretation of HMDA section 303(2), which defines "mortgage loan" to mean a loan which is secured by residential real property or a home improvement loan. The Bureau interprets that term to include dwelling-secured lines of credit, as those transactions are secured by residential real property, and they may be used for home improvement. As discussed above, information on home-equity lines of credit and dwelling-secured commercial lines of credit would have helped the public understand the risks posed to communities prior to the mortgage crisis. In addition, information on these types of transactions would have been helpful for public officials developing programs intended

[253] *See* Small Business Review Panel Report at 24, 38, 56, 57, 61, 91, 95, 96, 100, and 132.
[254] *See id* at 24, 37, 59, 78, and 85.
[255] *See id.* at 38.

to mitigate the effects of delinquency, default, and foreclosure in many areas throughout the country. Thus, this information will enable the people and public officials of the United States to determine whether depository institutions are filling their obligations to serve the housing needs of the communities and neighborhoods in which they are located and to assist public officials in their determination of the distribution of public sector investments in a manner designed to improve the private investment environment.

In addition, pursuant to section 305(a) of HMDA, the Bureau believes that this proposed requirement is necessary and proper to effectuate the purposes of HMDA and to prevent circumvention or evasion thereof. For the reasons given above, by requiring all financial institutions to report information regarding home-equity lines of credit and dwelling-secured commercial lines of credit, this proposed modification would ensure that the citizens and public officials of the United States are provided with sufficient information to enable them to determine whether depository institutions are filling their obligations to serve the housing needs of the communities and neighborhoods in which they are located. In addition, this proposed modification would assist public officials in their determination of the distribution of public sector investments in a manner designed to improve the private investment environment. Furthermore, as home-equity lines of credit and dwelling-secured commercial lines of credit are a common method of obtaining credit, this proposed modification would assist in identifying possible discriminatory lending patterns and enforcing antidiscrimination statutes.

2(p) Refinancing

HMDA does not expressly define "refinancing." Regulation C currently defines "refinancing" to mean a new obligation that satisfies and replaces an existing obligation by the same borrower, subject to two qualifications. In the first qualification, for coverage purposes,

the existing obligation is a home purchase loan (as determined by the lender, for example, by reference to available documents; or as stated by the applicant), and both the existing obligation and the new obligation are secured by first liens on dwellings. In the second qualification, for reporting purposes, both the existing obligation and the new obligation are secured by liens on dwellings. For the reasons discussed below, the Bureau is proposing several modifications to clarify and simplify this definition.

The Bureau has received feedback indicating that the current definition of refinancing should be clarified or modified to reduce burden and facilitate compliance. Comments received in response to the 2011 Regulation C Restatement argued that the definition of refinancing in Regulation C should be aligned with the definition in Regulation Z to streamline the regulatory requirements and reduce compliance burden. Other feedback suggests that the current two pronged definition of refinancing – one prong for institutional coverage and one prong for reporting – is also a source of confusion. While the FFIEC published several frequently asked questions to address some of these issues, it appears that some confusion remains.

The Bureau believes that these issues would be best addressed by simplifying the definition and adding clarifying commentary. While financial institutions may often refer to the regulation to determine whether a reportable transaction is considered a refinancing, the Bureau does not believe that financial institutions often reevaluate institutional coverage. When an entity needs to evaluate institutional coverage, it currently needs to refer to the definition of refinancing and financial institution. The Bureau believes that moving the coverage prong to the definition of financial institution would simplify the regulation by placing the information needed to determine institutional coverage in one location. Thus, the Bureau is proposing § 1003.2(p), which defines a refinancing to mean a covered loan in which a new debt obligation

satisfies and replaces an existing debt obligation by the same borrower, in which both the existing debt obligation and the new debt obligation are secured by liens on dwellings. The Bureau solicits feedback regarding whether these proposed modifications are appropriate, and whether additional clarification is necessary.

Proposed comment 2(p)-1 discusses the definition in § 1003.2(p) and provides illustrative examples of the definition. This proposed comment also clarifies that, if a borrower enters into a new debt obligation that modifies that terms of the existing debt obligation, but does not satisfy and replace the existing debt obligation, the new debt obligation is not a refinancing for purposes of § 1003.2(p). Proposed comment 2(p)-2 explains that, for purposes of determining whether the transaction is a refinancing under § 1003.2(p), both the new debt obligation and the existing debt obligation must be secured by liens on dwellings, and provides several illustrative examples. Proposed comment 2(p)-3 clarifies that the existing and new obligation must both be by the same borrower. This proposed comment provides examples of common scenarios that illustrate this proposed definition.

2(q) Reverse Mortgage

Currently, neither HMDA nor Regulation C expressly addresses reverse mortgages. However, reverse mortgages that are home purchase loans, home improvement loans, or refinancings under the current definitions in § 1003.2 are subject to the data collection and reporting requirements of Regulation C.

Reverse mortgages became increasingly popular in the past decade, and many expect these products to become more popular in the coming years.[256] While reverse mortgages may provide important benefits to homeowners, several concerns exist about the reverse mortgage market.[257] For example, in recent years a substantial number of homeowners with reverse mortgages have defaulted.[258] As discussed in part II.A above, many communities are struggling with the effects of foreclosure and default, which often contribute to a downward spiral in neighborhood property values.[259] These struggles may be especially acute in communities with sizeable populations of homeowners eligible for reverse mortgage programs,[260] and many State officials are focusing on harmful practices associated with reverse mortgage lending.[261] Thus, information on all reverse mortgages, regardless of purpose, would help communities understand the risks posed to local housing markets, thereby providing the citizens and public officials of the United States with sufficient information to enable them to determine whether financial institutions are filling their obligations to serve the housing needs of the communities and neighborhoods in which they are located. Furthermore, private institutions and nonprofit

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[256] *See* Lisa Prevost, *Retiring on the House: Reverse Mortgages for Baby Boomers*, N.Y. Times, Feb. 13, 2014, at RE5, *available at* http://www.nytimes.com/2014/02/16/realestate/reverse-mortgages-for-baby-boomers.html?_r=0.

[257] See Consumer Fin. Prot. Bureau, Report to Congress on Reverse Mortgages110-145 (June 28, 2012), *available at* http://files.consumerfinance.gov/a/assets/documents/201206_cfpb_Reverse_Mortgage_Report.pdf.

[258] In July 2011, 8.1 percent of active Home Equity Conversion Mortgage loans were in default. By February 2012, the proportion in default had increased to 9.4 percent. *See* HUD Presentation, Nat'l Reverse Mortgage Lenders Ass'n Eastern Regional Meeting (Mar. 26, 2012).

[259] *See supra* note 83.

[260] *See* Susan Taylor Martin, *Complexities of Reverse Mortgages Snag Homeowners*, Tampa Bay Times, May 30, 2014; Kevin Burbach & Sharon Schmickle, *As State Ages, Minnesota Braces for Problems With Risky Reverse-Mortgages*, MinnPost (April 5, 2013), http://www.minnpost.com/business/2013/04/state-ages-minnesota-braces-problems-risky-reverse-mortgages.

[261] *See e.g.*, Press Release, Illinois Attorney General, *Madigan Sues Two Reverse Mortgage Brokers For Using Deceptive Marketing to Target Seniors* (Feb. 8, 2010), http://www.illinoisattorneygeneral.gov/pressroom/2010_02/20100208.html; Press Release, Washington State Office of the Attorney General, *Ferguson Files Complaint Against Bellevue Insurance Agent and His Company for Targeting Elderly Widows* (July 29, 2013), http://www.atg.wa.gov/pressrelease.aspx?id=31312.

organizations, as well as local, State, and Federal programs, traditionally have facilitated or engaged in reverse mortgage lending. However, the proprietary market for reverse mortgages has substantially declined in recent years. Thus, requiring improved information regarding all reverse mortgages would assist public officials in their determination of the distribution of public sector investments in a manner designed to improve the private investment environment. In addition, State officials provided feedback during the 2010 Board Hearings that expanding the transactional coverage of Regulation C to include all reverse mortgages would assist in the identification of discriminatory and other potentially harmful practices.[262] Thus, improved reverse mortgage data would assist in identifying possible discriminatory lending patterns and enforcing antidiscrimination statutes.

Furthermore, the Bureau believes that the current applicability of Regulation C to reverse mortgages is a source of confusion and presents a compliance burden. For example, financial institutions are required to report information on a reverse mortgage that is a home purchase loan, home improvement loan, or a refinancing, but if the reverse mortgage is also a home-equity line of credit, the financial institution may report the information, but is not required to do so. In addition, the Bureau has received feedback that overlapping or inapplicable provisions in the current regulation contribute to this confusion. For example, a financial institution is required to report rate-spread information under § 1003.4(a)(12)(i) for a reverse mortgage that is a home purchase loan or a refinancing, but is not required to report this information for a reverse

[262] "[R]everse mortgages constitute a product geared toward a specific protected class, the elderly. Thus, reporting them, (assuming an institution chooses to report them at all), as refinance or HELOC loans may mask discriminatory or abusive practices that are occurring to harm the elderly." New York State Banking Department comment letter, Board of Governors of the Fed. Reserve System docket no. OP-1388, p. 5, submitted Aug. 6, 2010. *See also* San Francisco Hearing, *supra* note 133 (Remarks of Preston DuFauchard, Commissioner of the California Department of Corporations).

mortgage that also meets the definition of home-equity line of credit under § 1003.2, because home-equity lines of credit are exempt from the sections of Regulation Z related to the rate-spread calculation. Similarly, financial institutions are not required to report HOEPA status under § 1003.4(a)(13) for reverse mortgages, because reverse mortgages are exempt from HOEPA. While the FFIEC has published FAQs to address much of this confusion, simplifying the applicability of Regulation C to reverse mortgages would further facilitate compliance.

The Bureau believes that all of the concerns discussed above would be addressed by expanding the scope of reportable transactions to include all reverse mortgages, regardless of purpose, and by adding a new definition for reverse mortgages in § 1003.2. As part of the Bureau's efforts to reduce regulatory burden by aligning to existing industry or regulatory standards, it may be appropriate to define reverse mortgages by reference to the existing Regulation Z definition because the Bureau believes that definition is clear and is understood by industry. Accordingly, the Bureau is proposing § 1003.2(q), which would define reverse mortgage as a transaction that is a reverse mortgage transaction as defined in § 1026.33(a) of Regulation Z and that is not excluded from Regulation C pursuant to § 1003.3(c). The Bureau solicits feedback regarding whether this proposed definition is appropriate. Although the Bureau is not proposing commentary to this proposed definition, the Bureau solicits feedback regarding whether illustrative examples would help clarify the proposed definition or facilitate compliance.

Proposed § 1003.2(q) is issued pursuant to the Bureau's authority under section 305(a) of HMDA. For the reasons given above, the Bureau believes that including reverse mortgages within the scope of the regulation is a reasonable interpretation of HMDA section 303(2), which defines "mortgage loan" to mean a loan which is secured by residential real property or a home improvement loan. The Bureau interprets that term to include reverse mortgages, as those

transactions are secured by residential real property, and they may be used for home improvement. In addition, pursuant to its authority under section 305(a) of HMDA, the Bureau believes that this proposed adjustment is necessary and proper to effectuate the purposes of HMDA, to prevent circumvention or evasion thereof, and to facilitate compliance therewith. For the reasons given above, by requiring all financial institutions to report information regarding reverse mortgages, this proposed modification would ensure that the citizens and public officials of the United States are provided with sufficient information to enable them to determine whether depository institutions are filling their obligations to serve the housing needs of the communities and neighborhoods in which they are located. Furthermore, as reverse mortgages are a common method of obtaining credit, this proposed modification would assist in identifying possible discriminatory lending patterns and enforcing antidiscrimination statutes.

Section 1003.3 Exempt Institutions and Excluded Transactions

As part of the efforts to streamline and reduce burden, the Bureau proposes some limited reorganization of and modifications to Regulation C. As discussed below, the Bureau proposes to move and consolidate all excluded transactions into proposed § 1003.3(c). The Bureau proposes to modify the heading of § 1003.3 to reflect the addition of excluded transactions listed below.

3(c) Excluded Transactions

Regulation C currently excludes certain transactions from the requirements to collect and report data under HMDA. These exclusions are found in the regulation, appendix A, and commentary. Specifically, § 1003.4(d) lists six types of transactions that are excluded from reporting requirements, including loans the financial institution originated or purchased when acting in a fiduciary capacity, such as a trustee; loans on unimproved land; temporary financing;

the purchase of an interest in a pool of loans; the purchase solely of the right to service loans; and loans acquired as part of a merger or acquisition, or as part of the acquisition of all of the assets and liabilities of a branch office. In addition, section I.A.7 of appendix A instructs financial institutions not to report loans with a loan amount less than $500. Comment 1(c)-8 explains that an institution that purchases a partial interest in a loan does not report the transaction. Finally, comment Home purchase loan-3 explains that a loan to purchase property used primarily for agricultural purposes is not considered a home purchase loan.

The Bureau proposes to consolidate the list of the excluded transactions in § 1003.3(c). Commentary to the existing provisions would also be consolidated under § 1003.3(c). In addition to consolidating exclusions in one section, the Bureau also proposes additional guidance about the exclusions of loans secured by a lien on unimproved land and of temporary financing.

Loans Secured by a Lien on Unimproved Land

Industry stakeholders have expressed confusion over the exclusion of a loan secured by a lien on unimproved land. The Bureau proposes new comment 3(c)(2)-1 to clarify whether a loan is secured by a lien on unimproved land. The proposed comment clarifies that a loan that is secured by vacant land under Regulation X § 1024.5(b)(4) is also considered a loan secured by a lien on unimproved land under Regulation C. The proposed comment explains that a loan is not secured by a lien on unimproved land if the financial institution knows or reasonably believes that within two years after the loan closes, a dwelling will be constructed or placed on the land using the loan proceeds. The Bureau solicits feedback on whether this comment is appropriate generally.

Temporary Financing

Industry stakeholders have requested additional guidance about the meaning of temporary financing that is excluded from HMDA data. The Bureau proposes new comments 3(c)(3)-1 and -2 to clarify the meaning of temporary financing. Proposed comment 3(c)(3)-1 provides that a loan that is considered temporary financing under Regulation X § 1024.5(b)(3) is also considered temporary financing under Regulation C. Proposed comment 3(c)(3)-1 explains that temporary financing refers to loans that are designed to be replaced by permanent financing at a later time. For example, a bridge loan or swing loan is considered temporary financing. A construction loan with a term of two years or more to construct a new dwelling, other than a loan to a bona fide builder (a person who regularly constructs dwellings for sale or lease), is not considered temporary financing.

Questions have also been raised about permanent financing of construction activities. Proposed comment 3(c)(3)-2 explains that a loan that is designed to be converted to permanent financing by the same financial institution or a loan that is used to finance transfer of title to the first user is not temporary financing. Proposed comment 3(c)(3)-2 clarifies that if an institution issues a commitment for permanent financing, with or without conditions, the loan is not considered temporary financing. The Bureau solicits feedback on whether this commentary is appropriate generally.

As part of the reorganization discussed above, the Bureau is also proposing to move comment 4(d)-1 to proposed comment 3(c)(6)-1, comment 1(c)-8 to proposed comment 3(c)(8)-1, and comment Home purchase loan-3 to comment 3(c)(9)-1. The Bureau is also proposing nonsubstantive modifications to the comments. The Bureau is also proposing new comment 3(c)(1)-1 to provide examples of what is meant by a financial institution acting in a fiduciary capacity and new comment 3(c)(4)-1 to provide examples of what is meant by the purchase of an

interest in a pool of loans. The examples in proposed comments 3(c)(1)-1 and 3(c)(4)-1 are currently included in § 1003.4(d)(1) and (4), respectively. The Bureau solicits feedback on whether the proposed reorganization and modifications are appropriate generally.

Section 1003.4 Compilation of Reportable Data

4(a) Data Format and Itemization

Section 1003.4(a) requires financial institutions to collect and record specific information about covered loans, applications for covered loans, and purchases of covered loans. As discussed in detail below, the Bureau proposes several changes to § 1003.4(a) to implement the Dodd-Frank Act amendments to HMDA. In addition, the Bureau proposes modifications to Regulation C to reduce redundancy, provide greater clarity, and make the data more useful.

The proposed expanded HMDA data would provide more fulsome information about underwriting, pricing, loan features, and the property securing each reported loan and application. The additional information would enable the public and public officials to better evaluate whether financial institutions are serving the housing needs of their communities and better identify neighborhoods that could benefit from public or private sector investment. More detail might also shed light on the demand for certain types of loans in certain areas, and whether that demand is being met. In addition, the expanded data would assist in identifying possible discriminatory lending patterns and facilitate fair lending analysis. It may also assist the public and public officials in identifying problematic trends in the mortgage market. The proposal also would make technical improvements that would facilitate reporting by better aligning the information collected pursuant to HMDA with financial institutions' business practices and with other regulatory requirements. The Bureau solicits feedback on whether the proposed additions to HMDA data are appropriate. The Bureau also seeks comment on whether including additional

or different information in the HMDA data, such as an indication of whether the loan is subject to mortgage insurance, would better effectuate HMDA's purposes.

As discussed in part II.B above, the Bureau is proposing alignment of the HMDA data requirements, to the extent practicable, with MISMO/ULDD data standards. During the Small Business Review Panel process, the small entity representatives' feedback on adopting an industry data standard depended on whether the small entity representative sells loans in the secondary market, or whether their Loan Origination System vendor's system is aligned with industry data standards.[263] For example, the small entity representatives whose financial institutions participate in the secondary market or have more automated processes generally stated that the adoption of a data standard would help keep costs low and allow for more efficient collection of data.[264] On the other hand, other small entity representatives were not familiar with MISMO and expressed concern that the adoption of a new data standard would require additional employee training and other process adjustments to come into compliance, resulting in increased costs.[265] A few small entity representatives indicated that they would continue to collect and maintain the data manually and would realize few benefits of the proposed data standard.[266] In addition, some small entity representatives expressed concerns regarding implementation of the data standard.[267] For example, a few small entity representatives expressed concern that there would be challenges in adapting MISMO to business and commercial loans, and potential

[263] *See* Small Business Review Panel Report at 42.
[264] *Id.* at 33 and 42.
[265] *Id.*
[266] *Id.* at 33.
[267] *Id.*

penalties for errors.[268] One small entity representative recommended making adoption of MISMO optional.[269] The Small Business Review Panel recommended that the Bureau seek comment in the proposed rule from small financial institutions about whether they, or their vendors, use MISMO-compliant data definitions and standards, and the potential effect on small financial institutions of alignment of the HMDA data requirements with MISMO data standards.[270] Consistent with the Small Business Review Panel's recommendations, the Bureau solicits feedback on these issues.

As discussed above in Part II.C, in considering proposed changes to data required to be collected under § 1003.4(a), the Bureau assessed the potential impacts of the proposals on the privacy interests of applicants and borrowers.[271] The Bureau has considered applicant and borrower privacy in developing its proposals to implement the Dodd-Frank amendments and the additional data points and modifications to existing data points proposed. The Bureau's proposals are intended to ensure that data compiled and reported by financial institutions fulfill HMDA's purposes while appropriately protecting applicant and borrower privacy.

The Bureau proposes modifications to § 1003.4(a), comment 4(a)-1, and new commentary to clarify the reporting requirements. In particular, as discussed below, the proposed modifications address a financial institution's responsibilities when reporting a single transaction involving more than one institution and reporting repurchased loans. In addition, the proposed modifications reflect substantive changes concerning reporting requests for

[268] *Id.* at 33 and 42.
[269] *Id.*
[270] *Id.* at 43.
[271] Also see part II.C. above for a discussion of the Bureau's approach to protecting applicant and borrower privacy in HMDA data made available to the public while fulfilling the public disclosure purposes of the statute.

preapproval discussed below in the section-by-section analysis of proposed § 1003.4(c)(2). As discussed in the section-by-section analysis to each proposed data point below, the Bureau is also proposing to modify and reorganize the current instructions in part I of appendix A to provide new technical instructions for each data point to facilitate compliance.

Reporting Transactions Involving More Than One Institution

Currently, commentary to § 1003.1(c) describes the "broker rule," which explains a financial institution's reporting responsibilities when a single transaction involves more than one institution. Industry representatives have expressed confusion about this commentary and urged the Bureau to clarify the reporting responsibilities when more than one institution is involved in a transaction. To address these concerns, the Bureau proposes amendments to § 1003.4(a) and its commentary. In particular, the proposed amendments clarify that only one financial institution should report each transaction as an origination or application. The proposed amendments clarify that the financial institution that makes the credit decision prior to closing, or prior to when the loan would have closed if the application does not result in an origination, reports the transaction as an origination or application, respectively.

Accordingly, the Bureau proposes to modify § 1003.4(a) to specify that a financial institution shall collect data regarding originations of covered loans on which it makes a credit decision. In addition, the Bureau proposes new comments 4(a)-4 and -5 to provide further clarification about the reporting responsibilities when more than one institution is involved in a transaction. The proposed amendments modify and consolidate current comments 1(c)-2 through -7, 4(a)(1)-iii, and 4(a)(1)-iv. Proposed comment 4(a)-4 explains that each origination and application is only reported by one financial institution as an origination or application. If more than one institution was involved in an origination of or application for a covered loan, the

financial institution that made the credit decision before the loan closed or would have closed reports the origination. In the case of an application for a covered loan that did not result in an origination, the financial institution that made the credit decision or that was reviewing the application when the application was withdrawn or closed for incompleteness reports the application. In certain circumstances, one financial institution would report the transaction as an origination and another financial institution would report the transaction as a purchase. Whether the loan closed or would have closed in the institution's name is not relevant for HMDA reporting. Proposed comment 4(a)-4 provides several illustrative examples. Proposed comment 4(a)-5 discusses reporting responsibilities when a financial institution makes a credit decision through the actions of an agent and provides an illustrative example. The Bureau solicits feedback on whether the proposed amendments to § 1003.4(a) and associated commentary are appropriate generally.

Repurchased Loans

The proposal would add new comments 4(a)(8)-4 and 4(a)-6 to provide guidance on reporting repurchased loans. The Bureau understands that there has been confusion about whether the repurchase of a loan that a financial institution originally sold to another financial institution or secondary market entity, such as when the investor requires the financial institution to buy back the loan because it does not meet certain conditions, is reportable under Regulation C. An FFIEC publication in 2010 noted that repurchases qualify as purchases for Regulation C, and provided guidance on how and when to report such purchases.[272] Proposed comments 4(a)(8)-4 and 4(a)-6 would provide that when a covered loan that a financial institution initially

[272] FFIEC, *CRA/HMDA Reporter* 5 (Dec. 2010), http://www.ffiec.gov/hmda/pdf/10news.pdf.

originated and sold to another financial institution or secondary market entity is repurchased by the originating financial institution within the same calendar year as it was originated, the originating financial institution should not report it as sold, and the purchasing financial institution should not report it as purchased. It would also provide that if the repurchase happens in a subsequent calendar year, the purchase and repurchase should be reported in their respective calendar years. It would also provide additional guidance for financial institutions who would be required to report on a quarterly basis under proposed § 1003.5(a)(1)(ii). It would also provide several illustrative examples. The Bureau solicits feedback generally on how repurchases should be treated for purposes of Regulation C. Specifically, the Bureau solicits feedback on whether repurchases should be reported under Regulation C, and how they should be handled for financial institutions required to report on a quarterly basis.

4(a)(1)(i)

As amended by section 1094(3)(A)(iv) of the Dodd-Frank Act, HMDA section 304(b)(6)(G) authorizes the Bureau to require a universal loan identifier, as it may determine to be appropriate.[273] Existing § 1003.4(a)(1) requires financial institutions to report an identifying number for each loan or loan application reported. Pursuant to existing comment 4(a)(1)-4, the number must be unique within the institution, and financial institutions are strongly encouraged not to use the applicant's or borrower's name or Social Security number. According to the instructions in appendix A, the loan identifier can be any alphanumeric combination of the institution's choosing, up to 25 characters. The Bureau proposes to replace Regulation C's existing loan identifier with a new self-assigned loan or application identifier that would be

[273] 12 U.S.C. 2803(b)(6)(G).

unique within the industry, would be used by all financial institutions that report on the loan or application for HMDA purposes, and could not be used to directly identify the applicant or borrower. Although the term "universal" can be interpreted in many ways, the Bureau believes that this identifier would be a "universal loan identifier" within the meaning of HMDA section 304(b)(6) because it would be unique within the industry and would be used throughout the life of the loan.

The flexibility of § 1003.4(a)(1)'s current identifier requirement has raised concerns. To the extent that financial institutions include Social Security numbers or other personal identifiers in their loan identifiers, they may be unnecessarily revealing sensitive applicant or borrower information. Although the commentary instructs financial institutions to select "unique" identifiers, it does not provide guidance on how this should be done. Some financial institutions may, for example, be recycling identifiers from year to year.

Because § 1003.4(a)(1) allows financial institutions that purchase previously reported loans to assign a new identifier to the loan, data users cannot link HMDA data that different financial institutions report for the same loan. Different identifiers may be assigned to the same mortgage loan by the financial institution that initially reports it at origination and a financial institution that subsequently reports it as a purchased loan. Even a single financial institution may assign different identifiers to the same loan for different purposes, such as for origination, sale of the loan, and reporting HMDA data. At present, there is no system or process to synchronize those identifiers with respect to each loan. This makes it difficult to track an application or loan over its life and to accurately identify lending patterns.

In developing this proposal, the Bureau has consulted with a variety of stakeholders that have been considering these issues and the need for a more robust mortgage loan identifier. [274] In September 2012, MISMO created a Unique Loan Identification Data Working Group, which released a 2013 white paper that discusses possibilities for a unique loan identifier.[275] The group considered a number of options, including using an existing loan identification number, developing a new identifier from loan information such as lien priority and loan type, and attempting to standardize the syntax and format of loan identifiers.[276]

In December 2013, the U.S. Department of the Treasury's Office of Financial Research (OFR) released a working paper discussing the need for a universal mortgage identifier.[277] OFR strongly supports the establishment of a single, cradle-to-grave, universal mortgage identifier that cannot be linked to individuals using publicly available data.[278] OFR's working paper explains that such an identifier would allow for better integration of the fragmented data produced by the U.S. mortgage finance system, resulting in significant benefits to regulators and researchers.[279] OFR recognizes that there are significant challenges to designing a universal identifier, including privacy concerns and questions about the timing of assignment, the structure

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[274] A paper by Linda F. Powell and John A. Bottega discussing the Legal Entity Identifier describes a framework for the attributes of a robust identifier that may also be useful in discussing loan identifiers; the attributes that they identified include uniqueness, extensibility, reliability, coverage, persistence, and neutrality. John A. Bottega & Linda F. Powell, *Creating a Linchpin for Financial Data: Toward a Universal Legal Entity Identifier* (2011), http://www.federalreserve.gov/pubs/feds/2011/201107/201107pap.pdf.
[275] MISMO, *Unique Loan Identifier Development Workgroup White Paper* (2013), http://www.mismo.org/files/BrochuresandPresentations/DWGUniqueLoanIDWhitePaper2.pdf.
[276] *Id.* at 5.
[277] Matthew McCormick & Lynn Calahan, U.S. Dep't of Treas. Office of Fin. Research, *Common Ground: The Need for a Universal Mortgage Loan Identifier* (Dec. 5, 2013), http://www.treasury.gov/initiatives/ofr/research/Documents/OFRwp0012_McCormickCalahan_CommonGroundNeedforUniversalMortgageIdentifier.pdf.
[278] *Id.* at 14-15.
[279] *Id.* at 2-11.

and governance of any entities issuing identifiers or coordinating them, what parties should have access to the identifier, the documents that should or could carry the identifier, how to ensure use of the identifier throughout the mortgage life cycle, how to ensure identifier integrity, and how to develop mechanisms to link simultaneous or sequential liens.[280]

The Bureau is encouraged by the progress that is being made in this complex area and will continue to work with industry and other agencies and stakeholders to assess how the HMDA loan identifier relates to broader mortgage identification needs. Many of the mortgage identification options considered by MISMO and OFR would require significant investment of time and money and substantial coordination among all relevant stakeholders to develop. Although the Bureau is not proposing or seeking comment on a mortgage registry or vault at this time, the Bureau will continue to collaborate with industry groups and other government offices that are considering these possibilities, which could potentially serve a range of purposes.

To address the need for a unique loan identifier that can be used for HMDA reporting throughout the life of the loan, the Bureau proposes to strengthen Regulation C's self-assigned loan identifier by substituting proposed § 1003.4(a)(1)(i) for the identification requirement in existing § 1003.4(a)(1).[281] Proposed § 1003.4(a)(1)(i) requires entities to provide a universal loan identifier (ULI) for each covered loan or application that can be used to retrieve the covered loan or application file. For covered loans or applications for which any financial institution has previously reported a ULI under this part, proposed § 1003.4(a)(1)(i) provides that the ULI shall consist of the ULI that was previously reported. For all other covered loans and applications,

[280] *Id.*
[281] Under the Bureau's proposal, new § 1003.4(a)(1)(i) would address the universal loan identifier, while new § 1003.4(a)(1)(ii) would address the date of application, which is discussed below.

proposed § 1003.4(a)(1)(i)(A) provides that the ULI shall begin with the financial institution's Legal Entity Identifier described in § 1003.5(a)(3). Proposed § 1003.4(a)(1)(i)(B) provides that the ULI shall follow that Legal Entity Identifier with up to 25 additional characters to identify the covered loan or application, which (1) may be letters, numerals, symbols, or a combination of any of these; (2) must be unique within the financial institution; and (3) must not include any information that could be used to directly identify the applicant or borrower.

Two proposed comments to § 1003.4(a)(1)(i) would replace existing comment 4(a)(1)-4. Proposed comment 4(a)(1)(i)-1 explains the uniqueness requirement in proposed § 1003.4(a)(1)(i)(B). Only one ULI should be assigned to any particular application or covered loan, and each ULI should correspond to a single application and, if the application is approved and a loan is originated, the ensuing loan. A financial institution shall use a ULI that was reported previously to refer only to the same loan or application for which the ULI was used previously or to a loan that ensues from an application for which the ULI was used previously. For example, if a loan origination was previously reported for HMDA purposes with a ULI, a financial institution would report the later purchase of the loan using the same ULI. A financial institution may not, however, report an application for a covered loan in 2030 using a ULI that was reported for a covered loan that was originated in 2020. Similarly, refinancings or applications for refinancing should be assigned a different ULI than the loan that is being refinanced. A financial institution with multiple branches must ensure that its branches do not use a single ULI to refer to multiple covered loans or applications.

Proposed comment 4(a)(1)(i)-2 explains that information that could be used to directly identify the applicant or borrower includes but is not limited to the applicant's or borrower's name, date of birth, Social Security number, official government-issued driver's license or

identification number, alien registration number, government passport number, or employer or taxpayer identification number. Pursuant to proposed § 1003.4(a)(1)(i)(B)(3), a financial institution may not include information of this nature in the identifier that it assigns for a covered loan or application.

The Bureau believes that these changes would strengthen the existing identifier in three significant ways. First, by providing additional instructions relating to uniqueness and combining the financial institution's loan-specific identifier with its Legal Entity Identifier, the proposed rule would ensure that the resulting ULI is unique in the entire universe of HMDA loans and applications. Second, by requiring financial institutions that purchase loans to report the ULI that was previously reported, the proposed rule would allow the Bureau and other regulators to track HMDA reporting that is done over time by different financial institutions for a single loan, furthering all of HMDA's purposes. Third, to protect the privacy of borrowers and applicants, the proposal replaces the commentary that discourages using Social Security numbers and names in identifiers with regulation text that prohibits using information that could be used to directly identify the borrower or applicant. This is consistent with the recommendations of the Small Business Review Panel, which specifically urged the Bureau to consider and seek comment on prohibiting the use of information that could be used to directly identify an applicant or borrower as any component of a loan identifier.[282] Because the identifier is self-assigned, the Bureau believes that the burden associated with these changes would be fairly minimal.

[282] *See* Small Business Review Panel Report at 39.

The Bureau solicits feedback on whether the proposed changes to the loan or application identifier used for HMDA reporting purposes are appropriate, as well as feedback on other possible approaches to identifying loans and applications in HMDA reporting. This solicitation of feedback is consistent with the Small Business Review Panel's recommendation that the Bureau seek comment on each of the unique identifiers under consideration that were included in the Dodd-Frank Act.[283] Consistent with the Small Business Review Panel's recommendations, the Bureau specifically solicits comments on whether the privacy limitations provided in § 1003.4(a)(1)(i)(B) and explained in proposed comment 4(a)(1)(i)-2 are sufficient to protect applicant and borrower privacy, and whether the identifier should be required for all entries on the loan application register (as under existing § 1003.4(a)(1) and as proposed here) or only for loan originations and purchases.[284] The Bureau also seeks comment on whether 25 characters is the appropriate maximum number of characters for financial institutions to use in identifying the covered loan or application.

One alternative that the Bureau is considering is requiring financial institutions to use a secure hash algorithm to encrypt their ULIs prior to submission to the Bureau or the appropriate Federal agency. A hash function is any algorithm that maps data of arbitrary length to data of a fixed length. A secure hash algorithm is designed to provide a measure of encryption by being non-invertible (meaning that the original value cannot be derived from the hash) and to resist "collisions" (meaning that two different values will not hash to the same result). The Bureau could, for example, require use of Secure Hash Algorithm (SHA) 3-224 as specified by the

[283] *Id*.
[284] *See id.*

National Institute of Standards and Technology (NIST) in Federal Information Processing Standard 202[285] or another hash algorithm specified by the NIST, such as SHA-224. Each of these algorithms is a one-way hash function that can process a message (in this case, the institution's Legal Entity Identifier merged with an identifier for the loan or application) to produce a representation called a message digest. Requiring financial institutions to report the resulting message digest could ensure that the identifier produced is a consistent length and could also mask any residual information about the loan or borrower that might be embedded in the underlying identifier.

If the Bureau were to require hashing, it could provide tools that financial institutions could use to do the hashing, as well as details that financial institutions or their service providers could use should they wish to integrate the hash algorithm into their own systems. The Bureau invites comment on whether the Bureau should require financial institutions to apply a secure hash algorithm to their Legal Entity Identifier plus the identifier for the loan or application and then report the resulting message digest as the ULI, in lieu of reporting an unhashed ULI. If hashing is recommended, the Bureau also invites comment on how such hashing should be done, including whether a random value should be added prior to hashing through a technique called "salting" to enhance the encryption.[286]

4(a)(1)(ii)

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[285] Announcing Draft Federal Information Processing Standard (FIPS) 202, SHA–3 Standard, 79 FR 30549 (May 28, 2014). Additional information on secure hash algorithms is available on the NIST website at http://csrc.nist.gov/groups/ST/toolkit/secure_hashing.html.

[286] *See generally* Meltem Sönmez Turan et al., *NIST Special Publication 800-132: Recommendation for Password-Based Key Derivation, Part 1: Storage Applications* (Dec. 2010), *available at* http://csrc.nist.gov/publications/nistpubs/800-132/nist-sp800-132.pdf; RSA Laboratories, *PKCS #5 v.2.1: Password-Based Cryptography Standard* (Oct. 5, 2006), ftp://ftp.rsasecurity.com/pub/pkcs/pkcs-5v2/pkcs5v2_1.pdf.

The Bureau is proposing technical corrections and minor wording changes to § 1003.4(a)(1), which requires reporting of the date the application was received. Regulation C requires institutions to report the date the application was received, and comment 4(a)(1)-1 clarifies that institutions may report either the date of receipt or the date shown on the application form to provide greater flexibility for financial institutions but maintain reliable application date data.

The proposal moves the requirement regarding reporting of the date the application was received to new § 1003.4(a)(1)(ii) to provide a separate citation from loan identifier, which is discussed above. Proposed § 1003.4(a)(1)(ii) provides for reporting of the date the application was received or the date shown on the application form, consistent with comment 4(a)(1)-1 and instructions in appendix A. Existing comments 4(a)(1)-1, -2, -3, and -5 related to application date would be renumbered as comments 4(a)(1)(ii)-1 through -4. Comment 4(a)(1)-2 related to applications received from brokers would be revised to use terminology consistent with proposed comment 4(a)-4 and the requirement to report application channel information under § 1003.4(a)(33). Finally, the proposal makes technical corrections and minor wording changes to appendix A. Proposed instruction 4(a)(1)(ii)-1 provides for reporting the date the application was received or the date shown on the application form by year, month, and day.

After the Bureau's 2011 Regulation C Restatement was published, the Bureau received a comment from a stakeholder requesting more flexibility in reporting the date the application was received. The stakeholder asserted that differences in definitions of application under various regulations create difficulty with determining an exact date for purposes of Regulation C.

During the Small Business Review Panel process, small entity representatives expressed concern about reporting application date for commercial loans.[287] The Small Business Review Panel recommended that the Bureau consider seeking public comment on providing additional guidance on how HMDA reporters may determine the application date.[288] Based on this feedback and consistent with the recommendation of the Small Business Review Panel, the Bureau solicits feedback on whether additional guidance should be provided on how HMDA reporters may determine the application date.

4(a)(2)

HMDA section 304(b)(1) requires financial institutions to report "the number and dollar amount of mortgage loans which are insured under Title II of the National Housing Act or under Title V of the Housing Act of 1949 or which are guaranteed under chapter 37 of Title 38." Section 1003.4(a)(2) currently implements this requirement by requiring financial institutions to report the type of loan or application. Paragraph I.A.3 in appendix A further instructs lenders to identify the type of loan or application as conventional, FHA-insured, VA-guaranteed, or FSA/RHS-guaranteed. The Bureau's proposal retains the current reporting requirement, but incorporates the text of the statutory provision, with conforming modifications, directly into Regulation C.

Regulation C has always required financial institutions to report information regarding the type of loan or application.[289] Section 1003.4 itself does not, however, expressly incorporate the loan types provided for in the statute. The Bureau believes that reflecting the statutory text in

[287] *See* Small Business Review Panel Report at 39.
[288] Small Business Review Panel Report at 40.
[289] *See* 41 FR 23931 (June 14, 1976).

§ 1003.4 will facilitate future modifications to the instructions in appendix A, which in turn will add clarity and reduce burden. As explained above, the Bureau is also proposing a new term, "covered loan," that includes all types of loans subject to Regulation C in order to simplify the regulation and clarify its requirements. The proposal revises section 1003.4(a)(2) to conform to the use of this term. Accordingly, the Bureau's revised § 1003.4(a)(2) provides for reporting whether the covered loan or application is insured under title II of the National Housing Act, is insured under title V of the Housing Act of 1949, or is guaranteed under chapter 37 of title 38 of the United States Code. The Bureau solicits feedback regarding whether its proposed modifications are appropriate.

The Bureau is proposing to revise the technical instructions related to § 1003.4(a)(2) in appendix A. Proposed instruction 4(a)(2)-1 provides that a financial institution completing the loan application register must select from among four codes to indicate the type of covered loan or application, depending on whether the loan is conventional (Code 1), FHA (Code 2), VA (Code 3), or USDA Rural Development (Code 4). Proposed instruction 4(a)(2)-1.a specifies that Code 2 must be used if the covered loan or application is insured under title II of the National Housing Act. Proposed instruction 4(a)(2)-1.b specifies that Code 3 must be used if the covered loan or application is guaranteed under chapter 37 of title 38 of the United States Code. Proposed instruction 4(a)(2)-1.c specifies that Code 4 must be used if the covered loan or application is insured under title V of the Housing Act of 1949. Finally, proposed instruction 4(a)(2)-1.d specifies that Code 1 must be used if the covered loan or application is not insured under title II of the National Housing Act, not insured under title V of the Housing Act of 1949, and not guaranteed under chapter 37 of title 38 of the United States Code.

4(a)(3)

HMDA section 304(b) requires the disclosure of the number and dollar amount of mortgage loans and home improvement loans, among other things. Section 1003.4(a)(3) of Regulation C requires financial institutions to record the purpose of the loan or application. Appendix A to Regulation C paragraph I.A.5 instructs financial institutions to identify the purpose of a loan or application as either for home purchase, home improvement, or refinancing. The Dodd-Frank Act did not amend the sections of HMDA relevant to the loan purpose reporting requirement. While the Bureau is only proposing technical modifications to § 1003.4(a)(3) to conform to the addition of closed-end mortgage loans, the Bureau is seeking comment regarding whether the loan purpose reporting requirement should be modified with respect to home improvement loans and cash-out refinancings.

Home Improvement Loans

The Bureau has received feedback indicating that the current requirement to identify whether a loan or application is for home improvement purposes is a substantial compliance burden. As discussed in part II.A above, the inability to obtain credit to repair and maintain homes was one of the major factors driving urban deterioration in the 1970s. As a result, Congress was particularly concerned about access to home improvement credit when HMDA was enacted.[290] Home improvement loans were traditionally used for older properties, and community groups and public officials needed data on a neighborhood's ability to maintain the quality of existing housing stock.[291] Issues in this subset of the market have remained over time,

[290] Sen. Robert Taft, Jr.'s amendment to the draft bill addressed the requirement to collect home improvement loan data: "The importance of these loans to a neighborhood's health and survival is obvious, particularly since many of the neighborhoods in question have a larger number of older homes in need to repair." 121 Cong. Rec. S1281, 13192 (daily ed. July 21, 1975) (statement of Sen. Robert Taft, Jr.).

[291] *See* Randy E. Ryker, Louis G. Pol, & Rebecca F . Guy, *Racial Discrimination as a Determinant of*

as some studies suggest that home improvement lending practices may be a concern in certain neighborhoods and for certain borrowers.[292]

Although home improvement data was a central concern when HMDA was originally enacted, it may be the case that these data are no longer useful. While consumers routinely resorted to local banks for home improvement loans in the 1970s, after the widespread adoption of credit cards began in the 1980s consumers had alternative means of obtaining credit to repair or improve their homes.[293] This trend may have accelerated during the 1980s and early 1990s, when home-equity lines of credit became an increasingly popular form of credit.[294] In today's market, statistics suggest that HMDA provides the public with relatively little data about home improvement loans. For example, in 2012 home improvement loans comprised only approximately 4.4 percent of all HMDA records.[295] Testimony provided during the Board HMDA Hearings supports the argument that home improvement loan data are of limited value.[296] Thus, the consumer financial market may have evolved to the point where relatively few consumers use secured home improvement loans to repair, renovate, or otherwise improve their homes, and the data provided through HMDA may no longer be useful. The Bureau is

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Home Improvement Loans, 21 Urban Studies 177, 179 (May 1984).

[292] "The average rejection rate for home improvement loan applications is much higher than that for home purchase loans – 30% versus 15%. Also applicants for home improvement loans have lower incomes and live in census tracts with lower housing values than applicants for home purchase loans." Emily Y. Lin & Michelle J. White, *Bankruptcy and the Market for Mortgage and Home Improvement Loans*, 50 Journal Of Urban Economics 138, 153 (July 2001).

[293] *See* Fed. Reserve Bulletin, Changes in Family Finances from 1983 to 1989: Evidence from the Survey of Consumer Finances 13 (Jan. 1992). *See also* David Evans & Richard Schnakebsee, *Paying With Plastic*, Massachusetts Institute of Technology Press 98-100 (1991).

[294] *See* Fed. Reverse Bulletin, Changes in Family Finances from 1983 to 1989: Evidence from the Survey of Consumer Finances 13 (Jan. 1992); Fed. Reserve Bulletin, Changes in Family Finances from 1989 to 1992: Evidence from the Survey of Consumer Finances 874-875 (Oct. 1994).

[295] In 2012, out of 18,691,551 total HMDA records, only 814,857 had a home improvement purpose.

[296] *See, e.g.*, Chicago Hearing, *supra* note 137.

concerned about this potential reduction in usefulness, considering that financial institutions frequently state that home improvement reporting is a substantial burden.

As discussed in the section-by-section analysis to § 1003.2(i) above, the Bureau is proposing to exclude unsecured home improvement loans from the scope of Regulation C. While the Bureau believes that this proposed exclusion will address many of the concerns that have been asserted with regard to home improvement loan reporting, it may be the case that the public no longer finds home improvement data useful. For these reasons, the Bureau solicits feedback regarding whether § 1003.4(a)(3) should be modified so that financial institutions would not be required to identify covered loans for the purposes of home improvement. The Bureau requests comment regarding the current utility of these data, whether there are ways to lessen the costs associated with reporting secured home improvement loans, and whether there are ways to improve the usefulness of these data. Finally, the Bureau specifically solicits information related to financial institutions' current cost of reporting secured home improvement loans.

During the Small Business Review Panel process, several small entity representatives expressed concern about the challenges, compliance costs, and examination burdens associated with reporting home improvement loans.[297] The Small Business Review Panel recommended that the Bureau seek comment on any costs and other burdens associated with existing or potential HMDA requirements related to home improvement loans.[298] Consistent with the Small Business Review Panel's recommendation, the Bureau solicits feedback regarding any costs and

[297] *See* Small Business Review Panel Report at 24.
[298] *See id.* at 40.

burdens associated with the current loan purpose requirements related to home improvement loans, as well as the costs and burdens generally associated with Regulation C requirements related to home improvement loans.

Cash-Out Refinancings

The Bureau has received feedback indicating that requiring financial institutions to identify whether a loan or application is for a cash-out refinancing would improve the usefulness of the reported data. Several participants during the 2010 Board Hearings argued that cash-out refinancings should be separately identified in the HMDA data.[299] Studies suggest that cash-out refinancings were commonly offered in the subprime market which, as discussed in part II.A above, was and remains a particular area of concern for many communities.[300] Furthermore, public officials may find information on cash-out refinancings useful for developing programs intended to promote stable homeownership.[301] Thus, requiring financial institutions to identify cash-out refinancings may make the HMDA data more useful.

However, the Bureau is concerned about the potential burdens associated with requiring financial institutions to separately identify cash-out refinancings, and whether such burdens would outweigh the benefit of these additional data. First, the mortgage market does not currently employ a single definition of cash-out refinance. For example, secondary market

[299] *See e.g.*,San Francisco hearing, *supra* note 133; Chicago Hearing, *supra* note 137.
[300] *See* Chris Mayer & Karen Pence, *Subprime Mortgages: What, Where, and to Whom?*, Bd. of Governors of the Fed. Reserve Sys., Finance and Economics Discussion Series 2008-29at 10 (2008).
[301] For example, a recent study suggests that Texas's strict restrictions on cash-out home-equity lending helped protect Texas homeowners from several of the harms stemming from the mortgage crisis. *See* Anil Kumar & Edward C. Skelton, *Did Home Equity Restrictions Help Keep Texas Mortgages from Going Underwater?*, Fed. Reserve Bank of Dallas (Third Quarter 2013).

investors often provide different definitions based on the terms of the transaction.[302] Furthermore, MISMO does not currently provide any definition for cash-out refinancing. In addition, the Bureau has received feedback that financial institutions encounter compliance challenges when determining the purpose of the loan for the existing Regulation C requirements. The Bureau is concerned that adding another purpose-based requirement would further increase the existing burden associated with the reporting requirements.

For these reasons, the Bureau is considering requiring financial institutions to report whether a covered loan or application is for a cash-out refinancing, but wishes to obtain additional information to determine whether such a requirement is appropriate. The Bureau solicits feedback regarding whether § 1003.4(a)(3) should be modified to require financial institutions to identify separately rate-and-term refinancings from cash-out refinancings. The Bureau specifically solicits feedback on whether there is a clear and bright-line definition of cash-out refinancing that would ensure the public is provided with useful data while minimizing the compliance burden associated with this potential reporting requirement. The Bureau specifically requests comment regarding whether this information would assist community groups and consumers in determining whether financial institutions were meeting the housing needs of communities, whether public officials would use this information to develop housing investment programs, and information regarding whether financial institutions are providing cash-out refinancings in a discriminatory manner. The Bureau also seeks feedback regarding the extent to which financial institutions currently differentiate between rate-and-term refinancings

[302] *See* Fannie Mae, *Fannie Mae Single-Family Selling Guide*, Sections B2-1.2-02 and B2-1.2-03 (June 24, 2014), https://www.fanniemae.com/content/guide/sel062414.pdf. *See* Freddie Mac, *Single-Family Seller/Servicer Guide*, Vol. I, Chapters 24.6 and 24.7, http://www.freddiemac.com/sell/guide/.

and cash-out refinancings and, for those that do not differentiate between them, the projected cost of upgrading policies, procedures, and systems to make this differentiation.

The Bureau's Proposal

In addition to the requests for feedback regarding home improvement loans and cash-out refinancings addressed above, the Bureau is proposing changes to the loan purpose reporting requirement to conform to the proposed extension of coverage to all dwelling-secured mortgage loans, as discussed above. Accordingly, the Bureau is proposing to modify § 1003.4(a)(3) to provide that financial institutions shall report whether the covered loan is, or the application is for, a home purchase loan, a home improvement loan, a refinancing, or for a purpose other than home purchase, home improvement, or refinancing. The Bureau solicits feedback regarding whether this proposed requirement is appropriate, regarding the costs and benefits associated with this proposed requirements, and regarding whether any additional modifications would be appropriate.

During the Small Business Review Panel process, some small entity representatives expressed concern about the applying the HMDA requirements to commercial loans.[303] The Bureau is soliciting feedback regarding whether it would be appropriate to modify the proposed requirements for commercial transactions, or to exclude commercial transactions from HMDA, in the section-by-section analysis to proposed § 1003.2(d) and (o) and elsewhere in this proposed rule. Should the Bureau determine that an exemption for commercial loans is not appropriate, the Bureau solicits feedback regarding whether it would be appropriate to add a loan purpose

[303] *See* Small Business Review Panel Report at 24.

requirement applicable to commercial loans or some other method of uniquely identifying commercial loans in the HMDA data.

The Bureau is also proposing to modify comment 4(a)(3)-2 to clarify that § 1003.4(a)(3) requires a financial institution to report the purpose of a covered loan or application and also specifies the order of importance if a covered loan or application is for more than one purpose. For example, if a covered loan is a home purchase loan as well as a home improvement loan or a refinancing, § 1003.3(a)(3) requires the institution to report the loan as a home purchase loan. This proposed comment clarifies that, if a covered loan is a home improvement loan as well as a refinancing, but the covered loan is not a home purchase loan, § 1003.4(a)(3) requires the institution to report the covered loan as a home improvement loan; and further clarifies that, if a covered loan is a refinancing as well as for another purpose, such as for the purpose of paying educational expenses, but the covered loan is not a home purchase loan or a home improvement loan, § 1003.4(a)(3) requires the institution to report the covered loan as a refinancing.

Proposed comment 4(a)(3)-3 clarifies that, if a covered loan is not a home purchase loan, a home improvement loan, or a refinancing, § 1003.4(a)(3) requires a financial institution to report the covered loan as for a purpose other than home purchase, home improvement, or refinancing. For example, if a covered loan is for the purpose of paying educational expenses, the financial institution complies with § 1003.4(a)(3) by reporting the covered loan as for a purpose other than home purchase, home improvement, or refinancing. Under appendix A, proposed instruction 4(a)(3)-1 provides technical instructions regarding how to enter the covered loan or application purpose on the loan application register.

4(a)(4)

Current § 1003.4(a)(4) requires financial institutions to identify whether the application is a request for a covered preapproval. The Bureau is proposing to revise the technical instructions related to paragraph 4(a)(4) in appendix A. Proposed instruction 4(a)(4)-1.a would provide instructions for reporting preapprovals requested. The proposed instruction refers to the definition of a preapproval program in § 1003.2(b)(2) and specifies that the code should not be used for withdrawals or requests for preapprovals that are closed for incompleteness, as these preapprovals are not reportable under Regulation C. These instructions would also be specified in the instructions for reporting action taken under paragraph 4(a)(8) and would be added to the instructions for paragraph 4(a)(4) merely for clarity and completeness. Current instruction I.A.8(a) would be renumbered and revised as instruction 4(a)(4)-1.b, which would incorporate a reference to the proposed definition in § 1003.2(b)(2). Current instruction I.A.8(b) would be renumbered and revised as instruction 4(a)(4)-1.c, which would include technical revisions. Current instruction I.A.8(c) would be renumbered and revised as instruction 4(a)(4)-1.d, which would specify that the category of not applicable should be reported for applications for or originations of home improvement loans, open-end lines of credit, home-equity lines of credit, reverse mortgages, and for purchased loans.

The proposal would also delete the language in § 1003.4(a)(4) relating to whether the request for preapproval was denied or resulted in an origination because it is redundant with requirements under §§ 1003.4(a) and 1003.4(a)(8). The requirement to report action taken on preapprovals is currently contained in the reporting requirement for action taken under § 1003.4(a)(8) and the associated instructions in appendix A. This would continue under the proposal. Proposed § 1003.4(a)(4) and the associated instructions in appendix A would focus solely on whether the application was a request for a preapproval for a home purchase loan.

4(a)(5)

Section 1003.4(a)(5) of Regulation C requires financial institutions to report the property type of the dwelling to which a loan or application relates. Appendix A instructions provide that property type be reported as either a one-to-four-family dwelling (other than manufactured housing), manufactured housing, or a multifamily dwelling.

The Bureau has received feedback that the current reporting requirement has led to questions about how to report modular homes, which are factory-built but meet local building codes instead of the HUD standards for manufactured housing.[304] In addition, the current reporting requirement for property type does not correspond to commonly used industry data standards and recordkeeping because it conflates two distinct concepts, the property's construction method and the number of units in the property.[305]

Proposed § 1003.4(a)(5) replaces the requirement to report property type with the requirement to report the construction method for the dwelling related to the property identified in § 1003.4(a)(9). The Bureau believes this change in Regulation C's implementation of HMDA may more effectively carry out HMDA's purposes and facilitate compliance therewith, by providing more detail regarding whether institutions are serving the housing needs of their communities and by better aligning reporting to industry standards. This proposal is also authorized by the Bureau's authority pursuant to HMDA sections 305(a) and 304(b)(6)(J). A financial institution would report the construction method of the dwelling as site-built or

[304] Atlanta Hearing, *supra* note 131; FFIEC FAQs.
[305] *See* MISMO, *Version 3.3 of the Residential Reference Model* (Construction Method Type and Financed Unit Count); Fannie Mae, *Fannie Mae Implementation Guide for Loan Delivery Data*, Appendix A (Oct. 29, 2013), https://www.fanniemae.com/content/technology_requirements/uldd-implementation-guide-appendix-a.pdf. Freddie Mac, *Freddie Mac Implementation Guide for Loan Delivery Data*, Appendix A (Jan. 29, 2014), http://www.freddiemac.com/singlefamily/sell/docs/FRE_IG_selling_system_appendix_a_data_requirements.pdf.

manufactured housing with the proposed instructions in appendix A. During the Small Business Review Panel process, one small entity representative requested definitions and examples of types of construction method.[306] The proposal revises the instructions in appendix A and adds new instructions providing the technical details for reporting these data fields. The Bureau believes that replacing the current property type reporting requirement with construction method will enhance data collected under this part and better align it with industry practice.

As discussed below, the Bureau is also proposing to require financial institutions to report the total number of dwelling units related to the property under § 1003.4(a)(31). The data reported under proposed § 1003.4(a)(31), combined with the proposed definition of multifamily dwelling discussed above, replace the enumeration for multifamily dwellings under § 1003.4(a)(5). The Bureau believes that separating these concepts may have benefits for analyzing HMDA data. For example, the Bureau understands that there has been confusion over reporting home purchase loans that are secured by a manufactured home park and multiple manufactured homes on-site, because manufactured housing and multifamily dwelling are enumerations of the same data point.[307] Under the proposal, construction method of the dwelling could be identified under proposed § 1003.4(a)(5) and the number of manufactured homes could be identified under proposed § 1003.4(a)(31).

The proposed instructions in appendix A provide that modular housing should be reported as site built. The Bureau understands that appraisals do not always distinguish between

[306] *See* Small Business Review Panel Report at 80.
[307] FFIEC, *CRA/HMDA Reporter* 3 (Dec. 2010) ("It is a common misconception that the purchase of an entire mobile home park (e.g., the purchase of five or more individual mobile homes) should be reported as a multifamily property type. Because each mobile home falls within the definition of an individual unit, the property type should be reported as manufactured housing."), http://www.ffiec.gov/hmda/pdf/10news.pdf.

a modular home and a site built home, and that for many purposes modular homes are treated like site built homes.[308] There has been confusion as to how to report modular housing under current Regulation C, and the proposal is intended to facilitate compliance in this area. The proposed instructions under appendix A also provide that the use of prefabricated components for construction should be reported as site built.

The Bureau is proposing to add a new comment under § 1003.4(a)(5). Proposed comment 4(a)(5)-1 would provide additional guidance on identifying and reporting modular homes. Modular homes are distinct from manufactured homes, and the Bureau believes the comment will facilitate compliance by describing and providing guidance on reporting modular homes. The comment notes that modular homes are built to local or other recognized building codes instead of the HUD manufactured home standards and that they do not bear the identifying markers for a manufactured home. The comment also distinguishes between on-frame modular homes (which are built on permanent metal chassis similar to manufactured homes) and off-frame modular homes (which do not have metal chassis). The MISMO data standard treats on-frame and off-frame modular home as separate construction method types.[309] The Bureau understands that there are secondary market implications affecting the salability of loans secured by on-frame modular homes.[310] The ULDD implementation of the MISMO data standard treats

[308] Atlanta Hearing, *supra* note 131.
[309] *See* MISMO, *Version 3.3 of the MISMO Residential Reference Model* (Construction Method Type).
[310] *See* Fannie Mae, *Fannie Mae Single Family Selling Guide* § B2-3-02 (June 24, 2014) (defining any dwelling unit built on a permanent chassis as a manufactured home and requiring manufactured homes to meet HUD manufactured home construction standards), http://www.fanniemae.com/content/guide/sel062414.pdf.

all modular homes as site built for purposes of construction method, consistent with the proposal.[311]

The Bureau also proposes comment 4(a)(5)-2 to clarify how to report construction method where a covered loan is secured by more than one property. As discussed in the section-by-section analysis of proposed § 1003.4(a)(9) and in proposed comment 4(a)(9)-2, if more than one property is taken, or in the case of an application, proposed to be taken as security for a single covered loan or application, a financial institution may either report one of the properties in a single entry on its loan application register or report all of the properties using multiple entries on its loan application register. Regardless of whether the financial institution elects to report the transaction in one entry or more than one entry, the information required by § 1003.4(a)(5) should relate to the property identified under paragraph 4(a)(9). The Bureau solicits feedback generally on whether the proposed revisions are appropriate or whether more detailed enumerations for construction method would be appropriate.

4(a)(6)

HMDA section 304(b)(2) requires the disclosure of the number and dollar amount of mortgage loans made to mortgagors who did not, at the time of execution of the mortgage, intend to reside in the property securing the mortgage loan. Section 1003.4(a)(6) of Regulation C requires financial institutions to record the owner-occupancy status of the property to which the loan or application relates. Appendix A to Regulation C paragraph I.A.6 instructs financial institutions to identify the owner-occupancy status as either owner-occupied as a principal

[311] Fannie Mae, *Fannie Mae Implementation Guide for Loan Delivery Data*, Appendix A (Oct. 29, 2013), https://www.fanniemae.com/content/technology_requirements/uldd-implementation-guide-appendix-a.pdf; Freddie Mac, *Freddie Mac Implementation Guide for Loan Delivery Data*, Appendix A (Jan. 29, 2014), http://www.freddiemac.com/singlefamily/sell/docs/FRE_IG_selling_system_appendix_a_data_requirements.pdf.

dwelling, not owner-occupied as a principal dwelling, or not applicable. While the Dodd-Frank Act did not amend the sections of HMDA relevant to the owner-occupancy status reporting requirement, section 1094(3)(A)(iv) of the Dodd-Frank Act amended section 304(b) of HMDA to permit the disclosure of such other information as the Bureau may require. For the reasons discussed below, the Bureau is proposing to require financial institutions to report whether a property will be used as a principal residence, as a second residence, or as an investment property.

As discussed in part II.A above, providing the public with data related to whether properties were occupied by an owner was one of Congress's primary goals when HMDA was originally enacted. Information about the number of homeowners, absentee landlords, and real estate speculators was viewed as necessary to help communities stabilize and improve their neighborhoods.[312] To address these concerns, the Board interpreted HMDA section 304(b)(2) to require financial institutions to differentiate between loans secured by a property intended to be used as a principal or non-principal dwelling.[313] Although this requirement has been refined over time, the core requirement – whether or not the property is used as a principal dwelling – remains to this day.[314]

While the current requirement historically has furthered the purposes of HMDA, several considerations suggest that more granular information related to non-principal dwellings may be

[312] *See e.g.*, Home Mortgage Disclosure Act of 1975, S. Rep. 94-187, p. 279 (June 6, 1975); Home Mortgage Disclosure Act of 1975, H. Rep. 94-561, p. 117 (Oct. 19, 1975).
[313] *See* 41 FR 23933 (June 14, 1976).
[314] Financial institutions were originally required to report occupancy data indirectly, by identifying the number of loans secured by owner-occupied dwellings separately from non-owner occupied dwellings, in a column-based format. *Id*. When the Board adopted the register reporting format, financial institutions were required to report occupancy status on a record-by-record basis. *See* 54 FR 51356 (Dec. 15, 1989). Additional instructions and commentary were added over time to clarify and refine the requirement. *See e.g.*, 60 FR 63393, 63399 (Dec. 11 1995) (adopting relevant commentary); 67 FR 7222, 7239 (Feb. 15, 2002) (adding additional instructions).

necessary. First, over the past several years the increasing popularity of vacation and investment properties has affected the housing supply and economies of many communities. Evidence suggests that the increasing popularity of vacation homes has contributed to a lack of affordable housing in several areas.[315] In addition to affecting housing affordability, the economic effect of vacation home purchases is often complex, which presents local governments with unique challenges.[316] While the prevalence of vacation homes presents communities with several unique economic issues, the purchase of homes by investors (*i.e.*, persons who do not occupy purchased properties, even as vacation homes) presents communities with an entirely different set of challenges. Recent studies have demonstrated that the speculative purchase of homes by investors contributed to the housing bubble that preceded the financial crisis, especially in the States that were most affected by the downturn.[317] These investor purchases may be a concern for urban areas, many of which are experiencing a sharp increase in such purchases.[318] Thus, information related to second homes and investment properties may help communities and local

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[315] *See* Deborah Halliday, *You Can't Eat the View: The Loss of Housing Affordability in the West*, The Rural Collaborative pp. 9-10 (2003), *available at* http://www.theruralcollaborative.org/files/you%20can't%20eat%20the%20view.pdf.

[316] *See* Linda Venturoni, *The Economic and Social Effects of Second Homes – Executive Summary*, Northwest Colorado Council of Governments pp. 4-5 (June 2004) (stating that as the number of second homes in a community increases, the more the local economy will shift towards serving the needs of the second homes).

[317] *See* Andrew Haughwout, Donghoon Lee, Joseph Tracy, and Wilbert van der Klaauw, *Real Estate Investors, the Leverage Cycle, and the Housing Market Crisis*, Fed. Reserve Bank of New York Staff Report No.514 p. 21 (Sept. 2011).

[318] *See e.g.* Allan Mallach, *Investors and Housing Markets in Las Vegas: A Case Study*, Urban Institute pp. 32-34 (June 2013) (discussing that foreign real estate investors in Las Vegas are crowding out potential domestic purchasers); Robert D. Cruz and Ebony Johnson, *Research Notes on Economic Issues: Impact of Real Estate Investors on Local Buyers*, Miami-Dade County Regulatory and Economic Resources Dept. (Sept. 2013) (analyzing how domestic first-time home purchasers are at a competitive disadvantage compared to foreign real estate investors); Kathleen M. Howley, *Families Blocked by Investors from Buying U.S. Homes*, Bloomberg, Oct. 24, 2013 (discussing that the rise of all-cash purchases, among other things, has prevented many potential homeowners from purchasing homes).

officials develop policies tailored to the unique characteristics associated with these separate segments of the mortgage market.

Furthermore, the mortgage market has evolved to the point where lending policies and procedures differentiate between principal dwellings, second homes, and investment properties. Financial institutions and investors often apply underwriting criteria tailored to each property type.[319] Furthermore, large and small lenders often use marketing specifically targeting potential purchasers of vacation or investment properties, and many institutions specialize in this type of lending. In addition, mortgage loan pricing often varies based on whether the property will be used as a principal, second, or investment property.[320] Thus, updating the reporting requirements related to second or investment properties may be necessary to ensure that the reported data is a useful reflection of the current mortgage market.

When these considerations are taken together, it appears that the concerns that motivated the original distinction between principal and non-principal dwellings now exist with respect to second homes and investment properties. For these reasons, to implement section 304(b)(2) of HMDA and pursuant to its authority under sections 305(a) and 304(b)(6)(J) of HMDA, the Bureau is proposing to modify § 1003.4(a)(6) to provide that a financial institution shall report whether the property identified in § 1003.4(a)(9) is or will be used by the applicant or borrower as a principal residence, as a second residence, or as an investment property. The Bureau solicits feedback regarding whether this proposed modification is appropriate. While the Bureau

[319] *See e.g.*, Fannie Mae, *Fannie Mae Single-Family Selling Guide*, Chapter B2-3 (October 22, 2013), https://www.fanniemae.com/content/guide/sel102213.pdf; Freddie Mac, *Freddie Mac Single-Family Seller/Servicer Guide*, Vol. I, Chapters 22.22 and 22.22.1, *available at* http://www.freddiemac.com/sell/guide/.
[320] *See e.g.*, Fannie Mae, *Fannie Mae Single-Family Selling Guide*, Chapter B2-1.2-02 and B2-1.2-03 (October 22, 2013), *available at* https://www.fanniemae.com/content/guide/sel102213.pdf.

believes that financial institutions currently differentiate between principal, second, and investment properties for underwriting, pricing, and other purposes, the Bureau solicits feedback regarding whether, and the extent to which, financial institutions do not recognize this differentiation, and whether financial institutions would encounter unique costs or burdens associated with this proposed requirement.

During the Small Business Review Panel process, some small entity representatives expressed concerns about differentiating between principal, second, and investment properties for reporting purposes.[321] The Small Business Review Panel recommended that the Bureau solicit public comment on the challenges associated with requiring financial institutions to report owner-occupancy status as including reporting second home and investment uses, rather than just principal residence occupancy.[322] Consistent with the Small Business Review Panel's recommendation, the Bureau requests feedback regarding the challenges small financial institutions currently face when reporting owner-occupancy status, and the additional costs and burdens that small financial institutions would face if the current reporting requirement were modified to require reporting of whether a property is or will be used by the applicant or borrower as a second residence or investment property.

Proposed comment 4(a)(6)-2 clarifies that, for purposes of § 1003.4(a)(6), an applicant or borrower can have only one principal residence at a time. Thus, a vacation or other second home would not be a principal residence. However, if an applicant or borrower buys or builds a new dwelling that will become the applicant's or borrower's principal residence within a year or upon

[321] *See* Small Business Review Panel Report at 33, 42, and 100.
[322] *See id.* at 42.

the completion of construction, the new dwelling is considered the principal residence for purposes of applying this definition to a particular transaction.

Proposed comment 4(a)(6)-3 explains that, for purposes of § 1003.4(a)(6), a property is an applicant's or borrower's second residence if the property is or will be occupied by the applicant or borrower for a portion of the year and is not the applicant's or borrower's principal residence. For example, if a person purchases a property, occupies the property for a portion of the year, and rents the property for the remainder of the year, the property is a second residence for purposes of § 1003.4(a)(6). Similarly, if a couple occupies a property near their place of employment on weekdays, but the couple returns to their principal residence on weekends, the property near the couple's place of employment is a second residence for purposes of § 1003.4(a)(6).

Proposed comment 4(a)(6)-4 clarifies that, for purposes of § 1003.4(a)(6), a property is an investment property if the owner does not occupy the property. Similarly, if a person purchases a property, does not occupy the property, and does not generate income by renting the property, but intends to generate income by selling the property at some point in time, the property is an investment property for purposes of § 1003.4(a)(6). Section 1003.4(a)(6) requires a financial institution to identify a property as an investment property if the owner does not occupy the property, even if the owner does not consider the property as owned for investment purposes. Proposed comment 4(a)(6)-4 also provides several illustrative examples. Under appendix A, proposed instruction 4(a)(6)-1 provides technical instructions regarding how to enter the occupancy type on the loan application register by stating that financial institutions should enter one of four codes, and identifying which codes are applicable to the covered loan or application.

As discussed in the section-by-section analysis to proposed § 1003.4(a)(9) and in proposed comment 4(a)(9)-2, if more than one property is taken, or in the case of an application, proposed to be taken as security for a single covered loan or application, a financial institution may report one of the properties in a single entry on its loan application register or report all of the properties using multiple entries on its loan application register. Regardless of whether the financial institution elects to report the transaction in one entry or more than one entry, the information required by § 1003.4(a)(6) should relate to the property identified under § 1003.4(a)(9). The Bureau is also proposing comment 4(a)(6)-5 to clarify how to report the information required by proposed a covered loan secured by, or in the case of an application, proposed to be secured by, more than one property. The Bureau solicits feedback generally on whether the proposed revisions are appropriate or whether more detailed enumerations for construction method would be appropriate.

As discussed in part II.B above, one of the Bureau's objectives in this proposed rule is to reduce the fixed and ongoing costs associated with reporting HMDA data by aligning to the extent practicable to MISMO. MISMO version 3.3 currently defines an investment property by reference to whether the property will generate rental income. The Bureau is concerned that MISMO's definition does not encompass all properties that commonly would be considered investment properties. For example, a person that purchases a property for a family member to reside in, with the expectation of generating income upon the sale of the property in the future, may consider the property an investment property. Similarly, a person that purchases a property to renovate and sell, but does not reside in the property, may also view the property as an investment property. However, the properties described in these scenarios would not be considered investment properties under the definition in MISMO version 3.3. As a result, to

provide clear reporting rules while aligning to MISMO, proposed instruction 4(a)(6)-1 provides one instruction for reporting investment properties that generate income by the rental of the property, and another instruction for reporting investment properties that do not generate income by the rental of the property. The Bureau believes that this proposed instruction will align to MISMO while accommodating financial institutions that are reporting investment properties that are not recognized as such under MISMO, but solicits feedback on this proposed approach, and solicits feedback regarding whether any additional clarifications or changes are needed to facilitate compliance.

Section 1003.4(a)(6) is proposed to implement section 304(b)(2) of HMDA, and is also proposed pursuant to the Bureau's authority under sections 305(a) and 304(b)(6)(J) of HMDA. The Bureau believes requiring this level of detail about residency status is a reasonable interpretation of HMDA section 304(b)(2). Furthermore, for the reasons given above, the Bureau believes this change is necessary and proper to effectuate HMDA's purpose, because this information will help determine whether financial institutions are serving the housing needs of their communities and will assist in decisions regarding the distribution of public sector investments. This proposal may also facilitate compliance with HMDA, by aligning to the extent practicable to MISMO standards, thereby reducing costs associated with HMDA reporting.

4(a)(7)

Section 304(a) and (b) of HMDA requires the disclosure of the dollar amount of loans and applications subject to the statute.[323] Section 1003.4(a)(7) of Regulation C requires financial institutions to report the amount of the loan or the amount applied for. Paragraph I.A.7 in

[323] 12 U.S.C. 2803(a), (b).

appendix A instructs financial institutions to report loan amount rounded to the nearest thousand and clarifies how to determine and report loan amount with respect to various types of transactions. Comments 4(a)(7)-1 through -4 provide additional explanation concerning how loan amount is to be determined and reported.

The Bureau is proposing several technical, conforming, and clarifying modifications to § 1003.4(a)(7) and its corresponding instructions and comments. These proposals include moving into the text of § 1003.4(a)(7) several requirements currently found in instructions and comments, and moving into the commentary several explanations and clarifications currently found in appendix A. The Bureau is also proposing to modify the amount reported for an open-end line of credit and clarify what amount should be reported for a reverse mortgage. Finally, the Bureau is proposing that loan amount be reported in dollars rather than rounded to the nearest thousand.

Proposed § 1003.4(a)(7) requires financial institutions to report the amount of the covered loan or the amount applied for, as applicable. Proposed § 1003.4(a)(7)(i) provides that for a closed-end mortgage loan, other than a purchased loan or an assumption, a financial institution shall report the amount to be repaid as disclosed on the legal obligation. Proposed § 1003.4(a)(7)(i) further provides that, for a purchased closed-end mortgage loan or an assumption of a closed-end mortgage loan, the financial institution shall report the unpaid principal balance at the time of purchase or assumption. Proposed § 1003.4(a)(7)(i) incorporates requirements currently set forth in paragraph I.A.7(a) and (b) of appendix A and comment 4(a)(7)-4.

Proposed § 1003.4(a)(7)(ii) provides that for an open-end line of credit, including a purchased open-end line of credit or an assumption of an open-end line of credit, a financial

institution shall report the amount of credit available to the borrower under the terms of the plan. The Bureau proposes to collect the full line, rather than only the portion intended for home purchase or improvement, as is currently required by paragraph I.A.7(d) of appendix A and comment 4(a)(7)-3. The Bureau believes that this modification will produce more consistent and reliable data on open-end lines of credit and will reduce burdens on financial institutions associated with determining the purposes of open-end lines of credit. This proposed provision also clarifies how loan amount should be determined for purchases and assumptions of open-end lines of credit.

Proposed § 1003.4(a)(7)(iii) provides that, for a reverse mortgage, the amount of the covered loan is the initial principal limit, as determined pursuant to section 255 of the National Housing Act (12 U.S.C. 1715z-20) and implementing regulations and mortgagee letters prescribed by HUD. Regulation C is currently silent as to how loan amount should be determined for a reverse mortgage. The Bureau believes that industry is familiar with HUD's Home Equity Conversion Mortgage Insurance Program and its implementing regulations and mortgagee letters and that this modification will produce more consistent and reliable data on reverse mortgages. The Bureau solicits feedback regarding whether this proposed modification is appropriate and specifically solicits feedback on the determination of loan amount for non-federally insured reverse mortgages.

Proposed instruction 4(a)(7)-1 provides that the amount of the covered loan or the amount applied for, as applicable, shall be reported in dollars. Currently, loan amount is reported rounded to the nearest thousand. The Dodd-Frank Act requirement that financial institutions report property value will allow the calculation of loan-to-value ratio, an important underwriting variable, but rounded loan amount will render these calculations less precise,

undermining their utility to analyses for HMDA purposes. Accordingly, the Bureau proposes that loan amount be reported in dollars. The Bureau solicits feedback on these proposals.

The Bureau proposes to delete paragraph I.A.7(a) and (b) in appendix A and comment 4(a)(7)-4 because these requirements have been incorporated into proposed § 1003.4(a)(7)(i). The Bureau proposes to delete the remainder of the instructions set forth in appendix A relating to paragraph 4(a)(7) and incorporate them into proposed new comments, as discussed below.

The Bureau is proposing technical changes and minor wording changes to comment 4(a)(7)-1 to conform the comment to proposed changes in § 1003.4(a)(7). Proposed comment 4(a)(7)-2 explains how loan amount is to be determined for an application that was denied or withdrawn and incorporates, with minor wording changes, paragraph I.A.7(f) of appendix A. Proposed comment 4(a)(7)-3 explains how loan amount is to be determined for a multi-purpose loan and is renumbered from current comment 4(a)(7)-2, modified to conform to proposed changes concerning reporting loan amount for home-equity lines of credit. Proposed comment 4(a)(7)-4 is renumbered from current comment 4(a)(7)-3 and incorporates paragraph I.A.7(d) of appendix A, modified to conform to proposed changes concerning reporting loan amount for home-equity lines of credit. Proposed comment 4(a)(7)-5 describes how to determine loan amount for a refinancing and incorporates with some modifications paragraph I.A.7(e) of appendix A. Proposed comment 4(a)(7)-6 describes how to determine loan amount for a home improvement loan and incorporates with some modifications paragraph I.A.7(c) of appendix A.

4(a)(8)

Regulation C § 1003.4(a)(8) requires financial institutions to report the action taken on applications covered by HMDA and the date the action was taken. The proposal would revise the commentary under § 1003.4(a)(8) with respect to rescinded loans, repurchased loans,

conditional approvals, and applications received by third parties. The proposal also makes technical corrections and minor wording changes to the instructions in appendix A to use terminology consistent with other changes in the proposal.

Rescinded Loans

Regulation Z provides for a right to rescind certain credit transactions in which a security interest will be retained or acquired in a consumer's principal dwelling. 12 CFR 1026.15(a), 1026.23(a). Comment 4(a)(8)-2 permits institutions to report action taken for rescinded transactions as either an origination or an application approved but not accepted. The Board adopted this comment in 1995, noting that it believed a strict requirement was not warranted in light of the small number of loans rescinded.[324] The proposal would revise the comment to require institutions to report rescinded transactions as applications approved but not accepted if a borrower rescinds a transaction after closing and before a financial institution is required to submit its loan application register containing the information for the transaction under § 1003.5(a). The Bureau believes that approved but not accepted more accurately reflects the outcome of a rescinded transaction, that having all such transactions reported with the same action taken will improve data consistency, and that a bright-line rule provides clear guidance to financial institutions. The Bureau solicits feedback on how frequently rescission is exercised and whether the proposed change is appropriate.

Conditional Approvals

Current comment 4(a)(8)-4 describes how institutions should report action taken for conditional approvals that are issued to applicants. The commentary generally provides that

[324] 60 FR 63393, 63396 (Dec. 11, 1995).

financial institutions should report loans approved subject to underwriting conditions which are not met should be reported as a denial, but it also provides that certain customary loan commitment or loan-closing conditions are not underwriting conditions. Additional guidance on this topic had been published in the FFIEC FAQs.[325]

A participant at the Board's 2010 Board HMDA Hearings stated that existing guidance on how to report action taken for conditional approvals was not sufficiently clear and current business practices often involve issuing conditional approvals based on an automated underwriting system result subject to several conditions.[326] The Bureau has also received feedback that financial institutions experience compliance burden in attempting to determine whether certain conditions are underwriting conditions or customary commitment or closing conditions, and in turn what the appropriate action taken code is for reporting purposes.

The proposal would renumber current comment 4(a)(8)-4 as 4(a)(8)-5 and revise it to expand the examples of conditions that are considered customary commitment or closing conditions and those that are considered underwriting or creditworthiness conditions. The proposal also revises the comment to provide examples of scenarios when conditionally approved applications could be reported as withdrawn, closed for incompleteness, and approved but not accepted. The Bureau believes that the revised comment will provide more clarity on reporting action taken for loans and applications that involve conditional approvals.

Proposed comment 4(a)(8)-5 would add several examples of how to report action taken when a conditional approval is issued. If the approval is conditioned on satisfying underwriting

[325] FFIEC FAQs.
[326] *See* Washington Hearing, *supra* note 130.

or creditworthiness conditions and they are not met, the institution reports the action taken as a denial. If, however, the conditions involve submitting additional information about creditworthiness that the institution needs to make the credit decision, and the institution has sent a written notice of incompleteness under Regulation B and the applicant did not respond within the period of time specified in the notice, the institution reports the action taken as file closed for incompleteness. If the conditions are solely customary commitment or closing conditions and the conditions are not met, the institution would report the action taken as approved but not accepted. If all the conditions (underwriting, creditworthiness, or customary commitment or closing conditions) are satisfied and the institution agrees to extend credit but the covered loan is not originated, the institution would report the action taken as application approved but not accepted. If the applicant expressly withdraws before satisfying all underwriting or creditworthiness conditions and before the institution denies the application or closes the file for incompleteness, the institution reports the action taken as application withdrawn. If all underwriting and creditworthiness conditions have been met, and the conditions are solely customary commitment or closing conditions and the applicant expressly withdraws before the covered loan is originated, the institution would report the action taken as application approved but not accepted.

Proposed comment 4(a)(8)-5 would provide additional examples of customary commitment or closing conditions. These examples include: acceptable title insurance binder; clear termite inspection; a subordination agreement from another lienholder; and where the applicant plans to use the proceeds from the sale of one home to purchase another; a settlement statement showing adequate proceeds from the sale. The existing examples of a clear-title requirement and acceptable property survey are retained.

Proposed comment 4(a)(8)-5 would also provide examples of underwriting or creditworthiness conditions. These examples include: conditions that constitute a counter-offer; satisfactory debt-to-income ratio or loan-to-value ratio; determination of the need for private mortgage insurance; satisfactory appraisal requirement; or verification or confirmation that an applicant meets underwriting conditions; including documentation of income or assets.

These additions in proposed comment 4(a)(8)-5 are adapted and developed from the FFIEC FAQs, as well as from feedback received by the Bureau. The Bureau believes these additions are appropriate, but solicits feedback on this conclusion and whether any other examples would be appropriate.

Applications Received by Third Parties

The proposal adds comment 4(a)(8)-6 to provide guidance on how financial institutions should report applications involving more than one institution. The comment cross-references comment 4(a)-4 regarding such applications.

Other Revisions

The proposal makes technical corrections and minor wording changes to several comments. Current comments 4(a)(8)-5, -6, and -7 are renumbered as comments 4(a)(8)-7, -8, and -9, respectively, and are revised to use terminology consistent with other changes in the proposal. Proposed comment 4(a)(8)-4 directs financial institutions to refer to proposed comment 4(a)-6 regarding reporting requirements when a covered loan is repurchased by the originating financial institution.

4(a)(9)

As discussed in detail below, HMDA, as implemented through Regulation C, requires financial institutions to report certain information about the location of the property related to

most reported loans and applications. Specifically, Regulation C requires financial institutions to report the MSA or MD, State, county, and census tract of the property related to most reported loans or applications.[327]

Section 1094(3)(A)(iv) of the Dodd-Frank Act amended HMDA to authorize the Bureau, as it may determine to be appropriate, to collect the parcel number that corresponds to the real property pledged or proposed to be pledged as collateral. This parcel number would specifically identify the property securing or, in the case of an application, proposed to secure each covered loan. As amended by the Dodd-Frank Act, HMDA also directs the Bureau, with the assistance of certain other agencies and persons as the Bureau deems appropriate, to "develop or assist in the improvement of, methods of matching addresses and census tracts to facilitate compliance by depository institutions in as economical a manner as possible with the requirements of [HMDA]."[328] The Bureau proposes to implement the Dodd-Frank Act authorization to collect a parcel number as discussed below.

4(a)(9)(i)

Currently, Regulation C does not require financial institutions to report information specifically identifying the property securing or, in the case of an application, proposed to secure the covered loan. Rather, as discussed in detail below, Regulation C requires financial institutions to report the MSA or MD, State, county, and census tract of the property related to most reported loans or applications.[329] The Dodd-Frank Act amended HMDA to authorize the Bureau to collect the "parcel number that corresponds to the real property" securing the covered

[327] *See* § 1003.4(a)(9).
[328] Dodd-Frank Act section 1094(6); 12 U.S.C. 2806(a)(1).
[329] *See* § 1003.4(a)(9).

loan or, in the case of an application, proposed to secure the covered loan.[330] As discussed below, there is no universal parcel number system; therefore, the Bureau believes it is reasonable to interpret the Dodd-Frank Act amendment to refer to information that uniquely identifies a dwelling pledged or proposed to be pledged as collateral (parcel identifier). Proposed § 1003.4(a)(9)(i) is also authorized pursuant to the Bureau's HMDA section 305(a) authority to provide for adjustments because, for the reasons given below, the Bureau believes the proposal is necessary and proper to effectuate HMDA's purposes and facilitate compliance therewith. For the reasons discussed below, the Bureau proposes to require financial institutions to report the postal address of the property securing the covered loan or, in the case of an application, proposed to secure the covered loan. The Bureau also is exploring operational improvements that it can achieve using the reported postal address to reduce financial institutions' property-location reporting burden.

Including a parcel identifier in the HMDA data would provide many benefits that would further HMDA's purposes. Researchers and community advocates urged the Board to adopt a parcel identifier during the Board's 2010 Hearings.[331] Collecting a parcel identifier linked to the property's location, like postal address, may address many of the challenges associated with the current property location information reported in HMDA. Currently, census tract is the most granular property location information reported in HMDA. Census tract information enables public officials and members of the public to identify lending trends in geographic areas. Census tracts, however, present challenges as a unit of analysis because they vary in geographic size and

[330] HMDA section 304(b)(6)(H) authorizes the Bureau to include in the HMDA data collection "the parcel number that corresponds to the real property pledged or proposed to be pledged as collateral." 12 U.S.C. 2803(b)(6)(H).
[331] *See, e.g.*, Washington Hearing, *supra* note 130 (remarks of Lisa Rice, Vice President, National Fair Housing Alliance).

may change every ten years.[332] In addition, analysts are not able to evaluate the HMDA data using geographic divisions other than those reported in HMDA (*e.g.*, census tract block) and, as a result, experience difficulty identifying more localized lending trends.

With more specific information about the location of a property, the Bureau and other agencies would be able to evaluate and, for example, issue publicly available summary reports evaluating HMDA data based on different geographic divisions than census tract. These data and reports may facilitate a better understanding of lending trends in geographic divisions smaller than census tract. Geographic areas that would benefit from special public or private sector investment may be identified with greater precision. These data and reports may also enable more precise analysis of lending patterns to identify potential fair lending redlining concerns.

Including a parcel identifier linked to the location of a property, like postal address, in the HMDA data may also present opportunities for the Bureau to reduce the burden for financial institutions associated with the current property location reporting. The Bureau understands from industry feedback that "geocoding," (*i.e.*, providing the census tract, MSA or MD, county and State of a property) is a challenging and costly aspect of HMDA reporting. Financial institutions report frequent examination errors relating to geocoding. The Bureau believes that the Dodd-Frank Act's authorization to collect a parcel identifier and directive to facilitate economical compliance with matching addresses and census tracts may provide a unique opportunity to improve the reporting process. The Bureau is exploring operational changes that

[332] *See, e.g.*, United States Census Bureau, Geographic Terms and Concepts-Census Tract, http://www.census.gov/geo/reference/gtc/gtc_ct.html.

it may achieve using the reported postal address that would reduce the burden associated with geocoding. For example, the Bureau may create a system where a financial institution reports only the postal address and the Bureau provides the financial institution with the census tract, county, MSA or MD, and State. The Bureau believes that these potential operational changes, if achieved, would be a significant benefit to collecting postal address. If the Bureau is not able to achieve these operational changes, the Bureau may not elect to finalize the proposal to collect postal address, but likely would finalize the proposal discussed below in the section-by-section analysis of proposed § 1003.4(a)(9)(ii) to continue to collect the currently required property location information (State, MSA or MD, County, and census tract).

In addition, a parcel identifier would allow for the identification of multiple loans secured by the same property, which would allow for better understanding of the amount of equity retained in that property over time. Had these data been available leading up to the financial crisis, public officials may have been able to see the extent to which borrowers used up their equity through rapid refinancings. In addition, they would have been able to identify which financial institutions were offering these refinancings, which were often unsound.

Collecting a parcel identifier presents a number of practical challenges. Currently, no universal standard exists for identifying a property so that it can be linked to related mortgage data. There is no single authoritative source that delivers or maintains parcel numbering. Parcel data are collected and maintained by individual local governments with limited State or Federal involvement. Local jurisdictions do not use a standard way to identify properties. In addition, local parcel data are not easily linked to the location of the property, which, as discussed above, substantially amplifies the usefulness of a parcel identifier. Both the postal address and geospatial coordinates of a property are linked to the location of the property and uniquely

identify most properties. However, there may be inaccuracies associated with both postal address and geospatial coordinates. For example, neither the postal address nor the geospatial coordinates may be available at the time of origination for properties located in new developments. In addition, both postal address and geospatial coordinates present standardization issues. Financial institutions may not collect and record postal address in the same format. Likewise, financial institutions may not use the same methods for collecting and recording geospatial coordinates. The Bureau understands that financial institutions currently collect postal address during the mortgage origination and application process if the postal address is available, but that not all financial institutions collect geospatial coordinates.

In addition to the practical challenges discussed above, the Bureau recognizes that including a parcel identifier in the HMDA data raises privacy concerns because a parcel identifier, like a postal address, can easily be used to identify a borrower. The Bureau is sensitive to the privacy implications of including postal address in the HMDA data and has considered these implications carefully.[333]

The Bureau believes that it may be appropriate to collect a parcel identifier linked to the location of a property, given the potential benefits of such information to the purposes of HMDA. Collecting postal address may be the least burdensome way to obtain a parcel identifier because financial institutions generally collect postal addresses during the application and origination process.

[333] For discussion of the Bureau's approach to protecting applicant and borrower privacy in light of the goals of HMDA, see part II.C, above. As discussed in part II.C, the Bureau's assessment of the risks to privacy interests created by the disclosure of HMDA data and the benefits of such disclosure under its balancing test is ongoing. Because property address can be used to directly identify individual borrowers, however, the Bureau anticipates that property address would not be made available to the general public.

Accordingly, pursuant to its authority under HMDA sections 305(a) and 304(b)(6)(H), the Bureau proposes § 1003.4(a)(9)(i), which provides that a financial institution is required to report the postal address of the property securing or, in the case of an application, proposed to the covered loan. Proposed § 1003.4(a)(9)(i) applies to all reported covered loans and applications secured by or, in the case of an application, proposed to be secured by any type of manufactured housing. As the Bureau explains further in the section-by-section analysis of proposed § 1003.4(a)(29), the Bureau believes that it is reasonable to implement HMDA through Regulation C to treat mortgage loans secured by all manufactured homes, regardless of the dwelling's legal classification under State law, consistently. The Bureau further believes that collecting the postal address of all covered loan secured by (and applications for covered loans proposed to be secured by) any manufactured home is necessary and proper to effectuate HMDA's purposes and facilitate compliance therewith. The Bureau solicits feedback regarding whether to collect a parcel identifier generally and whether postal address is the appropriate way to collect a parcel identifier.

During the Small Business Review Panel process, small entity representatives expressed concerns about the challenges of implementing a parcel identifier for entries that do not result in an origination.[334] Consistent with that feedback, the Bureau proposes instructions in appendix A that allow a financial institution to omit certain of the required data fields if aspects of the property's postal address are not known. The Small Business Review Panel recommended that the Bureau solicit feedback on whether to require reporting of a parcel identifier for all entries or

[334] *See, e.g.*, Small Business Review Panel Report at 39.

only for originations and purchases.[335] Consistent with that recommendation, the Bureau solicits feedback on whether to require reporting of a parcel identifier for all entries.

4(a)(9)(ii)

Under HMDA and Regulation C, a financial institution is required to report the location of the property to which the covered loan or application relates by MSA or MD; State; county; and census tract if the loan is related to a property in an MSA or MD in which the financial institution has a home or branch office.[336] In addition, § 1003.4(e) requires banks and savings associations that are required to report data on small business, small farm, and community development lending under regulations that implement the CRA to collect the location of property located outside MSAs and MDs in which the institution has a home or branch office or outside of any MSA. Section I.C.3 of appendix A directs financial institutions to enter "not applicable" for census tract if the property is located in a county with a population of 30,000 or less. The Bureau proposes to renumber existing § 1003.4(a)(9) as § 1003.4(a)(9)(ii) and to make certain nonsubstantive technical modifications for clarification. The Bureau does not propose any changes to § 1003.4(e). The Bureau solicits feedback on whether the proposal is appropriate generally and on the benefits and burdens of the proposal.

The Bureau has received feedback from industry that reporting property location information is a challenging and costly aspect of HMDA reporting. As discussed above, the Bureau is exploring ways that it can reduce the burden associated with geocoding, such as

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[335] *Id*.

[336] *See* Section 1003.4(a)(9); HMDA section 304(a)(2). A for-profit mortgage-lending institution is deemed to have a branch office in an MSA or MD if in the preceding calendar year it received applications for, originated, or purchased five or more home purchases loans, home improvement loans, or refinancings related to property located in that MSA or MD, respectively. *See* Section 1003.2 (definition of branch office).

operational changes that may enable the Bureau to perform geocoding for financial institutions. For example, the Bureau may create a system where a financial institution reports only the postal address and the Bureau provides the financial institution with the census tract, county, MSA or MD, and State. As discussed above, if the Bureau is not able to achieve these operational changes, the Bureau may not elect to finalize the proposal to collect postal address, but likely would finalize the proposal to continue to collect the currently required property location information (census tract, county, MSA or MD, and State).

In addition, the Bureau understands that this potential operational change raises questions. Such questions include whether a financial institution would be responsible for the accuracy of the information provided by the Bureau and whether a financial institution would be responsible for geocoding an entry if the Bureau's geocoding system returned an error. The Bureau solicits feedback on whether such an operational change would alleviate burden and on whether such an operational change is appropriate generally.

During the Small Business Review Panel, small entity representatives discussed the potential operational change related to geocoding.[337] Small entity representatives generally supported the idea of shifting some of the burden of geocoding to the Bureau or other Federal agencies. Several small entity representatives stated that geocoding was not problematic for them. Some small entity representatives shared their thoughts on the type of loans or properties that present challenges in geocoding, including open-end lines of credit, new construction properties, and rural properties. One small entity representative stated that geocoding is the largest source of its reporting errors. Small entity representatives also raised questions about

[337] *See* Small Business Review Panel Report at 34.

whether the financial institution or the Bureau would be responsible for errors if the Bureau geocoded the loans.[338] The Panel supported the Bureau's suggested operational changes related to geocoding.[339]

Covered Loans Related to Multiple Properties

Comments 4(a)(9)-1 and-2 clarify a financial institution's responsibilities when reporting a loan that relates to more than one property. Comment 4(a)(9)-1 discusses how to report a home improvement loan or a refinancing of a home improvement loan that relates to more than one property. Comment 4(a)(9)-2 discusses how to report a home purchase loan or a refinancing of a home purchase loan that relates to more than one property. In light of the Bureau's proposal to expand the types of transactions subject to Regulation C by including all mortgage loans secured by a dwelling (discussed above in the section-by-section analysis of proposed § 1003.2(d) and (o)), the Bureau believes that it may be appropriate to revise comments 4(a)(9)-1 and -2 to provide a single framework clarifying how to report a covered loan related to multiple properties.

Proposed comment 4(a)(9)-1 explains that if a covered loan relates to more than one property and only one property is taken as or, in the case of an application, proposed to be taken as security, a financial institution reports the information required by § 1003.4(a)(9) for the property taken as or, in the case of an application, proposed to be taken as security. The comment also provides an illustrative example.

Proposed comment 4(a)(9)-2 clarifies that if more than one property is taken or, in the case of an application, proposed to be taken as security for a single covered loan, a financial

[338] *See id.*
[339] *See id*.

institution may report one of the properties using one entry on its loan application register or report all of the properties using multiple entries on its loan application register. Proposed comment 4(a)(9)-2 further explains that, if a financial institution opts to report all of the properties, the multiple entries should be identical with the exception of required information that is related to the property identified in § 1003.4(a)(9). If an institution is required to report specific information about the property identified in § 1003.4(a)(9), the institution should report the information that relates to the property identified in § 1003.4(a)(9) in that entry. The proposed comment provides an illustrative example.

Proposed comment 4(a)(9)-3 discusses reporting multifamily properties with more than one postal address. The proposed comment explains that for the purposes of § 1003.4(a)(9), a financial institution reports the information required by § 1003.4(a)(9) for a multifamily dwelling with more than one postal address in the same manner described in proposed comment 4(a)(9)-2. The proposed comment also explains that regardless of whether the financial institution elects to report the covered loan using a single entry or multiple entries, the information required by § 1003.4(a)(31) and (32) should refer to the total number of applicable units in the property or properties securing or, in the case of an application, proposed to secure the covered loan. The Bureau solicits feedback on whether the proposed comments are appropriate generally.

The Bureau is also proposing to renumber current comments 4(a)(9)-3 and -4 as proposed comments 4(a)(9)-4 and -5, respectively, and to make certain technical changes to align the comments with proposed § 1003.4(a)(9). In accordance with the changes discussed above, the Bureau proposes technical instructions in appendix A regarding how to enter the data on the loan application register.

4(a)(10)(i)

Ethnicity, Race, and Sex

HMDA section 304(b)(4) requires the reporting of racial characteristics and gender for borrowers and applicants.[340] Section 1003.4(a)(10) of Regulation C requires a financial institution to collect the ethnicity, race, and sex of the applicant or borrower for applications and loan originations for each calendar year. The Bureau's proposal renumbers § 1003.4(a)(10) and moves the requirement to collect the ethnicity, race, and sex of the applicant or borrower to § 1003.4(a)(10)(i). The new numbering is intended only for ease of reference and is not a substantive change.

The Bureau proposes to modify instruction I.D.1.b of appendix A, which requires that a financial institution use Code "not applicable" if the borrower or applicant is not a natural person, for example, a corporation or partnership. The Bureau provides this clarification in response to feedback from financial institutions expressing uncertainty as to whether a trust is a non-natural person. For a transaction involving a trust, the financial institution should report "not applicable" for the government monitoring information if the trust is the borrower or applicant. On the other hand, if the applicant or borrower is a natural person, and is the beneficiary of a trust, the financial institution should collect the government monitoring information pursuant to § 1003.4(a)(10)(i).

[340] 12 U.S.C. 2803(b)(4). The collection and reporting of this information was not a part of HMDA as originally enacted in 1975. *See supra* note 36. Originally, HMDA required lenders to collect and report data only on loan originations and only according to census tract and income. *See* Former 12 U.S.C. 2803(a)(1)-(a)(2) (1988). In order to help identify lending discrimination and enforce antidiscrimination laws, Congress amended HMDA to require the collection and reporting of the racial characteristics, gender, and income of loan applicants and borrowers (FIRREA). *See supra* note 58. In 2002, the Board amended Regulation C to improve the quality, consistency, and usefulness of the data being collected by financial institutions, including adding ethnicity as a new field for collection of information about an applicant. *See supra* note 75.

As part of the Bureau's efforts to streamline and clarify Regulation C, the Bureau is also proposing several technical modifications to the appendix A instructions for applicant information. The Bureau believes these modifications will help financial institutions comply with Regulation C by providing clearer instructions for completion of the applicant information in the loan application register. The Bureau is proposing to remove I.D.2 of appendix A because the instructions are either found elsewhere in the I.D. instructions or are duplicative of instructions in appendix B. For example, instruction I.D.2 provides that all loan applications, including applications taken by mail, internet, or telephone must use a collection form similar to that shown in appendix B regarding ethnicity, race, and sex. This instruction further provides that for applications taken by telephone, the information in the collection form must be stated orally by the lender, except for information that pertains uniquely to applications taken in writing. These instructions are also found in appendix B. The Bureau does not believe these instructions should appear twice and thus is proposing to remove the instructions from appendix A.

In addition, the Bureau is proposing to remove the I.D.2 instruction that provides if the applicant does not provide these data in an application taken by mail or telephone or on the internet, enter the Code for "information not provided by applicant in mail, internet, or telephone application" specified in paragraphs I.D.3., 4., and 5. of this appendix. As the instruction itself points out, paragraphs I.D.3., 4., and 5. of appendix A instruct a financial institution to enter the Code for "information not provided by applicant in mail, internet, or telephone application" and the Bureau does not believe there is a need to repeat that instruction in I.D.2. Therefore, the Bureau is proposing to remove this instruction from I.D.2 and is proposing to modify paragraph I.D.4. by adding a new subparagraph "b," redesignated as 4(a)(10)(i)-2.b, which would instruct

financial institutions to "Use Code 3 (for ethnicity) and Code 6 (for race) if the applicant or co-applicant does not provide the information in an application taken by mail, internet, or telephone" and is proposing to modify paragraph I.D.5. by adding a new subparagraph "a," redesignated as 4(a)(10)(i)-3.a, which would instruct financial institutions to use "Use Code 3 if the applicant or co-applicant does not provide the information in an application taken by mail, internet, or telephone."

As part of the Bureau's efforts to streamline and clarify Regulation C, the Bureau is proposing to renumber current instructions I.D.3, I.D.4, and I.D.5. The instructions are renumbered as 4(a)(10)(i)-1, 4(a)(10)(i)-2, and 4(a)(10)(i)-3. In line with the proposed renumbering to appendix A, the Bureau is proposing to renumber comments 4(a)(10)-1, 4(a)(10)-2, 4(a)(10)-3, 4(a)(10)-4, and 4(a)(10)-5. The comments are renumbered as comments 4(a)(10)(i)-1, 4(a)(10)(i)-2, 4(a)(10)(i)-3, 4(a)(10)(i)-4, and 4(a)(10)(i)-5.

Appendix B provides instructions on the collection of the ethnicity, race, and sex of applicants. Appendix B instructs financial institutions to inform applicants that the Federal government requests the information in order to monitor compliance with Federal statutes that prohibit lenders from discriminating against applicants on these bases. Appendix B also provides that financial institutions must ask for the information but cannot require applicants to provide it. Questions requesting the government monitoring information can be listed on the loan application form or on a separate form that refers to the application, and appendix B provides a sample form. Financial institutions must offer an applicant the option of selecting one or more racial designations. For telephone applications, the information in the collection form must be stated orally by the financial institution. When an application is taken in person and the applicant does not provide the information, the financial institution is instructed to note this on

the form, inform the applicant that it is required to collect the information based on visual observation and surname, and then collect it on that basis to the extent possible. In a mail, telephone, or internet application, the government monitoring information need not be provided if the applicant declines to answer the questions requesting the information or fails to provide the information. In such a case, the financial institution should indicate that the application was received by mail, telephone, or internet, if that fact is not otherwise evident on the face of the application.

Feedback provided during the Board's 2010 Hearings addressed the reluctance of applicants to provide demographic information and the challenges financial institutions face in collecting the information.[341] The Bureau solicits feedback regarding the challenges faced by both applicants and financial institutions by the data collection instructions prescribed in appendix B and specifically solicits comment on ways to improve the data collection of the ethnicity, race, and sex of applicants and borrowers.

During the Small Business Review Panel process, one small entity representative urged the Bureau to eliminate the requirement to record government monitoring information for in-person applications when the customer declines to specify the information.[342] The small entity representative noted that while the government monitoring information data are vital to HMDA's utility, recording the information on the basis of visual observation is highly subjective and puts financial institutions in the position of overriding the wishes of applicants who choose not to provide this information.[343] The small entity representative also stated that staff at the financial

[341] *E.g.*, Atlanta Hearing, *supra* note 131; San Francisco Hearing, *supra* note 133; Chicago Hearing, *supra* note 137.
[342] *See* Small Business Review Panel Report at 28.
[343] *Id.*

institution spend an average of three hours following up with loan officers when these data are not reported in the files.[344] While the Small Business Review Panel did not make a recommendation in response to these comments, as discussed above, the Bureau is aware that there may be ways to improve the collection of the government monitoring information and specifically solicits feedback on this issue.

Age

Section 1094(3)(A)(i) of the Dodd-Frank Act amended HMDA section 304(b)(4) to require financial institutions to report an applicant's or borrower's age.[345] For the reasons discussed below, the Bureau is proposing to implement the requirement to collect and report age by adding this characteristic to the information listed in proposed § 1003.4(a)(10)(i).

The MISMO/ULDD data standards for age include both the date of birth (YYYY-MM-DD format) and the age of the borrower in years at the time of application.[346] In light of potential applicant and borrower privacy concerns related to reporting date of birth, the Bureau proposes that financial institutions enter the age of the applicant or borrower, as of the date of application, in number of years as derived from the date of birth as shown on the application form.[347] The Bureau's Regulation B requires, as part of the application for credit, a creditor to request the age of an applicant for credit primarily for the purchase or refinancing of a dwelling occupied or to be occupied by the applicant as a principal dwelling, where the credit will be

[344] *Id.*
[345] 12 U.S.C. 2803(b)(4).
[346] *See* Version 3.3 of the MISMO Residential Reference Model (Construction Method Type and Financed Unit Count), Fannie Mae, *Fannie Mae Implementation Guide for Loan Delivery Data*, Appendix A (Oct. 29, 2013) (https://www.fanniemae.com/content/technology_requirements/uldd-implementation-guide-appendix-a.pdf), Freddie Mac, *Freddie Mac Implementation Guide for Loan Delivery Data*, Appendix A (Jan. 29, 2014) (http://www.freddiemac.com/singlefamily/sell/docs/FRE_IG_selling_system_appendix_a_data_requirements.pdf
[347] See part II.C above for a discussion of the Bureau's approach to protecting applicant and borrower privacy in light of the goals of HMDA.

secured by the dwelling.[348] The proposed requirement would align with the MISMO/ULDD data standard for age as well as with the definition of age under Regulation B. The Bureau solicits feedback regarding whether the collection of the age of the applicant or borrower, as of the date of application, in number of years as derived from the date of birth as shown on the application form is an appropriate manner of collecting such demographic information. The Bureau specifically solicits feedback regarding whether there is a less burdensome way for financial institutions to collect such information for purposes of HMDA.

During the Small Business Review Panel process, the small entity representatives generally expressed concern about the burden of reporting additional borrower data with respect to age.[349] Some small entity representatives recommended that the Bureau further clarify the age data point.[350] In particular, some small entity representatives noted that the date of birth of an applicant is already collected on application forms, but converting it to age would require additional work and increase the possibility of errors.[351] Some small entity representatives suggested that the Bureau clarify at which point in the mortgage loan process age would be determined.[352] One small entity representative suggested that the applicant's age at the time of

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[348] Regulation B § 1002.13(a)(1)(iv). Age has been a protected category under ECOA and Regulation B since 1976, and a creditor may not discriminate against an applicant on the basis of age regarding any aspect of a credit transaction, including home mortgage lending. *See* Regulation B §§ 1002.1(b), 1002.4(a)(b), 15 U.S.C. 1691(a)(1). Under Regulation B, "age" refers "only to the age of natural persons and means the number of fully elapsed years from the date of an applicant's birth." Regulation B § 1002.2(d).

[349] *See* Small Business Review Panel Report at 27 and 40. The Dodd-Frank amendments to HMDA added new provisions directing the Bureau to develop regulations that "modify or require modification of itemized information, for the purpose of protecting the privacy interests of the mortgage applicants or mortgagors, that is or will be available to the public," and identified age as a new data point that may raise privacy concerns. HMDA sections 304(h)(1)(E), (h)(3)(A)(ii). See part II.C above for a discussion of the feedback the Bureau received from the small entity representatives about privacy concerns relating to this proposed data point and the Bureau's approach to protecting applicant and borrower privacy in light of the goals of HMDA.

[350] *See* Small Business Review Panel Report at 27.

[351] *Id.*

[352] *Id.*

application be reported.[353] The Bureau's proposed comments and proposed instructions in appendix A provide clarity as to how a financial institution collects and reports age.

A requirement to collect and report the age of applicants or borrowers may impose some burden on financial institutions. However, the Bureau believes that the potential costs would be justified by the potential benefits to the public and public officials, and the Bureau believes that reporting of this information is an appropriate method of implementing HMDA section 304(b)(4) and carrying out HMDA's purposes. The Bureau believes this information will assist in identifying whether financial institutions are serving the housing needs of their communities, identifying possible discriminatory lending patterns, and enforcing antidiscrimination statutes.

Proposed instruction 4(a)(10)(i)-4 in appendix A provides technical instructions regarding how to enter the age of the applicant or borrower on the loan application register. Proposed instruction 4(a)(10)(i)-4 directs financial institutions to enter the age of the applicant or borrower, as of the date of application, in number of years as derived from the date of birth as shown on the application form. The Bureau recognizes that this proposed instruction would require financial institutions to calculate the age of an applicant or borrower in number of years by referring to the date of birth as shown on the application form and that such calculation has the potential for errors. However, the Bureau believes the application forms used by financial institutions, such as the Uniform Residential Loan Application form,[354] currently collect the date of birth of the applicant and any co-applicant and that requiring the calculation of age from this existing data source is not a significant burden. The Bureau believes that financial institutions

[353] *Id.*
[354] Fannie Mae Form 1003 or Freddie Mac Form 65 7/05 (rev. 6/09).

will have to manage the risk of an error in calculating an applicant's age to ensure HMDA compliance.

Similar to the existing technical instructions applicable to the ethnicity, race, and sex of an applicant or borrower, proposed instruction 4(a)(10)(i)-4 directs financial institutions to enter "not applicable" for age only when the applicant or co-applicant is not a natural person or when applicant or co-applicant information is unavailable because the covered loan has been purchased by the institution. In addition, similar to the existing instructions applicable to the ethnicity, race, and sex of an applicant or borrower, proposed instruction 4(a)(10)(i)-4 directs financial institutions to provide the age only for the first co-applicant listed on the application form when there is more than one co-applicant, and if there are no co-applicants or co-borrowers, to report "no co-applicant" in the co-applicant column.

Proposed comment 4(a)(10)(i)-1 discusses the requirement that a financial institution report the age of the applicant or borrower, as of the date of application, in number of years as derived from the date of birth as shown on the application form and provides an illustrative example. Proposed comment 4(a)(10)(i)-2 clarifies that a financial institution reports the age of the applicant or borrower, as of the date of application, in number of years as derived from the date of birth as shown on the application form and does not report age on the basis of visual observation or surname as is required with respect to the ethnicity, race, and sex of an applicant when the applicant fails to provide the requested information for an application taken in person. The Bureau also is proposing technical modifications to comments 4(a)(10)(i)-3, 4(a)(10)(i)-4, and 4(a)(10)(i)-5.

4(a)(10)(ii)

HMDA section 304(b)(4) requires the reporting of income level for borrowers and applicants. Section 1003.4(a)(10) of Regulation C implements this requirement by requiring collection and reporting of the gross annual income relied on in processing the application for applicants and borrowers. The proposal moves this requirement to § 1003.4(a)(10)(ii) and revises it to require the reporting of gross annual income relied on in making the credit decision requiring consideration of income or, if a credit decision requiring consideration of income was not made, the gross annual income collected as part of the application process. The Bureau has received feedback that the current income reporting requirement is confusing and unclear, and the new language is intended to facilitate compliance by clarifying and providing more specificity on when income is to be reported and what income should be reported.

The proposal revises the instructions in appendix A to be consistent with proposed § 1003.4(a)(10)(ii) and to provide additional guidance. Instruction 4(a)(10)(ii)-1 provides that the financial institution should report the gross annual income that it relied on in making the credit decision requiring consideration of income or, if the application was denied or withdrawn or the file was closed for incompleteness before a credit decision requiring consideration of income was made, the gross annual income collected as part of the application process. Instruction 4(a)(10)(ii)-1.a provides, consistent with the current instructions, that all dollar amounts should be rounded to the nearest thousand and shown in thousands. Instruction 4(a)(10)(ii)-1.b provides, consistent with the current instructions, that an institution would report "NA" for a covered loan or application related to a multifamily dwelling. Instruction 4(a)(10)(ii)-1.c provides that if no income information is collected as part of the application process, or if the covered loan applied for would not or did not require consideration of income, the institution would report "NA." Instruction 4(a)(10)(ii)-1.d provides that if the applicant or

co-applicant is not a natural person, or if the applicant or co-applicant information is unavailable because the covered loan has been purchased by the institution, the institution would report "NA."

The proposal revises and renumbers existing comments, and adds new comments. Specifically, the proposal renumbers current comments 4(a)(10)-6, -7, and -8 as comments 4(a)(10)(ii)-1, -2, and -3 and revises them clarification and to make minor wording changes. The proposal adds new comment 4(a)(10)(ii)-4 , which provides that amounts derived from asset depletion or annuitization to determine repayment ability are not part of gross annual income relied on for purposes of § 1003.4(a)(10)(ii). The proposal also adds new comment 4(a)(10)(ii)-5, which provides an example of reporting income information collected as part of the application process if the application is denied or withdrawn or the file is closed for incompleteness before a credit decision requiring consideration of income is made. The example provides that a financial institution would report the income collected if an applicant withdraws an application before a credit decision requiring consideration of income is made, or if an institution denied such an application or closed the file for incompleteness.

The proposal renumbers existing comment 4(a)(10)-6 as new comment 4(a)(10)(ii)-1 and revises it to make technical corrections and minor wording changes, and to provide an additional example of income relied on. The additional example provides that if an institution applied lender or investor guidelines to exclude commission income earned for less than 12 months, the institution would not include that income in the income reported. The Bureau understands that financial institutions frequently apply lender or investor guidelines when calculating income for purposes of making a credit decision. For example, the GSEs and the FHA have guidelines for determining and verifying borrower income for loans that financial institutions intend to sell to

or insure with those entities.[355] The MISMO/ULDD data standard for borrower qualifying income also refers to application of borrower or investor guidelines.[356] The example better aligns the proposed § 1003.4(a)(10)(ii) reporting requirement with these commonly used industry data standards. The Bureau solicits feedback on whether financial institutions believe there are any discrepancies between income that would be recorded under the MISMO/ULDD data standard and the income reported for HMDA purposes under proposed § 1003.4(a)(10)(ii) and if additional guidance or clarification is needed.

The proposal adds new comment 4(a)(10)(ii)-6, which provides guidance on credit decisions requiring consideration of income and credit decisions that did not or would not have required consideration of income. The comment provides that an institution does not report income if the application did not or would not have required a credit decision requiring consideration of income under the policies and practices of the financial institution and provides an example of a streamlined refinance program. Small entity representatives raised concerns about compliance difficulties where certain programs that do not require analysis or verification

[355] Fannie Mae, *Fannie Mae Single Family Selling Guide* § B3-3.1, (June 24, 2014) *available at* http://www.fanniemae.com/content/guide/sel062414.pdf; Freddie Mac, *Freddie Mac Single Family Selling Guide* § 37.13, (June 24, 2014) *available at* http://www.freddiemac.com/singlefamily/guide/bulletins/pdf/062414Guide.pdf; HUD, *HUD Handbook 4155.1* § 4.D.4.a, http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/handbooks/hsgh/4155.1.

[356] *See* MISMO, *Version 3.3 of the MISMO Residential Reference Model* (Total Monthly Income Amount and Borrower Qualifying Income); Fannie Mae, *Fannie Mae Implementation Guide for Loan Delivery Data*, Appendix A (Oct. 29, 2013), https://www.fanniemae.com/content/technology_requirements/uldd-implementation-guide-appendix-a.pdf; Freddie Mac, *Freddie Mac Implementation Guide for Loan Delivery Data*, Appendix A (Jan. 29, 2014), http://www.freddiemac.com/singlefamily/sell/docs/FRE_IG_selling_system_appendix_a_data_requirements.pdf.

of borrower income are involved.[357] The Bureau believes this comment may address these concerns and facilitate compliance.

During the Small Business Review Panel process, small entity representatives noted difficulties in reporting income relied on for certain loans, especially commercial loans because of technical differences between income and cash flow.[358] The Small Business Review Panel recommended that the Bureau consider clarifying requirements to report the income relied upon for commercial loans. Consistent with the recommendation of the Small Business Review Panel, the Bureau has considered whether additional guidance can be provided for reporting income relied on for commercial purpose loans. The Bureau notes that under the proposal, income would not be reported for loans or applications related to multifamily dwellings, loans or applications where the applicant or borrower is not a natural person (such as a corporation), where no income information is collected, or where a credit decision requiring consideration of income was not or would not have been required. Therefore, the Bureau believes that these reporting difficulties for income should be limited only to covered loans to natural persons for properties with less than five individual units where institutions ask for and rely on income for underwriting purposes. The Bureau believes that more specific feedback on this subset of covered loans and applications is necessary in order to consider developing appropriate guidance on this topic. Therefore, the Bureau solicits feedback on difficulties financial institutions experience in reporting income relied on for covered loans and applications not related to multifamily dwellings that are made to individual applicants or borrowers for a commercial

[357] *See* Small Business Review Panel Report at 51, 83.
[358] *See* Small Business Review Panel Report at 28, 60.

purpose. Specifically, the Bureau solicits feedback on how consideration of income differs for such loans from consumer- or household purpose-loans, and on how financial institutions distinguish between income and cash flow analysis and whether financial institutions have different procedures for considering them.

4(a)(11)

Current § 1003.4(a)(11) requires financial institutions to report the type of entity purchasing a loan that the financial institution originates or purchases and then sells within the same calendar year, and provides that this information need not be included in quarterly updates.[359] In conjunction with the Bureau's proposal to require quarterly data reporting by certain financial institutions as described further below in the section-by-section analysis of proposed § 1003.5(a)(1)(ii), the Bureau is proposing to modify § 1003.4(a)(11) by deleting the statement that the information about the type of purchaser need not be included in quarterly updates.

The Bureau is proposing technical modifications to current comments 4(a)(11)-1 and 4(a)(11)-2. The Bureau is also proposing to add six new comments to provide additional guidance regarding the type of purchaser reporting requirement. Additional guidance on this topic had been published in the FFIEC FAQs.[360] The Bureau believes it is appropriate to place this additional guidance in the commentary to Regulation C to assist financial institutions with HMDA compliance. Proposed comment 4(a)(11)-3 clarifies when a financial institution should report the code for "affiliate institution" by providing a definition of the term "affiliate" and

[359] 12 U.S.C. 2803(h)(1)(C).
[360] *See* FFIEC FAQs.

clarifies that for purposes of proposed § 1003.4(a)(11), the term "affiliate" means any company that controls, is controlled by, or is under common control with, another company, as set forth in the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*). Proposed comment 4(a)(11)-4 incorporates, with modifications, an FFIEC FAQ that clarified when a financial institution would report the code for "private securitization" and provides an illustrative example. Proposed comment 4(a)(11)-5 incorporates, with modifications, an FFIEC FAQ that clarified the meaning of a mortgage bank for purposes of § 1003.4(a)(11). Proposed comment 4(a)(11)-6 incorporates, with modifications, an FFIEC FAQ that clarified the type of purchaser to report when a covered loan is sold to a subsidiary of the seller institution. Proposed comment 4(a)(11)-7 incorporates, with modifications, an FFIEC FAQ that clarified the type of purchaser to report when the purchasing entity is a bank holding company or thrift holding company. Proposed comment 4(a)(11)-8 directs financial institutions to refer to proposed comment 4(a)-6 regarding reporting requirements when a covered loan is repurchased by the originating financial institution. The Bureau solicits feedback regarding whether these proposed comments are appropriate and specifically solicits feedback regarding whether additional clarifications would assist financial institutions in complying with proposed § 1003.4(a)(11).

The Bureau is proposing to modify the instructions in appendix A to ensure that they align with the proposed comments as well as with the Bureau's proposal to require quarterly data reporting by certain financial institutions pursuant to § 1003.5(a)(1)(ii), including the type of purchaser information. In addition to technical modifications and removing a parenthetical stating that the information need not be included in quarterly updates, the Bureau is proposing to modify instruction I.E.b in appendix A, to be renumbered as 4(a)(11)-1.b, to provide that for purposes of recording the type of purchaser within 30 calendar days after the end of the calendar

quarter pursuant to proposed § 1003.4(f), a financial institution should record Code 0 if the institution originated or purchased a covered loan and did not sell it during the calendar quarter for which the institution is recording the data. If the financial institution sells the covered loan in a subsequent quarter of the same calendar year, the institution should record the appropriate code for the type of purchaser on its loan application register for the quarter in which the covered loan was sold.

The Bureau is also proposing to provide clarification as to when a financial institution should report Code 5 for "private securitization" in proposed instruction 4(a)(11)-1.d, in order to align with proposed comment 4(a)(11)-4. In addition, in order to align with proposed comment 4(a)(11)-3, the Bureau is proposing to provide clarification as to when a financial institution should report Code 8 for "affiliate institution" in proposed instruction 4(a)(11)-1.e by providing a definition of the term "affiliate" for purposes of § 1003.4(a)(11). The Bureau solicits feedback regarding whether the proposed modifications to the instructions in appendix A are appropriate.

4(a)(12)

Regulation C currently requires financial institutions to report the difference between a loan's APR and the average prime offer rate (APOR) for a comparable transaction, as of the date the interest rate is set, if the difference equals or exceeds 1.5 percentage points for first-lien loans, or 3.5 percentage points for subordinate-lien loans. The average prime offer rate is an annual percentage rate that is derived from average interest rates, points, and other loan pricing terms offered to borrowers by a representative sample of creditors for mortgage loans with low risk pricing characteristics and is published weekly on the FFIEC website. Loans that require rate spread reporting are termed "higher-priced mortgage loans." The Board added the rate spread requirement in 2002, and amended it in 2008, intending to capture price information for

only the subprime market.[361] Section 304(b)(5)(B) of HMDA requires financial institutions to report mortgage loan information, grouped according to measurements of "the difference between the annual percentage rate associated with the loan and a benchmark rate or rates for all loans."[362] The Bureau proposes to implement this provision by requiring financial institutions to report, for covered loans subject to Regulation Z, 12 CFR part 1026, other than purchased loans and reverse mortgage transactions, the difference between the covered loan's annual percentage rate and the average prime offer rate for a comparable transaction as of the date the interest rate is set.

In amending HMDA to require financial institutions to report the difference between the annual percentage rate associated with the loan and a benchmark rate or rates for all loans, Congress found that improved pricing information would bring greater transparency to the market and facilitate the enforcement of fair lending laws.[363] Feedback received during the Board's 2010 Hearings suggested that requiring reporting of the rate spread for all loans, instead of only for loans considered higher-priced mortgages, would better serve HMDA's purposes by providing a more complete understanding of the mortgage market and improving the analysis of loan prices across various communities and markets.[364] For example, a 2009 GAO report found that the lack of pricing information limited the ability of Federal agencies to "assess the potential

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[361] *See* 67 FR 7222, 7229 (Feb. 15, 2002) (adopting thresholds of 3 percentage points for first-lien loans and 5 percentage points for subordinate-lien loans); 73 FR 63329, 63330, (Oct. 24, 2008) (revising the thresholds to 1.5 percentage points for first-lien loans and 3.5 percentage points for subordinate-lien loans).
[362] Section 1094(3)(A)(iv) of the Dodd-Frank Act amended HMDA by adding section 304(b)(5)(B), which expanded the rate spread reporting requirement beyond higher-priced mortgage loans.
[363] H.R. Rep. No. 111-702, at191 (2011).
[364] *See* Atlanta Hearing, *supra* note 131; Chicago Hearing, *supra* note 137; *see also* Neil Bhutta and Glenn B. Canner, *Mortgage Market Conditions and Borrower Outcomes: Evidence from the 2012 HMDA Data and Matched HMDA-Credit Record Data*, 99 Fed. Reserve Bulletin 1, at 31-32 (2013) (noting that gaps in the rate spread data limit its current usefulness for assessing fair lending compliance).

for discrimination in the prime and government-guaranteed and -insured mortgage markets."[365] Similarly, recent enforcement actions by the U.S. Department of Justice indicate that price discrimination can occur at levels that fall below the threshold for higher-priced mortgage loans.[366] Thus, expanded pricing data could reveal greater detail about the extent to which prime lending is available and competitive in all communities.

Proposed § 1003.4(a)(12) implements HMDA section 304(b)(5)(B) by requiring financial institutions to report the difference between the covered loan's annual percentage rate and the average prime offer rate for a comparable transaction as of the date the interest rate is set. Pursuant to HMDA section 305(a), the Bureau implements section 304(b)(5)(B) as applicable only to loans subject to the Truth in Lending Act (TILA), as implemented by Regulation Z. By aligning the scope of the rate spread provision to transactions subject to Regulation Z, the Bureau excepts certain types of loans for which rate spread data would be potentially misleading or unduly burdensome to report, such as business-purpose loans. The Bureau also proposes to exempt reporting of rate spread date for purchased loans, as appendix A currently does for rate-spread data on higher-priced loans, in order to reduce burden.

The Bureau believes that requiring rate spread reporting only for loans subject to TILA, as implemented by Regulation Z, is necessary and proper to effectuate HMDA's purposes by improving the utility of HMDA data and facilitating compliance by easing reporting burdens. During the Small Business Review Panel process, for example, one small entity representative

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[365] GAO, *Fair Lending: Data Limitations and the Fragmented U.S. Financial Regulatory Structure Challenge Federal Oversight and Enforcement Efforts*, GAO-09-704, at 18 (July 2009), http://www.gao.gov/new.items/d09704.pdf.

[366] *See* Complaint, United States v. First United Security Bank, (S.D. Ala., Sept. 30, 2009), No. 09-0644 *available at* http://www.justice.gov/crt/about/hce/documents/fusbcomp.pdf; San Francisco Hearing, *supra* note 133.

commented that requiring the rate spread for commercial loans would be difficult because these loans do not have an APR and would require an APR substitute.[367] Furthermore, the Bureau believes that burden will be reduced because most financial institutions are already calculating the difference between APR and APOR in order to determine compliance with the high-cost, higher-priced, and qualified mortgage provisions that apply to loans that are subject to Regulation Z.[368] Regulation Z § 1026.32(a)(1)(i) and the associated commentary, for example, already provide guidance on determining the correct closest comparable transaction for determining whether home-equity lines of credit are high-cost mortgages. The Bureau solicits feedback on the general utility of the revised rate spread data and on the costs associated with collecting and reporting the data. In particular, the Bureau solicits feedback on the scope of the rate spread reporting requirement, including whether the requirement should be expanded to cover purchased loans.

During the Small Business Review Panel process, the small entity representatives offered differing opinions on the burden of adding the pricing data points under consideration. The Small Business Review Panel recommended that the Bureau seek comment in the proposed rule on the costs to small financial institutions of providing the pricing data and consider aligning the requirements of Regulation C to the pricing data used in other Federal and State mortgage disclosures.[369] Rate spread is not included on Federal or State closing disclosures, but the Bureau is soliciting feedback on the cost to small financial institutions.

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[367] *See* Small Business Review Panel Report at 126.
[368] *See* Regulation Z §§ 1026.32, 1026.35, 1026.43.
[369] *See* Small Business Review Panel Report at 42.

The proposed rule moves parts of appendix A to supplement I, modifies the existing commentary, and adds several clarifying comments. Current comment 4(a)(12)(ii)-2 is incorporated into proposed comment 4(a)(12)-4. Proposed comment 4(a)(12)-2, which substantially incorporates current comment 4(a)(12)(ii)-3, clarifies that the Bureau publishes on the FFIEC's website (*http://www.ffiec.gov/hmda*), in tables entitled "Average Prime Offer Rates-Fixed" and "Average Prime Offer Rates-Adjustable," current and historic average prime offer rates for a wide variety of closed-end transaction types. The Bureau calculates an annual percentage rate, consistent with Regulation Z, for each transaction type for which pricing terms are available from the survey described in comment 4(a)(12)-1. The Bureau uses loan pricing terms available in the survey and other information to estimate annual percentage rates for other types of transactions for which direct survey data are not available. The Bureau publishes on the FFIEC's website the methodology it uses to arrive at these estimates. Proposed comment 4(a)(12)-2 explains that a financial institution may either use the average prime offer rates published by the Bureau or may determine average prime offer rates itself by employing the methodology published on the FFIEC website. A financial institution that determines average prime offer rates itself, however, is responsible for correctly determining the rates in accordance with the published methodology.

Proposed comment 4(a)(12)-3 clarifies that the requirements of this part refer to the covered loan's annual percentage rate. A financial institution complies with § 1003.4(a)(12)(i) by relying on the annual percentage rate for the covered loan, as calculated and disclosed pursuant to Regulation Z § 1026.18 (closed-end credit transactions) or 1026.40 (open-end credit plans) as applicable.

Proposed comment 4(a)(12)-4 discusses the fact that the rate spread calculation in § 1003.4(a)(12)(i) is defined by reference to a comparable transaction, which is determined according to the covered loan's amortization type (*i.e.*, fixed- or variable-rate) and loan term. For open-end covered loans, § 1003.4(a)(12)(i) requires a financial institution to identify the most closely comparable closed-end transaction. The tables of average prime offer rates published by the Bureau (*see* comment 4(a)(12)-2) provide additional detail about how to identify the comparable transaction. Proposed comment 4(a)(12)-4.i clarifies that for fixed-rate covered loans, the term for identifying the comparable transaction is the transaction's maturity (*i.e.*, the period until the last payment will be due under the loan contract or open-end credit agreement). If an open-end credit plan has a fixed rate but no definite plan length, a financial institution complies with § 1003.4(a)(12)(i) by using a 30-year fixed-rate loan as the most closely comparable closed-end transaction. Financial institutions may refer to the table on the FFIEC website entitled "Average Prime Offer Rates-Fixed" when identifying a comparable fixed-rate transaction.

Proposed comment 4(a)(12)-4.ii clarifies that for variable-rate covered loans, the term for identifying the comparable transaction is the initial, fixed-rate period (*i.e.*, the period until the first scheduled rate adjustment). For example, five years is the relevant term for a variable-rate transaction with a five-year, fixed-rate introductory period that is amortized over thirty years. Financial institutions may refer to the table on the FFIEC website entitled "Average Prime Offer Rates-Variable" when identifying a comparable variable-rate transaction. If an open-end credit plan has a variable rate and an optional, fixed-rate feature, a financial institution uses the rate table for variable-rate transactions.

Proposed comment 4(a)(12)-4.iii explains that when a covered loan's term to maturity (or, for a variable-rate transaction, the initial fixed-rate period) is not in whole years, the financial institution uses the number of whole years closest to the actual loan term or, if the actual loan term is exactly halfway between two whole years, by using the shorter loan term. For example, for a loan term of ten years and three months, the relevant term is ten years; for a loan term of ten years and nine months, the relevant term is 11 years; for a loan term of ten years and six months, the relevant term is ten years. If a loan term includes an odd number of days, in addition to an odd number of months, the financial institution rounds to the nearest whole month, or rounds down if the number of odd days is exactly halfway between two months. The financial institution rounds to one year any covered loan with a term shorter than six months, including variable-rate covered loans with no initial, fixed-rate periods. For example, if an open-end covered loan has a rate that varies according to an index plus a margin, with no introductory, fixed-rate period, the transaction term is one year.

Proposed comment 4(a)(12)-4.iv clarifies that if the amortization period of a covered loan is longer than the term of the transaction to maturity, § 1003.4(a)(12)(i) requires a financial institution to use the loan term to determine the applicable average prime offer rate. For example, assume a financial institution originates a closed-end, fixed-rate loan that has a term to maturity of five years and a thirty-year amortization period that results in a balloon payment. The financial institution complies with § 1003.4(a)(12)(i) by using the five-year loan term.

Proposed comment 4(a)(12)-5 clarifies that the relevant date to use to determine the average prime offer rate for a comparable transaction is the date on which the covered loan's interest rate was set by the financial institution for the final time before closing or account opening. This proposed comment also contains several illustrative examples. Proposed

comment 4(a)(12)-5.i explains that if an interest rate is set pursuant to a "lock-in" agreement between the financial institution and the borrower, then the date on which the agreement fixes the interest rate is the date the rate was set. Except as provided in comment 4(a)(12)-4.iii, if a rate is reset after a lock-in agreement is executed (for example, because the borrower exercises a float-down option or the agreement expires), then the relevant date is the date the financial institution exercises discretion in setting the rate for the final time before closing or account opening. The same rule applies when a rate-lock agreement is extended and the rate is reset at the same rate, regardless of whether market rates have increased, decreased, or remained the same since the initial rate was set. If no lock-in agreement is executed, then the relevant date is the date on which the institution sets the rate for the final time before closing or account opening.

Proposed comment 4(a)(12)-5.ii clarifies that if a financial institution issues a rate-lock commitment under one loan program, the borrower subsequently changes to another program that is subject to different pricing terms, and the financial institution changes the rate promised to the borrower under the rate-lock commitment accordingly, the rate-set date is the date of the program change. However, if the financial institution changes the promised rate to the rate that would have been available to the borrower under the new program on the date of the original rate-lock commitment, then that is the date the rate is set, provided the financial institution consistently follows that practice in all such cases or the original rate-lock agreement so provided. The comment contains several illustrative examples.

Proposed comment 4(a)(12)-5.iii clarifies that when a financial institution has reporting responsibility for a covered loan that it received from a broker, as discussed in comment 4(a)-4 (*e.g.*, because the financial institution makes a credit decision prior to closing or account

opening), the rate-set date is the last date the financial institution set the rate with the broker, not the date the broker set the borrower's rate.

Proposed comment 4(a)(12)-6 explains that a financial institution is required to compare the covered loan's annual percentage rate to the most recently available average prime offer rate that was in effect for the comparable transaction as of the rate-set date. Proposed comment 4(a)(12)-6 also explains that "most recently available" means the average prime offer rate set forth in the applicable table with the most recent effective date as of the date the interest rate was set. However, § 1003.4(a)(12)(i) does not permit a financial institution to use an average prime offer rate before its effective date.

Proposed instruction 4(a)(12) in appendix A provides technical instructions regarding how to enter rate spread data on the loan application register. Proposed instruction 4(a)(12)-1 provides technical instructions for entering the rate spread. Proposed instruction 4(a)(12)-2 provides that a financial institution completing the loan application register must enter "NA" for a loan not subject to Regulation Z, 12 CFR part 1026, a reverse mortgage, a loan that the financial institution purchased or assumed, or an application that does not result in a loan origination or the opening of a line of credit, except for applications that have been approved but not accepted by the applicant.

4(a)(13)

Regulation C currently requires financial institutions to report whether a loan is subject to HOEPA, as implemented by Regulation Z § 1026.32.[370] The Board found that information concerning the HOEPA status of a loan would produce more useful data about the mortgage

[370] Section 1003.4(a)(13).

market, particularly the subprime market. For the reasons discussed below, the Bureau proposes to require financial institutions to report whether the loan is a high-cost mortgage because its APR exceeds HOEPA's APR threshold or because its points and fees exceed the threshold for HOEPA coverage.

Information regarding the high-cost mortgage status of a loan has been essential to understanding changes in the mortgage market, particularly the subprime market, and to assessing fair lending concerns related to loan pricing. Currently, financial institutions must report only whether a loan is or is not a high-cost mortgage. The Bureau has received feedback suggesting that information regarding the reason for a loan's HOEPA status—whether the loan is considered a high-cost mortgage because of annual percentage rate, points and fees, or both—might improve the usefulness of the HMDA data.[371] For example, a loan might be flagged as a HOEPA loan despite having a low APR, raising questions about the other characteristics—such as points and fees—of the loan. Similarly, an expanded HOEPA flag could enable greater insight into which specific triggers are most prevalent among high-cost mortgages.

The Bureau believes that the burden of the expanded HOEPA status reporting requirement will be lessened by the fact that financial institutions will likely have to determine which, if any, of the high-cost mortgage triggers are satisfied in order to comply with Regulation Z § 1026.32. But the Bureau also recognizes that the level of complexity proposed above is not currently present in either Regulation C or the MISMO definition of the HOEPA status indicator as used in the ULDD. Despite the potential increased burden described above, feedback received

[371] The 2013 HOEPA Final Rule provides for a prepayment penalty coverage test in addition to the APR and points-and-fees coverage tests. *See* 78 FR 6855 (Jan. 31, 2013). However, because the rule prohibits prepayment penalties for high-cost mortgages, the Bureau's proposed modifications to § 1003.4(a)(13) omits prepayment penalty from the list of possible high-cost mortgage triggers provided in appendix A.

pursuant to the Bureau's outreach activities indicates that a HOEPA status data point that describes the HOEPA status trigger may be justified. Accordingly, the Bureau proposes to modify § 1003.4(a)(13) and the technical instructions to § 1003.4(a)(13) contained in appendix A to provide that a financial institution shall report, for covered loans subject to the Home Ownership and Equity Protection Act of 1994, whether the covered loan is a high-cost mortgage under Regulation Z § 1026.32(a), and the reason that the covered loan qualifies as a high-cost mortgage, if applicable. The Bureau seeks comment regarding the general utility of the modified data and on the costs associated with reporting the data.

Proposed instruction 4(a)(13) in appendix A provides technical instructions regarding how to enter the high-cost mortgage data on the loan application register. Proposed instruction 4(a)(13)-1 provides that a financial institution must use one of four codes to indicate a loan's HOEPA status: Code 1 if the annual percentage rate exceeds the high-cost mortgage thresholds; Code 2 if the points and fees exceed the high-cost mortgage thresholds; Code 3 if both the annual percentage rate and the points and fees for the transaction exceed the high-cost mortgage thresholds; and Code 4 for all other cases, such as for applications that do not result in originations or loans not subject to the HOEPA.

The changes to § 1003.4(a)(13) are proposed pursuant to the Bureau's authority under sections 305(a) and 304(b)(5)(D) of HMDA. The Bureau believes these reporting requirements are necessary to carry out the purposes of HMDA. The mortgage market has changed significantly since HMDA was enacted and since the Board required the reporting of additional loan pricing data in 2002, and it continues to evolve. For the reasons given above, the proposal will improve the usefulness and continued utility of HMDA data and help the public and public officials assess whether financial institutions are serving the housing needs of their communities.

4(a)(14)

Current § 1003.4(a)(14) requires financial institutions to report the lien status of the loan or application (first lien, subordinate lien, or not secured by a lien on a dwelling). The technical instructions in current appendix A provide that, for loans that a financial institution originates and for applications that do not result in an origination, a financial institution shall report the lien status as one of the following: secured by a first lien, secured by a subordinate lien, not secured by a lien, or not applicable (purchased loan).

The Board first promulgated the lien status requirement in 2002 because, among other reasons, "[d]ata on lien status may help explain some pricing disparities, because interest rates, and therefore APRs, vary according to lien status. Rates on first-lien loans are generally lower than rates on subordinate-lien or unsecured loans."[372] The Bureau agrees with the Board's reasoning and believes that data on lien status furthers HMDA's purpose of assisting in understanding loan pricing to identify possible discriminatory lending patterns. Pursuant to the Bureau's authority under sections 305(a) and 304(b)(6)(J) of HMDA, the Bureau proposes to modify § 1003.4(a)(14) to require reporting of the priority of the lien against the subject property that secures or would secure the loan. The proposal removes the current exclusion of reporting lien status on purchased loans.

Other than amending the reporting requirement related to the lien status on purchased loans, the proposal is substantially similar to the current requirement with modifications to conform to the MISMO data standard. As discussed in part II.B above, the Bureau believes that HMDA compliance and data submission can be made easier by aligning the requirements of

[372] 67 FR 43218, 43220 (June 27, 2002).

Regulation C, to the extent practicable, to existing industry standards for collecting and transmitting mortgage data. In furtherance of this proposed alignment, the Bureau determined that a similar definition for lien status exists in MISMO, which specifies the priority of the lien against the subject property and provides for the following enumerations: first lien, second lien, third lien, fourth lien, and other. The "other" enumeration is designed to capture the priority of the lien against the subject property beyond a fourth lien, for example, a fifth lien or sixth lien.

Given that loan terms, including loan pricing, vary based on lien status, and in light of the Bureau's proposal to require reporting of certain pricing data for purchased loans, such as the interest rate, the Bureau believes that requiring financial institutions to report the lien status of purchased loans would further enhance the utility of HMDA data overall. The liquidity provided by the secondary market is a critical component of the modern mortgage market, and information about the types of loans being purchased in a particular area, and the pricing terms associated with those purchased loans, is needed to understand whether the housing needs of communities are being fulfilled. This information is particularly important in many communities where neighborhood revitalization and affordable housing efforts depend on the liquidity provided by purchasers of mortgage loans. Thus, by requiring additional information on subordinate lien lending, the Bureau believes that this proposal would ensure that the public and public officials are provided with sufficient information to enable them to determine whether financial institutions are fulfilling their obligations to serve the housing needs of the communities and neighborhoods in which they are located. Furthermore, local and State housing finance agency programs facilitate the mortgage market for low- to moderate-income borrowers, often by offering programs to purchase or insure loans originated by a private institution. Since the HMDA data reported by financial institutions does not include the lien status of purchased loans,

it is difficult to determine the pricing characteristics of the private secondary market. Lien status information on purchased loans would help public entities, such as local and State housing finance agencies, understand how to complement the liquidity provided by the secondary market in certain communities, thereby maximizing the effectiveness of such public programs. Thus, the Bureau believes that requiring that such data be reported would assist public officials in their determination of the distribution of public sector investments in a manner designed to improve the private investment environment. Additionally, providing lien status information to purchasers is standard industry practice and is supported by MISMO. For these reasons, the Bureau believes that data on the lien status of purchased loans will further the purposes of HMDA.

Modifying the current reporting requirement in § 1003.4(a)(14) will enhance data collected under Regulation C and facilitate compliance by better aligning the data collected with industry practice. Based on these considerations, pursuant to the Bureau's authority under sections 305(a) and 304(b)(6)(J) of HMDA, the Bureau is proposing to modify § 1003.4(a)(14) to provide that a financial institution shall report the priority of the lien against the property identified under § 1003.4(a)(9), and is also proposing to require reporting of this information for purchased loans. The Bureau solicits feedback regarding whether this proposed modification is appropriate generally, and specifically solicits feedback regarding the potential burdens that may result from this proposal to align with the industry data standard. The Bureau also solicits feedback regarding whether alignment with the MISMO industry standard would benefit any other business operations of a financial institution.

As discussed in the section-by-section analysis of § 1003.4(a), during the Small Business Review Panel process, the small entity representatives' feedback on adopting an industry data

standard depended on whether the small entity representative sells loans in the secondary market, or whether their Loan Origination System vendor's system is aligned with industry data standards.[373] The Small Business Review Panel recommended that the Bureau seek comment in the proposed rule from small financial institutions about whether they, or their vendors, use MISMO-compliant data definitions and standards, and the potential effect on small financial institutions of alignment of the HMDA data requirements with MISMO data standards.[374] Consistent with the Small Business Review Panel's recommendations, the Bureau solicits feedback on these issues.

The Bureau is proposing to modify the technical instruction in appendix A regarding how to enter lien status on the loan application register. Like the current instruction, proposed instruction 4(a)(14)-1 directs financial institutions to enter the priority of the lien against the property by entering the applicable code from a list. Proposed instruction 4(a)(14)-1 modifies the current instruction in four ways. First, the Bureau proposes to remove the current instruction for reporting "not applicable" for purchased loans and proposes instruction 4(a)(14)-1.a, which requires that the priority of the lien against the property be entered not only for covered loans that a financial institution originates and for applications that do not result in an origination, but also for covered loans purchased. Second, in an effort to align with the industry data standard, proposed instruction 4(a)(14)-1 directs financial institutions to enter whether the priority of the lien against the property is a first lien, second lien, third lien, fourth lien, or other. Third, as discussed above, the Bureau proposes to modify Regulation C to require reporting only of

[373] *See* Small Business Review Panel Report at 42.
[374] *Id.* at 43.

dwelling-secured transactions and proposes to remove reporting of unsecured home improvement loans. As such, the current option to enter "not secured by a lien" would no longer be applicable, and the Bureau proposes to delete it. Fourth, proposed instruction 4(a)(14)-1.b requires financial institutions to enter Code 5 for "other" when the priority of the lien against the property is other than one identified in Codes 1 through 4 (for example, secured by a fifth lien or sixth lien).

The Bureau believes that its proposed modification to the current reporting requirement under § 1003.4(a)(14) is appropriate to align with the industry data standard. However, the Bureau recognizes the potential burdens that may result from requiring financial institutions to report the lien status of the property as a third lien, fourth lien, or other lien. The Bureau solicits feedback regarding whether the Bureau should maintain the current reporting requirement (secured by a first lien or subordinate lien) modified to conform to the proposed removal of unsecured home improvement loans, or whether financial institutions prefer to report the actual priority of the lien against the property (secured by a first lien, second lien, third lien, fourth lien, or other). The Bureau also recognizes that requiring the reporting of lien status for purchased loans may impose some potential burdens on financial institutions. However, the Bureau believes that such information is evident on the face of the loan documents and as such the information may be readily available to financial institutions. The Bureau believes that the potential benefits to the public and public officials, as discussed above, justify potential burdens. The Bureau solicits feedback on the general utility of lien status data on purchased loans and on the unique costs and burdens associated with collecting and reporting the data that financial institutions may face as a result of the proposal.

In order to conform the commentary on lien status to the proposed requirement to report the priority of the lien, the Bureau is proposing technical modifications to comment 4(a)(14)-1. In addition, comment 4(a)(14)-1 is amended to provide guidance on reporting lien status for purchased loans; it explains that, for covered loans purchased by a financial institution, lien status is determined by reference to the best information readily available to the financial institution at the time of purchase. Comment 4(a)(14)-1 is also amended to provide additional guidance on reporting lien status for applications that do not result in originations. The amended comment explains that if an application does not result in an origination and the best information readily available to the financial institution at the time final action is taken indicates that there is a mortgage on the property that would not have been paid off as part of the transaction, but the financial institution is not able to determine, based on the best information readily available to it, the exact lien priority of the loan applied for, the financial institution complies with proposed § 1003.4(a)(14) by reporting that the property would have been secured by a second lien.

As discussed in the section-by-section analysis of proposed § 1003.4(a)(9) and in proposed comment 4(a)(9)-2, if more than one property is taken, or in the case of an application, proposed to be taken as security for a single covered loan or application, a financial institution may report one of the properties in a single entry on its loan application register or report all of the properties using multiple entries on its loan application register. Regardless of whether a financial institution elects to report the transaction in one entry or more than one entry, the information required by proposed § 1003.4(a)(14) should relate to the property identified under paragraph 4(a)(9). The Bureau proposes to add new comment 4(a)(14)-2 which directs financial institutions to refer to proposed comment 4(a)(9)-2 regarding transactions involving multiple

properties and clarifies that a financial institution complies with § 1003.4(a)(14) by reporting lien status in a manner consistent with the property reported under § 1003.4(a)(9).

4(a)(15)

Although credit scores are often a critically important factor in underwriting and pricing loans, neither HMDA nor Regulation C historically has required reporting of information relating to an applicant's or borrower's credit score. Section 1094(3)(A)(iv) of the Dodd-Frank Act amended section 304(b) of HMDA to require financial institutions to report "the credit score of mortgage applicants and mortgagors, in such form as the Bureau may prescribe."[375] The Bureau is proposing to add new § 1003.4(a)(15) to implement this requirement.[376]

Except for purchased covered loans, proposed § 1003.4(a)(15)(i) requires financial institutions to report the credit score or scores relied on in making the credit decision and the name and version of the scoring model used to generate each credit score. The Bureau believes this interpretation of HMDA section 304(b)(6)(I) is reasonable because the name and version of the scoring model are necessary to understand any credit scores that would be reported, as different models are associated with different scoring ranges and some models may even have different ranges depending on the version used.[377] This proposal is also authorized by HMDA sections 305(a) and 304(b)(6)(J), and is necessary and proper to effectuate the purposes of HMDA, because, among other reasons, it facilitates accurate analyses of whether financial

[375] 12 U.S.C. 2803(b)(6)(I).
[376] The Dodd-Frank amendments to HMDA added new provisions directing the Bureau to develop regulations that "modify or require modification of itemized information, for the purpose of protecting the privacy interests of the mortgage applicants or mortgagors, that is or will be available to the public," and identified credit score as a new data point that may raise privacy concerns. HMDA sections 304(h)(1)(E), (h)(3)(A)(i). See part II.C above for discussion of the Bureau's approach to protecting applicant and borrower privacy in light of the goals of HMDA.
[377] For example, the range for VantageScore 3.0 scores is 300 to 850, but earlier VantageScore models have a range of 501 to 990. *See* VantageScore, *How the Scores Range*, http://your.vantagescore.com/interpret_scores.

institutions are serving the housing needs of their communities by providing adequate home financing to qualified applicants.

The Bureau believes that financial institutions that rely on credit scores in making credit decisions will be able to easily identify the credit score or scores they have relied on in making the credit decision and the name and version of the scoring model used to generate each credit score. However, to facilitate compliance pursuant to HMDA section 305(a), the Bureau has excluded purchased covered loans from the requirements of proposed § 1003.4(a)(15)(i) because the Bureau anticipates that it could be burdensome for financial institutions that purchase loans to identify the credit score or scores relied on in making the underlying credit decision and the name and version of the scoring model used to generate each credit score. The Bureau solicits feedback on whether this exception is appropriate.

As an alternative to requiring the scoring model name and version, the Bureau is considering requiring financial institutions to indicate the range of possible scores for the scoring model used. However, the Bureau is concerned that the significance of a particular score may vary depending on the model or version used even for models and versions that have identical ranges. The Bureau invites comment on whether it is appropriate to request the name and version of the scoring model and whether the Bureau should require any other related information to assist in interpreting credit score data, such as the date on which the credit score was created.

The Bureau is proposing in § 1003.4(a)(15)(ii) to interpret "credit score" to have the same meaning as in section 609(f)(2)(A) of the Fair Credit Reporting Act (FCRA), 15 U.S.C. 1681g(f)(2)(A). The Dodd-Frank Act amendments to HMDA do not provide a definition of "credit score." To provide clarity, proposed § 1003.4(a)(15)(ii) incorporates by reference the

definition in FCRA section 609(f)(2)(A), which is the only definition of "credit score" that appears in the FCRA or Regulation V. This definition applies for purposes of the credit score disclosure requirements in FCRA sections 609(f) and 615 and is incorporated by reference into the Bureau's risk-based pricing rule by Regulation V § 1022.71(*l*). FCRA section 609(f)(2)(A) provides:

> The term "credit score" –
>
> (i) means a numerical value or a categorization derived from a statistical tool or modeling system used by a person who makes or arranges a loan to predict the likelihood of certain credit behaviors, including default (and the numerical value or the categorization derived from such analysis may also be referred to as a "risk predictor" or "risk score"); and
>
> (ii) does not include –
>
> (I) any mortgage score or rating of an automated underwriting system that considers one or more factors in addition to credit information, including the loan to value ratio, the amount of down payment, or the financial assets of a consumer; or
>
> (II) any other elements of the underwriting process or underwriting decision.

The Bureau believes that FCRA section 609(f)(2)(A) provides a reasonable definition of "credit score" that is broadly familiar to financial institutions that are already subject to FCRA and Regulation V requirements. Alternatively, the Bureau could define "credit score" based on the Regulation B definitions of "credit scoring system" or "empirically derived, demonstrably

and statistically sound, credit scoring system."[378] Another alternative would be to interpret credit score to mean the probability of default, using a concept similar to the probability of default metric that the FDIC uses in determining assessment rates for large and highly complex insured depository institutions.[379] The Bureau believes that the FCRA section 609(f)(2)(A) definition is the most appropriate because it provides a general purpose definition that is familiar to industry, but the Bureau solicits feedback on whether Regulation C should instead use a different definition of "credit score."

Proposed comment 4(a)(15)-1 explains that a financial institution relies on a credit score in making the credit decision if the credit score was a factor in the credit decision even if it was not a dispositive factor. For example, if a credit score is one of multiple factors in a financial institution's credit decision, the financial institution has relied on the credit score even if the financial institution denies the application because one or more underwriting requirements other than the credit score are not satisfied.

Proposed comment 4(a)(15)-2 addresses circumstances where a financial institution obtains or creates multiple credit scores for a single applicant or borrower. It explains that, when a financial institution obtains or creates two or more credit scores for a single applicant or borrower but relies on only one score in making the credit decision, the financial institution complies with proposed § 1003.4(a)(15) by reporting that credit score and information about the

[378] According to Regulation B, a credit scoring system is "a system that evaluates an applicant's creditworthiness mechanically, based on key attributes of the applicant and aspects of the transaction, and that determines, alone or in conjunction with an evaluation of additional information about the applicant, whether an applicant is deemed creditworthy." Regulation B § 1002.2(p)(1). The four-part definition of an "empirically derived, demonstrably and statistically sound, credit scoring system" in Regulation B § 1002.2(p)(1) establishes the criteria that a credit system must meet in order to use age as a predictive factor. Regulation B comment 2(p)-1.
[379] FDIC Assessments, Large Bank Pricing, 77 FR 66000 (Oct. 31, 2012).

scoring model used. For example, a financial institution that relies on the middle of the scores reported would report the middle score, and a financial institution that relies on the average of all of the scores reported would report the average score.

Proposed comment 4(a)(15)-2 also addresses circumstances in which a financial institution relies on multiple scores for the applicant or borrower in making the credit decision. It explains that in such circumstances proposed § 1003.4(a)(15) requires the institution to report one of the credit scores for the borrower or applicant that was relied on in making the credit decision. In choosing which credit score to report in this circumstance, a financial institution need not use the same approach for its entire HMDA submission but should be generally consistent. For example, a financial institution could routinely use one approach within a particular division of the institution or for a category of covered loans. The proposed comment also indicates that in instances such as these, the financial institution should report the name and version of the credit scoring model for the score reported.

Proposed comment 4(a)(15)-3 addresses situations involving credit scores for multiple applicants or borrowers. In a transaction involving two or more applicants or borrowers for which the financial institution relies on a single credit score in making the credit decision for the transaction, the institution complies with proposed § 1003.4(a)(15) by reporting that credit score. Otherwise, a financial institution complies with proposed § 1003.4(a)(15) by reporting a credit score for the applicant or borrower that it relied on in making the credit decision, if any, and a credit score for the first co-applicant or co-borrower that it relied on in making the credit decision, if any. To illustrate, assume a transaction involves one applicant and one co-applicant and that the financial institution obtains or creates two credit scores for the applicant and two credit scores for the co-applicant. Assume further that the financial institution relies on the

lowest, highest, most recent, or average of all of the credit scores obtained or created to make the credit decision for the transaction. The financial institution would comply with proposed § 1003.4(a)(15) by reporting that credit score. Alternatively, assume a transaction involves one applicant and one co-applicant and that the financial institution obtains or creates three credit scores for the applicant and three credit scores for the co-applicant. Assume further that the financial institution relies on the middle credit score for the applicant and the middle credit score for the co-applicant to make the credit decision for the transaction. The financial institution would comply with proposed § 1003.4(a)(15) by reporting both the middle score for the applicant and the middle score for the co-applicant.

The Bureau believes that the approach described above for transactions involving multiple credit scores and multiple applicants or borrowers would limit the number of credit scores that financial institutions would need to report (at most two credit scores per application or covered loan), while ensuring that financial institutions provide meaningful credit score information. The Bureau invites comment on whether proposed § 1003.4(a)(15) and its associated commentary provide an appropriate approach to handling situations involving multiple credit scores and multiple applicants or borrowers.

Proposed comment 4(a)(15)-4 clarifies that the financial institution complies with § 1003.4(a)(15) by reporting not applicable if a file was closed for incompleteness or the application was withdrawn before a credit decision was made. It also clarifies that a financial institution complies with § 1003.4(a)(15) by reporting not applicable if it makes a credit decision without relying on a credit score for the applicant or borrower.

In appendix A, proposed instruction 4(a)(15)-1 directs financial institutions to enter the credit scores relied on in making the credit decision into column “A” for the applicant or

borrower and, where required by Regulation C, into column "CA" for the first co-applicant or co-borrower. Where a financial institution is required to report a single score for the transaction that corresponds to multiple applicants or borrowers, proposed instruction 4(a)(15)-1 directs the financial institution to use column "A."

Proposed instruction 4(a)(15)-2 provides the codes that financial institutions would use for each credit score reported to indicate the name and version of the scoring model used to generate the credit score relied on in making the credit decision, using column "A" and column "CA" as applicable. These include codes for the following models: Equifax Beacon 5.0, Experian Fair Isaac, FICO Risk Score Classic 04, FICO Risk Score Classic 98, VantageScore 2.0, and VantageScore 3.0. They also include a code to use if more than one credit scoring model was used in developing the credit score, as well as a code for any other credit scoring model that is not listed, a code for purchased loans, and a code for use if the financial institution did not rely on a credit score in making the credit decision or if a file was closed for incompleteness or an application was withdrawn before a credit decision was made. If the credit scoring model is one that is not listed, proposed instruction 4(a)(15)-2.b instructs the financial institution to provide the name and version of the scoring model used in a free-form text field. The Bureau invites comment on whether these codes and the fields described above are appropriate for reporting credit score data and on any alternative approaches that might be used for reporting this information.

4(a)(16)

Section 1003.4(c)(1) currently permits optional reporting of the reasons for denial of a loan application. However, certain financial institutions supervised by the Office of the Comptroller of the Currency (OCC) and the Federal Deposit Insurance Corporation (FDIC) are

required by those agencies to report denial reasons on their HMDA loan application registers.[380] For the reasons discussed below, the Bureau is proposing to require all financial institutions subject to HMDA reporting to report the reasons for denial of a loan application.

In general, the Bureau believes that the statistical value of optionally reported data is lessened because of the lack of standardization across all HMDA reporters. In addition, the reasons an application is denied are critical to understanding the financial institution's credit decision and to screen for potential violations of antidiscrimination laws, such as ECOA and the Fair Housing Act.[381] The Bureau has received feedback suggesting that requiring the collection of the reasons for denial of an application would improve the usefulness of HMDA data.[382] Denial reasons are important for a variety of purposes including, for example, assisting examiners in their reviews of denial disparities and underwriting exceptions.

Requiring the collection of the reasons for denial may facilitate more efficient, and less burdensome, fair lending examinations by the Bureau and other financial regulatory agencies, thereby furthering HMDA's purpose of assisting in identifying possible discriminatory lending patterns and enforcing antidiscrimination statutes. Furthermore, as discussed above, certain financial institutions supervised by the OCC and the FDIC are required by those agencies to report denial reasons.[383] For these reasons, pursuant to its authority under HMDA sections 305(a) and 304(b)(6)(J), the Bureau proposes to require all financial institutions to report reasons

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[380] 12 CFR 27.3(a)(1)(i), 128.6, 390.147.
[381] 15 U.S.C. 1691 *et seq.*; 42 U.S.C. 3601 *et seq*. Many financial institutions opt not to report denial reasons under current Regulation C. However, ECOA and Regulation B require all financial institutions to provide applicants the reasons for denial, or a notice of their right to receive those denial reasons, and to maintain records of compliance. *See* Regulation B §§ 1002.9 and 1002.12, 15 U.S.C. 1691(d).
[382] *E.g.*, San Francisco Hearing, *supra* note 133.
[383] *See supra* note 364.

for denial of an application. The Bureau believes this information is necessary to carry out HMDA's purposes, because it will provide more consistent and meaningful data, which will assist in identifying whether financial institutions are serving the housing needs of their communities, as well as assist in identifying possible discriminatory lending patterns and enforcing antidiscrimination statutes.

During the Small Business Review Panel process, a number of small entity representatives noted that a financial institution may have several reasons for denying a loan, which could complicate reporting.[384] Some small entity representatives expressed concern about mandatory reporting of denial reasons, particularly where there are multiple reasons for a denial.[385] In such instances, one small entity representative was concerned that the HMDA loan application register may not provide the full picture, while another noted that manual entry of the reasons would be required.[386] Another small entity representative suggested an "other" category if financial institutions are required to report denial reasons.[387] In addition, one small entity representative supported reporting of denial reasons, citing its importance for fair lending analysis.[388] While the Small Business Review Panel did not make a recommendation in light of these comments, the Bureau solicits feedback on these issues.

Proposed instruction 4(a)(16) in appendix A provides technical instructions regarding how to enter the denial reason data on the loan application register. Proposed instruction 4(a)(16)-1 provides that a financial institution must indicate the principal reason(s) for denial,

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[384] *See* Small Business Review Panel Report at 39.
[385] *Id.* at 26.
[386] *Id.*
[387] *Id.* at 26-7.
[388] *Id.* at 27.

indicating up to three reasons. The proposed instruction modifies the current instruction in three ways. First, the proposed instruction clarifies that a financial institution must list the "principal" reasons for denial. Second, the Bureau is proposing a free-form text field for denial reasons other than those provided in appendix A to account for the variety of reasons that may exist and to improve the utility of the "Other" data. The Bureau explains in proposed instruction 4(a)(16)-2 that, when a financial institution denies an application for a principal reason not included on the list of denial reasons in appendix A, an institution enters the corresponding code for "Other" and enters the principal denial reason(s). Financial institutions would no longer simply enter the corresponding code for "Other" on the loan application register if the reason for denial is not provided on the list but also would be required to enter the principal denial reason(s) in the free-form text field. Third, the proposed instruction adds a code for "not applicable" and explains in proposed instruction 4(a)(16)-3 that this code should be used by a financial institution if the action taken on the application was not a denial pursuant to § 1003.4(a)(8), such as if the application was withdrawn before a credit decision was made or the file was closed for incompleteness. Financial institutions would no longer leave this column blank on the loan application register but instead would enter the corresponding code for "not applicable."

The Bureau solicits feedback regarding whether the current codes in appendix A relating to reasons for denial (debt-to-income ratio, employment history, credit history, collateral, insufficient cash, unverifiable information, credit application incomplete, mortgage insurance denied, and other) should be modified. For example, the Bureau solicits feedback as to whether there are additional reasons for denying an application that are commonly used by financial institutions but are not present in the list of denial reasons. The Bureau also solicits feedback on

the proposed requirement that a financial institution enter the principal denial reason(s) in the free-form text field when "Other" is entered in the loan application register.

The Bureau is proposing to renumber current instruction I.F.2 of appendix A as instruction 4(a)(16)-4. Proposed instruction 4(a)(16)-4 explains how a financial institution that uses the model form for adverse action contained in appendix C to Regulation B (Form C–1, Sample Notice of Action Taken and Statement of Reasons) should report the denial reasons for purposes of HMDA. Similar to proposed instruction 4(a)(16)-2 discussed above, proposed instruction 4(a)(16)-4 provides that, when a principal reason a financial institution denied the application is not provided on the list of denial reasons in the model form for adverse action contained in appendix C to Regulation B (Form C–1, Sample Notice of Action Taken and Statement of Reasons), financial institutions would no longer simply enter the corresponding code for "Other" on the loan application register but also would be required to enter the principal denial reason(s) in the free-form text field. The Bureau solicits feedback regarding whether modifications or clarifications would assist financial institutions in complying with the proposed requirement.

Proposed comment 4(a)(16)-1 clarifies that a financial institution complies with § 1003.4(a)(16) by reporting the principal reason(s) it denied the application, indicating up to three reasons. The proposed comment explains that the reasons reported must be specific and accurately describe the principal reasons the financial institution denied the application. The Bureau solicits feedback regarding whether additional clarifications would assist financial institutions in complying with the proposed requirement.

In order to align with proposed instructions 4(a)(16)-2 and -4, proposed comment 4(a)(16)-2 clarifies that, when a principal reason a financial institution denied the application is

not provided on the list of denial reasons in appendix A, a financial institution complies with proposed § 1003.4(a)(16) by entering "Other" and reporting the principal reason(s) it denied the application. If an institution chooses to provide the applicant the reason(s) it denied the application using the model form contained in appendix C to Regulation B (Form C–1, Sample Notice of Action Taken and Statement of Reasons) or a similar form, the financial institution complies with proposed § 1003.4(a)(16) by entering the "Other" reason(s) that were specified on the form by the institution. If a financial institution chooses to provide the applicant a disclosure of the applicant's right to a statement of specific denial reasons using the model form contained in appendix C to Regulation B (Form C–5, Sample Disclosure of Right to Request Specific Reasons for Credit Denial) or a similar form, or chooses to provide the denial reason(s) orally under Regulation B § 1002.9(a)(2)(ii), the financial institution complies with proposed § 1003.4(a)(16) by entering the principal reason(s) it denied the application. The Bureau solicits feedback regarding whether additional clarifications would assist financial institutions in complying with the proposed requirement.

4(a)(17)

Section 304(b) of HMDA[389] requires reporting of "the total points and fees payable at origination in connection with the mortgage as determined by the Bureau, taking into account 15 U.S.C. 1602(aa)(4)."[390] The Bureau proposes to implement this provision by requiring financial institutions to report the total points and fees associated with certain mortgage loans.

[389] Section 1094(3)(A)(iv) of the Dodd-Frank Act amended section 304(b) of HMDA to provide for the reporting of total points and fees.

[390] 15 U.S.C. 1602(aa)(4) is part of TILA. Prior to amendments made by the Dodd-Frank Act, that section generally defined "points and fees" for the purpose of determining whether a transaction was a high-cost mortgage. *See* 15 U.S.C. 1602(aa)(4) (2006). Section 1100A of the Dodd Frank Act redesignated subsection 1602(aa)(4) as

In general, the term "points and fees" refers to costs associated with the origination of a mortgage loan. The Bureau proposes to define total points and fees by reference to TILA, as implemented by Regulation Z § 1026.32(b)(1) or (2). Section 1026.32(b)(1) defines "points and fees" for closed-end credit transactions. For a closed-end credit transaction, points and fees include all items included in the finance charge as specified under § 1026.4(a) and (b), with the exception of certain items specifically excluded under § 1026.32(b)(1)(i)(A) through (F). These excluded items include interest or time-price differential; government mortgage insurance premiums and funding fees; annual private mortgage insurance premiums; bona fide third-party charges not retained by the creditor, loan originator, or an affiliate; and certain bona fide discount points paid by the consumer. Section 1026.32(b)(1)(ii) through (vi) lists other items that are specifically included in points and fees, including compensation paid by a consumer or creditor to a loan originator; real estate-related charges; premiums for various forms of credit insurance; the maximum prepayment penalty that may be charged or collected under the terms of the mortgage loan; and the total prepayment penalty incurred by the consumer in a refinance transaction. Points and fees for open-end credit plans are defined in § 1026.32(b)(2). Section 1026.32(b)(2) generally includes all of the charges described above for closed-end transactions, with certain modifications and additions, such as the participation fees payable at or before account opening, and the charge, if any, to draw on the credit line.

The Bureau's 2013 HOEPA Final Rule and 2013 ATR Final Rule both limit the points and fees that lenders may charge when seeking to avoid HOEPA coverage or making a qualified

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subsection 1602(bb)(4), where it is currently codified. In light of that redesignation, the Bureau interprets HMDA section 304(b) as directing it to take into account 15 U.S.C. 1602(bb)(4) and its implementing regulations, as those provisions address "points and fees" and because current subsection 1602(aa)(4) is no longer relevant to a determination regarding points and fees.

mortgage, respectively.[391] The Bureau's 2013 HOEPA Final Rule provides that a transaction is a high-cost mortgage if, among other things, the transaction's points and fees exceed 5 percent of the total transaction amount or, for loans below $20,000, the lesser of 8 percent of the total transaction amount or $1,000 (with the dollar figures also adjusted annually for inflation). High-cost mortgages are subject to special disclosure requirements and restrictions on loan terms, and borrowers in high-cost mortgages have enhanced remedies for violations of the law. The Bureau's 2013 ATR Final Rule generally precludes a loan from being considered a qualified mortgage if the points and fees paid by the borrower exceed 3 percent of the total loan amount. Qualified mortgages are entitled to a presumption that the creditor making the loan has satisfied Regulation Z's ability-to-repay requirements.

Proposed § 1003.4(a)(17) requires financial institutions to report points-and-fees data for covered loans or applications subject either to HOEPA or the Bureau's 2013 ATR Final Rule. The Bureau intends for loans "subject to" HOEPA to apply to consumer loans secured by the borrower's principal dwelling, except for transactions specifically excluded under § 1026.32(a)(2), such as reverse mortgages, construction loans, loans originated and financed by a State housing finance agency, and loans originated and financed through the USDA's direct loan program. Similarly, loans "subject to" the Bureau's 2013 ATR Final Rule include all consumer loans secured by a dwelling, including any real property attached to a dwelling, as defined in § 1026.2(a)(19), other than transactions exempt under § 1026.43(a), such as home-equity lines of credit, reverse mortgages, and temporary or bridge loans with terms of 12 months

[391] *See* 78 FR 6856 (Jan. 31, 2013); 78 FR 6408 (Jan. 30, 2013).

or less.[392] Together, the HOEPA and qualified-mortgage prongs of the proposed points-and-fees provision cover open-end credit plans secured by primary residences and nearly all dwelling-secured, closed-end mortgage loans.

Total points and fees are an important component of loan pricing. Excessive points and fees have been associated with originations of subprime loans and loans to vulnerable borrowers. Panelists at the Board's 2010 Hearings stated that collecting information regarding points and fees would improve the usefulness of the HMDA data for determining whether lenders are serving the housing needs of their communities.[393] As with other elements of loan pricing, greater information regarding points and fees will also enable deeper insight into the terms on which different communities are offered loans. For example, the Bureau has received feedback stating that borrowers in manufactured housing communities receive loans with higher prices than borrowers in other communities.

For the above reasons, to implement HMDA section 304(b)(5)(A), the Bureau is proposing § 1003.4(a)(17), which provides that, for covered loans or applications subject to the Home Ownership and Equity Protection Act of 1994 or covered loans or applications subject to Regulation Z § 1026.43(e)(2)(iii), other than purchased covered loans, financial institutions shall report the total points and fees payable in connection with the covered loan or application,

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[392] In addition to the Bureau, section 1412 of the Dodd-Frank Act directed the following agencies to prescribe qualified mortgage rules with respect to loans that they insure, guarantee, or administer: (1) the Department of Housing and Urban Development, with regard to mortgages insured under the National Housing Act; (2) the Department of Veterans Affairs, with regard to a loan made or guaranteed by the Secretary of Veterans Affairs; (3) the Department of Agriculture, with regard to loans guaranteed by the Secretary of Agriculture under 42 U.S.C. 1472(h); and (4) the Rural Housing Service, with regard to loans insured by the Rural Housing Service. The qualified mortgage prong of the proposed points-and-fees provision would not apply to qualified mortgage rules promulgated by these agencies. Certain loans subject to the qualified mortgage rules of the other agencies would, however, be covered under the HOEPA prong of the points-and-fees provision.

[393] *See* San Francisco Hearing, *supra* note 133.

expressed in dollars and calculated in accordance with Regulation Z § 1026.32(b)(1) or (2), as applicable. For the reasons given above, the Bureau interprets the Dodd-Frank Act's instruction to "tak[e] into account" the TILA's definition of points and fees as allowing for alignment between the relevant provisions of Regulation C and Regulation Z. Defining points and fees consistently across regulations will avoid confusion and reduce the burden of reporting.[394] This definition is also consistent with the MISMO version 3.3 data standard for total points and fees.

The Bureau solicits comment on the benefits and burdens of the definition of points and fees proposed above, as well as on any specific elements of points and fees to include or exclude. Although the Bureau believes that most financial institutions will have to calculate points and fees for purposes of both the qualified mortgage points-and-fees cap and the high-cost mortgage coverage threshold, it is possible that financial institutions that are certain of a loan's qualified mortgage or high-cost status may not calculate the total points and fees. Furthermore, some financial institutions that calculate the total points and fees might not store the information in a format readily available for HMDA purposes. To facilitate compliance, the Bureau is proposing to exclude covered loans that have been purchased by a financial institution from this reporting requirement because it does not believe that the total points and fees would be evident on the face of the documentation obtained from the seller, but the Bureau solicits feedback on whether to apply the points-and-fees reporting requirement to purchased covered loans.

During the Small Business Review Panel process, the small entity representatives expressed concern over the consistency and clarity of the points-and-fees definition.[395] The

[394] *See* Atlanta Hearing, *supra* note 131.
[395] *See* Small Business Review Panel Report at 30-31, 55, 102, 108-10, 128 .

Small Business Review Panel recommended that the Bureau seek comment in the proposed rule on the costs to small financial institutions of providing the pricing data, and consider aligning the requirements of Regulation C to the pricing data used in other Federal and State mortgage disclosures as a way to reduce burden.[396] Consistent with the Small Business Review Panel's recommendation, the Bureau is proposing a definition of points and fees that aligns with the definition promulgated under the TILA. The Bureau also solicits feedback on the burden to small financial institutions.

Proposed instruction 4(a)(17) in appendix A provides technical instructions regarding how to enter points and fees data on the loan application register. Proposed instruction 4(a)(17)-1 provides technical instructions for entering the total points and fees payable in connection with the covered loan or application. Proposed instruction 4(a)(17)-2 provides that a financial institution completing the loan application register must enter "NA" for covered loans subject to this reporting requirement for which the total points and fees were not known at or before closing, or for covered loans not subject to this reporting requirement, such as purchased covered loans.

4(a)(18)

Currently, neither HMDA nor Regulation C requires financial institutions to report the total origination charges associated with a covered loan. Section 304(b) of HMDA permits the disclosure of such other information as the Bureau may require.[397] For the reasons discussed below, the Bureau is proposing to require, for covered loans subject to the disclosure

[396] *See id.* at 42.
[397] Section 1094(3)(A)(iv) of the Dodd-Frank Act amended section 304(b) of HMDA.

requirements in Regulation Z § 1026.19(f), the total of all itemized amounts that are designated borrower-paid at or before closing, expressed in dollars, as disclosed pursuant to § 1026.38(f)(1).

Origination charges are costs that the borrower will pay to the creditor and any loan originator for originating and extending the credit. Specifically, for covered loans subject to the disclosure requirements of Regulation Z § 1026.19(f), origination charges are those costs designated "borrower-paid" on Line A of the Closing Cost Details page of the Closing Disclosure, as provided for in Regulation Z § 1026.38(f)(1). The Bureau established this definition of origination charges in its 2013 TILA-RESPA Final Rule, which will become effective on August 1, 2015.[398] These costs include charges such as application fees, origination fees, underwriting fees, processing fees, verification fees, and rate-lock fees, but do not include charges paid by the borrower for required services provided by persons other than the creditor or loan originator, or taxes or other government fees.

The Bureau proposes to require reporting of total origination charges, as provided in proposed § 1003.4(a)(18), because they provide a more complete picture of loan pricing. The price of a loan consists of several elements, including the loan terms, discount points and cash rebates, origination points or fees, and closing costs. As the total of all charges paid by the borrower, the proposed origination charges data point provides a measure of the amount of charges directly imposed on a borrower by a financial institution, and therefore discloses information about those charges over which a financial institution exercises the most control. According to feedback received by the Bureau, greater precision among the elements of loan

[398] *See* 78 FR 79730 (Dec. 31, 2013).

pricing might provide public officials and community organizations with a better understanding of whether financial institutions are charging similar prices to similar applicants.

Furthermore, the Bureau has received feedback suggesting that the reporting burden would be lessened by consistency between HMDA data points and items on the Closing Disclosure, and thus has proposed the definition of origination charges already found in Regulation Z § 1026.38(f)(1).[399] The Small Business Review Panel recommended that the Bureau consider aligning the requirements of Regulation C to the pricing data used in other Federal and State mortgage disclosures.[400] Consistent with the Small Business Review Panel's recommendation, the Bureau is proposing a definition of total origination charges that aligns with the costs designated "borrower-paid" on Line A of the closing cost details page of the Closing Disclosure.

The Bureau recognizes that the utility of data on origination fees may have some limits. For example, reporting only borrower-paid origination charges will not directly provide data about the total cost of credit associated with a mortgage loan, because certain charges are excluded. Furthermore, by limiting the scope of this provision to covered loans that require closing disclosures, the Bureau acknowledges that the data will lack the total origination charges for loans excluded from Regulation Z § 1026.19(f), such as home-equity lines of credit and reverse mortgages.[401] The Bureau is also concerned with the burden that may result from requiring this information. For example, some financial institutions that calculate origination

[399] Chicago Hearing, *supra* note 137.
[400] *See* Small Business Review Panel Report at 42.
[401] *See* Regulation Z § 1026.19(f)(1)(i).

charges for purposes of the Closing Disclosure might not store the information in a format readily available for HMDA purposes.

Despite these concerns, feedback received in the Bureau's outreach activities suggests that the benefits to the public and to public officials would justify the costs imposed on industry, and the Bureau believes that reporting of origination costs, pursuant to proposed § 1003.4(a)(18), is necessary to carry out HMDA's purposes. For the reasons given, this information would provide a more complete and useful picture of loan pricing, which would assist public officials and members of the public in determining whether financial institutions are serving the housing needs of their communities and neighborhoods. As explained above, total origination charges would also assist in identifying potentially discriminatory lending patterns. Accordingly, pursuant to HMDA sections 305(a) and 304(b)(5)(D), the Bureau is proposing § 1003.4(a)(18), which provides that for covered loans subject to the disclosure requirements in Regulation Z § 1026.19(f), a financial institution shall report the total of all itemized amounts that are designated borrower-paid at or before closing, expressed in dollars, as disclosed pursuant to § 1026.38(f)(1). The Bureau solicits feedback regarding the general utility of the revised data, the scope of the reporting requirement, and the costs associated with collecting and reporting the data. In particular, the Bureau solicits comment on whether a more comprehensive measure of the aggregate costs associated with the loan would be more appropriate, such as the amount listed as the "total closing costs" on Line J of the Closing Disclosure.

Proposed instruction 4(a)(18) in appendix A provides technical instructions regarding how to enter the data on the loan application register. Proposed instruction 4(a)(18)-1 provides technical instructions for entering the amount of the total origination charges. Proposed instruction 4(a)(18)-2 provides that a financial institution completing the loan application register

must enter "NA" for covered loans for which no amounts paid by the borrower were known at or before closing, or for covered loans not subject to this reporting requirement, such as open-end lines of credit or reverse mortgages.

4(a)(19)

Currently, neither HMDA nor Regulation C requires financial institutions to report information regarding total discount points. Section 304(b) of HMDA permits the disclosure of such other information as the Bureau may require.[402] For the reasons discussed below, the Bureau is proposing to require, for covered loans subject to the disclosure requirements in Regulation Z § 1026.19(f), the points designated as paid to the creditor to reduce the interest rate, expressed in dollars, as described in § 1026.37(f)(1)(i).

Discount points are a type of prepaid interest that borrowers can pay to reduce the interest rate applicable to subsequent payments. For covered loans subject to the disclosure requirements in Regulation Z § 1026.19(f), the discount points that financial institutions would report are those listed on Line A.01 of the Closing Disclosure, as described in Regulation Z § 1026.37(f)(1)(i). The Bureau has received feedback suggesting that separate disclosure of discount points provides information useful for identifying potentially discriminatory lending patterns.[403] Specifically, information regarding the amount paid to reduce the interest rate, combined with information regarding total points and fees and total origination charges, enables researchers, regulators, and members of the public to develop a greater understanding of loan pricing. The annual percentage rate and interest rate cannot effectively be compared across borrowers without precise

[402] Section 1094(3)(A)(iv) of the Dodd-Frank Act amended section 304(b) of HMDA.
[403] San Francisco Hearing, *supra* note 133.

information on how discount points have altered the rate. By examining the changes in the interest rate produced by the purchase of a given amount of discount points, members of the public and public officials can better determine the value that borrowers receive in exchange for discount points, and whether similarly situated borrowers are receiving similar value.

Furthermore, the Bureau has received feedback suggesting that the reporting burden would be lessened by consistency between HMDA data points and items on the Closing Disclosure, and thus has proposed the definition of discount points already found in Regulation Z § 1026.37(f)(1)(i).[404] The Small Business Review Panel recommended that the Bureau consider aligning the requirements of Regulation C to the pricing data used in other Federal and State mortgage disclosures.[405] Consistent with the Small Business Review Panel's recommendation, the Bureau is soliciting feedback on the costs of reporting to small entities, and is proposing that financial institutions report the discount points already required to be listed on Line A.01 of the Closing Disclosure. This definition is also consistent with the MISMO version 3.3 data standard for discount points.

As with other loan pricing data discussed above, discount point data do not include loan profitability, a data point that, according to feedback received at the Board's 2010 Hearings, might permit more detailed analysis of whether similarly situated borrowers are benefiting from similar pricing.[406] Furthermore, by limiting the scope of this provision to covered loans that require closing disclosures, the Bureau acknowledges that the data will lack the total discount points for loans excluded from Regulation Z § 1026.19(f), such as home-equity lines of credit

[404] Atlanta Hearing, *supra* note 131.
[405] *See* Small Business Review Panel Report at 42.
[406] Atlanta Hearing, *supra* note 131.

and reverse mortgages.[407] The Bureau is also concerned with the burden that may result from requiring financial institutions to report discount points. As with other pricing information, some financial institutions that calculate total discount points for purposes of the Closing Disclosure might not store the information in a format readily available for HMDA purposes.

Despite these concerns, feedback received in the Bureau's outreach activities suggests that the benefits to the public and to public officials may justify these costs, and the Bureau believes that reporting of total discount points associated with a covered loan, pursuant to proposed § 1003.4(a)(19), is necessary to carry out HMDA's purposes. For the reasons given, this information would provide a more complete and useful picture of loan pricing, which would assist pubic officials and members of the public in determining whether financial institutions are serving the housing needs of their communities. Improved pricing information would also assist public officials and members of the public in identifying potentially discriminatory lending patterns. Accordingly, pursuant to HMDA sections 305(a) and 304(b)(5)(D), the Bureau is proposing § 1003.4(a)(19), which provides that for covered loans subject to the disclosure requirements in Regulation Z § 1026.19(f), a financial institution shall report the points designated as paid to the creditor to reduce the interest rate, expressed in dollars, as described in § 1026.37(f)(1)(i). The Bureau solicits feedback regarding the general utility of the revised data, the scope of the proposed reporting requirement, and the costs associated with collecting and reporting the data. Specifically, the Bureau seeks comment on whether to include any lender credits, premiums, or rebates in the measure of discount points.

[407] *See* Regulation Z § 1026.19(f)(1)(i).

Proposed instruction 4(a)(19) in appendix A provides technical instructions regarding how to enter the data on the loan application register. Proposed instruction 4(a)(19)-1 provides technical instructions for entering the total amount of points designated as paid to the creditor to reduce the interest rate. Proposed instruction 4(a)(19)-2 provides that a financial institution completing the loan application register must enter "NA" for covered loans for which no points to reduce the interest rate were known at or before closing, or for covered loans not subject to this reporting requirement, such as open-end lines of credit or reverse mortgages.

4(a)(20)

Neither HMDA nor Regulation C currently requires financial institutions to report the pre-discounted, risk-adjusted interest rate associated with a covered loan. Section 304(b) of HMDA permits the disclosure of such other information as the Bureau may require.[408] For the reasons discussed below, the Bureau is proposing to require reporting of, for covered loans subject to the disclosure requirements in Regulation Z § 1026.19(f), other than purchased covered loans, the interest rate that the borrower would receive if the borrower paid no bona fide discount points, as calculated pursuant to Regulation Z § 1026.32.

The risk-adjusted, pre-discounted interest rate is the rate that the borrower would have received in the absence of any discount points or rebates. The rate the Bureau is proposing to require institutions to report under proposed § 1003.4(a)(20) is the same base rate from which a financial institution would exclude "bona fide discount points" from points and fees for purposes of determining qualified mortgage and high-cost mortgage status under Regulation Z. Regulation Z § 1026.32(b)(1)(i)(E) or (F) (closed-end loans), and § 1026.32(b)(2)(i)(E) or (F)

[408] Section 1094(3)(A)(iv) of the Dodd-Frank Act amended section 304(b) of HMDA.

(open-end credit plans), allows bona fide discount points to be excluded from the calculation of points and fees for both qualified mortgages and high-cost mortgages. Specifically, lenders may exclude up to two bona fide discount points from the points-and-fees calculation, depending on whether the "interest rate without any discount" is within one or two percentage points of the average prime offer rate. Under the proposal, financial institutions would report the risk-adjusted, pre-discounted interest rate not only for covered loans for which bona fide discount points have been excluded from total points and fees pursuant to Regulation Z § 1026.32(b), but for all covered loans subject to the disclosure requirements in Regulation Z § 1026.19(f), other than purchased covered loans.

The Bureau has received feedback suggesting that reporting the risk-adjusted, pre-discounted interest rate may be useful for fair lending purposes. The risk-adjusted, pre-discounted interest rate reflects loan-level price adjustments made on the basis of the characteristics of the borrower, collateral, and the current market conditions. Because these types of adjustments are typically based on reasonable business considerations, analyzing the changes to loan pricing that occur after a financial institution has determined the risk-adjusted, pre-discounted interest rate can provide significant evidence of potential impermissible discrimination. Thus, knowing the pre-discounted interest rate, along with the rate that the borrower actually received and any discount points paid, may assist in understanding the value that the borrower received, relative to otherwise similarly situated borrowers. Also, the risk-adjusted, pre-discounted rate may be used to more efficiently focus fair lending examinations, thereby reducing burden caused by false positives and conserving public resources.

However, by limiting the scope of this provision to covered loans that require closing disclosures, the Bureau acknowledges that the data will lack the risk-adjusted, pre-discounted

interest rate for loans excluded from Regulation Z § 1026.19(f), such as home-equity lines of credit and reverse mortgages.[409] The Bureau is also concerned with the burden associated with reporting the risk-adjusted, pre-discounted interest rate. Some financial institutions may rarely exclude bona fide discount points from total points and fees pursuant to Regulation Z and may incur additional cost in calculating the risk-adjusted, pre-discounted interest for loans for which they would not make this calculation for purposes of compliance with Regulation Z. In addition, even financial institutions that calculate the rate for purposes of the qualified mortgage points-and-fees cap and the high-cost mortgage coverage threshold might not store the information in a format readily available for HMDA purposes.

Despite the potential reporting difficulties outlined above, the Bureau has received feedback in its outreach efforts that the benefits of reporting the risk-adjusted, pre-discounted interest rate may justify the costs, and the Bureau believes that reporting this information is necessary to carry out HMDA's purposes. For the reasons given, this information would provide a more complete and useful picture of loan pricing, which would be helpful in determining whether financial institutions are serving the housing needs of their communities. Improved pricing information would also significantly assist public officials and members of the public in identifying potentially discriminatory lending patterns.

Accordingly, pursuant to HMDA sections 305(a) and 304(b)(5)(D), the Bureau is proposing § 1003.4(a)(20), which provides that for covered loans subject to the disclosure requirements in Regulation Z § 1026.19(f), other than purchased covered loans, a financial institution shall report the interest rate that the borrower would receive if the borrower paid no

[409] *See* Regulation Z § 1026.19(f)(1)(i).

bona fide discount points, as calculated pursuant to Regulation Z § 1026.32. To facilitate compliance, the Bureau is proposing to exclude covered loans that have been purchased by a financial institution from this reporting requirement because it does not believe that the risk-adjusted, pre-discounted interest rate would be evident on the face of the documentation obtained from the seller. The Bureau solicits feedback regarding the general utility of the revised data and on the costs associated with collecting and reporting the data. In particular, the Bureau seeks information on any additional costs that financial institutions or vendors expect to encounter in calculating the risk-adjusted, pre-discounted interest rate and in retaining these data specifically for HMDA reporting purposes, and any alternative means to calculate the base rate used in loan pricing that may be less burdensome for institutions to collect and report. The Bureau further solicits comment regarding the scope of the provision, particularly whether to restrict the reporting requirement to covered loans for which financial institutions have chosen to exclude bona fide discount points from total points and fees for the purposes of HOEPA coverage or qualified mortgage status.[410]

During the Small Business Review Panel process, the small entity representatives were generally concerned with the definitional clarity of, and the potential burden associated with, reporting the risk-adjusted, pre-discounted interest rate.[411] The Small Business Review Panel recommended that the Bureau seek comment in the proposed rule on the costs to small financial institutions of providing the pricing data, and consider aligning the requirements of Regulation C to the pricing data used in other Federal and State mortgage disclosures.[412] Consistent with the

[410] *See* Regulation Z § 1026.32(b)(1)(i)(E), (F); (b)(2)(i)(E), (F).
[411] *See* Small Business Review Panel Report at 31-32, 74, 102, 130.
[412] *See id.* at 42.

Small Business Review Panel's recommendation, the Bureau is soliciting feedback on the cost to small financial institutions.

Proposed instruction 4(a)(20) in appendix A provides technical instructions regarding how to enter the data on the loan application register. Proposed instruction 4(a)(20)-1 provides technical instructions for entering the risk-adjusted, pre-discounted interest rate. Proposed instruction 4(a)(20)-2 provides that a financial institution completing the loan application register must enter "NA" for covered loans not subject to this reporting requirement, such as purchased covered loans, open-end lines of credit, or reverse mortgages.

4(a)(21)

Neither HMDA nor Regulation C currently requires financial institutions to report the interest rate associated with a mortgage loan. Section 304(b) of HMDA permits the disclosure of such other information as the Bureau may require.[413] For the reasons discussed below, the Bureau is proposing to require reporting of the interest rate that is or would be applicable to the covered loan at closing or account opening.

The Bureau has received feedback that data on the interest rate enables more effective comparison of pricing across borrowers. The interest rate provides pricing information separate from the elements of loan pricing, such as the rate spread,[414] and may alone enable preliminary comparison among borrowers or communities. Furthermore, when combined with the other

[413] Section 1094(3)(A)(iv) of the Dodd-Frank Act amended section 304(b) of HMDA.

[414] The pricing information provided by the rate spread relies on the annual percentage rate, which is different than the interest rate. The interest rate is the cost of the loan expressed as a percentage rate. The annual percentage rate is "a measure of the cost of credit, expressed as a yearly rate, that relates the amount and timing of value received by the consumer to the amount and timing of payments made." Regulation Z § 1026.22(a)(1); *see also* Regulation Z § 1026.14 (describing the determination of APR for open-end credit). The cost of credit represented by the APR includes discount points, origination fees, other charges retained by the creditor, and certain third-party charges. Therefore, the rate spread and interest rate represent different measures of loan pricing.

elements of loan pricing, such as the total discount points paid and the risk-adjusted, pre-discounted interest rate, the interest rate permits greater insight into loan pricing. For example, comparing the interest rate to the risk-adjusted, pre-discounted interest rate can reveal the extent to which the rate has moved, and analyzing the interest rate in conjunction with the rate spread can permit a user of HMDA data to derive an approximation of the total cost associated with the loan. Therefore, reporting the interest rate may assist in identifying discriminatory lending patterns and in more precisely measuring the cost of credit available in particular communities.

Although the proposal may entail some burden, the burden will be reduced by the fact that financial institutions will already know the interest applicable to most loans. For example, financial institutions would have to disclose this rate in the loan terms section of the Closing Disclosure, as provided for under Regulation Z § 1026.38(b). The interest rate is also currently found in part I of the Uniform Residential Loan Application form. Furthermore, the interest rate is included in the MISMO version 3.3 data standard. For some financial institutions, however, the information might not be stored in a format readily available for HMDA purposes. Furthermore, the proposed interest rate reporting requirement would apply to all covered loans, not just loans subject to the disclosure requirements of Regulation Z.

The Bureau is aware of the potential costs associated with requiring reporting of the interest rate. Feedback received pursuant to the Bureau's outreach, however, suggests that these costs may be justified by the benefits of this information to the public and to public officials, and the Bureau believes that reporting of the interest rate is necessary to carry out HMDA's purposes. For the reasons given, this information would provide a more complete and useful picture of loan pricing, which would be helpful in determining whether financial institutions are serving the housing needs of their communities. Furthermore, as a component of loan pricing

information, the interest rate would assist public officials and members of the public in identifying potentially discriminatory lending patterns. Therefore, pursuant to HMDA sections 305(a) and 304(b)(6)(J), the Bureau is proposing § 1003.4(a)(21), which provides that financial institutions shall report the interest rate that is or would be applicable to the covered loan at closing or account opening. The Bureau solicits feedback regarding whether this proposed requirement is appropriate.

During the Small Business Review Panel process, the small entity representatives expressed concern over the clarity of the interest rate reporting requirement.[415] The Small Business Review Panel recommended that the Bureau seek comment in the proposed rule on the costs to small financial institutions of providing the pricing data, and consider aligning the requirements of Regulation C to the pricing data used in other Federal and State mortgage disclosures.[416] The Bureau agrees that the interest rate reporting requirement should be clear and consistent with other regulations to the extent practicable. Consistent with the Small Business Review Panel's recommendation, for covered loans subject to the disclosure requirements of Regulation Z § 1026.38, the Bureau is proposing to use the methods of identifying the interest rate contained in Regulation Z, as explained in the proposed commentary accompanying proposed § 1003.4(a)(21). The Bureau is also soliciting feedback on the burden of reporting for small financial institutions.

Proposed comment 4(a)(21)-1 clarifies that a financial institution must identify the interest rate that is or would be applicable to the covered loan at closing or account opening, as

[415] *See* Small Business Review Panel Report at 31, 85, 98, 102.
[416] *See id.* at 42.

applicable. Proposed comment 4(a)(21)-1 illustrates that for covered loans subject to the disclosure requirements of Regulation Z § 1026.38, a financial institution complies with proposed § 1003.4(a)(21) by identifying the interest rate that is the rate disclosed pursuant to Regulation Z § 1026.37(b)(2). For an adjustable-rate covered loan subject to the disclosure requirements of Regulation Z § 1026.38, if the interest rate at closing is not known, a financial institution complies with proposed § 1003.4(a)(21) by identifying the fully indexed rate, which, for purposes of § 1003.4(a)(21), means the interest rate calculated using the index value and margin at the time of closing, pursuant to Regulation Z § 1026.37(b)(2). Proposed instructions 4(a)(21)-1 and -2 in appendix A provide technical instructions regarding how to enter the data on the loan application register.

4(a)(22)

Regulation C does not currently require financial institutions to report information regarding the prepayment penalty associated with a mortgage loan. However, section 304(b) of HMDA[417] requires reporting of the term in months of any prepayment penalty or other fee or charge payable upon repayment of some portion of principal or the entire principal in advance of scheduled payments.[418] As discussed below, the Bureau is proposing to implement HMDA section 304(b)(5)(C) by requiring financial institutions to report the term, in months, of any prepayment penalty, as defined in Regulation Z § 1026.32(b)(6)(i) or (ii), as applicable.

Prepayment penalties are charges imposed on borrowers for paying all or part of the transaction's principal before the date on which the principal is due. The Bureau is proposing to

[417] Section 1094(3)(A)(iv) of the Dodd-Frank Act amended section 304(b) of HMDA.
[418] 12 U.S.C. 2803(b)(5)(C).

align the definition of prepayment penalty for HMDA purposes with the definition found in Regulation Z § 1026.32(b)(6), which defines prepayment penalty for purposes of the high-cost and qualified mortgage rules. The amount and term in years of any potential prepayment penalty is listed on the loan terms table of the Closing Disclosure.[419]

In amending HMDA through section 1094 of the Dodd-Frank Act, Congress found that more specific loan pricing information would "provide more transparency on underwriting practices and patterns in mortgage lending and help improve the oversight and enforcement of fair lending laws."[420] Prepayment penalties are an important component of loan pricing. Loans with prepayment penalties are typically more expensive, and the Bureau has received feedback suggesting that information regarding prepayment penalties would improve the usefulness of the HMDA data for revealing potentially discriminatory lending patterns and for determining whether lenders are serving their communities.[421]

The Bureau has also received feedback favoring consistency between HMDA data points and items on the Closing Disclosure as a means of clarifying the regulation and reducing burden.[422] Although the term of any prepayment penalty is not listed in months on the Closing Disclosure, it is listed in years, which enables a relatively simple calculation. Furthermore, the prepayment penalty data point in this proposal is aligned to the "prepayment penalty expiration months count" data point in version 3.3 of the MISMO data standard.

To implement HMDA section 304(b)(5)(C), and pursuant to HMDA section 305(a), the Bureau is proposing § 1003.4(a)(22), which provides that, except for purchased covered loans,

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[419] *See* Regulation Z § 1026.38 (b)(effective August 15, 2015).
[420] H.R. Rep. No. 111-702, at 191 (2011).
[421] Atlanta Hearing, *supra* note 131; Chicago Hearing, *supra* note 137; San Francisco Hearing, *supra* note 133.
[422] Atlanta Hearings, *supra* note 131.

financial institutions shall report the term in months of any prepayment penalty, as defined in Regulation Z § 1026.32(b)(6)(i) or (ii), as applicable. To facilitate compliance, the Bureau is proposing to except covered loans that have been purchased by a financial institution from this reporting requirement because it does not believe that the term of the prepayment penalty would be evident on the face of the documentation obtained from the seller. Although the Closing Disclosure describes the term of any prepayment penalty that may be imposed on the borrower, this information is provided in years, rather than in months, as required by the Dodd-Frank Act and as implemented in this proposal. Furthermore, purchased covered loans not subject to the disclosure requirements of Regulation Z would require no Closing Disclosure. The Bureau solicits feedback regarding the general utility and costs associated with collecting and reporting the data. The Bureau also solicits feedback on the scope of the proposed requirement, including whether to limit the prepayment penalty reporting requirement to loans subject to Regulation Z, or to apply it to purchased covered loans.

During the Small Business Review Panel process, the small entity representatives did not express significant concerns regarding reporting of the prepayment penalty.[423] One small entity representative questioned which amount would be reported in the case of a prepayment penalty that varied based on the borrower's actions.[424] The Small Business Review Panel recommended that the Bureau seek comment in the proposed rule on the costs to small financial institutions of providing the data, as well as on the methods of reporting this information that would minimize burden on small financial institutions while still meeting the Dodd-Frank Act reporting

[423] *See* Small Business Review Panel Report at 29, 129.
[424] *See id.* at 102-03.

requirements and purposes of HMDA.[425] The Bureau agrees that the burden on small financial institutions should be minimized, but notes that HMDA section 304(b)(5)(C) specifically provides for reporting the prepayment penalty in months, rather than in amount or years, as provided on the Closing Disclosure. Consistent with the Small Business Review Panel's recommendation, the Bureau seeks feedback on the reporting burden for small financial institutions.

Proposed instruction 4(a)(22) in appendix A provides technical instructions regarding how to enter the data on the loan application register. Proposed instruction 4(a)(22)-1 provides technical instructions for entering the term in months of any prepayment penalty applicable to the covered loan or application. Proposed instruction 4(a)(22)-2 specifies that a financial institution must enter "NA" for covered loans for which a prepayment penalty may not be imposed under the terms of the covered loan, for covered loans not subject to this reporting requirement, such as purchased covered loans, or for applications for which the prepayment penalty term is unknown, such as applications closed for incompleteness.

4(a)(23)

Currently, neither HMDA nor Regulation C contains requirements regarding an applicant's or borrower's debt-to-income ratio. Section 304(b) of HMDA permits the disclosure of such other information as the Bureau may require.[426] For the reasons discussed below, the Bureau is proposing to require financial institutions to report information related to the applicant's or borrower's debt-to-income ratio.

[425] *See id.* at 41.
[426] *See* Dodd-Frank Act section 1094(3)(A)(iv).

Financial institutions often consider the ratio of an applicant's total monthly debt to total monthly income as part of the underwriting process. The Bureau has received feedback suggesting that requiring the collection of this debt-to-income ratio would improve the usefulness of the HMDA data. An applicant's debt-to-income ratio is an important factor in the underwriting process that often affects the pricing of the credit offered to an applicant. In some cases, an applicant's debt-to-income ratio may determine whether an applicant is offered credit at all. Thus, this information may help the public determine whether financial institutions are filling their obligations to serve the housing needs of the communities and neighborhoods in which they are located. As debt-to-income ratio may be predictive of default, these data may help public officials identify geographic locations or segments of the population that would benefit from special public or private sector investment and lending programs.

However, the Bureau is concerned about the reliability of these data. Debt-to-income ratio calculations may vary between financial institutions, may vary within a financial institution based on the type of loan, and may evolve over time. Financial institutions that intend to sell a mortgage loan may calculate multiple debt-to-income ratios during the underwriting process based on internal and investor requirements. The Bureau is also concerned about the potential burden that may result from requiring the collection of debt-to-income ratio. For example, the Bureau is aware that some financial institutions may not rely on the debt-to-income ratio for underwriting purposes.

Collecting debt-to-income ratio information may impose a burden on financial institutions. However, feedback received from industry, consumer advocates, and other users of HMDA data suggests that the potential benefits to the public and to public officials may outweigh these potential burdens. Based on these considerations, the Bureau believes that it may

be appropriate to require financial institutions to collect information regarding debt-to-income ratio. Accordingly, pursuant to its authority under sections 305(a) and 304(b)(6)(J) of HMDA, the Bureau is proposing § 1003.4(a)(23), which provides that, for a covered loan that is not, or an application that is not for, a reverse mortgage, a financial institution shall report the ratio of the applicant's or borrower's total monthly debt to the total monthly income relied on in making the credit decision. The Bureau solicits feedback regarding whether this proposed requirement is appropriate generally, and specifically solicits feedback regarding whether this proposed requirement would be less burdensome than requiring the collection of other debt-to-income ratios, such as a debt-to-income ratio that is calculated according to investor requirements but is not relied on in making the credit decision, or the debt-to-income ratio that may be required under the ability-to-repay provisions of Regulation Z. Although the Bureau believes that this proposed requirement may be appropriate, the Bureau recognizes that financial institutions may not always rely on an applicant's debt-to-income ratio when making a credit decision, such as when underwriting a reverse mortgage transaction. Thus, proposed § 1003.4(a)(23) does not require a financial institution to collect debt-to-income ratio information for reverse mortgages. The Bureau solicits feedback regarding whether this proposed exception is appropriate and regarding whether there are other types of transactions in which an applicant's debt-to-income ratio is not considered.

During the Small Business Review Panel process, several small entity representatives expressed concern about a potential debt-to-income ratio reporting requirement.[427] The Small Business Review Panel recommended that the Bureau solicit comment on whether it would be

[427] *See* Small Business Review Panel Report at27-28, 40, 81,103,129.

less burdensome for small financial institutions if the Bureau adopted a specific method for calculating the debt-to-income ratio or would allow the small financial institutions flexibility in developing their own calculations for debt-to-income ratio.[428] Based on this feedback and consistent with the Small Business Review Panel's recommendation, the Bureau solicits feedback regarding whether it would be less burdensome for small financial institutions to report the debt-to-income ratio relied on in making the credit decision, or if it would be less burdensome to small financial institutions for the Bureau to adopt a specific debt-to-income ratio calculation.

Proposed comment 4(a)(23)-1 discusses the requirement that the financial institution collect the ratio of the applicant's or borrower's total monthly debt to total monthly income relied on in making the credit decision and provides an illustrative example. Proposed comment 4(a)(23)-2 clarifies, if a financial institution relies on a set of underwriting requirements in making a credit decision, and the requirements include the ratio of the applicant's or borrower's total monthly debt to total monthly income as one of multiple factors, § 1003.4(a)(23) requires the financial institution to report the DTI ratio considered as part of the set of underwriting requirements relied on by the financial institution. For example, if a financial institution relies on a set of underwriting requirements in making a credit decision, the requirements include the applicant's or borrower's DTI ratio as one of multiple factors, and the financial institution approves the application, the financial institution complies with § 1003.4(a)(23) by reporting the DTI ratio considered as part of the set of underwriting requirements. Similarly, if a financial institution relies on a set of underwriting requirements in making a credit decision, the

[428] *See id.* at 40.

requirements include the applicant's or borrower's DTI ratio as one of multiple factors, and the financial institution denies the application because an underwriting requirement other than the DTI ratio requirement is not satisfied, the financial institution complies with § 1003.4(a)(23) by reporting the DTI ratio considered as part of the set of underwriting requirements.

Proposed comment 4(a)(23)-3 clarifies that, if a file was closed for incompleteness, or if an application was withdrawn before a credit decision was made, a financial institution complies with § 1003.4(a)(23) by reporting that no credit decision was made, even if the financial institution had calculated the ratio of the applicant's total monthly debt to total monthly income. For example, if a file is incomplete and is so reported in accordance with § 1003.4(a)(8), the financial institution complies with § 1003.4(a)(23) by reporting that no credit decision was made, even if the financial institution had calculated the applicant's DTI ratio. Similarly, if an application was expressly withdrawn by the applicant before a credit decision was made, the financial institution complies with § 1003.4(a)(23) by reporting that no credit decision was made, even if the financial institution had calculated the applicant's DTI ratio.

Proposed comment 4(a)(23)-4 clarifies that § 1003.4(a)(23) does not require a financial institution to calculate an applicant's or borrower's debt-to-income ratio, nor does it require a financial institution to rely on an applicant's or borrower's debt-to-income ratio in making a credit decision. This proposed comment also explains that if a financial institution makes a credit decision without relying on the applicant's or borrower's debt-to-income ratio, the financial institution complies with § 1003.4(a)(23) by reporting that no debt-to-income ratio was relied on in connection with the credit decision. Under appendix A, proposed instruction 4(a)(23)-1 provides technical instructions regarding how to enter the debt-to-income ratio data on the loan application register. Proposed instruction 4(a)(23)-2 provides technical instructions for

covered loans in which no debt-to-income ratio is relied on in connection with the credit decision, for reverse mortgages, for files closed for incompleteness, and for applications withdrawn before a credit decision is made.

4(a)(24)

Currently, neither HMDA nor Regulation C contains requirements regarding loan-to-value ratio. Section 304(b) of HMDA permits the disclosure of such other information as the Bureau may require.[429] For the reasons discussed below, the Bureau is proposing to require financial institutions to report the ratio of the total amount of debt secured by the property to the value of the property.

Financial institutions regularly calculate the loan-to-value (LTV) ratio and the combined loan-to-value (CLTV) ratio as part of the underwriting process. The LTV ratio generally refers to the ratio of the value of a secured debt to the value of the property securing the debt, while the CLTV ratio generally refers to the ratio of total amount of secured debt to the value of the property securing the debt. As discussed in part III.A above, during the 2010 Board Hearings the CLTV ratio was cited as an important factor both in the determination of whether to extend credit and for the pricing terms upon which credit would be extended. The Bureau also has received feedback that the CLTV ratio is a standard underwriting factor regularly calculated by financial institutions, both for a financial institution's own underwriting purposes and to satisfy investor requirements. Furthermore, during the mortgage market crisis State and Federal officials focused on CTLV ratios in crafting emergency mortgage programs to assist

[429] *See* Dodd-Frank Act section 1094(3)(A)(iv).

homeowners with secured debt in excess of the value of their homes. Thus, it appears that data related to the CLTV ratio would improve the usefulness of the HMDA data.

However, a potential CLTV reporting requirement may pose some challenges. The Bureau is generally concerned about the potential burden associated with reporting calculated data fields, such as the CLTV ratio. Also, CLTV ratio calculations on home-equity lines of credit may vary between financial institutions, which may affect the reliability of these data. Furthermore, the Bureau understands that CLTV ratios may not be entirely accurate, especially when the exact values of multiple debts secured by the property is not known until the date of closing or after, which may present a challenge for reporting purposes.

Notwithstanding these concerns about a CLTV reporting requirement, the potential benefits seem to outweigh the potential burdens. CLTV ratios appear to be calculated by all financial institutions, are a significant factor in the underwriting process, and provide valuable insight into both the stability of community homeownership and the functioning of the mortgage market. In contrast, the burdens associated with a CLTV reporting requirement appear to be limited to the general burden associated with reporting HMDA data and technical issues related to determining the exact ratio. Furthermore, by providing information regarding the combined loan-to-value ratio of transactions subject to Regulation C, this proposed provision would ensure that the citizens and public officials of the United States are provided with sufficient information to enable them to determine whether depository institutions are filling their obligations to serve the housing needs of the communities and neighborhoods in which they are located. Combined loan-to-value ratio data also would assist public officials in their determination of the distribution of public sector investments in a manner designed to improve the private investment environment.

Based on these considerations, the Bureau believes that requiring financial institutions to collect information regarding CLTV ratios may be necessary to carry out HMDA's purposes. Accordingly, pursuant to its authority under sections 305(a) and 304(b)(6)(J) of HMDA, the Bureau is proposing § 1003.4(a)(24), which provides that a financial institution shall record the ratio of the total amount of debt secured by the property to the value of the property, as determined in accordance with proposed § 1003.4(a)(24)(i) and (ii). Proposed § 1003.4(a)(24)(i) provides that, for a covered loan that is a home-equity line of credit, the ratio shall be determined by dividing the sum of the unpaid principal balance of the first mortgage, the full amount of any home-equity line of credit (whether drawn or undrawn), and the balance of any other subordinate financing by the value of the property. Proposed § 1003.4(a)(24)(ii) provides that, for a covered loan that is not a home-equity line of credit, the ratio shall be determined by dividing the combined unpaid principal balance amounts of the first and all subordinate mortgages, excluding undrawn home-equity lines of credit amounts, by the value of the property.

The Bureau solicits feedback regarding whether this proposed requirement is appropriate generally. Also, as part of the Bureau's effort to align the Regulation C requirements to the MISMO data standards discussed in part II.B above, this proposed requirement is conceptually identical and textually similar to the definitions of the Combined LTV Ratio Percent data point and Home Equity Combined LTV Ratio Percent data point in proposed MISMO version 3.3. The Bureau solicits feedback regarding whether this proposed alignment is appropriate and whether the text of this proposed requirement should be clarified. Finally, although the Bureau believes that financial institutions calculate CTLV ratios on all transactions subject to Regulation C, the Bureau solicits feedback regarding whether there are particular transactions in which a CLTV ratio would not be calculated or considered during the underwriting process.

During the Small Business Review Panel process, several small entity representatives stated that a combined loan-to-value ratio reporting requirement would pose particular burdens and challenges, especially with respect to ratios on home-equity lines of credit and commercial loans.[430] The Small Business Review Panel recommended that, in addition to soliciting comment on whether to require reporting of the combined loan-to-value ratio, the Bureau solicit comment on whether a Bureau-defined calculation method would be less burdensome for small financial institutions than allowing the financial institutions to develop their own calculations for the combined loan-to-value ratio.[431] Consistent with the Small Business Review Panel's recommendation, in addition to the general solicitation of feedback provided above, the Bureau solicits feedback regarding whether it would be less burdensome for small financial institutions to report the combined loan-to-value relied on in making the credit decision, or if it would be less burdensome to small financial institutions for the Bureau to adopt a specific combined loan-to-value ratio calculation.

Proposed comment 4(a)(24)-1 clarifies that, if a financial institution makes a credit decision without calculating the combined loan-to-value ratio, the financial institution complies with § 1003.4(a)(24) by reporting that no combined loan-to-value ratio was calculated in connection with the credit decision. Proposed comment 4(a)(24)-2 explains that, for home-equity lines of credit, § 1003.4(a)(24)(i) requires a financial institution to calculate the combined loan-to-value ratio by including the full amount of any home-equity line of credit, whether drawn or undrawn, and provides illustrative examples. Proposed comment 4(a)(24)-3 explains that, for

[430] *See* Small Business Review Panel Report at 14, 30, 57, 80, 96, 101
[431] *See id.* at 41.

transactions that are not home-equity lines of credit, § 1003.4(a)(24)(ii) requires a financial institution to calculate the combined loan-to-value ratio by including the amounts outstanding under home-equity lines of credit secured by the property, and provides illustrative examples. Under appendix A, proposed instruction 4(a)(24)-1 provides technical instructions regarding how to enter the combined loan-to-value ratio data on the loan application register. Proposed instruction 4(a)(24)-2 provides technical instructions for covered loans in which no combined loan-to-value ratio is calculated.

4(a)(25)

Regulation C does not require financial institutions to report information regarding the loan's term. HMDA section 304(b)(6)(D) requires, for loans and completed applications, reporting of the actual or proposed term in months of the mortgage loan.[432] The length of time a borrower has to repay a loan is an important loan feature for both borrowers and creditors. For borrowers, the loan term helps determine the amount of principal due with each payment, which significantly influences both the borrower's ability to afford the loan and the amount of interest the borrower will pay over the life of the loan. For creditors, the loan term impacts the creditor's interest rate risk and is thus a significant factor in the risk of extending credit and can affect loan pricing. For these reasons, including loan term in HMDA will help provide a more complete picture of the covered loans reported and may help to explain pricing or other differences that were previously indiscernible with HMDA data. The proposal to report information about non-amortizing features, discussed below in the section-by-section analysis of proposed

[432] Dodd-Frank Act section 1094(3)(A)(iv), 12 U.S.C. 2803(b)(6)(D).

§ 1003.4(a)(27) may be useful in discerning differences in covered loans with similar loan terms that may in fact be very different because of how the loans amortize.

Proposed § 1003.4(a)(25) implements HMDA section 304(b)(6)(D) by requiring financial institutions to collect and report data on the number of months until the legal obligation matures for a covered loan or application. During the Small Business Review Panel process, small entity representatives expressed some concerns about reporting loan term for certain types of loans, including home-equity lines of credit and loans with different amortization and maturity terms.[433] The proposed instructions in appendix A for paragraph 4(a)(25) provide details on reporting loan term for home-equity lines of credit and other specific types of covered loans. Proposed instruction 4(a)(25)-1.b provides that the loan term for an open-end line of credit with a definite term includes both the draw and the repayment period. The Bureau believes that including both the draw and repayment periods for home-equity lines of credit most accurately reflects the loan term. Proposed instruction 4(a)(25)-1.c provides that, for covered loans without a definite term, including some home-equity lines of credit and reverse mortgages, institutions should report the loan term as "NA." The Bureau believes that this proposed instruction will facilitate compliance by differentiating covered loans without a definite term.

Proposed comment 4(a)(25)-1 clarifies that, for covered loans that have different maturity and amortization terms, the loan term reported should be the maturity term. The comment provides an example of a five year balloon loan for illustration purposes. For covered loans with a balloon payment or other amortization features which would cause the covered loan not to be fully amortizing over its term, such features would be reported under the requirements of

[433] *See* Small Business Review Panel Report at 29, 98.

proposed § 1003.4(a)(27). Proposed comment 4(a)(25)-2 would clarify that for covered loans with non-monthly repayment schedules, such as a covered loan with a bi-weekly repayment schedule, the loan term should be reported in months and the term reported should not include any fractional months remaining. The Bureau believes this comment would facilitate compliance by providing guidance on how to report loan terms for covered loans with repayment schedules measured in time units other than months.

The Small Business Review Panel recommended that the Bureau seek public comment on what method of reporting loan term would minimize burden on small financial institutions while still meeting the Dodd-Frank Act reporting requirements and purposes of HMDA.[434] Consistent with the recommendation of the Small Business Review Panel, the Bureau solicits feedback on what method of reporting loan term would minimize burden on small financial institutions while still meeting the Dodd-Frank Act reporting requirements and purposes of HMDA.

Section 1003.4(a)(25) is proposed to implement HMDA section 304(b)(6)(D). The Bureau believes the proposed reporting requirement will provide the public and public officials with data to help determine whether financial institutions are serving the housing needs of their communities by providing information about the types of loans that are being made, and assist in identifying possible discriminatory lending patterns and enforcing antidiscrimination statutes by allowing information about similar loans to be compared and analyzed appropriately.

4(a)(26)

Regulation C does not require financial institutions to report information regarding the number of months until the first interest rate adjustment may occur. HMDA section

[434] Small Business Review Panel Report at 41.

304(b)(6)(B) requires the reporting of the actual or proposed term in months of any introductory period after which the rate of interest may change.[435] Proposed § 1003.4(a)(26) implements this requirement by requiring financial institutions to collect and report data on the number of months until the first date the interest rate may change after loan origination. Proposed § 1003.4(a)(26) would apply regardless of how the interest rate adjustment is characterized by product type, such as adjustable rate, step rate, or another type of product with a "teaser" rate. Interest rate variability can be an important feature in long-term affordability for borrowers, and the Bureau believes that reporting this information will allow for better analysis of loans and applications using HMDA data.

The proposal provides instructions for reporting the introductory period in appendix A. Proposed instruction 4(a)(26)-1.a provides that the introductory period should be reported as "NA" for a fixed-rate covered loan. Proposed instruction 4(a)(26)-1.b provides that the introductory period should be reported as measured from loan origination for purchased loans, or "NA" for purchased fixed rate loans. Proposed comment 4(a)(26)-1 illustrates the requirement to report the introductory interest rate period, including for a home-equity line of credit with a teaser rate; an adjustable-rate loan with an introductory rate; and a step-rate loan with an introductory rate that then adjusts to a different, known rate. Proposed comment 4(a)(26)-2 provides guidance on preferred rates. The comment provides illustrative examples of preferred rates and provides that a financial institution reports initial interest rate periods based on

[435] Dodd-Frank Act section 1094(3)(A)(iv), 12 U.S.C. 2803(b)(6)(D).

preferred rates only if the terms of the legal obligation provide that the preferred rate will expire at a defined future date.[436]

The Small Business Review Panel recommended that the Bureau seek public comment on what method of reporting initial interest rate period would minimize burden on small financial institutions while still meeting the Dodd-Frank Act reporting requirements and purposes of HMDA.[437] Consistent with the recommendation of the Small Business Review Panel, the Bureau solicits feedback on what method of reporting initial interest rate period would minimize burden on small financial institutions while still meeting the Dodd-Frank Act reporting requirements and purposes of HMDA.

4(a)(27)

Regulation C currently does not require financial institutions to report whether a loan allows or would have allowed the borrower to make payments other than fully amortizing payments. HMDA section 304(b)(6)(C) requires reporting of the presence of contractual terms or proposed contractual terms that would allow the mortgagor or applicant to make payments other than fully amortizing payments during any portion of the loan term.[438] Non-amortizing features, once a rarity, became more commonplace in the lead-up to the mortgage crisis. Such features can put borrowers at risk and even lead to foreclosure if the borrower is unable to pay the principal balance of the loan when it eventually becomes due. The Dodd-Frank Act addressed non-amortizing features of loans in a variety of contexts. For example, the definition

[436] The guidance provided by the commentary gives examples using the loan product designations from the Loan Estimate pursuant to the Bureau's 2013 TILA-RESPA Final Rule, and would be consistent with similar guidance on preferred rates in Regulation Z. *See* 78 FR 79730, 79916 (Dec. 31, 2013), Regulation Z comments 17(c)(1)-11.iii and 40(d)(12)(viii)-1.
[437] Small Business Review Panel Report at 41.
[438] Section 1094(3)(A)(iv), 12 U.S.C. 2803(b)(6)(C).

of a qualified mortgage in TILA section 129C(b)(2)(A), as added by Dodd-Frank Act section 1412, generally excludes from that definition residential mortgage loans for which regular periodic payments may result in an increase of the principal balance, or that allow deferred repayment of principal and interest, as well as loans the terms of which result in certain balloon payments.

The Bureau is proposing to implement HMDA section 304(b)(6)(C) by adding new § 1003.4(a)(27) to Regulation C. During the Small Business Review Panel process, small entity representatives generally agreed that this information is currently collected and available.[439] One small entity representative requested that the Bureau clearly define and provide specific examples of non-amortizing features.[440] The Bureau believes it is reasonable to interpret HMDA section 304(b)(6)(C) to require reporting non-amortizing features by identifying specific, well-defined non-amortizing loan features. Proposed § 1003.4(a)(27) requires reporting of balloon payments, as defined by 12 CFR 1026.18(s)(5)(i), under § 1003.4(a)(27)(i); interest only payments, as defined by 12 CFR 1026.18(s)(7)(iv), under § 1003.4(a)(27)(ii); a contractual term that could cause the loan to be a negative amortization loan, as defined by 12 CFR 1026.18(s)(7)(v), under § 1003.4(a)(27)(iii); or any other contractual term that would allow for payments other than fully amortizing payments, as defined by 12 CFR 1026.43(b)(2), under § 1003.4(a)(27)(iv). The Bureau believes that proposed § 1003.4(a)(27)(iv) concerning "other" types of non-amortizing features would implement HMDA section 304(b)(6)(C) so as to carry

[439] *See* Small Business Review Panel Report at 29-30.
[440] *See* Small Business Review Panel Report at 79.

out HMDA's purposes, and that it may be helpful in identifying other such features that may be present in the market or that may arise at a later time.

As discussed above, the Bureau is proposing to define the terms for reporting under Regulation C consistent with Regulation Z definitions to facilitate compliance. The Bureau is proposing to add comment 4(a)(27)-1 in order to facilitate compliance and provide additional guidance on alignment with Regulation Z. Proposed comment 4(a)(27)-1 would provide that an institution may rely on the definitions in Regulation Z for the contractual features to be reported, but clarifies that loans or applications should be reported without regard to whether the credit is for personal, family, or household purposes, without regard to whether the person to whom credit is extended is a consumer, without regard to whether the property is a dwelling, and without regard to whether the person extending credit is a creditor, as those terms are defined in Regulation Z.

Proposed appendix A instructions 4(a)(27)(i), (ii), (iii), and (iv) provide that financial institutions should indicate whether a particular feature is present by using true or false. The Bureau solicits comments on whether any exclusions for this reporting requirement for certain types of loans are appropriate, and on whether any additional non-amortizing features should be specifically identified rather than reported under § 1003.4(a)(27)(iv).

The Small Business Review Panel recommended that the Bureau seek public comment on what method of reporting non-amortizing features would minimize burden on small financial institutions while still meeting the Dodd-Frank Act reporting requirements and purposes of

HMDA.[441] Consistent with the recommendation of the Small Business Review Panel, the Bureau solicits feedback on what method of reporting non-amortizing features would minimize burden on small financial institutions while still meeting the Dodd-Frank Act reporting requirements and purposes of HMDA.

Section 1003.4(a)(27) is proposed to implement HMDA section 304(b)(6)(C). The proposed reporting requirement will provide the public and public officials with data to help determine whether financial institutions are serving the housing needs of their communities by providing information about the types of loans that are being made, and assist in identifying possible discriminatory lending patterns and enforcing antidiscrimination statutes by allowing information about similar loans to be compared and analyzed appropriately.

4(a)(28)

Regulation C does not require financial institutions to report information regarding the value of the property that secures or will secure the loan. HMDA section 304(b)(6)(A) requires the reporting of the value of the real property pledged or proposed to be pledged as collateral.[442] Proposed § 1003.4(a)(28) implements this requirement by requiring financial institutions to report the value of the property securing the covered loan or, in the case of an application, proposed to secure the covered loan relied on in making the credit decision.

Regulation C currently includes a requirement to report loan amount. Knowing the property value in addition to loan amount allows HMDA users to estimate the loan-to-value ratio (LTV). LTV measures a borrower's equity in the property and is a key underwriting and pricing

[441] Small Business Review Panel Report at 41.
[442] Dodd-Frank Act section 1094(3)(A)(iv), 12 U.S.C. 2803(b)(6)(A).

criterion. A 2009 GAO report on fair lending noted that LTV would be valuable for screening for discriminatory practices.[443] During the Board's 2010 Hearings, LTV was specifically mentioned as a topic of consideration.[444] Many panelists at the hearings supported adding LTV to Regulation C.[445]

Property valuation has also long been an issue of concern for consumers and fair housing advocates.[446] ECOA was amended in 1991 to require creditors to provide applicants with appraisal reports upon request for dwelling-secured loans.[447] ECOA was amended by the Dodd-Frank Act to mandate the provision of appraisals and other valuations developed in connection with applications for first lien dwelling-secured loans, and these requirements are implemented by the Bureau's ECOA valuations rule.[448] Adding property value to HMDA data will further HMDA's purposes by providing additional information on how institutions are serving the housing needs of their communities. The additional information about LTV may also help to explain disparities that otherwise might appear to be part of a potentially discriminatory pattern.

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[443] GAO, *Fair Lending: Data Limitations and the Fragmented U.S. Financial Regulatory Structure Challenge Federal Oversight and Enforcement Efforts*, GAO-09-704, 21 (July 2009), http://www.gao.gov/new.items/d09704.pdf.
[444] 75 FR 35030, 35032 (June 21, 2010).
[445] Atlanta Hearing, *supra* note 131; San Francisco Hearing, *supra* note 133; Chicago Hearing, *supra* note 137; Washington Hearing, *supra* note 130.
[446] Early fair housing litigation challenged discriminatory appraisal practices including, for example, a practice which adjusted property values downward if the ethnic composition of the neighborhood to which the property belonged was not homogenous. *See United States v. Am. Inst. of Real Estate Appraisers of Nat'l Ass'n of Realtors*, 442 F.Supp. 1072 (N.D. Ill. 1977). The 1988 amendments to the Fair Housing Act explicitly banned discriminatory appraisal practices, 42 U.S.C. 3605. The Federal Housing Enterprises Financial Safety and Soundness Act of 1992 provided for review of the GSEs with respect to potential discriminatory effects of appraisal guidelines, including consideration of the age of dwellings or the age of neighborhoods. 12 U.S.C. 4545(1), (6).
[447] Public Law 102-242, section 223, 105 Stat. 2236 (1991).
[448] 15 U.S.C. 1691(e); Regulation B § 1002.14; 78 FR 7216 (Jan. 31, 2013).

During the Small Business Review Panel process, small entity representatives expressed some concerns regarding reporting of property value.[449] Some small entity representatives noted that multiple valuations are sometimes developed during the application process, and that valuations may not be available for certain types of loans. One small entity representative recommended that the value reported should be the one relied on in the credit decision.[450]

Appendix A provides technical instructions for reporting the property value relied on in dollars. Proposed instruction 4(a)(28)-1 would provide that financial institutions should report the value of the property relied on in making the credit decision in dollars. Proposed instruction 4(a)(28)-2 would provide that if the value of the property was not relied on in making the credit decision, the value should be reported as "NA." The Bureau is proposing to add new comment 4(a)(28)-1 in order to facilitate compliance. Proposed comment 4(a)(28)-1 explains how to report the property value used by an institution in calculating loan-to-value ratio. The comment provides that if an institution relied on an appraised value for the property, it would report that value. However, if an institution relied on the purchase price of the property, it would report that value. The Bureau is also proposing to add new comment 4(a)(28)-2, which provides guidance for reporting property value when multiple valuations are obtained. It provides as an example that when a financial institution obtains two appraisals or other valuations with different values for the property, it reports the value relied on in making the credit decision.

The Small Business Review Panel recommended that the Bureau clarify in the proposed rule and seek public comment on which property valuations must be reported. As discussed

[449] *See* Small Business Review Panel Report at 30, 41.
[450] *See id.*

above, the proposal provides guidance on which property valuation to report.[451] Consistent with the recommendation of the Small Business Review Panel, the Bureau solicits feedback on which property valuations should be reported.

For the reasons given in the section-by-section analysis of proposed § 1003.4(a)(29), the Bureau believes that implementing HMDA through Regulation C to treat mortgage loans secured by all manufactured homes consistently, regardless of legal classification under State law, is reasonable, and is necessary and proper to effectuate HMDA's purposes and facilitate compliance therewith. Accordingly, pursuant to its authority under HMDA sections 305(a) and 304(b)(6)(A), the Bureau proposes § 1003.4(a)(28). The Bureau believes that this proposed reporting requirement is necessary and proper to effectuate the purposes of HMDA and facilitate compliance therewith. The proposed reporting requirement will provide the public and public officials with data to help determine whether financial institutions are serving the housing needs of their communities by providing information about the values of properties that are being financed; it will also assist public officials in distributing public-sector investment so as to attract private investment by providing information about property values; and it will assist in identifying possible discriminatory lending patterns and enforcing antidiscrimination statutes by allowing information about similar loans to be compared and analyzed appropriately.

4(a)(29)

Neither HMDA nor Regulation C requires financial institutions to report whether loans relating to manufactured homes are or would be secured by real or personal property. Section

[451] Small Business Review Panel Report at 41.

304(b) of HMDA permits disclosure of such other information as the Bureau may require.[452] For the reasons discussed below, the Bureau believes it may be appropriate to require financial institutions to report whether a manufactured home is legally classified as real property or as personal property.

Since 1988, Regulation C has required reporting of home purchase and home improvement loans and refinancings related to manufactured homes, whether or not the homes are considered real property under State law.[453] Manufactured homes serve vital housing needs in communities and neighborhoods throughout the United States. For example, manufactured housing is the largest unsubsidized source of affordable homeownership in the United States.[454] Manufactured homes also often share certain essential financing features with non-manufactured homes. But classifications of manufactured homes as real or personal property vary significantly among States and can be ambiguous.[455]

Regulation C's consistent treatment of manufactured housing in HMDA data has proven important to furthering HMDA's purposes and provided communities and public officials with important information about manufactured housing lending.[456] The Bureau believes that the unique nature of the manufactured home financing market warrants additional information

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[452] Section 1094(3)(A)(iv) of the Dodd-Frank Act amended section 304(b) of HMDA.
[453] 53 FR 31683, 31685 (Aug. 19, 1988).
[454] Ann M. Burkhart, *Bringing Manufactured Housing into the Real Estate Finance System*, 37 Pepperdine Law Review 427, 428 (2010), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1548441.
[455] *See* James M. Milano, *An Overview and Update on Legal and Regulatory Issues in Manufactured Housing Finance*, 60 Consumer Financial Law Quarterly Report 379, 383 (2006); Burkhart, *supra* note 438, at 430.
[456] Adam Rust & Peter Skillern, Community Reinvestment Association of North Carolina, *Nine Myths of Manufactured Housing: What 2004 HMDA Data says about a Misunderstood Sector* (2006), *available at* http://www.reinvestmentpartners.org/sites/reinvestmentpartners.org/files/Myths-and-Realities-of-Manufactured-Housing.pdf; Delaware State Housing Authority, *Manufactured Housing in Delaware: A Summary of Information and Issues* (2008), *available at* http://www.destatehousing.com/FormsAndInformation/Publications/manu_homes_info.pdf.

reporting. Although in many respects manufactured and site built housing are similar, manufactured home financing reflects certain key differences as compared to site built home financing. State laws treat site built homes as real property, with financing secured by a mortgage or deed of trust. On the other hand State law may treat manufactured homes as personal property or real property depending on the circumstances.[457] Manufactured home owners may own or rent the underlying land, which is an additional factor in manufactured home owners' total housing cost and can be relevant to financing.[458]

These features of manufactured home financing can significantly influence interest rates, loan pricing, appraisal and valuation practices, and applicable legal protections.[459] HMDA data from 2012 on manufactured homes highlight many of the differences between manufactured housing lending and lending related to site built homes. For example, 82 percent of conventional first-lien home purchase loans for manufactured homes were higher-priced, compared to 3.2 percent for similar loans for site built homes. The average rate spread of those higher-priced manufactured home loans was 6 percent, compared to 2.6 percent for the site built home loans. The denial rate for first-lien conventional owner-occupied home purchase loans for manufactured housing was 56 percent, compared to 13.7 percent for similar loans for site built homes. Given these differences and the importance of manufactured housing to low- and moderate-income families, the Bureau believes that additional information collection and reporting on manufactured housing will further the purposes of HMDA.

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[457] Milano, *supra* note 439 at 380.
[458] William Apgar, et al., *An Examination of Manufactured Housing Community- and Asset-Building Strategies* 5 (2002).
[459] GAO, *Federal Housing Administration: Agency Should Assess the Effects of Proposed Changes to the Manufactured Home Loan Program*, GAO 07-879, *available at* http://www.gao.gov/new.items/d07879.pdf.

Different legal regimes, tax implications, appraisal standards, and consumer protections can depend on whether the manufactured home is legally classified as personal property or as real property.[460] Further, the Bureau understands that there are different underwriting and pricing considerations based on the distinction. Because of the importance of manufactured housing to the housing market, the Bureau believes that additional information on the legal classification of the manufactured home will improve the utility of HMDA data for manufactured housing.

Participants at the Board's 2010 Hearings discussed the distinctions between chattel and real property manufactured home loans, and some recommended differentiating them in HMDA.[461] Additional feedback was also received as part of the Board's 2010 Hearings that supported differentiating real and personal property manufactured home loans. The Bureau understands that classifying the loan as either a real property or a personal property loan may not provide a complete picture of manufactured housing finance. For example, certain State laws permit manufactured homes to be legally classified as real property even if the home is sited on leased land, such as in a manufactured home community, and such a manufactured home could be secured by a leasehold mortgage.[462] The Bureau also understands that there could be reporting questions that arise from certain aspects of manufactured housing lending, such as lenders offering combination land/home financing wherein the manufactured home is secured as personal property but the land is secured as real property; or where the security interest taken in

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[460] *See generally* Burkhart, *supra* note 438.
[461] Washington Hearing, *supra* note 130.
[462] *See, e.g.*, Cal. Health & Safety Code § 18551(a)(1)(A); Colo. Rev. Stat. § 38-29-202(1)(d); Conn. Gen. Stat. § 21-67a; Fla. Stat. § 319.261; Idaho Code § 63-304(1)(b); N.H. Rev. Stat. § 477:44, subp. I; Or. Rev. Stat. § 446.626(1); S.C. Code § 56-19-510; Tex. Occ. Code § 1201.2055.

the manufactured home may change as the transaction progresses; or where a lender may, out of prudence, perfect its security interest in a manufactured home through multiple methods.[463] The Bureau understands that there may be ambiguities in certain State laws about the legal classification of a manufactured home as personal property or real property, and that, as a result, it may not be clear whether certain financing transactions should be classified as mortgage transactions.[464]

During the Small Business Review Panel process, the small entity representatives generally did not oppose collecting information on whether manufactured housing is legally classified as real or personal property. Several small entity representatives noted that State laws often determine under what circumstances a manufactured home is treated as real or personal property, and that there are pricing differences dependent on that classification. One small entity representative noted that this could be easily collected, and believed the data would be useful for examiners and consumer advocates and might help to clear up confusion as to the legal classification of the dwelling in certain circumstances.[465]

The Bureau's proposal is tied to the manufactured home's legal classification rather than characterizing the loan as a real property or personal property loan. Both GSE selling guides refer to the legal classification of the manufactured home for purposes of eligibility

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[463] Manufactured Housing Institute, *Quick Facts: Trends and Information About the Manufactured Housing Industry*, 6 (2013), http://www.manufacturedhousing.org/lib/forcedownload.asp?filepath=www.manufacturedhousing.org/admin/template/brochures/93temp.pdf; Milano, *supra* note 437, at 381 n. 14.

[464] *See generally* Milano *supra* note 439.; *See* Burkhart *supra* note 438 at 443; Uniform Manufactured Housing Act § 4(c) comment ("This provision eliminates the ambiguity that currently exists in some state statutes concerning the purposes for which the home is to be treated as real property. When a statutory provision that a manufactured home can be classified as real property does not include this type of language, courts have questioned whether the home is real property only for certain purposes, such as financing, or for all purposes.") (2012), *available at* http://www.uniformlaws.org/Committee.aspx?title=Manufactured%20Housing%20Act.

[465] *See* Small Business Review Panel Report at 32, 33, 99, and 127.

requirements.[466] The Bureau believes that the manufactured housing's legal classification under applicable State law will facilitate compliance by focusing the reporting requirement on the status of the dwelling, rather than on the characterization of the loan or how the obligation is secured. As discussed below, the Bureau is also proposing to collect additional information regarding the applicant or borrower's property interest in the land on which the manufactured home is located, which will provide more detailed HMDA data about manufactured housing loans when combined with data about the legal classification of the home.

Proposed additions to appendix A provide technical instructions for reporting the legal classification for manufactured housing. As discussed in the section-by-section analysis of proposed § 1003.4(a)(9) and proposed comment 4(a)(9)-2, if more than one property is taken, or in the case of an application, proposed to be taken as security for a single covered loan or application, a financial institution may report one of the properties in a single entry on its loan application register or report all of the properties using multiple entries on its loan application register. Regardless of whether the financial institution elects to report the transaction in one entry or more than one entry, the information required by § 1003.4(a)(29) should relate to the property identified under paragraph 4(a)(9). The Bureau is also proposing comment 4(a)(29)-2 to clarify how to report the information required by § 1003.4(a)(29) for a covered loan secured by, or in the case of an application, proposed to be secured by, more than one property.

For the reasons given, pursuant to its authority under sections 305(a) and 304(b)(6)(J) of HMDA, the Bureau is proposing § 1003.4(a)(29), which requires financial institutions to report

[466] Fannie Mae, *Fannie Mae Single Family Selling Guide* § B5-2-02 (June 24, 2014), *available at* http://www.fanniemae.com/content/guide/sel062414.pdf; Freddie Mac, *Freddie Mac Single Family Selling Guide* § H33.2 (June 24, 2014), *available at* http://www.freddiemac.com/singlefamily/guide/bulletins/pdf/062414Guide.pdf

whether a dwelling is legally classified as real property or as personal property, if the dwelling related to the property identified in § 1003.4(a)(9) is a manufactured home. Pursuant to its authority under HMDA section 305(a) to provide for adjustments for any class of transactions, the Bureau believes that interpreting HMDA to treat mortgage loans secured by all manufactured homes consistently is necessary and proper to effectuate HMDA's purposes and facilitate compliance therewith. In light of changes in the mortgage market, certain differences between manufactured housing lending and lending related to site built homes, and the importance of manufactured housing generally, especially for low- and moderate-income families, the Bureau believes proposed § 1003.4(a)(29) will provide necessary insight into this loan data and allow it to be used to help determine whether financial institutions are serving the housing needs of their communities, assist public officials in public-sector investment determinations, and assist in identifying possible discriminatory lending patterns and enforcing antidiscrimination statutes.

The Bureau solicits feedback on these requirements in general. In particular, the Bureau solicits feedback on whether reporting the legal classification of the dwelling appropriately captures distinctions between personal property and real property lending, whether possible ambiguities in State law could make compliance with the reporting requirement difficult, and whether additional guidance could be provided on what information financial institutions could rely on to facilitate compliance.

4(a)(30)

Neither HMDA nor Regulation C requires financial institutions to report information about what property interest applicants or borrowers have in the land on which their

manufactured homes are located. Section 304(b) of HMDA permits disclosure of such other information as the Bureau may require.[467] For the reasons discussed below, the Bureau believes it may be appropriate to require financial institutions to collect and report whether the applicant or borrower owns the land on which the manufactured home is or will be located through a direct or indirect ownership interest or leases the land through a paid or unpaid leasehold interest.

Manufactured home owners generally either own or lease the land on which the manufactured home is sited.[468] Land may be owned either directly or indirectly through a cooperative or similar ownership structure. A leasehold interest could arise through a lease with specified terms and rental payments or through a tenancy at will arising from the landowner's permission. Whether a manufactured home owner owns or rents the underlying land can have important implications for the financing of the transaction and its long-term affordability and the appreciation of the manufactured home.[469] Because of the importance of manufactured housing to the housing market, the Bureau believes that additional information on the applicant or borrower's land property interest may improve the utility of HMDA data for manufactured housing.

During the Small Business Review Panel process some small entity representatives believed that it could be burdensome to collect this information. One small entity representative noted that the information may be gathered for loan servicing, but it might not be available for withdrawn or denied loans.[470] The Bureau believes that financial institutions may already be

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[467] Section 1094(3)(A)(iv) of the Dodd-Frank Act amended section 304(b) of HMDA.
[468] Apgar, *supra* note 442.
[469] Kevin Jewell, Consumers Union, *Manufactured Housing Appreciation: Stereotypes and Data* (2003), http://consumersunion.org/pdf/mh/Appreciation.pdf.
[470] *See* Small Business Review Panel Report at 33, 127.

collecting or analyzing some information on land property interest for underwriting or servicing purposes. Cooperative fees, ground rent, and leasehold payments are included in the definition of mortgage-related obligations in § 1026.43(b)(8) of Regulation Z pursuant to the Bureau's 2013 ATR Final Rule, for example. Creditors subject to the rule are required to consider such obligations in assessing an applicant's ability-to-repay and to verify the information using reasonably reliable third-party records pursuant to § 1026.43(c).

Many manufactured homes are located on leased land. For example, in a manufactured home park, the home owner pays rent to the park owner for the right to occupy a lot in addition to making payments on the manufactured home loan.[471] The park owner typically provides sewer, water, roads, and other services.[472] A manufactured home owner could also lease land outside of a manufactured home park. Finally, manufactured homes are sometimes located on land for which the manufactured home owner does not own or have a formal lease. For example, a manufactured home owner may be permitted by a family member to locate the home on family land.[473] This arrangement could be formal or informal, without a specific agreement as to term or rent. Even in such an informal arrangement a tenancy at will leasehold interest may arise.[474]

As discussed above, if the land on which the manufactured home is located is owned it could be financed with the manufactured home in a land/home loan, or the land could be financed separately or already owned by the manufactured home loan borrower. An emerging scenario involves a manufactured home park owned as a cooperative by the residents, often

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[471] Katherine MacTavish, et al., *Housing Vulnerability Among Rural Trailer-Park Households*, 13 Georgetown Journal on Poverty Law and Policy 97 (2006).
[472] GAO, *Federal Housing Administration: Agency Should Assess the Effects of Proposed Changes to the Manufactured Home Loan Program*, GAO 07-879, http://www.gao.gov/new.items/d07879.pdf.
[473] *See* Small Business Review Panel Report at 56.
[474] Restatement (Second) of Property, Landlord & Tenant § 1.6 (1977).

called a resident-owned community.[475] As compared to owners of manufactured homes on leased land, the residents in such communities have greater control over the property on which their homes are located due to their communal ownership interest.[476] One study found that residents who own their communities benefit from lower lot fees, higher home sale prices, faster home sales, and access to better financing.[477]

Proposed additions to appendix A provide technical instructions for reporting land property interest for manufactured housing covered loans and applications. Proposed instruction 4(a)(30)-1 instructs financial institutions to indicate whether the applicant or borrower's interest in the land on which the manufactured home related to the covered loan or application is or will be located is a direct ownership interest, an indirect ownership interest (such as a home in a resident-owned community), a paid leasehold interest (such as a lease for a lot in a manufactured home park), or an unpaid leasehold interest (such as a home on family-owned land). Proposed instruction 4(a)(30)-1.e provides for reporting "not applicable" if the dwelling is not a manufactured home or the location for the manufactured home is not determined.

The proposal adds comment 4(a)(30)-1, which provides additional guidance on indirect ownership. The comment provides illustrative guidance on identifying resident-owned communities and examples of reporting land property interest depending on whether or not the applicant or borrower is a member of the ownership structure. Proposed comment 4(a)(30)-2 provides additional guidance on leasehold interests. The comment provides illustrative guidance on identifying paid and unpaid leasehold interests. As discussed in the section-by-section

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[475] Katherine MacTavish, *supra* note 453.
[476] Apgar, *supra* note 440.
[477] Sally Ward, et al., Carsey Institute, *Resident Ownership in New Hampshire's "Mobile Home Parks:" A Report on Economic Outcomes*, (2010), http://www.carseyinstitute.unh.edu/publications/Ward_Community_Fund.pdf.

analysis of proposed § 1003.4(a)(9) and proposed comment 4(a)(9)-2, if more than one property is taken, or in the case of an application, proposed to be taken as security for a single covered loan or application, a financial institution may report one of the properties in a single entry on its loan application register or report all of the properties using multiple entries on its loan application register. Regardless of whether the financial institution elects to report the transaction in one entry or more than one entry, the information required by § 1003.4(a)(30) should relate to the property identified under paragraph 4(a)(9). The Bureau is also proposing comment 4(a)(30)-3 to clarify how to report the information required by § 1003.4(a)(30) for a covered loan secured by, or in the case of an application, proposed to be secured by, more than one property.

For the reasons given, pursuant to its authority under sections 305(a) and 304(b)(6)(J) of HMDA, the Bureau is proposing § 1003.4(a)(30), which requires financial institutions to report whether the applicant or borrower owns the land on which the manufactured home is or will be located through a direct or indirect ownership interest or leases the land through a paid or unpaid leasehold interest, if the dwelling related to the property identified in § 1003.4(a)(9) is a manufactured home. For the reasons given, the Bureau believes proposed § 1003.4(a)(30) is necessary to carry out HMDA's purposes, because it will provide necessary insight into loan data and allow it to be used to help determine whether financial institutions are serving the housing needs of their communities, since this information can have important implications for the financing, long-term affordability, and appreciation of the housing at issue.

The Bureau solicits feedback on what information financial institutions collect about an applicant's or borrower's land property interest for manufactured home transactions, and about any potential difficulties associated with complying with the proposed reporting requirement.

The Bureau solicits feedback about whether financial institutions consider payments that may be associated with such interests in underwriting, such as lease payments, ground rents, or cooperative fees, and about what information they typically collect regarding such payments. The Bureau specifically solicits feedback regarding reporting land property interest for land that is neither formally leased nor owned, such as family-owned land which the applicant or borrower does not have a direct ownership interest in, and whether the proposal appropriately addresses that scenario. The Bureau also specifically solicits feedback on resident-owned communities and whether the proposal appropriately addresses them. The Bureau solicits feedback on whether this proposal, combined with the proposal regarding manufactured home legal classification, appropriately captures and differentiates the lending products in manufactured home finance; on whether it will allow for communities to assess how financial institutions are meeting the needs of manufactured home owners; and on whether different or additional requirements, enumerations, or guidance is appropriate.

4(a)(31)

Section 1003.4(a)(5) requires financial institutions to report the property type to which a loan or application relates. Financial institutions must report whether the dwelling is a one-to four-family dwelling (other than manufactured housing), a manufactured home, or a multifamily dwelling. Section 1003.4(a)(5) does not require financial institutions to report the number of units in properties. HMDA to section 304(b)(6)(J) permits disclosure of such other information as the Bureau may require. For the reasons discussed below, pursuant to HMDA sections 305(a) and 304(b)(6)(J), the Bureau is proposing to add § 1003.4(a)(31), which requires a financial institution to report the number of individual dwelling units related to the property securing the covered loan or, in the case of an application, proposed to secure the covered loan. As discussed

above, the Bureau is proposing to replace the current property type reporting requirement with construction method and to separate the concept of the number of units from that reporting requirement. Separating the property type requirement into two distinct reporting requirements would better align HMDA reporting with industry practice and will improve the quality of the data.

The Bureau believes that information on the total number of units may improve the utility of HMDA data both for covered loans and applications related to one-to four-family dwellings. The information will allow single family homes to be differentiated from duplexes and similar properties. Multifamily dwellings would be reported with the exact number of units in the property, allowing for more robust analysis of multifamily dwelling finance. The Bureau understands that tracking total number of units is consistent with the MISMO/ULDD data standard.[478] As discussed below, the Bureau is also considering a requirement to report the number of income-restricted units for multifamily dwellings with affordable housing subsidies. This information will be useful when combined with the total number of units in a multifamily dwelling to determine the percentage of subsidized units for mixed-income affordable housing projects. As such, the proposal would help serve the HMDA purposes of assisting the public and government officials to determine whether financial institutions are serving the housing needs of their communities, and it would assist public officials in targeting public investments.

[478] *See* MISMO, *Version 3.3 of the MISMO Residential Reference Model* (Financed Unit Count); Fannie Mae, *Fannie Mae Implementation Guide for Loan Delivery Data*, Appendix A (Oct. 29, 2013), https://www.fanniemae.com/content/technology_requirements/uldd-implementation-guide-appendix-a.pdf; Freddie Mac, *Freddie Mac Implementation Guide for Loan Delivery Data*, Appendix A (Jan. 29, 2014), http://www.freddiemac.com/singlefamily/sell/docs/FRE_IG_selling_system_appendix_a_data_requirements.pdf.

Multifamily housing has always been an essential component of the nation's housing stock. In the wake of the housing crisis, multifamily housing has taken on an increasingly important role in communities, as families have turned to rental housing for a variety of reasons.[479] Many participants at the Board's 2010 Hearings expressed a desire for HMDA to include more specific data about multifamily properties.[480] HMDA highlights the importance of multifamily lending to the recovering housing finance market and to consumers. At the peak of the housing market in 2004, 48,437 originated multifamily loans were reported under HMDA. By 2010 the volume for originated multifamily loans had dropped to 18,974. However, in 2012 multifamily loans rose sharply to 36,761—a much greater rise than the originated loan volume for one- to four-family dwellings. Greater detail about multifamily housing finance may provide additional information about whether financial institutions are serving the housing needs of their communities, and may provide information to assist public official in making decisions about public-sector investments, and to help identify potential fair lending concerns.

The Bureau notes that many of Regulation C's current and proposed reporting requirements may not be relevant for applications or loans related to multifamily dwellings. Financial institutions report that they often have different processes for commercial loans, including loans related to multifamily dwellings, which increases the burden of reporting data for such loans. The Bureau recognizes the potential burden associated with reporting HMDA data for applications and loans related to multifamily dwellings. However, the importance of multifamily housing to the nation's housing stock and feedback from public officials and

[479] San Francisco Hearing, *supra* note 133.
[480] San Francisco Hearing, *supra* note 133.

consumer advocates suggests that potential benefits to the public and public officials may justify these potential burdens, and the Bureau believes that disclosure of this information, pursuant to proposed § 1003.4(a)(31), is necessary to carry out HMDA's purposes.

Proposed instructions in appendix A provide technical details for reporting total individual dwelling units. Proposed comment 4(a)(31)-1 provides guidance for reporting total units for loans involving multiple properties and cross-references comment 4(a)(9)-2.

The Bureau understands that tracking total number of units is consistent with the MISMO/ULDD data standard.[481] However, the Bureau is concerned that some financial institutions may not differentiate total unit counts for two- to four-family dwellings. During the Small Business Review Panel process, some small entity representatives preferred distinguishing only between one- to four-family dwellings and multifamily dwellings with no total unit count; others preferred distinguishing between single family dwellings, two- to four-family dwellings, and multifamily dwellings; and still others suggested ranges of units for multifamily dwellings.[482] The Small Business Review Panel recommended that the Bureau seek public comment on appropriate alternatives to reporting the total number of dwelling units, including whether financial institutions should report ranges of the number of units.[483] Based on this feedback and consistent with the recommendation of the Small Business Review Panel, the Bureau solicits feedback on appropriate alternatives to reporting the total number of dwelling

[481] *See* MISMO, *Version 3.3 of the MISMO Residential Reference Model* (Financed Unit Count); Fannie Mae, *Fannie Mae Implementation Guide for Loan Delivery Data*, Appendix A (Oct. 29, 2013), https://www.fanniemae.com/content/technology_requirements/uldd-implementation-guide-appendix-a.pdf; Freddie Mac, *Freddie Mac Implementation Guide for Loan Delivery Data*, Appendix A (Jan. 29, 2014), http://www.freddiemac.com/singlefamily/sell/docs/FRE_IG_selling_system_appendix_a_data_requirements.pdf.
[482] *See* Small Business Review Panel Report at 32, 99, 127.
[483] *See* Small Business Review Panel Report at 42.

units, including whether financial institutions should report ranges of the number of units such as one, two to four, and five or more.

4(a)(32)

Neither HMDA nor Regulation C requires financial institutions to report information about the number of dwelling units in multifamily dwellings that are income-restricted pursuant to affordable housing programs. Section 304(b) of HMDA permits disclosure of such other information as the Bureau may require.[484] For the reasons discussed below, pursuant to HMDA sections 305(a) and 304(b)(6)(J), the Bureau is proposing § 1003.4(a)(32), which requires financial institutions to collect and report information on the number of individual dwelling units in multifamily dwellings that are income-restricted pursuant to Federal, State, or local affordable housing programs.

Affordable multifamily housing is an important component of the housing market for low- and moderate-income consumers and an important investment of Federal, State, and local government resources. A December 2013 study by the Harvard Joint Center on Housing Studies noted that in 2012 approximately 21.1 million households were cost-burdened (*i.e.*, spending more than 30 percent of income on housing), and estimated that, while 19.3 million households were eligible for affordable housing assistance, only 4.6 million received such assistance.[485] For these reasons, and as explained below, the Bureau believes that additional information about whether multifamily housing loans are related to multifamily dwellings with affordability restrictions would further HMDA's purposes, in part by providing more useful information about

[484] Section 1094(3)(A)(iv) of the Dodd-Frank Act amended section 304(b) of HMDA.
[485] Harvard University Joint Center for Housing Studies, *America's Rental Housing: Evolving Market and Needs* (Dec. 9, 2013), http://www.jchs.harvard.edu/americas-rental-housing.

these vital public resources, and thereby assisting public officials in distributing public-sector investment so as to attract private investment to areas where it is needed.

The Bureau believes that data reported pursuant to this proposal could be combined with other existing publically available data to obtain additional detail on multifamily dwelling affordability. For example, HUD maintains publically available data on Low-Income Housing Tax Credit multifamily dwellings;[486] publically available data on FHA-insured multifamily dwellings, which includes information on whether the insured dwelling loan included affordability components from Low-Income Housing Tax Credits or tax exempt bonds;[487] and information about contracts for Section 8-assisted multifamily dwellings.[488] Other organizations maintain or aggregate data on multifamily affordable housing which could be utilized with HMDA data provided by this proposal.[489]

The Bureau recognizes that reporting information regarding affordability restrictions may entail new burden for some financial institutions that do not ordinarily make loans to affordable housing properties and may be unfamiliar with these programs. Conversely, the Bureau understands that many financial institutions specialize in this kind of lending or have special programs designed for such lending and believes that such institutions may have this information readily available.

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[486] Low-Income Housing Tax Credit Database, http://lihtc.huduser.org/.
[487] Insured Multifamily Mortgages Database, http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/comp/rpts/mfh/mf_f47.
[488] Multifamily Assistance and Section 8 Contracts Database, http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh/exp/mfhdiscl.
[489] *See, e.g.*, the National Housing Preservation Database, http://www.preservationdatabase.org/.

Based on these considerations, the Bureau is proposing to require financial institutions to collect and report information on the number of individual dwellings units that are income-restricted pursuant to Federal, State, or local affordable housing programs.

The proposal adds technical instructions for reporting in appendix A. Proposed instruction 4(a)(32)-1 provides general reporting information. Proposed instruction 4(a)(32)-1.a specifies to report "NA" if the dwelling is not a multifamily dwelling. Proposed instruction 4(a)(32)-1.b specifies to report "0" for a multifamily dwelling that contains no individual dwelling units subject to affordable housing income restrictions.

The Bureau is also proposing to add several comments. Proposed comment 4(a)(32)-1 clarifies that income-restricted affordable housing units are generally subject to income level restrictions defined by area median income and provided by HUD or another agency responsible for implementing the applicable affordable housing program. The comment provides that such restrictions are frequently part of programs that provide public funds, special tax treatment, or density bonuses for affordable housing purposes. The comment provides that rent control or rent stabilization and acceptance of Housing Choice Vouchers or other portable housing assistance are not considered to create income-restricted affordable housing individual dwelling units for purposes of proposed § 1003.4(a)(32).

Proposed comment 4(a)(32)-2 provides illustrative examples of Federal programs and funding sources that may result in individual dwellings units that are reportable under § 1003.4(a)(32). Proposed comment 4(a)(32)-3 provides illustrative examples of State and local programs and funding sources that may result in individual dwelling units that are reportable under § 1003.4(a)(32). Proposed comment 4(a)(32)-4 provides guidance for reporting income-restricted units for loans involving multiple properties and cross-references comment 4(a)(9)-2.

The Bureau considered whether to require financial institutions to report the specific affordable housing program related to the multifamily dwelling, or the area median income level at which units in the multifamily dwelling are considered affordable. However, the Bureau believes that the large variety of Federal, State, and local affordable housing programs would make implementing a more specific reporting requirement difficult and burdensome. Similarly, reporting income affordability level for units in the multifamily dwelling may be unduly burdensome. The Bureau understands that many affordable multifamily dwellings include multiple layers of affordable housing program subsidies in development and long-term financing, further complicating a specific reporting requirement.

During the Small Business Review Panel process, small entity representatives generally stated that information concerning multifamily affordable housing is not generally disclosed during the loan process and may be labor-intensive to obtain.[490] The Small Business Review Panel recommended that the Bureau seek public comment concerning the extent to which information about multifamily affordable housing programs is available in loan files, how financial institutions currently use this information, and the costs and other burdens of obtaining these data.[491] Consistent with the recommendation of the Small Business Review Panel, the Bureau solicits feedback on the extent to which information about multifamily affordable housing programs is available in loan files, how financial institutions currently use this information, and the costs and other burdens of obtaining these data.

[490] *See* Small Business Review Panel Report at 42.
[491] *Id.*

The Bureau solicits feedback generally about this requirement. The Bureau also solicits feedback on whether additional information about the program or type of affordable housing would be valuable and serve HMDA's purposes, and about the burdens associated with collecting such information compared with the burdens of the proposal. Comment is solicited on the following points: whether the Bureau should require reporting of information concerning programs targeted at specific groups (such as seniors or persons with disabilities); whether income restrictions above a certain threshold should be excluded for reporting purposes (such as income restrictions above the area median income); whether it would be appropriate to simplify the requirement and report only whether a multifamily dwelling contains a number of income-restricted units above a certain percentage threshold; whether financial institutions should be required to report the specific affordable housing program or programs; and whether financial institutions should be required to report the area median income level at which units in the multifamily dwelling are considered affordable. The Bureau also solicits feedback on whether the burden on financial institutions may be reduced by providing instructions or guidance specifying that institutions only to report income-restricted dwelling units that they considered or were aware of in originating, purchasing, or servicing the loan.

4(a)(33)

Regulation C does not require financial institutions to report information concerning the application channel of covered loans and applications. HMDA section 304(b)(6)(E) requires financial institutions to disclose "the channel through which application was made, including

retail, broker, and other relevant categories," for each covered loan and application.[492] Proposed § 1003.4(a)(33) implements this requirement by requiring financial institutions to record certain information related to the application channel of each reported origination and application.

Congress added the requirement to record information about the application channel to the HMDA data collection because it believed that it would enrich HMDA data. For example, Congress expressed concerns that the wholesale channel may have presented greater risks to applicants than the retail channel during the financial crisis.[493] Participants in the Board's 2010 Hearings also urged for the addition of information about the application channel to the HMDA data collection.[494] The loan terms and rates that a financial institution offers an applicant may depend on how the applicant submits the application (*i.e.*, whether through the retail, wholesale, or correspondent channel).[495] Thus, identifying transactions by channel may help to interpret loan pricing and other information in the HMDA data.

The mortgage industry generally operates through three primary application channels: retail, wholesale, and correspondent. These channels are often characterized by three factors:

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[492] Dodd-Frank Act, section 1094(3), 12 U.S.C. 2803(b)(6)(E).

[493] *See, e.g.,* House Consideration of HR 4173, 155 Cong. Record H 14430 (daily ed. Dec. 9, 2009) (Cong. Ellison (MN)) ("And nearly one in four U.S. borrowers currently owes more on their mortgage than their home is worth. This, in large measure, happened, Madam Chair, because mortgage brokers, unregulated lured families with low teaser-rate interest rates that later skyrocketed to unaffordable levels, hidden fees, and charges in incomprehensible terms and conditions that brought on the housing crisis and undermined the financial system."); Senate Consideration of S 3217, 156 Cong. Rec. S 3323 (daily ed. May 6, 2010) (Sen. LeMieux (FL)) ("One is we know mortgages were given to people who should not have had mortgages-people who had no income and no jobs. They called them ninja loans-no income, no jobs. There were a lot of them in my State of Florida. Why were they written? Many of them were written because they were written by mortgage brokers and banks that did not have to retain any of those mortgages on their books. There were no underwriting standards. They could just ship them off. They had no skin in the game and no responsibility.").

[494] *See, e.g.,* Chicago Hearing, *supra* note 137 (remarks of Janis Bowdler, Deputy Director of the Wealth Building Project, National Council of La Raza); *id*. (remarks of Michael Collins, Researcher, University of Wisconsin).

[495] *See, e.g.,* Keith Ernst, et al, "Steered Wrong: Brokers, Borrowers, and Subprime Loans," Center for Responsible Lending, April 8, 2008, *available at* http://www.responsiblelending.org/mortgage-lending/research-analysis/steered-wrong-brokers-borrowers-and-subprime-loans.pdf.

(1) which institution received the application directly from the applicant, (2) which institution made the credit decision, and (3) in which institution's name the loan closed (*i.e.*, to whom the obligation initially was payable). The term "retail channel" generally refers to situations where the applicant submits the application directly to the financial institution that makes the credit decision on the application and to whom the obligation is initially payable.

On the other hand, the term "wholesale channel," which is also referred to as the "broker channel," generally refers to situations where the applicant submits the application to a mortgage broker and the broker sends the application to a financial institution that makes the credit decision on the application and to whom the obligation is initially payable. The wholesale channel may also include some arrangements, such as table funding, in which the obligation is not initially payable to the financial institution that makes the credit decision.

The third channel includes correspondent arrangements between two financial institutions. A purchasing financial institution may have different arrangements with correspondents and may or may not delegate underwriting authority to a correspondent. A correspondent with delegated underwriting authority processes an application much like the retail channel described above. The correspondent receives the application directly from the applicant, makes the credit decision, closes the loan in its name, and immediately or within a short period of time sells the loan to another institution. Correspondents with nondelegated authority operate more like a mortgage broker in the wholesale channel. These correspondents receive the application from the applicant, but prior to closing involve a third-party institution that makes the credit decision. The transaction generally closes in the name of the

correspondent, which immediately or within a short period of time sells the loan to the third-party institution that made the credit decision.[496]

Collecting information about the application channel presents challenges due to the complexities of the mortgage market and HMDA's reporting requirements. As discussed above in the section-by-section analysis of proposed § 1003.4(a), the financial institution that made the credit decision prior to closing reports the application or origination, regardless of whether the loan closed or would have closed in that institution's name. Since retail lenders, mortgage brokers, and correspondent lenders all may make a credit decision on an application, financial institutions that report HMDA data include financial institutions acting in all of those roles. In addition, each financial institution may play a different role in different transactions, *e.g.*, act as a retail lender in one transaction and as a correspondent lender in another transaction. Furthermore, financial institutions may characterize the different application channels differently and may not routinely collect information about application channels.

The Bureau recognizes the potential challenges and burdens with collecting information about application channels. However, the Bureau believes that the potential benefits to the public and to public officials may justify these potential burdens. The Bureau also believes that disclosure of information about application channels is an appropriate method of implementing HMDA section 304(b)(6)(E) in a manner that carries out HMDA's purposes. Based on these considerations, the Bureau proposes to implement the Dodd-Frank amendment by requiring financial institutions to collect and report information on whether the application was submitted

[496] *See generally*, 78 FR 11280, 11284 (Feb. 15, 2013); CFPB Examination Procedure, http://files.consumerfinance.gov/f/201401_cfpb_mortgage-origination-exam-procedures.pdf.

directly to the financial institution reporting the loan or application and on whether the covered loan closed or, in the case of an application, would have closed in the name of the financial institution reporting the covered loan or application. The Bureau believes that this approach implements the relevant Dodd-Frank Act amendment to HMDA in a manner that carries out HMDA's purposes, without imposing undue burden.

Accordingly, pursuant to HMDA sections 304(b)(6)(E) and 305(a), the Bureau proposes § 1003.4(a)(33), which provides that, except for purchased covered loans, a financial institution is required to report the following information about the application channel of the covered loan or application: whether the applicant or borrower submitted the application for the covered loan directly to the financial institution; and whether the obligation arising from the covered loan was or, in the case of an application, would have been initially payable to the financial institution. The Bureau solicits feedback regarding whether this proposed requirement is appropriate generally and regarding alternative ways to collect application channel information.

To facilitate compliance, the Bureau proposes to except purchased covered loans from this requirement. The Bureau believes that reporting of the information required by proposed § 1003.4(a)(33) for purchased covered loans would not provide valuable information because there would likely be little variation in the information reported (*i.e.*, a financial institution reporting a purchase of a covered loan would nearly always report that the application was not submitted directly to the financial institution and that the covered loan did not close in the name of the financial institution). Accordingly, the Bureau believes that it may not be appropriate to burden financial institutions with the requirement to report the information required by proposed § 1003.4(a)(33) for purchased covered loans. The Bureau solicits feedback on whether this exception is appropriate.

During the Small Business Review Panel process, small entity representatives expressed concerns about the burden associated with collecting application channel information given the complexities of their business practices.[497] The Panel recommended that the Bureau seek comment on the most effective means of collecting information about the application channel of the reported covered loans and applications.[498] Consistent with the Small Business Review Panel's recommendation, the Bureau seeks feedback on whether alternative ways of collecting application channel information would achieve the statutory requirement in a more efficient manner.

The Bureau is also proposing commentary to clarify the reporting requirements. Proposed comment 4(a)(33)-1 contains several examples that illustrate when an application is submitted directly to a financial institution. Proposed comment 4(a)(33)-2 clarifies that proposed § 1003.4(a)(33) requires financial institutions to report whether the obligation arising from a covered loan or application was or would have been initially payable to the institution. Proposed comment 4(a)(33)-3 explains how to report the application channel information if the financial institution is reporting the credit decision made by an agent consistent with comment 4(a)-5. Proposed additions to appendix A provide technical instructions regarding how to enter the application channel data on the loan application register.

4(a)(34)

Regulation C does not require financial institutions to report information regarding a loan originator identifier. HMDA section 304(b)(6)(F) requires the reporting of, "as the Bureau may

[497] *See, e.g.,* Small Business Review Panel Report at 26.
[498] *See id* at 39-40.

determine to be appropriate, a unique identifier that identifies the loan originator as set forth in section 1503 of the [Secure and Fair Enforcement for] Mortgage Licensing Act of 2008" (S.A.F.E. Act).[499] Proposed § 1003.4(a)(34) implements this requirement by requiring financial institutions to report, for a covered loan or application, the unique identifier assigned by NMLSR for the mortgage loan originator, as defined in Regulation G § 1007.102 or Regulation H § 1008.23, as applicable.

The S.A.F.E. Act provides for a unique identifier under the NMLSR for residential mortgage loan originators.[500] The S.A.F.E. Act requirements are implemented by the Bureau's Regulations G and H.[501] The Bureau believes that implementing the Dodd-Frank Act requirement for a mortgage loan originator unique identifier will improve HMDA data and assist in identifying and addressing potential issues, such as training deficiencies with specific loan originators, as well as strengthen the transparency of the residential mortgage market. The ability to identify an individual who has primary responsibility in the transaction will enable new dimensions of analysis, including being able to link individual mortgage loan originators or groups of mortgage loan originators to a financial institution. The NMLSR mortgage loan originator unique identifier also provides a vehicle for industry to self-test and determine appropriate corrective measures when it identifies individual misconduct through self-analysis of HMDA data.

A requirement to collect and report a mortgage loan originator unique identifier may impose some burden on financial institutions. However, the Bureau believes that the potential

[499] Dodd-Frank Act section 1094(3)(A)(iv), 12 U.S.C. 2803(b)(6)(F).
[500] 12 U.S.C. 5107(c).
[501] 12 CFR parts 1007 (Regulation G) and 1008 (Regulation H).

benefits to the public and public officials justify these potential burdens, and the Bureau believes that disclosure of this information is an appropriate method of implementing HMDA section 304(b)(6)(F) and carrying out HMDA's purposes. This information is provided on certain loan documents pursuant to the loan originator compensation requirements under TILA.[502] This information will also be provided on the TILA-RESPA integrated disclosure form starting on August 1, 2015.[503] As a result, the NMLSR unique identifier for the mortgage loan originator will be readily available to HMDA reporters at little to no ongoing cost. Accordingly, the Bureau is proposing § 1003.4(a)(34), which provides that a financial institution shall report, for a covered loan or application, the unique identifier assigned by the NMLSR for the mortgage loan originator as defined in Regulation G § 1007.102 or Regulation H § 1008.23, as applicable.

Proposed instruction 4(a)(34)-1 in appendix A provides technical instructions regarding how to enter the NMLSR ID on the loan application register. This proposed instruction provides that a financial institution must enter the NMLSR mortgage loan originator unique identifier as set forth in the S.A.F.E. Act, as implemented by Regulation G (S.A.F.E. Mortgage Licensing Act—Federal Registration of Residential Mortgage Loan Originators), 12 CFR part 1007, and Regulation H (S.A.F.E. Mortgage Licensing Act—State Compliance and Bureau Registration System), 12 CFR part 1008. Proposed instruction 4(a)(34)-2 in appendix A provides that, in the event that the mortgage loan originator is not required to obtain and has not been assigned an NMLSR ID, a financial institution must enter "NA" for not applicable.

[502] Regulation Z § 1026.36(g).
[503] Regulation Z § 1026.37(k).

Proposed comment 4(a)(34)-1 discusses the requirement that a financial institution report the NMLSR ID for the mortgage loan originator and describes the NMLSR ID. Proposed comment 4(a)(34)-2 discusses the requirement that a financial institution report "NA" for not applicable when the mortgage loan originator is not required to obtain and has not been assigned an NMLSR ID. Proposed comment 4(a)(34)-2 also provides that, if a mortgage loan originator has been assigned an NMLSR ID, a financial institution complies with proposed § 1003.4(a)(34) by reporting the mortgage loan originator's NMLSR ID regardless of whether the mortgage loan originator is required to obtain an NMLSR ID for the particular transaction being reported by the financial institution. The proposed comment provides an illustrative example.

Proposed comment 4(a)(34)-3 explains that, in the event that more than one individual meets the definition of a mortgage loan originator, as defined in Regulation G § 1007.102 or Regulation H § 1008.23, for a covered loan or application, a financial institution complies with proposed § 1003.4(a)(34) by reporting the NMLSR ID of the individual mortgage loan originator with primary responsibility for the transaction.[504] The proposed comment explains that a financial institution that establishes and follows a reasonable, written policy for determining which individual mortgage loan originator has primary responsibility for the reported transaction complies with proposed § 1003.4(a)(34).

During the Small Business Review Panel process, the small entity representatives generally supported the proposal to require the NMLSR identifier for the mortgage loan

[504] The Bureau's 2013 Final Loan Originator Rule and 2013 TILA-RESPA Final Rule also provide standards for identifying the appropriate loan officer or loan originator where more than one individual is listed in the loan documents or disclosure documents, as applicable. *See* Regulation Z § 1026.36(g), comment 36(g)(1)(ii)-1; § 1026.37(k), comment 37(k)-3.

originator involved in the transaction.[505] One small entity representative noted that the information is already collected on RESPA forms, but urged the Bureau to specify clearly when the identifier must be provided.[506] Another small entity representative, however, expressed concern about the potential unmerited negative impact on loan originators who are identified with a significant number of loans that fail for reasons other than inadequate underwriting.[507] With respect to each of the unique identifiers specified in the Dodd-Frank Act, including the mortgage loan originator identifier, the Small Business Review Panel recommended that the Bureau seek comment on each identifier under consideration and on whether each of the identifiers should be required for all entries on the loan application register, or only for loan originations and purchases.[508] Consistent with the Small Business Review Panel's recommendations, the Bureau solicits feedback on its proposal requiring financial institutions to report, for a covered loan or application, the unique identifier assigned by the NMLSR for the mortgage loan originator. In addition, the Bureau specifically solicits comment on whether the mortgage loan originator unique identifier should be required for all entries on the loan application register, including applications that do not result in originations, or only for loan originations and purchases.

4(a)(35)

Currently, Regulation C does not require financial institutions to report information regarding recommendations received from automated underwriting systems, and HMDA does not expressly require this itemization. Section 304(b) of HMDA permits the disclosure of "such

[505] *See* Small Business Review Panel Report at 26.
[506] *Id.*
[507] *Id.*
[508] *Id.* at 39.

other information as the Bureau may require."[509] For the reasons discussed below, the Bureau believes it may be appropriate to require financial institutions to report information related to the automated underwriting system used to evaluate the application and the recommendation generated by that system.

Financial institutions often use an automated underwriting system (AUS) to evaluate an applicant's credit risk. As part of the Board's 2010 Hearings, feedback indicated that HMDA data would be improved if institutions collected and reported the automated underwriting system used in evaluating an application and the recommendation generated by that system.[510] For example, the Federal Trade Commission stated that "[t]his information is often crucial to isolating and examining discretion in a lender's loan approval and denial decisionmaking."[511] The Bureau believes that requiring financial institutions to collect and report the automated underwriting system used to evaluate an application, and the recommendation generated by that system, may further the purposes of HMDA. Information about automated underwriting would help the public and public officials evaluate whether financial institutions are serving the housing needs of their communities and assist in identifying possible discriminatory lending patterns by allowing information about similar loans and applications to be compared and analyzed appropriately. The Bureau believes that AUS data could improve the accuracy of fair lending analysis used to identify potential underwriting disparities. By including key information considered by financial institutions in their underwriting decisions, financial regulators can more

[509] Dodd-Frank Act section 1094(3)(A)(iv), 12 U.S.C. 2803(b)(6)(J).
[510] *E.g.*, Washington Hearing, *supra* note 130.
[511] Comment Letter of Donald Clark, Secretary, Federal Trade Commission, December 3, 2010.

effectively monitor institutions for possible discrimination and reduce the likelihood of false positives that increase regulatory costs for both institutions and regulators.

However, collecting and reporting data on automated underwriting systems may pose some concerns. The automated underwriting systems used by financial institutions to evaluate applications may vary between institutions, as may the recommendations generated by those systems. Financial institutions may also have different policies and procedures for how they use automated underwriting systems and recommendations in the credit decision. In addition, automated underwriting systems may evolve over time. Financial institutions may also use multiple automated underwriting systems to evaluate an application and may consider multiple recommendations generated by those systems in their underwriting process. Requiring the collection of information about automated underwriting systems may impose burden on financial institutions.

Notwithstanding the concerns associated with collecting and reporting information about automated underwriting systems, the potential benefits to the public and public officials may justify any potential burden. The Bureau believes that the collection and reporting of information related to automated underwriting systems, pursuant to proposed § 1003.4(a)(35), is necessary to carry out HMDA's purposes. This data would assist in understanding a financial institution's underwriting decisionmaking and would also provide useful information for fair lending examinations. Based on these considerations and pursuant to its authority under sections 305(a) and 304(b)(6)(J) of HMDA, the Bureau is proposing § 1003.4(a)(35)(i), which provides that except for purchased covered loans, a financial institution shall report the name of the automated underwriting system it used to evaluate the application and the recommendation generated by that automated underwriting system. In addition, the Bureau is proposing

§ 1003.4(a)(35)(ii), which defines an automated underwriting system as 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. The Bureau solicits feedback regarding whether these proposed requirements are appropriate and whether there are alternative ways to collect information about automated underwriting systems. For example, financial institutions could report the recommendation generated by the automated underwriting system used to evaluate the application in defined categories, such as "recommended approval" or "recommended referral for further underwriting." In addition, the Bureau specifically solicits feedback regarding whether limiting the definition of an automated underwriting system as proposed in § 1003.4(a)(35)(ii) to one that is developed by a securitizer, Federal government insurer, or guarantor is appropriate. The Bureau is not proposing commentary to proposed § 1003.4(a)(35)(ii) because the Bureau believes that the proposed definition is straightforward and clear. However, the Bureau solicits feedback regarding whether commentary is needed to clarify this proposed definition or to facilitate compliance.

The Bureau believes that financial institutions that use automated underwriting systems to evaluate applications will be able to easily identify the system used and the recommendation generated by that system for purposes of HMDA reporting. However, the Bureau has excluded purchased covered loans from the requirements of proposed § 1003.4(a)(35) because the Bureau anticipates that it could be burdensome for financial institutions that purchase covered loans to identify the AUS data. The Bureau solicits feedback on whether this exclusion is appropriate.

During the Small Business Review Panel process, the small entity representatives indicated that, in general, their financial institutions use manual underwriting procedures, and

reporting AUS recommendations could provide an incomplete and distorted picture of loan transactions, triggering unnecessary fair lending scrutiny.[512] A number of small entity representatives expressed concern that, if financial institutions are required to report AUS results, there would be an increase in the "false positive" indicators of fair lending violations.[513] Small entity representatives were particularly concerned about AUS results that do not align with the action taken for reasons unrelated to underwriting, and the potential costs and negative publicity that may result.[514] A number of small entity representatives also questioned the value of AUS information and whether the HMDA purposes the information would serve could be realized in other ways.[515] The Small Business Review Panel recommended that the Bureau solicit additional information in the proposed rule on the extent to which AUS-generated information is used by small financial institutions and how that information is used in credit decisions.[516] The Small Business Review Panel also recommended that the Bureau seek public comment on whether any method of reporting on the use of an automated underwriting system that is included in the proposed rule is consistent with the current practices of small financial institutions.[517] Consistent with the Small Business Review Panel's recommendations, the Bureau solicits feedback on these issues.

The Bureau is also proposing technical instructions in appendix A regarding how to enter the AUS data on the loan application register. Proposed instruction 4(a)(35)-1 provides that a financial institution must indicate the name of the automated underwriting system it used to

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[512] *See* Small Business Review Panel Report at 39.
[513] *Id.* at 26.
[514] *Id.*
[515] *Id.*
[516] *Id.* at 39.
[517] *Id.*

evaluate the application by entering the applicable code from a list. The Bureau solicits feedback regarding whether this proposed instruction is appropriate generally, and specifically solicits feedback regarding whether the proposed instruction would be less burdensome if the list of systems were modified by, for example, either removing or adding systems.

Proposed instruction 4(a)(35)-2 provides that a financial institution completing the loan application register must indicate the AUS recommendation generated by the automated underwriting system that it used to evaluate the application by entering the applicable code from a list. The Bureau solicits feedback regarding whether this proposed instruction is appropriate generally, and specifically solicits feedback regarding whether the proposed instruction would be less burdensome if the list of AUS recommendations were modified by, for example, either removing or adding AUS recommendations. In addition, the Bureau is proposing to use two free-form text fields for automated underwriting system information (for "Other" automated underwriting systems and recommendations, respectively) to account for the variety of systems and recommendations that currently exist or that may exist in the future. The Bureau solicits feedback on the proposed requirement that, when a financial institution selects "Other" for automated underwriting system and recommendation, the financial institution must enter the name of the AUS used to evaluate the application and the recommendation generated by that AUS.

Proposed comment 4(a)(35)-1 discusses the requirement that a financial institution report the AUS recommendation generated by the automated underwriting system used by the financial institution to evaluate the application and provides an illustrative example. A financial institution complies with proposed § 1003.4(a)(35) by reporting an AUS recommendation if the recommendation was considered by the financial institution in its underwriting process. For

example, when a financial institution takes into account a combination of an AUS recommendation and manual underwriting in making the credit decision, the financial institution has considered the AUS recommendation in its underwriting process and reports the AUS recommendation.

Proposed comment 4(a)(35)-2.i discusses the requirement that a financial institution report the name of the automated underwriting system used by the financial institution to evaluate the application, explains which automated underwriting system to report if a financial institution uses multiple automated underwriting systems to evaluate an application, and provides an illustrative example. When a financial institution uses more than one automated underwriting system to evaluate an application, the financial institution complies with proposed § 1003.4(a)(35) by reporting the name of the AUS developed by a securitizer, Federal government insurer, or guarantor that was used closest in time to the credit decision. For example, when a financial institution processes an application through the automated underwriting system of two different government-sponsored enterprises, such as the Federal National Mortgage Association (Fannie Mae) or the Federal Home Loan Mortgage Corporation (Freddie Mac), the financial institution complies with proposed § 1003.4(a)(35) by reporting the name of the AUS that was used closest in time to the credit decision. If a financial institution processes an application through multiple AUSs at the same time, the financial institution complies with proposed § 1003.4(a)(35) by reporting the name of the AUS that generated the recommendation that was a factor in the credit decision.

Proposed comment 4(a)(35)-2.ii explains which AUS recommendation to report if a financial institution obtains multiple AUS recommendations and provides an illustrative example. When a financial institution obtains two or more AUS recommendations for an

applicant or borrower that are generated by a single or multiple AUSs developed by a securitizer, Federal government insurer, or guarantor, the financial institution complies with proposed § 1003.4(a)(35) by reporting the AUS recommendation generated closest in time to the credit decision. For example, when a financial institution receives a recommendation from an automated underwriting system that requires the financial institution to manually underwrite the loan, but in addition the financial institution subsequently processes the application through a different automated underwriting system that also generates a recommendation, the financial institution complies with proposed § 1003.4(a)(35) by reporting the AUS recommendation generated closest in time to the credit decision. If a financial institution obtains multiple AUS recommendations at the same time, the financial institution complies with proposed § 1003.4(a)(35) by reporting the AUS recommendation that was a factor in the credit decision.

Proposed comment 4(a)(35)-3 explains when a financial institution should report "not applicable" for AUS data and provides examples. If a financial institution does not use an AUS developed by a securitizer, Federal government insurer, or guarantor to evaluate the application, the financial institution complies with proposed § 1003.4(a)(35) by reporting "not applicable." For example, if a financial institution only manually underwrites an application and does not consider an AUS recommendation in its underwriting process, the financial institution complies with proposed § 1003.4(a)(35) by reporting "not applicable." Also, if the file was closed for incompleteness or the application was withdrawn before a credit decision was made, the financial institution complies with proposed § 1003.4(a)(35) by reporting "not applicable."

4(a)(36)

Neither HMDA nor Regulation C requires a financial institution to report whether a reportable transaction is a reverse mortgage. Section 304(b) of HMDA permits the disclosure of

such other information as the Bureau may require.[518] For the reasons discussed below, the Bureau is proposing to require financial institutions to identify whether a reportable transaction is a reverse mortgage.

Currently, although reverse mortgages that are home purchase loans, home improvement loans, or refinancings are reported, financial institutions are not required to separately identify if a reported transaction is a reverse mortgage. Some of the current reporting requirements, and several of the proposed requirements discussed above, do not apply to reverse mortgages. The Bureau has received feedback indicating that financial institutions often spend significant amounts of time during the reporting process dealing with submission errors related to inapplicable fields. Requiring financial institutions to identify whether a reportable transaction is a reverse mortgage would allow the Bureau to develop a submission system that automatically removes inapplicable fields. This should facilitate compliance by reducing the amount of time financial institutions spend on submitting reverse mortgage data.

Identifying reverse mortgages may also improve the usefulness of the data. Communities concerned about homeownership stability may find the data useful because reverse mortgages reduce a homeowner's equity over time. Also, as reverse mortgages are commonly obtained by persons approaching retirement age, communities and public officials may use the data to ascertain whether financial institutions are fulfilling their obligations to all members of their communities. Furthermore, improved reverse mortgage data would assist in identifying possible discriminatory lending patterns and enforcing antidiscrimination statutes.

[518] *See* Dodd-Frank Act section 1094(3)(A)(iv).

For the reasons discussed above, the Bureau believes that it may be appropriate to improve the HMDA data related to reverse mortgages. Pursuant to its authority under sections 305(a) and 304(b)(6)(J) of HMDA, the Bureau is proposing § 1003.4(a)(36), which provides that a financial institution shall record whether the covered loan is, or the application is for, a reverse mortgage, and whether the reverse mortgage is an open- or closed-end transaction. The Bureau solicits feedback regarding whether this proposed requirement is appropriate. While the Bureau is not proposing commentary applicable to proposed § 1003.4(a)(36), the Bureau solicits feedback regarding whether commentary would help clarify or illustrate the requirements of this proposed reporting requirement. Proposed instruction 4(a)(36)-1 provides technical requirements for completing the loan application register, stating that a financial institution should enter on the loan application register whether the covered loan is a reverse mortgage by entering one of three codes, and identifies the applicable transactions for each code.

During the Small Business Review Panel process, small entity representatives were not generally concerned about a proposed requirement to identify reverse mortgages.[519] The Small Business Review Panel recommended that the Bureau seek comment on any costs and other burdens associated with existing or potential HMDA requirements related to reverse mortgages.[520] Consistent with the Small Business Review Panel's recommendation, the Bureau solicits feedback regarding any costs and burdens associated with this proposed requirement regarding reverse mortgages, as well as the costs and burdens generally associated with Regulation C requirements related to reverse mortgages.

[519] *See* Small Business Review Panel Report at 40, 90, 129, and 132.
[520] *See id.* at 40.

4(a)(37)

Currently, neither HMDA nor Regulation C requires a financial institution to identify whether a reportable transaction is a home-equity line of credit. Section 304(b) of HMDA permits the disclosure of such other information as the Bureau may require.[521] For the reasons discussed below, the Bureau believes that it may be appropriate to require financial institutions to separately identify reported transactions that are home-equity lines of credit.

Although home-equity lines of credit currently may be reported as home purchase loans or home improvement loans, users of the HMDA data cannot identify which of those loans are home-equity lines of credit. The Bureau has received feedback indicating that the HMDA data would be improved by requiring financial institutions to identify whether a reportable transaction is a home-equity line of credit. Studies suggest that in the years leading up to the financial crisis home-equity line of credit lending was correlated with real estate speculation, which may have increased prices in local housing markets prior to the collapse.[522] Thus, clarifying the HMDA data in this manner would help communities and public officials better understand local lending practices and patterns. Furthermore, as home-equity lines of credit tend to be priced differently than other reportable transactions, being able to identify them would help clarify the data and facilitate effective data analysis. In addition, the Bureau believes that financial institutions may employ different policies, procedures, and systems for home-equity line of credit lending, so requiring financial institutions to identify these transactions would facilitate compliance by aligning with standard business practices. Furthermore, as the Bureau is also proposing to

[521] *See* Dodd-Frank Act section 1094(3)(A)(iv).
[522] *See supra* note 241, 242.

include dwelling-secured commercial lines of credit, the Bureau believes that differentiating between transactions would improve the usefulness of the data.

For the reasons discussed above, pursuant to its authority under sections 305(a) and 304(b)(6)(J) of HMDA, the Bureau is proposing § 1003.4(a)(37), which provides that a financial institution shall report whether the covered loan is, or the application is for, an open-end line of credit, and also whether the open-end line of credit is a home-equity line of credit. The Bureau solicits feedback regarding whether this proposed requirement is appropriate. While the Bureau is not proposing commentary applicable to proposed § 1003.4(a)(37), the Bureau solicits feedback regarding whether commentary would help clarify or illustrate the requirements of this proposed reporting requirement. Proposed instruction 4(a)(37)-1 provides technical requirements for completing the loan application register by identifying the applicable transactions for one of three codes.

4(a)(38)

Currently, neither HMDA nor Regulation C contains requirements related to whether a loan would be considered a qualified mortgage under Regulation Z. Section 304(b) of HMDA permits the disclosure of such other information as the Bureau may require.[523] For the reasons discussed below, the Bureau believes that it may be appropriate to require financial institutions to report a covered loan's qualified mortgage status under Regulation Z.

The ability-to-repay and qualified mortgage provisions of Regulation Z were intended to address several of the harmful underwriting practices that were used in the years leading up to the financial crisis. For this reason, community groups and public officials may find useful

[523] *See* Dodd-Frank Act section 1094(3)(A)(iv).

information related to loans that are exempt from the ability-to-repay requirements, subject to the requirements, or are considered qualified mortgages under the requirements. Furthermore, this information may be particularly useful for public officials at the U.S. Department of Housing and Urban Development, the U.S. Department of Veterans Affairs, and the U.S. Department of Agriculture, as these agencies administer programs and promulgate regulations related to the ability-to-repay standards of Regulation Z. In addition, the Bureau has received feedback that information related to qualified mortgage status is becoming a part of the mortgage industry data standards. Thus, this information is consistent with the regular business practices of financial institutions and should not be particularly burdensome.

For these reasons, the Bureau believes that it may be appropriate to require financial institutions to report data regarding whether a covered loan is a qualified mortgage under Regulation Z. Accordingly, pursuant to its authority under sections 305(a) and 304(b)(5)(D) of HMDA, the Bureau is proposing § 1003.4(a)(38), which provides that a financial institution shall report whether the covered loan is subject to the ability-to-repay provisions of Regulation Z, 12 CFR 1026.43, and whether the covered loan is a qualified mortgage, as described under 12 CFR 1026.43(e) or (f). The Bureau solicits feedback regarding whether this proposed requirement is appropriate, whether this proposed requirement would result in more useful data, and whether this proposed requirement would impose additional burdens or result in additional challenges that the Bureau has not considered.

During the Small Business Review Panel process, several small entity representatives expressed concerns about a potential requirement to report a covered loan's qualified mortgage

status.[524] The Small Business Review Panel recommended that the Bureau solicit comment on how the burden of collecting the qualified mortgage information could be minimized.[525] Based on this feedback and consistent with the Small Business Review Panel's recommendation, the Bureau requests feedback regarding whether modifications to the proposed requirement would minimize the burden of collecting information related to a covered loan's qualified mortgage status.

Proposed comment 4(a)(38)-1 clarifies that financial institutions may rely on Regulation Z § 1026.43, the related commentary, and appendix Q to part 1026 in determining whether a covered loan is a qualified mortgage. This proposed comment further clarifies that, if a covered loan is subject to Regulation Z § 1026.43, but is not a qualified mortgage pursuant to § 1026.43(e) or (f), § 1003.4(a)(38) requires a financial institution to identify the covered loan as a loan that is not a qualified mortgage. Proposed comment 4(a)(38)-1 also explains that, if a covered loan is not subject to paragraphs (c) through (f) of Regulation Z § 1026.43, § 1003.4(a)(38) requires the financial institution to identify the covered loan as a loan that is not subject to the reporting requirements of § 1026.43. Finally, this proposed comment provides several illustrative examples of the requirements of § 1003.4(a)(38).

The Bureau is also proposing technical requirements related to the completion of the loan application register in appendix A. Proposed instruction 4(a)(38)-1 states that financial institutions should enter on the loan application register whether the covered loan is a qualified mortgage under Regulation Z by entering one of six codes. Proposed instruction 4(a)(38)-2

[524] *See* Small Business Review Panel Report at 40, 57, 80, 85, 103-104, and 129.
[525] *See id.* at 40.

identifies the applicable codes for a covered loan that is a standard qualified mortgage, a temporary qualified mortgage, a small creditor qualified mortgage, a balloon-payment qualified mortgage, or not a qualified mortgage. Proposed instruction 4(a)(38)-3 identifies the applicable code for an application for a covered loan, and for a covered loan that is not subject to the ability-to-repay requirements of Regulation Z.

Section 1003.4(a)(38) is proposed pursuant to the Bureau's authority under sections 305(a) and 304(b)(5)(D) of HMDA. Pursuant to section 305(a) of HMDA, the Bureau believes that this proposed requirement is necessary to carry out the purposes of HMDA. By providing information regarding whether a covered loan is a qualified mortgage under Regulation Z, this proposed provision would ensure that the citizens and public officials of the United States are provided with sufficient information to enable them to determine whether depository institutions are filling their obligations to serve the housing needs of the communities and neighborhoods in which they are located. Furthermore, qualified mortgage data also would assist public officials, particularly HUD's Federal Housing Administration, in their determination of the distribution of public sector investments in a manner designed to improve the private investment environment.

4(a)(39)

Currently, neither HMDA nor Regulation C requires a financial institution to report the amount of first draw on a home-equity line of credit or an open-end reverse mortgage.[526] Section

[526] Section 1003.4(c)(3) of Regulation C currently provides that a financial institution may report, but is not required to report, home-equity lines of credit made in whole or in part for the purpose of home improvement or home purchase. If a financial institution elects to report a home-equity line of credit, it reports only the amount of the line intended for home improvement or home purchase purposes at the time of the application. As a result, in certain cases, current HMDA data contains information regarding the initial draw on a home-equity line of credit.

304(b) of HMDA permits the disclosure of such other information as the Bureau may require.[527] For the reasons discussed below, the Bureau is proposing to require financial institutions to report, for a home-equity line of credit and an open-end reverse mortgage, the amount of the draw on the covered loan, if any, made at account opening.

Both home-equity lines of credit and reverse mortgages represent important segments of the mortgage market that have been associated with problematic practices. Home-equity lines of credit were often used by speculative real estate investors both before and after the financial crisis, and were popular in areas where housing prices increased significantly prior to the collapse of the real estate market.[528] Likewise, reverse mortgages have long presented the potential for abuse of vulnerable seniors.[529] As a result, participants in the Board's 2010 Hearings called for more data regarding home-equity lines of credit and reverse mortgages, including the initial amount drawn.[530] Although originations of home-equity lines of credit have declined from their pre-market crash levels, they are expected to be become increasingly popular as homeowners regain equity.[531] Similarly, as the population of elderly individuals increases, reverse mortgages may become available to a larger segment of the population. The Bureau believes that requiring financial institutions to report the amount of the initial draw would permit

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[527] Section 1094(3)(A)(iv) of the Dodd-Frank Act amended section 304(b) of HMDA.
[528] *See* Michael LaCour-Little, Wei Yu, and Libo Sun, *The Role of Home Equity Lending in the Recent Mortgage Crisis*, 42 Real Estate Economics 153 (2014).
[529] Jessica Silver-Greenberg, *A Risky Lifeline for the Elderly Is Costing Some Their Homes*, N.Y. Times, Oct. 14, 2012, at A1 ("Reverse mortgages, which allow homeowners 62 and older to borrow money against the value of their homes and not pay it back until they move out or die, have long been fraught with problems."); *see also* U.S. Consumer Fin. Prot. Bureau, *Report to Congress on Reverse Mortgages* (2012).
[530] *See* Atlanta Hearing, *supra* note 131; Chicago Hearing, *supra* note 137.
[531] *See* Bd. Of Governors of the Fed. Reserve Sys., Fed. Reserve Statistical Release, *Z.1 Financial Accounts of the United States: Flow of Funds, Balance Sheets, and Integrated Macroeconomic Accounts*, at 113, Table B.100 (2014), *available at* http://www.federalreserve.gov/releases/z1/Current/z1.pdf .; *see also* Ken Harney, *Homeowners' Equity Jumps 20 Percent After a Years-Long Slump*, Wash. Post, Jan. 4, 2013.

greater insight into the operation of the markets for these important products. Such information would also help to ensure that public officials and public interest organizations can monitor risks to their communities and neighborhoods.

The Bureau believes that the burden of reporting the amount of the initial draw will be lessened by the fact that financial institutions will already need to record this amount in order to properly service the loan. However, the Bureau recognizes that financial institutions might not store the information in a format readily available for HMDA purposes. Home-equity lines of credit, for example, tend to run on a different platform than traditional, closed-end mortgage loans. Despite the potential increased burden described above, feedback received pursuant to the Bureau's outreach activities indicates that reporting of the initial draw may be justified. Accordingly, pursuant to its authority under sections 305(a) and 304(b)(5)(D) of HMDA, the Bureau is proposing § 1003.4(a)(39), which provides that a financial institution shall report, for a home-equity line of credit and an open-end reverse mortgage, the amount of the draw on the covered loan, if any, made at account opening. The Bureau believes that this proposed requirement is necessary to carry out HMDA's purposes. This proposed revision would provide a more complete picture of the home mortgage market and help the public and public officials compare the use of these products across different communities and groups of borrowers, thereby assisting in determining whether financial institutions are serving the housing needs of their communities. The Bureau seeks comment regarding the general utility of the data and on the costs associated with collecting and reporting the data. Although the Bureau believes that information about the initial draw is most useful for home-equity lines of credit, the Bureau solicits feedback regarding whether this data would be useful for all open-end lines of credit, including dwelling-secured commercial lines of credit. Furthermore, the Bureau understands

that financial institutions have been developing new products, including multiple-draw closed-end reverse mortgages, and accordingly seeks feedback on whether to require reporting of the initial draw for all reverse mortgages, whether closed or open-end.

Proposed instruction 4(a)(39) in appendix A provides technical instructions regarding how to enter the data on the loan application register. Proposed instruction 4(a)(39)-1 provides that a financial institution must enter in dollars the amount of any draw on a home-equity line of credit or an open-end reverse mortgage made at the time of account opening.

4(b) Collection of Data on Ethnicity, Race, Sex, Age, and Income

Section 1003.4(b)(1) of current Regulation C requires that a financial institution collect data about the ethnicity, race, and sex of the applicant or borrower as prescribed in appendix B. Section 1003.4(b)(2) provides that the ethnicity, race, sex, and income of an applicant or borrower may but need not be collected for loans purchased by the financial institution. The Bureau proposes to add age to § 1003.4(b)(1) and (b)(2), and proposes to amend § 1003.4(b)(1) by requiring a financial institution to collect data about the ethnicity, race, sex, and age of the applicant or borrower as prescribed in both appendices A and B. The Bureau also is proposing minor wording changes to § 1003.4(b)(1) and (b)(2).

As discussed in the section-by-section analysis of § 1003.4(a)(10), the Dodd-Frank Act amended HMDA section 304(b)(4) to require financial institutions to report an applicant's or borrower's age.[532] As discussed above, the Bureau is proposing to implement the requirement to collect and report age by adding this characteristic to the information listed in § 1003.4(a)(10)(i). To conform to that proposed requirement, the Bureau is proposing to add age to § 1003.4(b)(1)

[532] Dodd-Frank Act section 1094(3)(A)(i), 12 U.S.C. 2803(b)(4).

and (b)(2). In addition, as part of the Bureau's efforts to streamline and clarify Regulation C, the Bureau is proposing to amend § 1003.4(b)(1) by requiring a financial institution to collect data about the ethnicity, race, sex, and age of the applicant or borrower as prescribed in appendices A and B since both appendices contain instructions for the collection of an applicant's or borrower's demographic information.

As discussed above, § 1003.4(b)(2) provides that ethnicity, race, sex, and income data may but need not be collected for loans purchased by a financial institution. Instruction I.D.1.a of appendix A provides that a financial institution need not collect or report this applicant and borrower information for loans purchased and if an institution chooses not to report this information, it should use the Codes for "not applicable." While the proposed reporting requirements do not require reporting of ethnicity, race, sex, age, and income for loans purchased by a financial institution, the Bureau solicits feedback on whether this exclusion is appropriate. In particular, the Bureau specifically solicits feedback on the general utility of ethnicity, race, sex, age, and income data on purchased loans and on the unique costs and burdens associated with collecting and reporting the data that financial institutions may face if the reporting requirement were modified to no longer permit optional reporting but instead require reporting of this applicant and borrower information for purchased loans.

4(c) Optional Data

4(c)(1)

Current § 1003.4(c)(1) provides that a financial institution may report the reasons it denied a loan application but is not required to do so. As discussed in the section-by-section analysis of § 1003.4(a)(16), the Bureau is proposing to make reporting of denial reasons

mandatory instead of optional. To conform to that proposed requirement, the Bureau is proposing to delete § 1003.4(c)(1).

4(c)(2)

Section 1003.4(c)(2) provides that institutions may report requests for preapprovals that are approved by the institution but not accepted by the applicant, but they are not required to do so. The Bureau is proposing to make reporting of requests for preapprovals approved by the financial institution but not accepted by the applicant mandatory instead of optional.

The Board published an advanced notice of proposed rulemaking in 1998 which solicited feedback about reporting of preapprovals.[533] The Board noted that originations resulting from preapprovals were already being reported without any kind of preapproval identifier, and noted that Regulation B required sending adverse action notices when preapproval requests were denied.[534] Some commenters noted that aligning with Regulation B's adverse action requirement could distort the data by capturing denials but not requests that were approved but did not lead to an origination.[535] Following the advance notice, the Board proposed an approach that would align with Regulation B's discussion of preapprovals and prequalifications.[536] In response to additional comments received on that proposal the Board adopted the current preapproval requirement in 2002, with specific action taken codes and a flag for preapproval requests.[537] The Board also provided for optional reporting of preapproval requests that are approved but not accepted by the applicant, because it believed that lenders might want "to put into context the

[533] 63 FR 12329 (Mar. 12, 1998).
[534] 63 FR 12329, 12330.
[535] 65 FR 78656, 78658 (Dec. 15, 2000).
[536] 65 FR 78659.
[537] 67 FR 7222 (Feb. 15, 2002).

preapproval requests that are denied."[538] The Board did not provide for reporting preapproval requests that were closed for incompleteness or withdrawn because it believed that the number of such requests would be small and the benefit of such data would not warrant the burden of reporting it.[539] The Board noted that, based on 2000 HMDA data, 2 percent of other mortgage applications were closed for incompleteness and 7 percent were withdrawn.

The Bureau believes that reporting of preapprovals approved by the financial institution but not accepted by the applicant provides context for denials of preapproval requests, and improves fair lending analysis because it allows denials to be compared to a more complete set of approved preapproval requests. Combining originated loans and loans approved but not accepted for purposes of comparison with denied applications is common in fair lending analysis for other home purchase applications. However, such analysis is not possible for preapprovals if an institution does not report preapprovals approved but not accepted.

Analysis of the currently reported preapproval requests that are approved but not accepted highlights the importance of these data. Over half of all reported home purchase applications in the 2012 HMDA data (excluding loans purchased by a financial institution) were received by financial institutions that offer preapproval programs. Approximately 14 percent of reported preapproval requests were approved but not accepted. For all home purchase applications (excluding loans purchased by a financial institution), approximately 5 percent were approved but not accepted. Because the 14 percent represents only institutions that chose to report preapproval requests approved but not accepted, the percentage if the proposal were

[538] 67 FR 7224.
[539] *Id.*.

adopted would likely be higher. For certain institutions with large preapproval programs, the percentage of preapproval requests that are approved but not accepted is much higher, including above 50 percent for some institutions. For all home purchase applications (excluding loans purchased by a financial institution and not including preapproval requests), approximately 2 percent were closed for incompleteness and 9 percent were withdrawn, similar to the percentages from the 2000 HMDA data. Preapproval requests that are approved but not accepted thus occur more frequently than other applications for home purchases that are approved but not accepted and represent an important element of HMDA data.

Therefore, the Bureau is proposing to make reporting of requests for preapprovals approved by the financial institution but not accepted by the applicant mandatory instead of optional. Consequently, the Bureau is proposing to delete current § 1003.4(c)(2) and, as noted above, to revise § 1003.4(a) accordingly. The Bureau believes that this change will not represent any additional burden for institutions that currently choose to report such preapprovals, and that the burden may not be great for institutions that currently do not choose to report such preapprovals because of information that such institutions currently collect about all of their preapproval requests before the outcome of the request is known. However, the Bureau solicits feedback about whether financial institutions expect significant burden associated with the proposed change.

4(c)(3)

Section 1003.4(c)(3) of Regulation C currently provides that a financial institution may report, but is not required to report, home-equity lines of credit made in whole or in part for the purpose of home improvement or home purchase. As discussed in the section-by-section analysis to § 1003.2(o), the Bureau is proposing to require reporting of open-end lines of credit,

which include home-equity lines of credit. To conform to that proposed modification, the Bureau proposes to delete § 1003.4(c)(3). The Bureau also proposes to delete comment 4(c)(3)-1, which currently provides that an institution that opts to report home-equity lines reports the disposition of all applications, not just originations. The Bureau solicits feedback regarding whether this proposed modification is appropriate.

4(d)

For the reasons discussed above in the section-by-section analysis of proposed § 1003.3(c), the Bureau proposes to move the discussion of excluded data to proposed § 1003.3(c). Accordingly, the Bureau proposes to reserve § 1003.4(d).

4(f) Quarterly Recording of Data

As part of the effort to streamline Regulation C, the Bureau proposes to move the data recording requirement in § 1003.4(a) to proposed § 1003.4(f) and to make technical modifications to the requirement. Proposed § 1003.4(f) provides that a financial institution shall *record*[540] the data collected pursuant to § 1003.4 on a loan application register within 30 calendar days after the end of the calendar quarter in which final action is taken (such as origination or purchase of a covered loan, or denial or withdrawal of an application).

Section 1003.5 Disclosure and Reporting

5(a) Reporting to Agency

5(a)(1)

[540] A financial institution's obligation to *report* data to the Bureau or the appropriate agency for the institution is addressed below in the section-by-section analysis of proposed § 1003.5(a).

HMDA section 304(h)(1) provides that a financial institution shall submit its HMDA data to the Bureau or to the appropriate agency for the institution in accordance with rules prescribed by the Bureau.[541] HMDA section 304(h)(1) also directs the Bureau to develop regulations, in consultation with other appropriate agencies, that prescribe the format for disclosures required under HMDA section 304(b), the method for submission of the data to the appropriate agency, and the procedures for disclosing the information to the public. HMDA section 304(n) also requires that the data required to be disclosed under HMDA section 304(b) shall be submitted to the Bureau or to the appropriate agency for any institution reporting under HMDA, in accordance with regulations prescribed by the Bureau. HMDA section 304(c) requires that information required to be compiled and made available under HMDA section 304, other than loan application register information under section 304(j), must be maintained and made available for a period of five years.[542]

Section 1003.5(a)(1) of Regulation C requires that, by March 1 following the calendar year for which data are compiled, a financial institution must submit its complete loan application register to the agency specified in appendix A. Section 1003.5(a)(1) also provides that a financial institution shall retain a copy of its complete loan application register for its records for at least three years. Section II of appendix A to Regulation C provides information concerning where financial institutions should submit their complete loan application registers. Additional information concerning submission of the loan application register is found in comments 4(a)-1.vi and -1.vii, 5(a)-1 and -2, and 5(a)-5 through -8. Comment 5(a)-2 provides

[541] Dodd-Frank Act section 1094(3)(B), 12 U.S.C. 2803(h)(1).
[542] HMDA section 304(j)(6) requires that loan application register information described in HMDA section 304(j)(1) for any year shall be maintained and made available, upon request, for three years.

that a financial institution that reports 25 or fewer entries on its loan application register may submit the register in paper form. For the reasons described below, the Bureau is proposing several changes to § 1003.5(a)(1).

Quarterly Reporting

The Bureau is proposing that a financial institution with a high transaction volume report its HMDA data to the Bureau or appropriate agency on a quarterly, rather than an annual, basis. This proposal is based on considerations relating to the timeliness of HMDA data submitted, the quality of the data submitted, and the Bureau's desire to make annual HMDA data available to the public earlier than they are currently made available.

Under the current regime, HMDA data may be reported as many as 14 months after final action is taken on an application or loan.[543] The Bureau is concerned that this delay impairs the ability of the Bureau and the appropriate agencies to use HMDA data to effectuate the purposes of the statute in a timely manner. The Bureau believes that timelier data would allow it and the appropriate agencies to determine, in much closer to "real time," whether financial institutions are fulfilling their obligations to serve the housing needs of communities in which they are located. The Bureau also believes that timelier identification of risks to local housing markets and troublesome trends by the Bureau and the appropriate agencies would allow for more effective interventions or other actions by the agencies and other public officials. The Bureau's proposal reduces the maximum time lag between final action on a loan or application and

[543] For example, a loan originated on January 1 in calendar year one is not reported to the Bureau or other appropriate agency until March 1 of calendar year two.

reporting from 14 months to approximately five months for a significant percentage of reported transactions.

Further, as quarterly reporting requires financial institutions with larger transaction volumes to review and edit smaller batches of reportable data several times throughout the year, the Bureau believes that quarterly reporting would facilitate and enhance compliance with HMDA, reduce reporting errors, and improve the quality of HMDA data. Finally, because quarterly reporting would permit the Bureau to process HMDA data throughout the year, the Bureau believes the proposal may allow for the earlier annual release to the public of HMDA data. The HMDA data are currently made public by the FFIEC in September of each year, up to 20 months after final action is taken on applications and loans reflected in the data. HMDA data users have complained to the Bureau, and to the Board before it, that this delay reduces the usefulness of the data to the public. Although the Bureau currently does not anticipate that HMDA data would be released to the public more frequently than annually,[544] it believes that quarterly reporting may allow the Bureau and the FFIEC to expedite disclosures of annual HMDA data to the public and better serve the public disclosure goals of the statute.

Based on these considerations, the Bureau believes that it may be appropriate to require certain financial institutions to report their HMDA data on a quarterly basis. Accordingly, proposed § 1003.5(a)(1)(ii) requires that, within 60 calendar days after the end of each calendar quarter, a financial institution that reported at least 75,000 covered loans, applications, and purchased covered loans, combined, for the preceding calendar year (the 75,000 transaction

[544] Based on its analysis to date, the Bureau believes that releasing HMDA data to the public on a quarterly basis, even in aggregate form, may create risks to applicant and borrower privacy that are not justified by the benefits of such release. However, the Bureau, in consultation with the other appropriate agencies, intends to evaluate options for the agencies' release of data or analysis more frequently than annually at a later date.

threshold) shall submit its loan application register containing all data required to be recorded pursuant to § 1003.4(f).[545] The Bureau believes that this proposed requirement is necessary and proper to effectuate the purposes of HMDA. The Bureau solicits comment on whether this proposal is appropriate, including any increase in costs resulting from the requirement that financial institutions submit accurate HMDA data on a quarterly basis as opposed to once each year.

To the extent there are cost increases, the Bureau seeks to balance those costs with the benefits of quarterly reporting described above. The Bureau's proposal limits the imposition of any increased costs to those institutions with the largest transaction volumes, thus minimizing the number of financial institutions subject to the proposed requirement while maximizing the volume of data reported on a quarterly basis. The Bureau believes that realizing the benefits of more timely data submission requires that the agencies receive sufficient data to perform meaningful analyses. Further, the Bureau believes that, the larger the volume of data submitted and processed during the course of the calendar year, the more likely HMDA data could be released to the public earlier the following year than is currently the case. Based on 2012 HMDA data, the 75,000 transaction threshold proposed would have required 28 financial institutions to report on a quarterly basis in 2013. In 2012, these 28 institutions reported approximately 50 percent of all transactions reported under HMDA. The Bureau solicits feedback on whether the proposed 75,000 transaction threshold is justified by the benefits of quarterly reporting.

[545] Currently, § 1003.4(a) requires that "all reportable transactions shall be recorded, within thirty calendar days after the end of the calendar quarter in which final action is taken (such as origination or purchase of a loan, or denial or withdrawal of an application), on a register in the format prescribed in Appendix A of this part." The Bureau's proposal moves this requirement, with some revisions, to proposed § 1003.4(f).

The Bureau's proposal requires that HMDA data submitted on a quarterly basis be submitted within 60 days after the end of the calendar quarter in which final action is taken (such as origination or purchase of a covered loan, or denial or withdrawal of an application). Financial institutions currently *record* all reportable transactions on the loan application register within 30 days after the end of the calendar quarter.[546] The Bureau's proposal retains this requirement for all financial institutions.[547] Under the proposal, financial institutions that must *report* on a quarterly basis have an additional 30 days beyond the date by which they must record their HMDA data to submit their quarterly loan application registers. The Bureau solicits feedback on whether this proposal provides financial institutions required to report on a quarterly basis sufficient time to prepare their quarterly data for submission.

As proposed, § 1003.5(a)(1) allows for a delay in the effective date of the proposed quarterly reporting provision. The Bureau has left the effective date blank in proposed § 1003.5(a)(1)(ii), but is considering a delay of at least one year from the effective date of the other amendments to Regulation C proposed herein. The Bureau solicits feedback on the length of time beyond the effective date of the other proposed amendments to Regulation C, if any, that financial institutions would require to develop and implement the systems, policies, and procedures required to report HMDA data on a quarterly basis.

The Bureau is proposing new comment 5(a)-1 to illustrate coverage under proposed § 1003.5(a)(1)(ii). The Bureau is proposing conforming modifications to comment 5(a)-2 to clarify when, if the appropriate Federal agency for a financial institution reporting on a quarterly

[546] Section 1003.4(a).
[547] *See* proposed § 1003.4(f).

basis changes, the financial institution would report to the new agency. The Bureau is proposing new comment 5(a)-5 to clarify that, for purposes of the proposed § 1003.5(a)(1)(ii) requirement that a financial institution that reports on a quarterly basis must retain a copy of its complete loan application register for its records for at least three years, the complete loan application register is the loan application register reflecting all data reported for the preceding calendar year. The comment explains that a financial institution that reports data on a quarterly basis may satisfy the retention requirement in § 1003.5(a)(1)(ii) by retaining the data for the calendar year combined on one loan application register or on four quarterly loan application registers. The Bureau solicits feedback on whether these proposals are appropriate.

Elimination of Paper Reporting

Comment 5(a)-2 provides that a financial institution that reports 25 or fewer entries on its loan application register may submit the register in paper, rather than electronic, format. The Bureau understands that, in recent years, very few financial institutions have submitted their loan application registers in paper format. The FFIEC provides the HMDA Data Entry Software (DES) at no cost to institutions, and the Bureau understands that the vast majority of financial institutions with small transaction volumes take advantage of this free tool to compile and securely submit their HMDA data to the appropriate agencies. Loan application registers that are submitted on paper must be manually input by the processor into its system, requiring the processor to duplicate the work of the financial institution, in order for the data to be used by the agencies and included in the HMDA data products later prepared.

The Bureau notes that, if its proposal to exclude from the definition of financial institution any institution that originated less than 25 covered loans, excluding open-end lines of credit, is adopted,[548] the number of financial institutions that would be eligible to submit their loan application register in paper format would be significantly reduced.[549] Further, as part of its efforts to improve and modernize HMDA operations, the Bureau is considering various improvements to the HMDA data submission process that should reduce even further the need for institutions to compile and submit their HMDA data in paper format. The improvements under consideration include upgrades to the HMDA DES, such as moving DES to the web, which would allow financial institutions to use the software from multiple terminals in different branches and would eliminate the need to download and install updated software each year.

Based on these considerations, the Bureau believes that preserving an option to permit the submission of loan application registers in paper format is no longer necessary. Accordingly, the Bureau is proposing to delete comment 5(a)-2, which allows a financial institution that reports 25 or fewer entries on its loan application register to submit the register in paper form, and to clarify in § 1003.5(a)(1) that the register must be submitted in electronic format. The Bureau solicits comment on this proposal, including concerning any additional costs it imposes upon small-volume financial institutions.

Retention of Complete Loan Application Register in Electronic Format

Section 1003.5(a)(1) requires that a financial institution shall retain a copy of its complete loan application register for three years, but Regulation C is silent concerning the formats in

[548] *See* proposed § 1003.2(g).

[549] If proposed § 1003.2(g) is adopted and the Bureau continues to allow a financial institution that reports 25 or fewer entries on its loan application register to submit its register in paper format, only a financial institution that originated exactly 25 covered loans would be eligible to submit its register in paper format.

which the complete loan application register may be retained. During the Small Business Review Panel process, the Bureau learned that some financial institutions have interpreted § 1003.5(a)(1) to require that complete loan application registers must be retained in paper format, and that this can be burdensome depending on the size of the complete loan application register. Proposed comment 5(a)-4 clarifies that retention of the loan application register in electronic format is sufficient to satisfy the requirements of § 1003.5(a)(1). The Bureau seeks comment on whether this proposal is appropriate.

Submission Procedures and Related Technical Requirements

As part of its efforts to improve and modernize HMDA operations, the Bureau is considering various improvements to the HMDA data submission process. The Bureau is proposing to reorganize sections I and II of appendix A and portions of the commentary so that instructions relating to data submission are found in one place in the regulation. The Bureau expects to publish procedural and technical requirements and specifications relating to data submission separately from this proposal.[550]

The content of section II of appendix A and comment 5(a)-1 are inconsistent with the Bureau's plan for data submission and the Bureau therefore proposes to delete these provisions. The Bureau proposes to move the portion of comment 4(a)-1.vi concerning officer certification to § 1003.5(a)(1)(iii). The Bureau proposes to incorporate the pertinent remaining portion of comment 4(a)-1.vi and comments 4(a)-1.vii and 5(a)-7 and -8 into proposed instructions 5(a)-2 and -3 in appendix A. The Bureau proposes to delete the remaining portions of these comments.

[550] The Board has published technical specification for HMDA reporting annually since 1998. *See* Bd. of Governors of the Fed. Reserve Sys., *2014 HMDA File Specifications* 2-3 (Sept. 13, 2013), http://www.ffiec.gov/hmda/pdf/spec2014.pdf.

Proposed instruction 5(a)-1 in appendix A provides procedural and technical information concerning submission requirements. When the Bureau finalizes this proposed rule, it will make conforming technical changes to the transmittal sheet and loan application register form in appendix A. The Bureau solicits feedback on whether these proposals are appropriate.

5(a)(3) Entity Identifier

Currently the transmittal sheet and loan application register in appendix A to Regulation C require entry of the Reporter's Identification Number (HMDA RID). The HMDA RID consists of an entity identifier specified by the financial institution's appropriate agency combined with a code that designates the agency. For the reasons discussed below, pursuant to HMDA section 305(a), the Bureau is proposing to require financial institutions to provide a globally-accepted Legal Entity Identifier (LEI) to replace the HMDA RID in HMDA submissions.

Under the current system, each Federal agency chooses the entity identifier that its financial institutions use in reporting their HMDA data. The following entity identifiers are currently used in generating the HMDA RID:

- the Research Statistics Supervision and Discount (RSSD) number for institutions supervised by the Board and for depository institutions supervised by the Bureau;
- the Federal Tax Identification number for nondepository institutions supervised by agencies other than the Board;
- the charter number for depository institutions supervised by the NCUA and the OCC; and

- the certificate number for depository institutions supervised by the FDIC.[551]

Leading zeroes are added to the extent necessary to make this entity identifier ten digits for purposes of the transmittal sheet and loan application register, and the identifier is then amalgamated with a one-digit code at the end that identifies the agency.[552]

There is no mechanism to link nondepository institutions identified by a Federal Tax Identification number to related companies. The lack of a sufficiently comprehensive identification system for financial institutions that are parties to mortgage transactions can result in the same financial institution being identified by different names or codes across and within datasets. As a result, financial institutions, regulators, and data users can find data aggregation, validation, and analysis difficult.

Requiring financial institutions to provide an LEI when they report their HMDA data could help to address these concerns. The LEI is a unique, 20-digit alphanumeric identifier associated with a single legal entity and is intended to serve as a uniform international standard for identifying participants in financial transactions. The LEI's alphanumeric identifier does not itself contain any embedded information about the entity but is linked to reference data about the entity. Once the LEI is fully implemented, this information is projected to include data on ownership and corporate hierarchies.[553]

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[551] *Id.* at 2.
[552] *Id.* at 2, 8.
[553] *See generally* Fin. Stability Bd., *A Global Legal Entity Identifier for Financial Markets* 38-39 (June 8, 2012), http://www.financialstabilityboard.org/publications/r_120608.pdf (including a recommendation on LEI reference data relating to ownership); Fin. Stability Bd., LEI Implementation Group, *Fourth Progress Note on the Global LEI Initiative* 4 (Dec. 11, 2012), http://www.financialstabilityboard.org/publications/r_121211.pdf (noting that the LEI Implementation Group is developing proposals for additional reference data on the direct and ultimate parent(s) of legal entities and on relationship data more generally).

A global LEI standard is currently in the implementation stage, with strong support from the Financial Stability Board,[554] the Group of 20 Finance Ministers and Central Bank Governors, and others.[555] The LEI's Regulatory Oversight Committee (ROC) – the top tier in the LEI governance structure – held its inaugural meeting in early 2013.[556]

The second tier in LEI governance – the Global LEI Foundation (GLEIF) – was recently established as a not-for-profit foundation in Switzerland.[557] The GLEIF will build the LEI system's technology infrastructure and have responsibility for operational and quality controls, assuring adherence to standards for reliability, quality, and uniqueness.[558] The third tier of the LEI system is the network of local operating units (LOUs) that assign LEIs, validate and maintain the associated reference data, and make these data continuously available to the public and regulators.[559]

The ROC has already endorsed more than a dozen pre-LOUs around the world, and the LEI identifiers issued by these pre-LOUs have been accepted for regulatory purposes in various

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[554] The Financial Stability Board is an international coordinating body established to promote global financial stability and regulatory coordination. It is a successor to the Financial Stability Forum, which was founded in 1999 by the Group of 7 Finance Ministers and Central Bank Governors.

[555] *See, e.g.*, Matthew Reed, *Legal Entity Identifier System Gains Global Momentum*, Treasury Notes Blog (Jan. 14, 2014), http://www.treasury.gov/connect/blog/Pages/Legal-Entity-IdentifierSystem-Gains-Global-Momentum.aspx; Fin. Stability Bd., *A Global Legal Entity Identifier for Financial Markets* (June 8, 2012), https://www.financialstabilityboard.org/publications/r_120608.pdf. A number of trade associations, including the Americans Bankers Association, expressed support for creation of the LEI in an April 12, 2011 letter to all G-20 finance ministers, which is available at http://www.gfma.org/correspondence/item.aspx?id=159.

[556] *See* ROC, *Inaugural Meeting of the Global Legal Entity Identifier (LEI) Regulatory Oversight Committee (ROC)* (Jan. 28, 2013), http://www.leiroc.org/publications/gls/roc_20130128.pdf.

[557] Press Release, GLEIF, *Inaugural Meeting of the Global Legal Entity Identifier Foundation (GLEIF)* (Jun. 30, 2014), http://www.leiroc.org/publications/gls/gleif_20140629_2.pdf; ROC, *Regulatory Oversight Committee Welcomes First Meeting of Global LEI Foundation* (June 30, 2014), http://www.leiroc.org/publications/gls/gleif_20140629_1.pdf.

[558] *See, e.g.*, Matthew Reed, *Legal Entity Identifier System Gains Global Momentum*, Treasury Notes Blog (Jan. 14, 2014), http://www.treasury.gov/connect/blog/Pages/Legal-Entity-IdentifierSystem-Gains-Global-Momentum.aspx.

[559] *Id.*

jurisdictions represented in the ROC.[560] Approximately 300,000 entities have been issued LEI identifiers to date.[561]

In light of the potential benefits that a robust and uniform entity identifier could provide, the Bureau is proposing to add new § 1003.5(a)(3) to require financial institutions to provide an LEI when reporting HMDA data. Proposed § 1003.5(a)(3) specifies that the LEI must be issued by: (i) a utility endorsed by the ROC or (ii) a utility endorsed or otherwise governed by the GLEIF (or any successor of the GLEIF) after the GLEIF assumes operational governance of the global LEI system.

The Bureau believes that requiring use of the LEI could improve the ability to identify the legal entity that is reporting data and to link it to its corporate family. For these reasons, pursuant to HMDA section 305(a), the Bureau believes that proposed § 1003.5(a)(3) is necessary and proper to effectuate HMDA's purposes and facilitate compliance therewith. By facilitating identification, the Bureau's proposal would help data users in achieving HMDA's objectives of identifying whether financial institutions are serving the housing needs of their communities, as well as identifying possible discriminatory lending patterns. This new requirement could also assist in identifying market activity and risks by related companies.

The Bureau recognizes that requiring financial institutions to obtain LEIs would impose some costs on the financial institutions. The LEI system is based on a cost-recovery model.[562]

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[560] *See* Global Fin. Markets Ass'n, *Progress and Developments in Establishing the Global LEI System* 5-6 (Mar. 2014), http://www.gfma.org/uploadedFiles/Initiatives/Legal_Entity_Identifier_(LEI)/GFMAwebinarLEISlideDeck10Mar2014%20%5bCompatibility%20Mode%5d.pdf (listing examples of regulatory acceptance); ROC, *Endorsed Pre-LOUs of the Interim Global Legal Entity Identifier System (GLEIS)* (May 2014), http://www.leiroc.org/publications/gls/lou_20131003_2.pdf.

[561] ROC, *Regulatory Oversight Committee Welcomes First Meeting of Global LEI Foundation* (June 30, 2014), http://www.leiroc.org/publications/gls/gleif_20140629_1.pdf.

One LOU endorsed by the ROC currently charges registrants approximately $200 for initial registration plus $100 per year for maintenance.[563] These costs could decrease as the LEI identifier is used more widely.

In light of all these considerations, the Bureau believes that the benefits of having all HMDA reporters obtain and report an LEI may justify the associated costs. The Bureau solicits feedback on whether the LEI would be a more appropriate entity identifier than the HMDA RID. The Bureau is also seeking feedback regarding whether other identifiers, such as the RSSD number[564] or the NMLSR Identifier,[565] would be an appropriate alternative to the LEI.

5(a)(4) Parent Company

The transmittal sheet in appendix A to Regulation C currently requires financial institutions to provide the name of their parent company, if any. Because information about parent companies is not yet available through the LEI, the Bureau believes it is necessary to maintain this requirement to ensure that financial institutions' submissions can be linked with those of their corporate parents. The Bureau is therefore proposing new § 1003.5(a)(4), which provides that when reporting its data, a financial institution shall identify its parent company, if any. Proposed comment 5(a)-3 explains that for purposes of § 1003.5(a)(4), an entity that holds or controls an ownership interest in the financial institution that is greater than 50 percent should

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[562] *Charter of the ROC For the Global LEI System* 2, 18 (Nov. 5, 2012), *available at* http://www.financialstabilityboard.org/publications/r_121105c.pdf.

[563] *See* GMEI Utility, *Frequently Asked Questions*, https://www.gmeiutility.org/frequentlyAskedQuestions.jsp (accessed July 17, 2014).

[564] RSSD numbers are assigned and managed by the Board's National Information Center. As noted above, they are currently used by some financial institutions as their HMDA RID.

[565] NMLSR assigns a unique identifier to each entity, branch, and individual loan originator that has a record within its system. The NMLSR Identifier is required on certain loan documents pursuant to the Bureau's 2013 Loan Originator Rule. Regulation Z § 1026.36(g). The Bureau's 2013 TILA-RESPA Final Rule will also require use of the NMLSR Identifier when the rule becomes effective in August 2015. Regulation Z § 1026.37(k).

be listed as a parent company. This is the same test that is used to determine if a financial institution is a subsidiary of a bank or savings association for purposes of reporting HMDA data to the same agency as the parent.

5(b) Public Disclosure of Statement

Under Regulation C as originally promulgated, the disclosure statement was the means by which financial institutions made available to the public the aggregate data required to be disclosed under HMDA section 304.[566] At present, the FFIEC prepares an individual disclosure statement for each financial institution using the HMDA data submitted by the institution for the previous calendar year. A disclosure statement is a series of tables made available to the public by a financial institution and on the FFIEC website. Unlike the modified loan application register that a financial institution must make available to the public under HMDA section 304(j) and § 1003.5(c) of Regulation C, a financial institution's disclosure statement presents the institution's HMDA data in aggregate forms, rather than on the loan level.

5(b)(1)

HMDA section 304(k) requires the FFIEC to make available a disclosure statement for each financial institution required to make disclosures under HMDA section 304.[567] Section 1003.5(b)(1) of Regulation C requires that the FFIEC prepare a disclosure statement for each financial institution based on the data each financial institution submits on its loan application register.

[566] 41 FR 23931, 23937-38 (June 14, 1976).

[567] HMDA section 304(k)(1)(A) provides that a financial institution "shall make a disclosure statement available, upon request, to the public no later than 3 business days after the institution receives the statement from the Federal Financial Institutions Examination Council."

The Bureau proposes to modify § 1003.5(b)(1) to clarify that, although some financial institutions will report quarterly under proposed § 1003.5(a)(1)(ii), disclosure statements for these financial institutions will be based on all data submitted by each institution for the preceding calendar year. The Bureau also proposes to replace the word "prepare" with "make available" in § 1003.5(b)(1). The Bureau believes that advances in technology may permit, for example, the FFIEC to produce an online tool that would allow users of the tool to generate disclosure statements. It is the Bureau's interpretation that the FFIEC's obligation under HMDA section 304(k) would be satisfied if the FFIEC produced such a tool, which in turn would produce disclosure statements upon request. The Bureau proposes to modify the language in § 1003.5(b)(1) to clarify that such developments are accommodated by this section. Further, pursuant to its authority under HMDA section 305(a), the Bureau believes that permitting the FFIEC to produce a tool that allows members of the public to generate disclosure statements is necessary and proper to effectuate the purposes of HMDA and to facilitate compliance therewith. The Bureau solicits feedback on whether these proposals are appropriate.

5(b)(2)

HMDA section 304(k)(1) requires that, in accordance with procedures established by the Bureau, a financial institution shall make its disclosure statement available to the public upon request no later than three business days after it receives the statement from the FFIEC. HMDA section 304(m), titled "Opportunity to reduce compliance burden," provides that a financial institution shall be deemed to have satisfied the public availability requirements of section 304(a) if it compiles the information required at the home office of the institution and provides notice at the branch locations specified in HMDA section 304(a) that such information is available from the home office upon written request. The Bureau is given broad discretion as to the media and

format in which disclosure statements are made available and the procedures for disclosing them.[568]

Section 1003.5(b)(2) of Regulation C requires that each financial institution make its disclosure statement available to the public in its home office within three business days of receiving it. In addition, § 1003.5(b)(3) requires that a financial institution must either (1) make the statement available to the public in at least one branch office in each other MSA and each other MD where the institution has offices or (2) post the address for sending written requests for the disclosure statement in the lobby of each branch office in each other MSA and each other MD and provide a copy of the disclosure statement within 15 calendar days of receiving a written request. Comment 5(b)-2 provides that an institution may make the disclosure statement available in paper form or, if the person requesting the data agrees, in electronic form. For the reasons described below, the Bureau is proposing to allow a financial institution to make its disclosure statement available to the public by making available a notice that clearly conveys that the disclosure statement may be obtained on the FFIEC website and that includes the FFIEC's website address.

The current disclosure statement for each reporting financial institution is comprised of a series of numerous tables that are prepared using the HMDA data submitted by the financial institution for the previous calendar year. The Bureau has received feedback from financial institutions that the largest disclosure statements can exceed 4,000 pages. The FFIEC posts the disclosure statements to the FFIEC website in September each year and, after receiving notice that the statements are available on the FFIEC website, financial institutions download or print

[568] *See* HMDA sections 304(h)(1)(A), 304(k)(1), 304(m)(2).

the statements from the website so as to have them available for members of the public. The Bureau has received feedback from financial institutions that having to print and download the disclosure statements so as to make them available is burdensome and often wasteful, as disclosure statements are infrequently requested. Financial institutions have argued that, because the source of the disclosure statements—the FFIEC website—is readily available and easily accessible to the public at no cost, institutions should be permitted to direct members of the public who request disclosure statements to the FFIEC website. During the Small Business Review Panel process, the Bureau heard from small entity representatives that they rarely if ever receive requests for their disclosure statements and that making them available as currently required can be burdensome. The Small Business Review Panel recommended that the Bureau consider whether there may be alternative means of providing disclosure statements to the public.[569]

The Bureau believes that costs to financial institutions would be reduced by allowing institutions to refer members of the public who request disclosure statements to the FFIEC website. The Bureau has considered whether the provision to the public of disclosure statements in paper or electronic form by the financial institution itself confers any unique benefit to the disclosure goals of the statute, but does not believe it does. The FFIEC website provides one, easily accessible location where members of the public can access all HMDA disclosure statements for all financial institutions required to report under the statute, which the Bureau believes furthers the goals of the statute.[570] The Bureau has also considered whether requiring

[569] *See* Small Business Review Panel Report at 43.
[570] Under current § 1003.5(b)(3), for example, a member of the public that requests a disclosure statement at a branch office must only be provided with a disclosure statement containing data relating to the MSA or MD where

that a member of the public seeking a disclosure statement obtain it online would be unduly burdensome. Given the prevalence of internet access today, the Bureau believes that members of the public should be able to readily access HMDA disclosure statements online with minimum inconvenience, if any. The Bureau believes that any such inconvenience is not greater than, and is likely less than, the potential inconvenience of receiving a disclosure statement on a floppy disc or other electronic data storage medium which may be used with a personal computer, as is contemplated by HMDA section 304(k)(1)(b).

The Bureau believes that the burden to financial institutions associated with the provision of disclosure statements to members of the public upon request is likely not justified by any benefit to maintaining the current disclosure statement dissemination scheme. For these reasons, the Bureau believes it is reasonable to deem that financial institutions make disclosure statements available, pursuant to HMDA sections 304(k)(1) and 304(m), by referring members of the public seeking disclosure statements to the FFIEC website, as provided under proposed § 1003.5(b)(2). This proposal is also proposed pursuant to the Bureau's authority under HMDA 305(a). For the reasons given, this proposal is necessary and proper to effectuate the purposes of HMDA and facilitate compliance therewith.

Accordingly, the Bureau is proposing that, no later than three business days after receiving notice that its disclosure statement is available, a financial institution shall make available to the public at its home office and each branch office located in each MSA and each

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the branch is located. Referral to the FFIEC website would allow that member of the public to easily view the financial institution's disclosure statements for all MSAs and MDs. Also, to the extent a member of the public wanted to compare the lending activities of financial institutions in a particular MSA or MD, the FFIEC website allows her to do so all in one place, rather than requiring her to obtain disclosure statements from multiple institutions.

MD a notice that clearly conveys that the institution's disclosure statement may be obtained on the FFIEC website and that includes the FFIEC's website address.[571] Because this proposal requires only that a financial institution make available a notice, rather than its disclosure statement, the Bureau believes it appropriate to require that a financial institution make available the notice in every branch office located in an MSA or MD. The Bureau is proposing a new comment 5(b)-3 to provide an example of notice content that would satisfy the requirements of proposed § 1003.5(b)(2). Because the Bureau intends to make disclosure statements also available on its website, the example in proposed comment 5(b)-3 includes the Bureau's website address. The Bureau seeks feedback on whether these proposals are appropriate.

The Bureau also proposes to modify comment 5(b)-2 to conform to proposed § 1003.5(b)(2) and to allow a financial institution to provide the proposed notice in paper or electronic form. Comment 5(b)-2 requires that an institution may make its disclosure statement available in electronic form to a person requesting it only if the person agrees. This comment implements a requirement previously found in HMDA section 304(m)(2), which provided that, in complying with its obligation to make its HMDA data available to the public as required by section 304(m)(1), an institution could provide the information in electronic form only "if acceptable to the person" requesting the information. The Dodd-Frank Act amended HMDA section 304(m)(2) to substitute this language with new language providing that, in complying with section 304(m)(1), a financial institution "shall provide the person requesting the

[571] The Bureau notes that, as reflected in proposed comment 5(b)-3, its proposal does not require financial institutions to update each year the notice required under proposed § 1003.5(b)(2). Accordingly, the requirement that a financial institution make the notice available "within three business days" after receiving notice that its disclosure statement is available will be meaningful for a financial institution only in the year that it first reports HMDA data under revised Regulation C.

information with a copy of the information requested in such formats as the Bureau may require."[572] The Bureau believes it is appropriate to align the formats in which a financial institution may make its disclosure statement available to the public with the formats in which it may make its modified loan application register available to the public.[573] Accordingly, the Bureau is proposing to modify comment 5(b)-2 to provide that an institution may make the notice required under proposed § 1003.5(b)(2) available in paper or electronic form. The Bureau seeks feedback on this proposal.

5(c) Public Disclosure of Modified Loan Application Register

HMDA section 304(j)(1) requires that financial institutions make available to the public, upon request, "loan application register information" as defined by the Bureau and in the form required under regulations prescribed by the Bureau. HMDA section 304(j)(2) provides that the Bureau shall require such deletions from the loan application register information made available to the public as the Bureau may determine to be appropriate to protect any privacy interest of any applicant and to protect financial institutions from liability under any Federal or State privacy law, and identifies three fields in particular as appropriate for deletion.[574] HMDA section 304(j)(5) requires that the loan application register information described in section 304(j)(1) must be made available as early as March 31 following the calendar year for which the information was compiled. HMDA section 304(j)(7) provides that the Bureau shall make every effort to minimize costs incurred by financial institutions in complying with section 304(j).

[572] Dodd-Frank Act section 1094(3)(E), 12 U.S.C. 2803(m)(1).
[573] Comment 5(c)-1 allows a financial institution to make its modified loan application register available in either paper or electronic form.
[574] The fields identified in the statute as appropriate for deletion are "the applicant's name and identification number, the date of the application, and the date of any determination by the institution with respect to such application." HMDA section 304(j)(2)(B).

Section 1003.5(c) of Regulation C requires a financial institution to make its loan application register available to the public after removing three fields to protect applicant and borrower privacy: the application or loan number, the date that the application was received, and the date action was taken. An institution must make this "modified" loan application register publicly available following the calendar year for which the data are compiled by, March 31 for a request received on or before March 1, and within 30 calendar days for a request received after March 1. The modified loan application register need only contain data relating to the MSA or MD for which the request is made. Comment 5(c)-1 explains that a financial institution may make the modified loan application register available in paper or electronic form and that, although institutions are not required to make the modified loan application register available in census tract order, they are strongly encouraged to do so in order to enhance its utility to users.

For the reasons discussed below, the Bureau is proposing to modify § 1003.5(c) to require that a financial institution make available to the public a modified loan application register showing only the data fields that currently are released on the modified loan application register. The Bureau is proposing new comment 5(c)-3 to clarify that a modified loan application register made available to the public by a financial institution that reports its HMDA data on a quarterly basis under proposed § 1003.5(a)(1)(ii) must show data for the entire calendar year. The Bureau seeks comment on whether it should except smaller financial institutions from the obligation to release a modified loan application register.

As discussed above in part II.C, the Bureau's assessment under its balancing test of the risks to privacy interests created by the disclosure of HMDA data and the benefits of such disclosure is ongoing. Based on its analysis thus far, however, the Bureau believes that some of the new data points required or permitted by the Dodd-Frank Act and proposed by the Bureau

may raise privacy concerns sufficient to warrant some degree of modification, including redaction, before they are disclosed to the public. This has two implications for the future release of loan-level HMDA data.[575] First, wherever the Bureau considers modifying HMDA data before it is made available to the public, it will consider strategies to preserve the utility of the data subject to modification. These strategies may include, but may not be limited to, various disclosure limitation techniques, such as techniques aimed at masking the precise value of certain data points.[576] While such techniques can address privacy and data utility concerns, the Bureau is mindful that requiring financial institutions to apply them in order to prepare the modified loan application register may impose undue burden on financial institutions and may increase the risk of errors that could result in the unintended disclosure of data or other error.

Second, the Bureau believes that any privacy risks created by the disclosure of loan-level HMDA data may evolve over time. For example, technological developments in areas such as data aggregation and mining and the availability of new public sources of data may increase, decrease, or otherwise alter the likelihood and nature of potential privacy harms that could result from the public disclosure of loan-level HMDA data. Evolving privacy risks may warrant changes to the privacy protections applied to HMDA data disclosed to the public. Changing the modifications a financial institution must make to the modified loan application register in order to protect applicant and borrower privacy interests would require amendments to Regulation C

[575] As discussed above in part II.C, the FFIEC releases annually, on behalf of the Bureau and other agencies, a public loan-level dataset containing reported HMDA data for the preceding calendar year (the agencies' data release). Deleted from this release are the same three fields that are deleted from the modified loan application register that financial institutions make available.
[576] See *supra* note 122 for examples of these techniques.

that may impose undue costs on financial institutions and delay the implementation of the changes.

Based on these considerations,[577] the Bureau believes it may be appropriate to require that financial institutions include on their modified loan application registers only the data fields that currently are released on the modified loan application register.[578] The Bureau believes this approach would avoid creating new privacy risks or liabilities for financial institutions in connection with the release of loan-level data via the modified loan application register. It would also minimize the burden to institutions associated with preparing their modified loan application registers to implement amendments to Regulation C. The proposed approach would allow the Bureau and the other agencies flexibility in disclosing new data points in the agencies' data release, including flexibility to adjust any privacy protections as risks evolve, without unduly burdening financial institutions or creating opportunities for the modified loan application register and the agencies' data release to interact in ways that might increase privacy risk.[579]

The Bureau has concerns about the impact such a proposal may have on members of the public that regularly use modified loan application registers. Although the Bureau has received

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[577] The Bureau notes that, as part of its efforts to improve and modernize HMDA operations, it is exploring technological solutions that may allow the Bureau to apply appropriate privacy protections to the modified loan application register. These solutions, if realized, and would reduce burdens on financial institutions related to preparing the modified loan application register and otherwise impact the considerations described herein.

[578] Because the Bureau proposes to modify some of the existing HMDA data points, the data disclosed on the modified loan application register under this proposal will not be exactly the same as under current Regulation C in some respects. *See* proposed § 1003.4(a)(5) (replacing property type with construction method), 1003.4(a)(6) (providing more detail on owner-occupancy status), 1003.4(a)(10) (modifying and clarifying income reporting for various reporting scenarios), 1003.4(a)(13) (requiring additional information on HOEPA status), 1003.4(a)(14) (requiring additional information about lien priority).

[579] For example, if the modified loan application register were to disclose more data fields, or more granular data, than was disclosed in the agencies' data release, the modified loan application register could be used to reverse engineer the agencies' data release and undermine privacy protections applied to that release. Accordingly, limiting the data disclosed on the modified loan application register would allow the agencies flexibility in their data release, including to adjust privacy protections as risks evolve.

feedback that requests for modified loan applications registers are infrequently received at many institutions, the Bureau believes that a small number of HMDA data users routinely request modified loan application registers from large financial institutions. The Bureau understands that this practice is driven primarily by the timing of the agencies' data release: whereas a financial institution must make available its modified loan application register as early as March 31, the agencies' loan-level HMDA data currently are not released until almost six months later, in September. The Bureau notes that it intends to coordinate with the other agencies to explore processing improvements that may allow the agencies' data release to be made available to the public, in the future, closer to March 31 than is the current practice.

For the reasons described above, the Bureau is proposing to modify § 1003.5(c) to provide that a financial institution shall make its loan application register available to the public after, for each entry: removing the information required to be reported under § 1003.4(a)(1), the date required to be reported under § 1003.4(a)(8), the postal address required to be reported under proposed § 1003.4(a)(9), the age of the applicant or borrower required to be reported under proposed § 1003.4(a)(10), and the information required to be reported under proposed § 1003.4(a)(15) and (a)(17) through (39); and rounding the information required to be reported under proposed § 1003.4(a)(7) to the nearest thousand.[580] Proposed comment 5(c)-2 explains how a financial institution should round the loan amount on their modified loan application

[580] Currently under Regulation C, financial institutions report loan amount rounded to the nearest thousand. *See* paragraph I.A.7 of appendix A. Proposed instruction 4(a)(7)-1 modifies this requirement to provide that loan amount is reported in dollars. The Bureau proposes that financial institutions round loan amount to the nearest thousand before making available to the public their modified loan application registers so that loan amount is shown on the modified loan application register as it is under current Regulation C.

register and provides an illustrative example. The Bureau solicits comment concerning whether this proposal is appropriate.

The Bureau is aware that concerns have been raised that data currently disclosed on the modified loan application register may create risks to borrower and applicant privacy.[581] As discussed above, the Bureau is considering all data reported under HMDA in its privacy assessment, including data currently disclosed. However, the Bureau is unaware of any misuse of the currently-disclosed loan-level HMDA data, which has been made available to the public annually since 1991. The Bureau is also aware that some of these data are publicly available, such as in county land transfer records. The Bureau solicits comment concerning any risks to applicant or borrower privacy interests posed by the continued release of currently-released data fields on the modified loan application register. The Bureau also solicits comment concerning the benefits of disclosure of the currently-released fields for HMDA purposes.

Proposed comment 5(c)-3 clarifies that the modified loan application register is the loan application register reflecting all data reported for a calendar year, modified as described in § 1003.5(c)(1), whether the data were submitted on a quarterly or annual basis. Financial institutions that report on a quarterly basis under proposed § 1003.5(a)(1)(ii) must show on their

[581] The Bureau and the Board before it have received feedback that certain data fields disclosed in the HMDA loan-level data releases, including financial institution name, loan amount, and census tract, might be used in some circumstances to identify individual applicants or borrowers. *See, e.g.*, Small Business Review Panel Report at 35 (reflecting concern expressed by small entity representative that, "especially in less populated areas, the modified loan application register could be compared to public records to identify borrowers"). In other contexts, it has been suggested that loan-level disclosure of borrower income, which is currently disclosed on the modified loan application register, may raise privacy concerns. *See, e.g.*, Div. of Corp. Fin., U.S. Sec. and Exch. Comm'n, *Disclosure of Asset-Level Data* 14 (Feb. 25, 2014), *available at* http://www.sec.gov/comments/s7-08-10/s70810-258.pdf (suggesting that borrower income raises privacy concerns; this memorandum relates to the SEC's decision to re-open the comment period for two proposed rules concerning the offering, disclosure, and reporting requirements for asset-backed securities, *see* 79 FR 11361, 11362 n.5 (Feb. 28, 2014)).

modified loan application register data reported for the calendar year, not just data reported for a particular quarter.

The Bureau seeks comment on whether it should except, pursuant to its authority under HMDA section 305(a), smaller financial institutions from the requirement under § 1003.5(c) that a financial institution make available to the public its modified loan application register. During the Small Business Review Panel process, the Bureau heard from small entity representatives that they rarely if ever receive requests for their modified loan application registers. The Small Business Review Panel recommended that the Bureau consider whether there is a continued need for small financial institutions to make their modified loan application registers available to the public.[582] The Bureau solicits comment on whether such an exception from the obligation to make a modified loan application register available to the public is desirable and, if so, which financial institutions should qualify for the exception, including whether such exception should align with the quarterly reporting threshold proposed in § 1003.5(a)(1)(ii).[583]

5(d) Availability of Data

HMDA sections 304(c) and 304(j)(6) set forth the time periods for which financial institutions must maintain and make available information required to be disclosed under the statute. HMDA sections 304(j)(4) and 304(k)(3) permit a financial institution that provides its loan application register information or its disclosure statement to a member of the public to

[582] *See* Small Business Review Panel Report at 43.

[583] Proposed § 1003.5(a)(1)(ii) requires a financial institution that reported at least 75,000 covered loans, applications, and purchased covered loans, combined, for the preceding calendar year to submit its loan application register to the agencies on a quarterly, rather than annual, basis. If the threshold to exclude a financial institution from the obligation to make available to the public a modified loan application register were aligned with the threshold proposed in § 1003.5(a)(1)(ii), only financial institutions required to report on a quarterly basis would be required to make a modified loan application register available to the public under § 1003.5(c).

impose a reasonable fee for any cost incurred in reproducing the information or statement. Section 1003.5(d) of Regulation C requires that a financial institution must make its modified loan application register available to the public for a period of three years and its disclosure statement available to the public for a period of five years. This section also provides that an institution must make these disclosures available to the public for inspection and copying during the hours the office is normally open to the public for business and may impose a reasonable fee for any cost incurred in providing or reproducing the data. The Bureau is proposing to delete the requirement that a financial institution make its HMDA data available for inspection and copying and to make additional technical modifications to § 1003.5(d).

Section 1003.5(d) requires that an institution shall make its data available for inspection and copying during the hours the office is normally open to the public. This language suggests that a member of the public seeking a financial institution's disclosure statement or modified loan application register could require the financial institution to permit him to reproduce these documents himself at the financial institution's office. The Bureau believes that preserving this option is unnecessary and may be burdensome to financial institutions. The Bureau proposes to modify § 1003.5(d) to delete reference to inspection and copying and seeks comment on whether this proposed modification is appropriate.

5(e) Notice of Availability

HMDA section 304(m) provides that a financial institution shall be deemed to have satisfied the public availability requirements of HMDA section 304(a) if it compiles its HMDA data at its home office and provides notice at certain branch locations that its information is available upon written request. Section 1003.5(e) of Regulation C requires that a financial institution post a notice concerning the availability of its HMDA data in the lobby of its home

office and of each branch office located in an MSA and MD. Section 1003.5(e) also requires that a financial institution must provide, or the posted notice must include, the location of the institution's office where its disclosure statement is available for inspection and copying. Comment 5(e)-1 suggests text for the posted notice required under § 1003.5(e). Comment 5(e)-2 suggests text concerning disclosure statements that may be included in the posted notice to satisfy § 1003.5(b)(3)(ii). The Bureau is proposing conforming, clarifying, and technical modifications to § 1003.5(e).

Under proposed § 1003.5(b)(2), a financial institution shall make its disclosure statement available to the public by making available at its home office and at each branch office located in each MSA and each MD a notice that clearly conveys that the institution's disclosure statement may be obtained on the FFIEC website and that includes the FFIEC's website address. If this proposal is adopted, a financial institution's disclosure statement would be available online and the notice advising of this fact would be available in every branch office located in an MSA or MD, rendering unnecessary the current § 1003.5(e) requirement that an institution provide the location of the office where the disclosure statement is available for inspection and copying or include the location in the posted notice. Accordingly, the Bureau is proposing to remove from § 1003.5(e) the requirement that an institution provide, or its posted notice include, the location of the institution's office where its disclosure statement is available for inspection and copying. The Bureau solicits comment on whether this proposal is appropriate. The Bureau is proposing to delete comment 5(e)-2 to conform to the deletion of proposed § 1003.5(b)(3).

The Bureau is also proposing to clarify that the notice required under § 1003.5(e) must be posted in a financial institution's home office and in each branch office located in an MSA or MD. Finally, the Bureau is proposing to make minor technical modifications to comment 5(e)-1.

These include adding language to the suggested content for the notice required under § 1003.5(e) to highlight that HMDA data include the age of applicants and borrowers and to provide additional information about the online availability of HMDA data. The Bureau solicits feedback on whether these changes are appropriate.

5(f) Aggregation

HMDA section 310 requires the FFIEC to compile aggregate data by census tract for all financial institutions reporting under HMDA and to produce tables indicating aggregate lending patterns for various categories of census tracts grouped according to location, age of housing stock, income level, and racial characteristics. HMDA section 304(f) requires the FFIEC to implement a system to facilitate access to data required to be disclosed under HMDA section 304, including arrangements for central depositories where such data are made available for inspection and copying. Section 1003.5(f) of Regulation C provides that the FFIEC will produce reports for individual institutions and reports of aggregate data for each MSA and MD, showing lending patterns by property location, age of housing stock, and income level, sex, ethnicity, and race, and will make these reports available at central depositories. Section 1003.5(f) also contains information concerning how to obtain a list of central depositories from the FFIEC. For the reasons discussed below, the Bureau is proposing two modifications to § 1003.5(f).

The Bureau understands that the FFIEC has not made HMDA data available at brick-and-mortar central depositories since approximately the mid-2000s. Instead, since at least the early 2000s, the FFIEC has made data required to be disclosed under HMDA, including the data required under HMDA section 310, readily available at no cost to the public on its website. The Bureau concludes that sole reliance on the FFIEC website to publish HMDA data satisfies HMDA section 304(f). The website provides a single, convenient place for public officials and

members of the public to inspect and copy all public HMDA data, and thus qualifies as a central depository: access is available through any computer with internet connectivity, and the website constitutes an effective system for facilitating access to HMDA data. The Bureau also concludes, pursuant to HMDA section 305(a), that this means of providing access to HMDA data is necessary and proper to effectuate HMDA's purposes and facilitate compliance therewith. Accordingly, the Bureau is proposing to delete reference to central depositories in § 1003.5(f) and to instead explicitly reference the data's availability on the FFIEC website, to conform to current practices.

The Bureau also proposes to replace the word "produce" with "make available" in § 1003.5(f) for clarity. The Bureau believes that advances in technology may permit, for example, the FFIEC to produce an online tool, such as a tabular engine, that would allow public officials and members of the public to generate the tables described in HMDA section 310. It is the Bureau's interpretation that the obligation to "produce tables" set forth in HMDA section 310 would be satisfied if the FFIEC produced such a tool, which in turn would produce the tables described in HMDA section 310 on request. The Bureau proposes to modify the language in § 1003.5(f) to clarify that such developments are accommodated by this section. Further, pursuant to HMDA section 305(a), the Bureau believes that permitting the FFIEC to produce a tool that allows members of the public to generate tables described in HMDA section 310 is necessary and proper to effectuate the purposes of HMDA and facilitate compliance therewith.

The Bureau solicits feedback on whether these proposed modifications to § 1003.5(f) are appropriate.

Section 1003.6 Enforcement

6(b) Bona Fide Errors

During the Small Business Review Panel process, some small entity representatives raised concerns regarding reporting errors. Small entity representatives expressed concern that adoption of any new data points would make financial institutions more vulnerable to being cited in examinations for reporting errors that they consider minor, but in total exceed their supervisory agencies' tolerances for reporting accurate HMDA information.[584] Some small entity representatives suggested that tolerances for errors be increased if additional data points were added to Regulation C.[585] One small entity representative recommended that error rates be judged by the total number of data points contained in the loan application register entries sampled rather than by the number of entries sampled.[586] Another small entity representative noted that strict tolerances for errors increased HMDA compliance costs because they required substantial review of loan application registers for precision.[587]

Section 1003.6(b) of Regulation C provides that an error in compiling and recording loan data is not a violation of HMDA or Regulation C if the error was unintentional and occurred despite the maintenance of procedures reasonably adapted to avoid such errors; that census tract reporting errors are not violations if an institution maintains procedures reasonably adapted to avoid such errors; and that, if an institution makes a good faith effort to record all data concerning covered transactions fully and accurately within thirty calendar days after the end of each calendar quarter, and some data are nevertheless inaccurate or incomplete, the error or omission is not a violation of HMDA or Regulation C provided that the institution corrects or completes the information prior to submitting the loan application register to its regulatory

[584] *See* Small Business Review Panel Report at 21.
[585] *See* Small Business Review Panel Report at 21.
[586] *See* Small Business Review Panel Report at 97.
[587] *See* Small Business Review Panel Report at 55.

agency. The Bureau is not proposing specific changes to § 1003.6(b). However, the Bureau is concerned about the issues related to errors raised by the small entity representatives. The Bureau is seeking feedback generally regarding whether, in light of the new proposed reporting requirements, it would be appropriate to add new provisions to § 1003.6 to clarify compliance expectations and address compliance burdens or operational challenges. The Bureau is seeking feedback on whether a more precise definition of what constitutes an error would be helpful, whether there are ways to improve the current methods of calculating error rates, and whether tolerance levels for error rates would be appropriate.

VI. Section 1022(b)(2) of the Dodd-Frank Act

The Bureau is considering the potential benefits, costs, and impacts of the proposed rule.[588] The Bureau requests comment on the preliminary discussion presented below, as well as submissions of additional data that could inform the Bureau's consideration of the benefits, costs, and impacts of the proposed rule. In developing the proposed rule, the Bureau has consulted with or offered to consult with the prudential regulators (the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the National Credit Union Administration, and the Office of the Comptroller of the Currency), the Department of Justice, the Department of Housing and Urban Development, the Federal Housing Finance Agency, the Securities and Exchange Commission, and the Federal Trade Commission regarding, among

[588] Specifically, section 1022(b)(2)(A) of the Dodd-Frank Act calls for the Bureau to consider the potential benefits and costs of a regulation to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services; the impact on depository institutions and credit unions with $10 billion or less in total assets as described in section 1026 of the Dodd-Frank Act; and the impact on consumers in rural areas.

other things, consistency with any prudential, market, or systemic objectives administered by such agencies.

As discussed in greater detail elsewhere throughout this supplementary information, in this rulemaking, the Bureau is proposing to amend Regulation C, which implements HMDA, and the official commentary to the regulation, as part of the Bureau's implementation of the Dodd-Frank Act amendments to HMDA regarding the reporting and disclosure of mortgage loan information. The proposed amendments to Regulation C implement section 1094 of the Dodd-Frank Act, which made certain amendments to HMDA.[589]

In addition, the proposal includes additional amendments to Regulation C to implement the Dodd-Frank Act's provisions permitting reporting of, as the Bureau may determine to be appropriate, a unique identifier that identifies the loan originator, a universal loan identifier, and the parcel number that corresponds to the real property pledged or proposed to be pledged as collateral. The proposed rule would also require financial institutions to report additional information pursuant to authority under sections 304(b)(5)(D) and 304(b)(6)(J) of HMDA, which permit the disclosure of such other information as the Bureau may require, and section 305(a) of HMDA, which, among other things, broadly authorizes the Bureau to prescribe such regulations as may be necessary to carry out HMDA's purposes. Certain additional data points included in

[589] These amendments, among other things, require financial institutions to itemize their HMDA data by: the age of mortgagors and mortgage applicants; points and fees payable at origination in connection with a mortgage; the difference between the annual percentage rate associated with a loan and a benchmark rate or rates for all loans; the term in months of any prepayment penalty or other fee or charge payable on repayment of some portion of principal or the entire principal in advance of scheduled payments; the value of the real property pledged or proposed to be pledged as collateral; the actual or proposed term in months of any introductory period after which the rates of interest may change; the presence of contractual terms or proposed contractual terms that would allow the mortgagor or applicant to make payments other than fully amortizing payments during any portion of the loan term; the actual or proposed term in months of the mortgage; the channel through which the mortgage application was made, including retail, broker, and other relevant categories; and the credit score of mortgage applicants and mortgagors.

the proposed rule are not specifically identified by the Dodd-Frank Act amendments to HMDA.[590]

The proposed rule would also modify the regulation's institutional and transactional coverage by, among other things, requiring financial institutions to report activity only for dwelling-secured loans, regardless of whether the loans are for home purchase, home improvement, or refinancing; adjusting the institutional coverage to adopt a uniform loan-volume threshold of 25 loans applicable to all financial institutions; and requiring financial institutions to report data on applications and accounts opened for home-equity lines of credit.

Furthermore, the Bureau is proposing to modify the frequency of reporting for certain financial institutions with large numbers of transactions, modify the requirements regarding the disclosure statement, and specify the form required for the loan application register information that HMDA reporters must make available to the public. Financial institutions that reported at least 75,000 covered loans, applications, and purchased covered loans, combined, for the preceding calendar year, would be required to report data quarterly to the Bureau or to the appropriate Federal agency. Financial institutions would be permitted to make their disclosure statements available to the public by providing, upon request, a notice that clearly conveys that

[590] These additional data include: the construction method for the dwelling related to the subject property; mandatory reporting of the reasons for denial of a loan application; the total origination charges associated with the loan; the total points paid to the lender to reduce the interest rate of the loan; the interest rate the borrower would have received if the borrower had not paid any bona fide discount points; the interest rate applicable to the covered loan at closing or account open; the applicant's or borrower's debt-to-income ratio; the ratio of the total amount of debt secured by the property to the value of the property; whether a manufactured home is legally classified as real property or as personal property; the land property interest for loans or applications related to manufactured housing; the total number of individual dwelling units contained in the dwelling related to the loan; the number of individual dwellings units that are income-restricted pursuant to Federal, State, or local affordable housing programs; information related to the automated underwriting system used in evaluating an application; whether the loan is a reverse mortgage, and whether the reverse mortgage is an open- or closed-end transaction; whether the loan is a home-equity line of credit; whether the loan is a qualified mortgage; and the amount of the draw on a home-equity line of credit and on an open-end reverse mortgage.

the disclosure statement may be obtained on the FFIEC website and that includes the website address. Under the proposed regulation, financial institutions would make available to the public a modified loan application register showing only the data fields that are currently released on the modified loan application register.

The Bureau is also separately considering several operational improvements designed to reduce the burden associated with reporting HMDA data. The Bureau is considering restructuring the geocoding process, creating an improved web-based HMDA Data Entry Software (DES), and otherwise streamlining the submission and editing process to make it more efficient. The Bureau is also proposing to align the HMDA data requirements with the widely-used MISMO data standards for residential mortgages to the extent practicable.

As discussed in greater detail elsewhere in this supplementary information, HMDA requires lenders located in metropolitan areas to report data about their housing-related lending activity. In 2010, Congress responded to the mortgage crisis with the Dodd-Frank Act, which enacted changes to HMDA and directed reforms to the mortgage market and the broader financial system. In addition to transferring rulemaking authority for HMDA from the Board to the Bureau, the Dodd-Frank Act directed the Bureau to implement changes requiring the collection and reporting of several new data points and such other information as the Bureau may require. In doing so, Congress sought to ensure that HMDA data continue to be useful for determining whether institutions are serving the housing needs of their communities, for identifying potentially discriminatory lending patterns, and for helping public officials target public investment to attract private investment where it is needed.

A. Provisions To Be Analyzed

The proposal contains both specific proposed provisions with regulatory or commentary language (proposed provisions) as well as requests for comment on modifications where regulatory or commentary language was not specifically included (additional proposed modifications). The discussion below considers the benefits, costs, and impacts of the following major proposed provisions and the additional proposed modifications:

1. The scope of the institutional coverage of the proposed rule.
2. The scope of the transactional coverage of the proposed rule.
3. The data that financial institutions are required to report about each loan or application.
4. The proposed modifications to disclosure and reporting requirements.

With respect to each major proposed provision, the discussion considers the benefits, costs, and impacts to consumers and covered persons. The discussion also addresses certain alternative provisions that were considered by the Bureau in the development of the proposed rule. The Bureau requests comment on the consideration of the potential benefits, costs, and impacts of the proposed rule.

B. Statement of Need

1. HMDA's purposes and the current deficiencies in Regulation C

Congress intended HMDA to provide the public and public officials with information to help determine whether financial institutions are serving the housing needs of their communities, to target public investment to attract private investment in communities, and to identify possible discriminatory lending patterns and enforce antidiscrimination statutes. Today, HMDA data are the preeminent data source for regulators, researchers, economists, industry, and advocates analyzing the mortgage market both for the three stated purposes of HMDA and for general

market monitoring. For example, HMDA data are used by bank supervisors to evaluate depository institutions for purposes of the CRA; by local groups as the basis for discussions with lenders about local community needs; and by regulators, community groups, and researchers to identify disparities in mortgage lending that may provide evidence of prohibited discrimination. In addition, HMDA data provide a broadly representative, national picture of home lending that is unavailable from any other data source. This information permits users to monitor market conditions and trends, such as the supply and demand of applications and originations. For example, industry uses HMDA data to identify and meet the needs of underserved markets through potentially profitable lending and investment opportunities.

HMDA data include records regarding applications by mortgage borrowers and records regarding the flow of funding from lenders to borrowers. Together, these records form a near-census of the home mortgage market for covered loans and applications, with rich geographical detail (down to census tract level) and identification of the specific financial institution for each transaction. Therefore, HMDA allows users to draw a detailed picture of the supply and demand of mortgage credit at various levels of geography and lender aggregation.

Despite past improvements, however, serious inadequacies exist in the information currently collected under Regulation C. HMDA data can generally be used to calculate underwriting and pricing disparities across various protected classes in mortgage lending, at the national, market, and individual-lender levels. Nevertheless, the data lack key fields that explain legitimate underwriting and pricing decisions for mortgage loans. Therefore, in most cases, HMDA data alone cannot demonstrate whether borrowers and applicants have received nondiscriminatory treatment by financial institutions. Additional proposed data points, such as credit score, AUS recommendations, CLTV, and DTI, would help users understand the reasons

for approvals and denials of applications and for pricing decisions regarding originations. Similarly, current HMDA data provide certain information about borrowers (race, ethnicity, sex, income, and location) and loans (loan amount, purpose, loan type, occupancy, lien status, and property type). However, the current data points do not fully characterize the types of loans for which consumers are applying and do not explain why some applications are denied. The additional proposed data points, such as non-amortizing features, prepayment penalties, and loan terms, would help fill these important information gaps.

Additionally, analysis of the cost of credit to mortgage borrowers is incomplete without the inclusion of key pricing information. The current rate spread reporting requirement requires financial institutions to report rate spread only for higher-priced mortgage loans. Currently, such loans comprise less than 5 percent of total originations. These limited data restrict analysis of the cost of credit to a small segment of total mortgage originations and create severe selection bias as changes in the market lead to shifts in the average spreads between APR values and APOR. Adding the proposed pricing data fields, such as discount points, risk-adjusted, pre-discounted interest rate, origination charges, interest rate, and total points and fees, will allow users to better understand the price that consumers pay for mortgages and more effectively analyze the tradeoffs between rates, points, and fees.

HMDA also currently provides limited information about the property that secures or will secure the loan. Despite being one of the most important characteristics for underwriting and pricing decisions, the value of the property securing the loan has not been collected under the current HMDA reporting requirements. The proposed rule would address this deficiency by providing for reporting of the value of the property securing the covered loan or application. Current HMDA data also lack information about the manufactured housing segment of the

mortgage market. Manufactured housing is an important source of housing for many borrowers, such as low-income and elderly borrowers, that are often financially fragile and possibly more vulnerable to unfair and predatory practices.[591] Multifamily financing for both institutional and individual borrowers serves the housing needs of multifamily unit dwellers who are mostly renters and many of whom face challenges related to housing affordability. The Bureau's proposal would provide for reporting of the construction method, number of multifamily affordable units, manufactured housing security type, and property interest. The improved data would help community groups, government agencies, researchers, members of the public, and industry to better understand the properties for which borrowers are receiving or being denied credit.

Finally, the transactional coverage criteria omit a large proportion of dwelling-secured loan products, such as home-equity lines of credit. In the lead-up to the financial crisis between 2000 and 2008, the total balance of closed- and open-end home-equity loans increased by approximately 16.8 percent annually, growing from a total of $275.5 billion to $953.5 billion. Recent research has shown that this growth in home-equity lending was correlated with subsequent home price depreciation, as well as high default and foreclosure rates among first mortgages.[592] These correlations were driven in part by consumers using home-equity lines of

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[591] Eric S. Belsky & Mark Duda, "Anatomy of the Low-Income Homeownership Boom in the 1990s," in *Low Income Homeownership: Examining the Unexamined Goal* 15-63, Joint Center for Housing Studies of Harvard University Low-Income Homeownership Working Paper Series 01-1 (2001) (providing evidence that manufactured housing was an important driver of the homeownership boom for the low-income population in the 1990s). Manufactured housing is also an important source of housing for the elderly. *See* Robert W. Wilden, Comm'n on Affordable Housing and Health Facility Needs for Seniors in the 21st Century, *Manufactured Housing and Its Impact on Seniors* (2002).

[592] Michael LaCour-Little, Wei Yu, and Libo Sun, *The Role of Home Equity Lending in the Recent Mortgage Crisis*, 42 Real Estate Economics 153 (2014).

credit to fund investment properties, which impacted default rates when housing prices began to fall. By identifying home-equity lines of credit and loan purposes, industry, members of the public, and public officials will be better able to identify and respond to similar patterns in the future.

Congress recognized the current deficiencies in HMDA, and responded with the Dodd-Frank Act, which amended HMDA and provided broader reforms to the financial system. The Dodd-Frank Act's amendments to HMDA require the collection and reporting of several new data points, including information about borrowers (age and credit score), information about loan features and pricing, and, as the Bureau may determine to be appropriate, unique identifiers for loans, properties, and loan originators. It also authorizes the Bureau to require financial institutions to collect and report "such other information as the Bureau may require."

2. Improving HMDA data to address market failures

HMDA does not regulate the interactions between lenders and borrowers. Instead, HMDA requires financial institutions to report detailed information to their Federal supervisory agencies and to the public about mortgage applications and originations at the transaction level. Such information provides an important public good that illuminates the lending activities of financial institutions and the mortgage market in general. This increased transparency allows members of the public, community groups, and public officials to better assess compliance with various Federal laws and regulations. In doing so, HMDA data help correct the potential market failures that those laws and regulations were designed to address.

From the perspective of economics, the proposed improvements to HMDA would address two market failures: (1) the under-production of public mortgage data by the private sector, and (2) the information asymmetries present in credit markets.

First, HMDA data is a public good in that it is both non-rival, meaning that it may be used without reducing the amount available for others, and non-excludable, meaning that it cannot be withheld from consumers who do not pay for it. As with other public goods, standard microeconomic principles dictate that public mortgage data would be under-produced by the private sector, creating an outcome that is not socially optimal. Not surprisingly, no privately produced loan-level mortgage databases with comprehensive national coverage exist that are easily accessible by the public. Private data vendors offer a few large databases for sale that typically contain data collected from either the largest servicers or securitizers. However, none of these databases match the near-universal coverage of the HMDA data.[593] Furthermore, commercial datasets come at high cost to subscribers, creating a substantial hurdle for community groups, government agencies, and researchers that wish to obtain access. Importantly, these commercially available datasets typically do not identify individual lenders and therefore cannot be used to study whether specific lenders are meeting community needs or making nondiscriminatory credit decisions. In addition, all privately produced, commercially available mortgage databases cover only originated loans and exclude applications that do not result in originations. A crucial feature of the HMDA data is that they include information about applications in addition to originations. In other words, in economic terms, private mortgage databases only provide information about the market outcome resulting from the intersection of supply and demand, while HMDA data provide information about both the market outcome and the demand for credit. Thus, users can examine both supply and demand regarding mortgage

[593] Although limited transactions and institutions are excluded from HMDA, these are also typically excluded from commercial datasets.

credit and understand the reasons for discrepancies between supply and demand at various levels of analysis, including by lender, geographic region, type of product or feature, credit risk, income, and race or ethnicity.

Second, it is well-accepted that credit markets are characterized by information asymmetries. Mortgage products and transactions are highly complex, and lenders have a significant information advantage. Such information asymmetry affects price and quantity allocations and can contribute to types of lender behavior, such as discrimination or predatory lending, that conflict with the best interests of consumers. In addition to disadvantaging individual consumers, information failure may also lead to herding behavior by both lenders and consumers, creating substantial systemic risk to the mortgage market and the nation's overall financial system. The recent mortgage crisis provides a vivid demonstration of such a threat to the overall safety and stability of the housing market.

These market failures are intertwined. Following the financial crisis, the Bureau and other government regulators have attempted to directly address misallocation, enhance consumer protection, and stem systemic risk in the mortgage market through rules that regulate the business practices of financial institutions. In contrast, the proposed rule provides another approach to solving failures in the mortgage market: correcting the informational market failure. Increased mortgage data would provide greater transparency about the mortgage market, weakening the information advantage that lenders possess relative to borrowers, community groups, and public officials. Greater information enables these groups to advocate that financial institutions adopt fairer practices and increases the prospect that self-correction by financial institutions would be rewarded. Additional information would also help reduce the herding behavior of both lenders and borrowers, reducing the systemic risk that has been so detrimental

to the nation. Mandatory sharing of information may lead to more efficient outcomes. Thus, as a public good that reduces information asymmetry in the mortgage market, HMDA data are irreplaceable.

Finally, the proposed rule would meet the compelling public need for improved efficiency in government operations. The new data would allow the government to more effectively assess compliance by financial institutions with the Equal Credit Opportunity Act and the Fair Housing Act. The new data will also help regulatory agencies assess the performance of certain financial institutions under the Community Reinvestment Act. Improved HMDA data would also provide valuable information that supports future market analyses and optimal policy-making.

C. Baseline for Consideration of Costs and Benefits

The Bureau has discretion in any rulemaking to choose an appropriate scope of consideration with respect to potential benefits and costs and an appropriate baseline. The Bureau does not believe the amendments to HMDA in section 1094 of the Dodd-Frank Act would take effect automatically without implementing rules. Financial institutions are not required to report additional data required by section 304(b)(5) and (6) of HMDA, as amended, "before the first January 1 that occurs after the end of the 9-month period beginning on the date on which regulations are issued by the Bureau in final form with respect to such disclosures."[594] Furthermore, financial institutions are unable to comply with the obligation to report data regarding the age of mortgagors and mortgage applicants, which is required pursuant to section 304(b)(4) of HMDA, until the Bureau provides the necessary guidance on the manner of such

[594] Public Law 111-203, section 1094(3)(F).

reporting, including modification of the loan application register to accommodate the reporting of age data. Therefore, the Bureau believes that the requirements to report all of the new data elements under HMDA section 304(b)(4)-(6) cannot be effective until the Bureau completes a rulemaking with respect to the reporting of such data. Accordingly, this analysis considers the benefits, costs, and impacts of the major provisions of the proposed rule against a pre-Dodd-Frank Act baseline, *i.e.*, the current state of the world before the provisions of the Dodd-Frank Act that amended HMDA are implemented by an amended Regulation C. The Bureau believes that such a baseline will also provide the public with better information about the benefits and costs of the statutory amendments to HMDA.

D. Coverage of the Proposed Rule

Each proposed provision applies to certain financial institutions, and requires these financial institutions to report and disclose data regarding covered loans secured by a dwelling that they originate or purchase, or for which they receive applications, as described further in each section below.

E. Basic Approach of the Bureau's Consideration of Benefits and Costs and Data Limitations

This discussion relies on data that the Bureau has obtained from industry, other regulatory agencies, and publicly available sources. However, as discussed further below, the data limit the Bureau's ability to quantify the potential costs, benefits, and impacts of the proposed rule.

1. Costs to Covered Persons

Regarding the costs to covered persons, the proposed rule generally establishes which financial institutions, transactions, and data points are covered under HMDA's reporting requirements. In order to precisely quantify the costs to covered persons, the Bureau would

need, for both current and potential HMDA reporters, representative data on the operational costs that financial institutions incur to gather and report HMDA data, one-time costs for financial institutions to update reporting infrastructure in response to the proposed rule, and information on the level of complexity of financial institutions' business models and compliance systems. Currently, the Bureau does not believe that data on HMDA reporting costs with this level of granularity is systematically available from any source. The Bureau has made reasonable efforts to gather data on HMDA reporting costs. Through outreach efforts with industry, community groups, and other regulatory agencies, the Bureau has obtained some information about ongoing operational and one-time compliance costs, and the discussion below uses this information to quantify certain costs of the proposed rule. The Bureau believes that the discussion constitutes the most comprehensive assessment to date of the costs of HMDA reporting by financial institutions. However, the Bureau recognizes that these calculations may not fully quantify the costs to covered persons, especially given the wide variation of HMDA reporting costs among financial institutions. The Bureau continues to seek data from available sources in order to better quantify the costs to covered persons.

More specifically, in considering the benefits, costs, and impacts of the proposed rule, the Bureau has engaged in a series of efforts to estimate the cost of compliance by covered entities. First, the Bureau attempted to understand and estimate the current cost of reporting for financial institutions, *i.e.* the baseline cost at the institution level. Second, the Bureau evaluated the change in financial institutions' operational and one-time costs in response to the proposed changes. Part VI.F, below, provides details on the Bureau's approach in performing these institution-level analyses. The Bureau realizes that costs vary by institution due to many factors, such as size, operational structure, and product complexity, and that this variance exists on a

continuum that is impossible to fully represent. In order to conduct a cost consideration that is both practical and meaningful, the Bureau has chosen an approach that focuses on three representative tiers of financial institutions. For each tier, the Bureau has produced a reasonable estimate of the cost of compliance given the limitations of the available data. Part VI.F.2, below, provides additional details on this approach. More elaboration is available in the Small Business Review Panel Outline of Proposals and the Small Business Review Panel Report.[595]

The third stage of the Bureau's consideration of costs involved projecting and mapping the total number of potentially impacted financial institutions to the three tiers described above. The Bureau used a wide range of data in conducting this task, including current HMDA data, call reports, and NMLSR data.[596] The Bureau faced substantial challenges in completing this task, because no single data source provided complete coverage of all the financial institutions that could be impacted, and the data quality of some sources was less than perfect. For example, estimating the number of HMDA reporters that would be eliminated under the proposed rule was relatively easier than estimating the number of HMDA reporters that would be added. Similarly, the Bureau faced certain challenges in mapping the financial institutions to the three representative tiers. Where the Bureau is uncertain about the aggregate impacts, it has provided certain range estimates.

2. Costs to Consumers

[595] *See* U.S. Consumer Fin. Prot. Bureau, *Small Business Review Panel for Home Mortgage Disclosure Act Rulemaking: Outline of Proposals Under Consideration and Alternative Considered* (Feb. 7, 2014) (Outline of Proposals), *available at* http://files.consumerfinance.gov/f/201402_cfpb_hmda_outline-of-proposals.pdf.
[596] NMLSR is a national registry of non-depository financial institutions, including mortgage loan originators.

Having generated estimates of the cost impact on covered financial institutions, the Bureau attempted to estimate the costs to consumers. According to economic theory, in a perfectly competitive market where financial institutions are profit maximizers, the affected financial institutions would pass on to consumers the marginal, i.e. variable, cost per application or origination, and absorb the one-time and increased fixed costs of complying with the rule. The Bureau received feedback through the Small Business Review Panel process that, if the market permitted, some small entities would attempt to pass on to consumers the entire amount of the increased cost of compliance and not just the increase in variable costs. Because the competiveness, supply-demand conditions, and impact of market failures may vary across different markets, the Bureau seeks additional comment on the costs to consumers.

3. Benefits to Consumers and Covered Persons

Quantifying benefits to consumers also presented substantial challenges. As discussed above, Congress intended for HMDA, including the Dodd-Frank Act amendments to the Act and the Bureau's rules implementing HMDA, to achieve compelling social benefits. The Bureau is unable to readily quantify some of these benefits with precision, both because the Bureau does not have the data to quantify all benefits and because the Bureau is not able to assess completely how effective the Dodd-Frank amendments to HMDA will be in achieving those benefits. As explained elsewhere in this supplementary information, the Bureau believes that its proposals appropriately implement the statutory amendments and are necessary and proper to effectuate HMDA's purposes. As discussed further below, as a data reporting rule, most provisions of the proposal would benefit consumers in indirect ways. Nevertheless, the Bureau believes that the impact of enhanced transparency would substantially benefit consumers. For example, the proposed rule would facilitate the detection and remediation of discrimination; promote public

and private investment in certain under-served markets, potentially increasing access to mortgage credit; and promote more stable and competitive markets. Quantifying and monetizing these benefits would require identifying all possible uses of HMDA data, establishing causal links to the resulting public benefits, and then quantifying the magnitude of these benefits. The Bureau continues to seek data from available sources regarding the benefits to consumers of the proposed rule. The Bureau is particularly interested in the quantifiable impact of increased transparency on financial institution behavior, the need for public and private investment, the housing needs of communities, the number of lenders potentially engaging in discriminatory or predatory behavior, and the number of consumers currently being unfairly disadvantaged and the level of quantifiable damage from such disadvantage. The Bureau is unaware of data that would enable reliable quantitative estimates of all of these effects.

Similar issues arise in attempting to quantify the benefits to covered persons. Certain benefits to covered persons are difficult to quantify. For example, the Bureau believes that the enhanced HMDA data will facilitate improved monitoring of the mortgage market in order to prevent major disruptions to the financial system, which in turn would benefit financial institutions over the long run. But such effects are hard to quantify because they are largely related to future events that the proposed changes themselves are designed to prevent from happening. Similarly, the Bureau believes that the enhanced HMDA data will provide a better analytical basis for financial regulators and community groups to screen and monitor lenders for possible discrimination. Because of limitations in the current HMDA data fields, high false positive rates have been widely cited by financial institutions in various HMDA-related fair lending exams, complaints, and lawsuits. The proposed changes would greatly reduce the rate of false positives and therefore reduce the associated compliance burden on financial institutions.

The Bureau believes that such benefits to financial institutions could be substantial. Nevertheless, quantifying them would require data that are currently unavailable.

In light of these data limitations, the discussion below generally provides a qualitative consideration of the benefits, costs, and impacts of the proposed rule. General economic principles, together with the limited data available, provide insight into these benefits, costs, and impacts. Where possible, the Bureau has made quantitative estimates based on these principles and the data that are available. The Bureau seeks comment on the appropriateness of the approach described above, including additional data relevant to the benefits and costs to consumers and covered persons.

F. Potential Benefits and Costs to Consumers and Covered Persons

1. Overall Summary

In this section, the Bureau presents a concise, high-level overview of the benefits and costs considered in the remainder of the discussion. This overview is not intended to capture all details and nuances that are provided both in the rest of the analysis and in the section-by-section discussion above, but rather to provide an overview of the major benefits and costs of the proposed rule.

Major benefits of the rule. The proposed rule has a number of major benefits. First, the proposed changes will improve the usefulness of HMDA data in identifying possible discriminatory lending patterns and enforcing antidiscrimination statutes. By covering additional transactions, including mandatory reporting of open-end lines of credit, home-equity loans, reverse mortgages, and preapproval requests that were approved, but not accepted, and by requiring reporting by additional nondepository institutions, the proposal expands the scope of the market that community groups and government agencies can include in fair lending analyses.

The addition of pricing data fields such as interest rate, discount points, and origination charges improves understanding of disparities in pricing outcomes beyond that permitted by the current rate spread data field. The addition of data fields such as CLTV, credit score, DTI, and AUS recommendations allow for a more refined analysis and understanding of disparities in both underwriting and pricing outcomes. Overall, the proposed changes make fair lending analyses more comprehensive and accurate. This is especially important for the prioritization and peer analysis or redlining reviews that regulatory agencies conduct for fair lending supervision and enforcement purposes because a consistent and clean dataset will be available for all financial institutions.

Second, the proposal will help determine whether financial institutions are serving the housing needs of their communities and help public officials target public investment to better attract private investment, two of HMDA's stated purposes. The proposed expansions of institutional and transactional coverage would provide additional data helpful to both industry and government in identifying profitable lending and investment opportunities in underserved communities. Similarly, the proposed data points related to multifamily dwellings and manufactured housing would reveal more information about these segments of the market. Borrowers who seek financing for manufactured housing are typically more financially vulnerable than borrowers financing site-built homes, and may deserve closer attention from government agencies and community groups. Although financing involving multifamily dwellings reported under HMDA is typically offered to institutional borrowers, the ultimate constituents these loans serve are mostly low- to mid-income renters who live in these financed units. Advocacy groups and government agencies have raised concerns over affordability issues faced by individuals living in multifamily dwellings, who also tend to be more financially

vulnerable than individuals living in single-family dwellings. Overall, by permitting a better and more comprehensive understanding of these markets, the proposal will improve the usefulness of HMDA data for assessing the supply and demand of credit, and financial institutions' treatment of applicants and borrowers, in these communities.

Third, the proposed changes would assist in earlier identification of trends in the mortgage market including the cyclical loosening and tightening of credit. Mandatory reporting of additional transactions, such as open-end lines of credit, home-equity loans, and reverse mortgages, as well as additional data fields, such as amortization type, prepayment penalty, and occupancy type, would improve understanding of the types of products and product characteristics received by consumers. Recent research has indicated that certain product types and characteristics may have increased the likelihood of default and exacerbated declines in housing prices during the recent financial crisis. In addition to being able to better identify some of the risk factors that played a role in the recent financial crisis, the additional transactions and data points would improve current research efforts to understand mortgage markets. This research may identify new risk factors that might increase systemic risk to the overall economy. Better understanding of these risk factors could provide early warning signals to the government of worrisome market trends.

Fourth, the proposed changes will improve the effectiveness of policy-making efforts. In response to the recent financial crisis, the government has generated a number of rules and implemented a wide array of public policy measures to address market failures and protect consumers. The additional data being proposed, as well as the proposed coverage and transaction changes, will allow for more informed decisions by policy makers and improve the

consideration of benefits, costs, and impacts for future policy efforts, resulting in more effective policy.

Quantifying these benefits is difficult because the size of each particular effect cannot be known in advance. Given the number of mortgage transactions and the size of the mortgage market, however, small changes in behavior can have substantial aggregate effects. The Bureau seeks comments and suggestions on whether such effects can be reliably estimated and possible ways of doing so.

Major costs of the rule. The proposed rule will increase ongoing operational costs and impose one-time costs on financial institutions. Financial institutions conduct a variety of operational tasks to collect the necessary data points, prepare the data for submission, conduct compliance and audit checks, and prepare for HMDA-related exams. These operational costs are driven primarily by the time spent on each task and the wage of the relevant employee. The Bureau estimates that current annual operational costs of reporting under HMDA are approximately $2,200 for a representative low-complexity financial institution with a loan application register size of 50 records; $32,000 for a representative moderate-complexity financial institution with a loan application register size of 1,000 records; and $267,000 for a representative high-complexity financial institution with loan application register size of 50,000 records. This translates into an estimated per-application cost of approximately $45, $30, and $5 for representative low-, moderate- and high-complexity financial institutions, respectively. These operational cost estimates were shared with small entity representatives during the Small Business Review Panel meeting and their general accuracy was confirmed by most of the small

entity representatives.[597] Using recent survey estimates of net income from the Mortgage Bankers Association[598] as a frame of reference for these ongoing, operational costs, the average net income per origination is approximately $2,900 for small/mid-size banks, $3,900 for medium banks, and $2,100 for large banks; and approximately $2,300 for small/mid-size independent mortgage companies, $3,000 for medium independent mortgage companies, and $1,900 for large independent mortgage companies.[599]

The proposed rule will affect the operational tasks associated with collecting and reporting HMDA data. More time will be required for tasks such as transcribing and checking data, and more resources will need to be devoted to tasks such as internal and external audits. The Bureau estimates that, absent the mitigation efforts discussed below, the addition to ongoing, operational costs borne by covered persons would be approximately $1,600 for a representative low-complexity financial institution; $10,300 for a representative moderate-complexity financial institution; and $27,000 for a representative high-complexity financial institution, per year. For the estimated 28 financial institutions that reported at least 75,000 transactions in the preceding year and would be required to report HMDA data quarterly, the addition to ongoing, operational costs would be approximately $54,000 per year. This would translate into a market-level impact of approximately $18,400,000 to $59,000,000 per year. Using a 7 percent discount rate, the net

[597] During the Small Business Review Panel Meetings, most small entity representatives self-identified as tier 3 and tier 2 institutions. There were a few non-depository institutions with large mortgage loan volume that self-identify as tier 1 institutions.

[598] These estimates come from an annual survey conducted by the Mortgage Bankers Association and the STRATMORE group as part of the Peer Group Program and are available at http://www.mba.org/ResearchandForecasts/ProductsandSurveys/MBASTRATMORPeerGroupSurveyandRoundtables.htm.

[599] The Bureau notes that these net income estimates were reported by the Mortgage Bankers Association and the STRATMORE group on per-origination basis. The Bureau estimates the HMDA operational cost per application, not per origination.

present value of this impact over five years across the entire market would be an increase in costs of $75,600,000 to $242,000,000.[600]

With operational improvements the Bureau is considering, the net cost increase from the proposal would be smaller than the above estimates. The Bureau's initial outreach efforts, as well as information gathered during the Small Business Review Panel process, indicated that reportability questions, regulatory clarity, geocoding, and submission processes and edits were significant concerns to financial institutions. Along with modifying the reporting requirements, the Bureau is separately considering operational enhancements and modifications to address these concerns. For example, the Bureau is considering working to consolidate the outlets for assistance, providing guidance support similar to the guidance provided for Title XIV rules; improving points of contact processes for help inquiries; modifying the types of edits and when edits are approved; exploring opportunities to improve the current DES; and considering approaches to reduce geocoding burdens. All of these enhancements would improve the submission and processing of data, increase clarity, and reduce reporting burden. With the inclusion of these operational improvements, the net impact of the proposed rule on ongoing operational costs would be approximately $1,000, $2,100, and $12,600 per year, for representative low-, moderate-, and high-complexity financial institutions, respectively. For the estimated 28 financial institutions that reported at least 75,000 transactions in the preceding calendar year would be required to report HMDA data quarterly, the addition to ongoing

[600] The market-level estimates provide lower and upper bounds of the impact of the proposed rule on the market as a whole. To convey differences in impacts across the three representative tiers, we present institution-level estimates for each tier and do not aggregate up to market-level estimates for each tier. The institution-level estimates for each tier provide more useful and accurate estimates of differences in impacts across the three representative financial institutions, because they do not require the additional assumptions used to map HMDA reporters into tiers.

operational costs would be approximately $31,300 per year. This would translate into a market-level net cost increase of $10,200,000 to $14,900,000 per year. Using a 7 percent discount rate, the net present value of this impact over five years would be a cost of $41,900,000 to $61,200,000.

In addition to impacting ongoing, operational costs, the proposed rule would impose one-time costs necessary to modify processes in response to the proposal. These one-time costs are driven primarily by updating software systems, training staff, updating compliance procedures and manuals, and overall planning and preparation time. The Bureau estimates that these one-time costs would be approximately $3,000 for low-complexity financial institutions, $250,000 for moderate-complexity financial institutions, and $800,000 for high-complexity financial institutions.

These estimates exclude the impact of expanding transactional coverage to include open-end lines of credit, home-equity loans, and reverse mortgages.[601] As discussed in more detail below, outreach efforts indicated that many financial institutions, especially larger and more complex institutions, process home-equity products in the consumer business line using separate procedures, policies, and data systems. As a result, there would be one-time costs to modify processes and systems for home-equity products and one-time costs to modify processes and systems for other mortgage products. The Bureau recognizes that the one-time cost from reporting dwelling-secured home-equity products could be substantial for many financial institutions but so far lacks the data necessary to accurately quantify it. For this discussion, the

[601] The Bureau realizes that the impact to one-time costs varies by institution due to many factors, such as size, operational structure, and product complexity, and that this variance exists on a continuum that is impossible to fully capture. As a result, the one-time cost estimates will be high for some financial institutions, and low for others.

Bureau assumes that the one-time cost of integrating home-equity products into HMDA reporting processes would be roughly equal to 50 percent of the one-time costs absent mandatory reporting of such products. This estimate accounts for the fact that compliance with the reporting requirements for these lines of business would require some new systems, extra start-up training, and new compliance procedures and manuals, but that some fixed, one-time costs could be shared with lines of business currently subject to Regulation C because both have to undergo systemic changes. For high- and moderate-complexity financial institutions, the Bureau therefore estimates one-time costs to adapt to mandatory reporting of open-end lines of credit, home-equity loans, and reverse mortgages to be $400,000 and $125,000, respectively. For low-complexity financial institutions, the one-time cost associated with mandatory reporting of dwelling-secured home-equity products is relatively low because these institutions are less reliant on information technology systems for HMDA reporting, and home-equity products are often processed on the same system and in the same business unit as mortgage products. Therefore, for tier 3 financial institutions, the Bureau estimates that the additional one-time cost created by the proposed changes to transactional coverage is minimal and is derived mostly from new training and procedures adopted for the proposed changes.

The specific estimates of one-time costs are based on the Bureau's outreach efforts. Specifically, for low-complexity financial institutions, these outreach efforts indicated that the cost to update information technology systems would be minimal, because the processes involved in reporting are highly manual. The estimate of one-time training cost is based on estimated ongoing training costs of $300 per year for staff directly responsible for data reporting. In response to the proposed rule, additional staff will require one-time training, but the intensity of this training will be lower than ongoing training. To capture this additional, less-intensive

training, the Bureau used five times the annual training cost as the estimated one-time training cost ($1,500). Training costs provide the best-available proxy for the one-time cost to update compliance procedures and manuals, so the Bureau used $1,500 as an estimate of these costs as well. Therefore, the total one-time cost estimate for lower-complexity financial institutions is approximately $3,000 (=0+1,500+1,500). This estimate varies little with or without the inclusion of mandatory reporting of dwelling-secured home-equity products.

For moderate-complexity financial institutions, outreach efforts indicated that representative costs to update information technology would be approximately $225,000. This estimate excludes the impact of expanding transactional coverage to include dwelling-secured home-equity products. The estimate of one-time training cost is based on the estimate of ongoing training costs of $2,500 per year. Again, the Bureau used five times the annual training cost as the estimated one-time training cost ($12,500). Training costs provide the best-available proxy for the one-time cost to update compliance procedures and manuals, so the Bureau used $12,500 as an estimate of these costs as well. The one-time cost estimate for a representative moderate-complexity financial institution is therefore approximately $250,000 (=225,000+12,500+12,500), excluding the costs of mandatory reporting of dwelling-secured home-equity products. By including the 50 percent multiplier discussed above, the Bureau assumes that the one-time cost of mandatory reporting of dwelling-secured home-equity products is $125,000. Therefore, for a representative moderate-complexity financial institution, the one-time cost estimate including mandatory reporting of dwelling-secured home-equity products is $375,000.

For high-complexity financial institutions, outreach efforts indicated that representative costs to update information technology would be approximately $500,000. This estimate

excludes the impact of expanding transactional coverage to include dwelling-secured home-equity products. The estimate of one-time training costs is based on the estimate of ongoing training costs of $30,000 per year. Again, the Bureau used five times the annual training cost as the estimated one-time training cost ($150,000). Training costs provide the best available proxy for the one-time cost to update compliance procedures and manuals, so the Bureau used $150,000 as an estimate of these costs as well. The one-time cost estimate for a representative high-complexity financial institution is therefore approximately $800,000 (=500,000+150,000+150,000). By including the 50 percent multiplier discussed above, the Bureau assumes that the one-time cost of mandatory reporting of dwelling-secured home-equity products is $400,000. Therefore, for a representative high-complexity financial institution, the one-time cost estimate including mandatory reporting of dwelling-secured home-equity products is $1,200,000.

The Bureau estimates an overall market impact on one-time costs of between $383,000,000 and $2,100,000,000. As a frame of reference for all of these market-level, one-time cost estimates, the total non-interest expenses for current HMDA reporters were approximately $420 billion in 2012. The upper-bound estimate of $2.1 billion is approximately 0.5 percent of the total annual non-interest expenses.[602] Because these costs are one-time investments, financial institutions are expected to amortize these costs over a period of years. In this analysis the Bureau amortizes all costs over five years, using a simple straight-line

[602] The Bureau estimated the total non-interest expense for banks, thrifts and credit unions that reported under HMDA based on Call Report and NCUA Call Report data for depository institutions and credit unions, and NMLS data for non-depository insitutions, all matched with 2012 HMDA reporters.

amortization. Using a 7 percent discount rate and a five-year window, the annualized additional one-time cost is $93,400,000 to $514,900,000.

The Bureau has taken a conservative approach to estimating the one-time costs because of the uncertainty regarding how many financial institutions belong to each of the three representative tiers. Thus the Bureau has mapped out all possible distributions to arrive at the lower bound and higher bound cost estimates, as explained in part VI.F.2, below. The Bureau hopes to obtain more information on the distribution of financial institutions across the three tiers and to refine its estimate of these one-time costs through feedback received during the rulemaking process. In particular, the Bureau seeks additional information on the number of HMDA reporters that are moderate complexity, tier 2 institutions.

2. Methodology for Generating Cost Estimates

In connection with the development of the proposed rule, the Bureau reviewed the current HMDA compliance systems and activities of financial institutions. The review used a cost-accounting, case-study methodology consisting, in part, of interviews with 20 financial institutions of various sizes, nine vendors, and 15 governmental agency representatives.[603] These interviews provided the Bureau with detailed information about current HMDA compliance processes and costs.[604] This information showed how financial institutions gather and report

[603] For a discussion of this methodology in the analysis of the costs of regulatory compliance, see Gregory Elliehausen, *The Cost of Bank Regulation: A Review of the Evidence*, Bd. of Governors of the Fed. Reserve Sys. Working Paper Series 171 (1998). In addition, the Bureau recently conducted a Compliance Cost Study as an independent analysis of the costs of regulatory compliance. *See* U.S. Consumer Fin. Prot. Bureau, *Understanding the Effects of Certain Deposit Regulations on Financial Institution's Operations: Findings on Relative Costs for Systems, Personnel, and Processes at Seven Institutions*, (2013), *available at* http://files.consumerfinance.gov/f/201311_cfpb_report_findings-relative-costs.pdf.

[604] The financial institutions interviewed were selected to provide variation in key characteristics like institution type (bank, credit union, independent mortgage bank), regulator, record count, submission mechanism, number of resubmissions, and other designations like multifamily lender or rural. However the Bureau recognizes that this does

HMDA data and provided the foundation for the approach the Bureau took to consider the benefits, costs and impacts of the proposed rule. The Bureau augmented this information through the Small Business Review Panel process, and through relevant academic literature, publicly available information and data sources available through the internet,[605] historical HMDA data, Call Report Data, NMLSR Data, and the Bureau's expertise.

Based on the outreach described above, the Bureau classified the operational activities that financial institutions currently use for HMDA data collection and reporting into discrete compliance "tasks." This classification consists of 18 "component tasks," which can be grouped into four "primary tasks." The level of detail of the classification is intended to facilitate estimation of baseline costs and to enable rigorous analysis of the impact of the proposals across a wide range of financial institutions. The four primary tasks are described briefly below.

1. Data collection: transcribing data, resolving reportability questions, and transferring data to HMDA Management System (HMS).

2. Reporting and resubmission: geocoding, standard annual edit and internal checks, researching questions, resolving question responses, checking post-submission edits, filing post-submission documents, creating public loan application register, distributing public loan application register, distributing disclosure report, and using vendor HMS software.

3. Compliance and internal audits: training, internal audits, and external audits.

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not constitute a random survey of financial intuitions and the sample size might not be large enough to capture all variations among financial institutions. Therefore the Bureau interprets the findings cautiously.

[605] Internet resources included, among others, sites such as Jstor.org, which provides information on published research articles; FFIEC.gov, which provides information about HMDA, CRA, and the financial industry in general; university websites, which provide information on current research related to mortgages, HMDA and the financial industry; community group websites, which provide the perspective of community groups; and trade group websites which provide the perspective of industry.

4. HMDA-related exams: exam preparation and exam assistance.

In addition to collecting information about operational activities and costs, the Bureau also used outreach efforts and the Small Business Review Panel process to better understand the potential one-time costs that HMDA reporters will incur in response to the proposed rule. Management, legal, and compliance personnel will likely require time to learn new reporting requirements and assess legal and compliance risks. Financial institutions that use vendors for HMDA compliance will incur one-time costs associated with software installation, troubleshooting, and testing. The Bureau is aware that these activities will take time and that the costs may vary depending on the time available. Financial institutions that maintain their own reporting systems will incur one-time costs to develop, prepare, and implement necessary modifications to those systems. In all cases, financial institutions will need to update training materials to reflect new requirements and activities and may have certain one-time costs for providing initial training to current employees.

The Bureau recognizes that the cost per loan of complying with the current requirements of HMDA, as well as the operational and one-time impact of the proposed rule will differ by financial institution. During the Bureau's outreach with financial institutions, the Bureau identified seven key dimensions of compliance operations that were significant drivers of compliance costs. These seven dimensions are: the reporting system used; the degree of system integration; the degree of system automation; the compliance program; and the tools for geocoding, performing completeness checks, and editing. The Bureau found that financial institutions tended to have similar levels of complexity in compliance operations across all seven dimensions. For example, if a given financial institution had less system integration, then it would also tend to use less automation and less-complex tools for geocoding. It was generally

not the case that a financial institution would use less complex approaches on one dimension and more complex approaches on another. The small entity representatives validated this perspective during the Small Business Review Panel meeting.

To capture the relationships between operational complexity and compliance cost, the Bureau used these seven dimensions to define three broadly representative lenders according to the overall level of complexity of their compliance operations. Tier 1 denotes a representative financial institution with the highest level of complexity, tier 2 denotes a representative financial institution with a moderate level of complexity, and tier 3 denotes a representative financial institution with the lowest level of complexity. For each tier, the Bureau developed a separate set of assumptions and cost estimates. All of these assumptions and cost estimates apply at the institutional level.[606] In the Outline of Proposals prepared for the Small Business Review Panel, the Bureau provided a detailed exposition of the analytical approach used for the three tiers.[607]

Table 1 below provides an overview of all three representative tiers across the seven dimensions of compliance operations:

[606] The Bureau assumes that the tier 1 representative financial institution has 50,000 records, the tier 2 representative has 1,000 records, and the tier 3 representative financial institution has 50 records on the HMDA loan application register. All cost estimates reflect the assumptions defining the three representative financial institutions, and reflect general characteristics and patterns, including man-hours spent on each of the 18 component tasks and salaries of the personnel involved. To the extent that an individual financial institution specializes in a given product, or reports different numbers of records on its loan application register, these representative estimates will differ from the actual cost of that particular financial institution.

[607] *See* U.S. Consumer Fin. Prot. Bureau, *Small Business Review Panel for Home Mortgage Disclosure Act Rulemaking: Outline of Proposals Under Consideration and Alternative Considered* (Feb. 7, 2014) (Outline of Proposals), *available at* http://files.consumerfinance.gov/f/201402_cfpb_hmda_outline-of-proposals.pdf.

Table 1:
Types of HMDA Reporters[1]

	Tier 3 FIs tend to…	Tier 2 FIs tend to…	Tier 1 FIs tend to…
Systems	Store data in EXCEL and use DES	Use LOS and HMS	Use multiple LOS, central SoR, HMS, DES
Integration	(None)	Have forward integration (LOS to HMS)	Have backward and forward integration
Automation	Type data into DES	Use manual edit checks	Have high automation (only verifying edits manually)
Geocoding	Use FFIEC tool (manual)	Use batch processing	Use batch processing with multiple sources
Completeness checks	Check in DES only	Use LOS, which includes completeness checks	Use multiple stages of checks
Edits	Use FFIEC edits only	Use FFIEC and customized edits	Use FFIEC and customized edits run multiple times
Compliance program	Have a joint compliance and audit office	Have basic internal and external accuracy audit	Have in-depth accuracy and fair lending audit

[1] FI is "financial institution"; DES is "Data Entry Software"; LOS is "Loan Origination System"; HMS is "HMDA Management Software"; SoR is "System of Record."

Tables 2-4 convey the baseline estimates of annual ongoing operational costs as well as the underlying formulas used to calculate these estimates for the 18 operational tasks for the three representative financial institutions. The wage rate is $28 per hour, which is the national average wage for compliance officers based on most recent National Compensation Survey from the Bureau of Labor Statistics. The number of applications for tier 3, tier 2, and tier 1 financial institutions is 50, 1,000, and 50,000, respectively. The Bureau used similar breakdowns of the 18 operational tasks for each representative financial institution to estimate the impact of the proposal on ongoing operational costs. The Bureau notes that with the assumed wage rate, number of applications, and other key assumptions provided in the notes following each table, it

is possible for readers of this discussion to back out all elements in the formulas provided below using the baseline estimates for each task in each tier.

Table 2: Baseline Cost Estimates for 18 Operational Tasks for Tier 3 Financial Institutions[1]

Primary Task	Component Tasks	Baseline Compliance Costs at a Tier 3 FI	Fixed or Variable Cost	Baseline Estimate
Data Collection	Transcribing data	(hourly wage) x (hours spent transcribing data per application) x (number of applications)[2]	Variable	$230
	Resolving reportability questions	(hourly wage) x (hours spent resolving reportability questions per application) x (number of applications with reportability questions)	Variable	$138
	Transfer data to HMS	(hourly wage) x (hours spent transferring data to HMS per application) x (number of applications)	Variable	$230
Reporting and Resubmission	Complete geocoding data	(hourly wage) x (hours spent geocoding per application) x (number of applications)	Variable	$100
	Standard annual edit and internal check	(hourly wage) x (hours spent on edits and checks)	Fixed	$442
	Researching questions	(hourly wage) x (hours spent researching questions per application) x (number of applications with questions)[3]	Variable	$69
	Resolving question responses	(hourly wage) x (hours resolving question responses per application) x (number of applications with contrary answers to questions)[4]	Variable	$28
	Checking post-submission edits	(hourly wage) x (hours spent checking post-submission edits per application)	Variable	$28
	Filing post-submission documents	(hourly wage) x (hours spent filing post-submission documents)	Fixed	$7
	Creating public LAR	(hourly wage) x (hours spent creating public LAR)	Fixed	$111
	Distributing public LAR	(hourly wage) x (hours spent distributing public LAR) x (number of public LAR requests)[5]	Fixed	$0
	Distributing disclosure report	(hourly wage) x (hours spent distributing disclosure report) x (number of disclosure report requests)[6]	Fixed	$0
	FI uses vendor HMS Software	Interviews indicated Tier 3 FIs use free DES instead of vendor HMS	Fixed	$0
Audits	Training	(hourly wage) x (number of loan officers and processors)[7] x (hours of training received by each)	Fixed	$276
	Internal audit	Interviews indicated Tier 3 FIs have no internal audit department	Fixed	$0
	External audit	Cost based on representative average of information	Fixed	$500
Exams	Exam prep	(hourly wage) x (hours spent preparing for exam)	Fixed	$7
	Exam assistance	(hourly wage) x (hours spent assisting during exams)	Fixed	$55

Note: Key Assumptions in the Table

1. Hourly wage = $28, number of applications = 50
2. Number of applications with reportability questions = 5
3. Number of applications with questions = 5
4. Number of applications with contrary answers to questions = 1
5. Number of public LAR requests = 0
6. Number of disclosure report requests = 0
7. Number of loan officers and processors = 5

Table 3: Baseline Cost Estimates for 18 Operational Tasks for Tier 2 Financial Institutions[1]

Primary Task	Component Tasks	Baseline Compliance Costs at a Tier 2 FI	Fixed or Variable Cost	Baseline Estimate
Data Collection	Transcribing data	(hourly wage) x (hours spent transcribing data per application) x (number of applications)	Variable	$2,303
	Resolving reportability questions	(hourly wage) x (hours spent resolving reportability questions per application) x (number of applications with reportability questions)[2]	Variable	$1,382
	Transfer data to HMS	Tier 2 Financial institutions use an automated transfer of data into the HMS	Variable	$0
Reporting and Resubmission	Complete geocoding data	(hourly wage) x (hours spent geocoding per application) x (number of applications)	Variable	$691
	Standard annual edit and internal check	(hourly wage) x (hours spent on edits and checks)	Fixed	$8,621
	Researching questions	(hourly wage) x (hours spent researching questions per application) x (number of applications with questions)[3]	Variable	$691
	Resolving question responses	(hourly wage) x (hours resolving question responses per application) x (number of applications with contrary answers to questions)[4]	Variable	$28
	Checking post-submission edits	(hourly wage) x (hours spent checking post-submission edits per application)	Variable	$111
	Filing post-submission documents	(hourly wage) x (hours spent filing post-submission documents)	Fixed	$7
	Creating public LAR	(hourly wage) x (hours spent creating public LAR)	Fixed	$221
	Distributing public LAR	(hourly wage) x (hours spent distributing public LAR) x (number of public LAR requests)[5]	Fixed	$41
	Distributing disclosure report	(hourly wage) x (hours spent distributing disclosure report) x (number of disclosure report requests)[6]	Fixed	$41
	FI uses vendor HMS Software	Estimated annual vendor HMS cost	Fixed	$8,000
Audits	Training	(hourly wage) x (number of loan officers and processors)[7] x (hours of training received by each)	Fixed	$2,210
	Internal audit	(hourly wage) x (hours spent on HMDA portion of audit	Fixed	$221
	External audit	Cost based on representative average of information	Fixed	$5,000
Exams	Exam prep	(hourly wage) x (hours spent preparing for exam)	Fixed	$2,210
	Exam assistance	(hourly wage) x (hours spent assisting during exams)	Fixed	$332

Note: Key Assumptions in the Table

1. Hourly wage = $28, number of applications = 1,000
2. Number of applications with reportability questions = 50
3. Number of applications with questions = 50
4. Number of applications with contrary answers to questions = 1
5. Number of public LAR requests = 3
6. Number of disclosure report requests = 3
7. Number of loan officers and processors = 20

Table 4: Baseline Cost Estimates for 18 Operational Tasks for Tier 1 Financial Institutions[1]

Primary Task	Component Tasks	Baseline Compliance Costs at a Tier 1 FI	Fixed or Variable Cost	Baseline Estimate
Data Collection	Transcribing data	(hourly wage) x (hours spent transcribing data per application) x (number of applications)	Variable	$115,125
	Resolving reportability questions	(hourly wage) x (hours spent resolving reportability questions per application) x (number of applications with reportability questions)[2]	Variable	$6,908
	Transfer data to HMS	Tier 1 Financial institutions use an automated transfer of data into the HMS	Variable	$0
Reporting and Resubmission	Complete geocoding data	(hourly wage) x (hours spent geocoding per application) x (number of applications)	Variable	$2,500
	Standard annual edit and internal check	(hourly wage) x (hours spent on edits and checks)	Fixed	$17,904
	Researching questions	(hourly wage) x (hours spent researching questions per application) x (number of applications with questions)[3]	Variable	$3,454
	Resolving question responses	(hourly wage) x (hours resolving question responses per application) x (number of applications with contrary answers to questions)[4]	Variable	$28
	Checking post-submission edits	(hourly wage) x (hours spent checking post-submission edits per application)	Variable	$442
	Filing post-submission documents	(hourly wage) x (hours spent filing post-submission documents)	Fixed	$7
	Creating public LAR	(hourly wage) x (hours spent creating public LAR)	Fixed	$442
	Distributing public LAR	(hourly wage) x (hours spent distributing public LAR) x (number of public LAR requests)[5]	Fixed	$207
	Distributing disclosure report	(hourly wage) x (hours spent distributing disclosure report) x (number of disclosure report requests)[6]	Fixed	$207
	FI uses vendor HMS Software	Interviews indicated Tier 3 FIs use free DES instead of vendor HMS	Fixed	$13,000
Audits	Training	(hourly wage) x (number of loan officers and processors)[7] x (hours of training received by each)	Fixed	$27,630
	Internal audit	(hourly wage) x (hours spent per year on audit)	Fixed	$63,660
	External audit	Interviews indicated Tier 1 FIs have no external audit of HMDA data	Fixed	$0
Exams	Exam prep	(hourly wage) x (hours spent preparing for exam)	Fixed	$13,262
	Exam assistance	(hourly wage) x (hours spent assisting during exams)	Fixed	$2,210

Note: Key Assumptions in the Table

1. Hourly wage = $28, number of applications = 50,000
2. Number of applications with reportability questions = 250
3. Number of applications with questions = 250
4. Number of applications with contrary answers to questions = 1
5. Number of public LAR requests = 15
6. Number of disclosure report requests = 15
7. Number of loan officers and processors = 250

To generate cost estimates at the market level, the Bureau developed an approach to map all HMDA reporters to one of three tiers. Because financial institutions are arrayed along a continuum of compliance cost that cannot be precisely mapped to three representative tiers, the Bureau has adopted a conservative strategy in providing a possible range of the number of financial institutions in each tier. To identify these distributions, the Bureau used the total number of reporters (7,421) and the total number of loan application register records (18,723,000) in the 2012 HMDA data.

As a first step, the Bureau identified all possible tier distributions that were consistent with these two reporter and record counts, using the same loan application register sizes adopted in the institutional-level analysis (50,000 for tier 1 institutions; 1,000 for tier 2 institutions; and 50 for tier 3 institutions). Specifically the Bureau set the following two constraints: (1) the total number of HMDA reporters in all three tiers must sum to 7,421; and (2) using the assumed loan application register size in each tier, the total number of loan application register records by all reporters in all three tiers must sum to 18,723,000. For this step, the Bureau imposed an additional constraint by classifying all 217 HMDA reporters with over 10,000 records as tier 1, because the Bureau's investigation led it to believe that these large financial institutions all possess a high level of complexity in HMDA reporting. This assumption helped to narrow the range of possible combinations. The Bureau also substituted the actual loan application register size of these 217 largest HMDA reporters into this constraint for the loan application register size of a tier 1 financial institution, further narrowing the range of possible combinations. The Bureau notes that all distributions identified are mathematically possible based on the Bureau's assumptions.

Second, for the subset of tier distributions satisfying these reporter and count constraints, the Bureau then estimated market-level costs based on the tier-specific assumptions and cost estimates. That is, for a given distribution derived in the first step, the Bureau multiplied the institutional-level cost estimate for each tier by the number of institutions in that tier, and then summed across all three tiers. The distributions with the lowest- and highest-estimated market-level costs provided the lower and upper bounds for the market-level estimates throughout the consideration of the benefits and costs. Specifically, the Bureau arrived at two distributions for all HMDA reporters: (1) the first distribution has 4 percent of financial institutions in tier 1, 0 percent of financial institutions in tier 2, and 96 percent of financial institutions in tier 3; and (2) the second distribution has 3 percent of financial institutions in tier 1, 66 percent of financial institutions in tier 2, and 31 percent of financial institutions in tier 3. The Bureau notes that these two distributions likely do not match the state of the world exactly. Nevertheless, for the set of assumptions described above, these distributions provide upper and lower bounds for the market-level estimates. The Bureau recognizes that this range estimate does not permit perfect precision in estimating the impact of the proposed rule and will refine the range estimate for the final rule to the extent that public comments supplement the Bureau's knowledge. The Bureau solicits comments and data that might assist in producing more precise estimates.

Initial outreach efforts, as well as information gathered during the Small Business Review Panel process, indicated that compliance costs for financial institutions were impacted by the complexity of the data field specifications and the process of submitting and editing HMDA data. As part of the proposed rule, the Bureau is considering enhancements to the sources of help and the processing procedures. For example, the Bureau is considering working to consolidate the outlets for assistance, providing guidance support similar to the guidance

provided for title XIV rules; and improving points of contact processes for help inquiries. In addition, the Bureau is separately considering possible modifications to data submission tools to include loan-type specific edits and pre-approved edits. All of these enhancements would clarify the data field specifications and reduce burden. The consideration of benefits and costs discusses how these enhancements might affect the impact of the proposed rule.

3. The scope of the institutional coverage of the proposed rule

The proposed rule would revise the threshold that determines which financial institutions are required to report data under HMDA. Specifically, depository and nondepository institutions that meet all the other criteria for a "financial institution" in proposed § 1003.2(g) would only be required to report HMDA data if they originated at least 25 covered loans, excluding open-end lines of credit, in the previous calendar year. The Bureau is proposing to no longer exempt nondepository institutions pursuant to its discretionary authority under HMDA section 309(a).

Based on data for 2012 from Call Reports, HMDA, and the NMLSR, the Bureau estimates that these proposed changes would reduce the number of reporting depository institutions by approximately 1,600 and increase the number of reporting nondepository institutions by approximately 450.[608] The exclusion of depository institutions would reduce loan application register records by approximately 70,000 and the inclusion of additional nondepository institutions would add approximately 30,000 records. Expansions or contractions

[608] Estimates of the number of depository institutions that would no longer be required to report under HMDA, as well as the reduction in loan application register volume can be obtained directly from current HMDA data, and are therefore relatively reliable. The number of nondepository institutions that would be required to start reporting based on the proposed rule is more difficult to estimate, because it requires data and information from an alternative source as these nondepository institutions are not currently HMDA reporters. There are various data quality issues related to the alternative data sources on nondepository institutions. As such, the estimates for non-depository institutions are less reliable, and should be viewed as the best effort estimates given the data limitations.

of the number of financial institutions, or changes in product offerings between now and implementation of the proposed rule may alter these estimated impacts.

Benefits to consumers. The proposed institutional coverage threshold would have several benefits to consumers. Traditionally, nondepository institutions have been subject to less scrutiny by regulators than depository institutions and little is known about the mortgage lending behavior of nondepository institutions that fall below the current reporting thresholds. By illuminating this part of the mortgage market, the proposed rule would provide regulators, public officials, and members of the public with important information. For example, it is possible that small nondepository institutions are serving particular market segments or populations that would benefit from more oversight by public officials and community groups. This oversight can be enhanced only if more information is revealed about the segments, and the proposed change in institutional coverage is designed to fill this vacuum. To the extent that such increased monitoring and transparency enhances social welfare, consumers served by these nondepository institutions would benefit.

Similarly, expanding coverage among nondepository institutions could improve the processes used to identify possible discriminatory lending patterns and enforce antidiscrimination statutes. Financial regulators and enforcement agencies use HMDA data in their initial prioritization and screening processes to select institutions for examination. HMDA data also provide information that is used in fair lending reviews of mortgage lenders for potential violations of ECOA and the Fair Housing Act. This is especially true for redlining analyses, which compare lending patterns across lenders within given markets. Current deficiencies in HMDA's institutional coverage leave gaps in the data used by regulators for conducting fair lending prioritization and redlining analyses to compare lenders or markets.

Because many depository and nondepository institutions with similar loan volumes are similar in other respects, excluding some nondepository institutions with fewer than 100 loans may weaken the understanding of markets needed for prioritization and redlining analyses. Consequently, increased reporting among nondepository institutions may increase the ability to identify fair lending risk.

Finally, the proposed rule will also improve the ability to determine whether financial institutions are serving the housing needs of their communities. Information from data sources such as the United States Census, Call Reports, and the NMLSR can be used to characterize the housing needs of the communities each lender serves. HMDA data provide a supply-side picture of how well each lender is meeting these housing needs. Indeed, HMDA data may be analogized to a census of mortgage demand and supply for covered financial institutions. However, such data currently paints only a partial picture of the market served by financial institutions with 25 to 99 loans. The addition of nondepository institutions with between 25 and 99 originations will provide an improved understanding of the mortgage markets where these financial institutions operate, thereby enhancing efforts to assess whether these institutions, and financial institutions overall, are serving the housing needs of their communities.

Costs to consumers. The revised threshold will not impose any direct costs on consumers. Consumers may bear some indirect costs if nondepository institutions that would be required to report under the proposed rule pass on some or all of their costs to consumers. Following microeconomic principles, the Bureau believes that these nondepository institutions will pass on increased variable costs to future mortgage applicants, but absorb start-up costs,

one-time costs, and increased fixed costs if financial institutions are profit maximizers and the market is perfectly competitive.[609]

The Bureau defines variable costs as costs that depend on the number of applications received. Based on initial outreach efforts, the following five operational steps affect variable costs: transcribing data, resolving reportability questions, transferring data to an HMS, geocoding, and researching questions. The primary impact of the proposed rule on these operational steps is an increase in time spent per task. Overall, the Bureau estimates that the impact of the proposed rule on variable costs per application is approximately $13 for a representative tier 3 financial institution, $0.20 for a representative tier 2 financial institution, and $0.11 for a representative tier 1 financial institution.[610] The 450 nondepository institutions that would now be required to report have small origination volumes, so the Bureau expects most of them to be tier 3 financial institutions. Hence, based on microeconomics principles, the Bureau expects the costs that a representative financial institution affected by this proposal would pass on to mortgage applicants would be $13 per application. This expense will be amortized over the life of the loan and represents a negligible increase in the cost of a mortgage loan. Therefore, the Bureau does not anticipate any material adverse effect on credit access in

[609] If markets are not perfectly competitive or financial institutions are not profit maximizers then what financial institutions pass on may differ. For example, they may attempt to pass on one-time costs and increases in fixed costs, or they may not be able to pass on variable costs.

[610] These cost estimates do not incorporate the impact of adding operational changes affecting geocoding, DES processing, and help sources. Incorporating these additional operational changes would reduce the estimated impact on variable costs. Therefore, the estimates we provided are upper bound estimates of the increase in variable costs that financial institutions would pass on to consumers. These estimates of the impact of the proposed rule on variable cost per application show the impact of all components of the proposed rule, and therefore differ from estimates of the impact on variable cost presented below, which show the impact of specific components of the proposed rule. In addition, these estimates focus only on the variable cost tasks, while other estimates incorporate both variable and fixed cost tasks.

the long or short term even if the additional reporting nondepository institutions pass on these costs to consumers.

During the Small Business Review Panel process, some small entity representatives noted that they would attempt to pass on all increased compliance costs associated with the proposed rule, but that whether these costs were passed on would depend on the competiveness of the market in which they operate, especially for smaller financial institutions. In addition, some small entity representatives noted that they would attempt to pass on costs through higher fees on other products, would leave geographic or product markets, or would spend less time on customer service. To the extent that the market is less than perfectly competitive and financial institutions are able to pass on a greater amount of these compliance costs, the cost to consumers would be slightly larger than the estimates described above. Even so the Bureau believes that the potential costs that would be passed on to consumers are small.

The proposed rule may impose additional costs on consumers. Reducing the number of depository institutions required to report will reduce HMDA's overall coverage of the mortgage market. This reduction would reduce the usefulness of HMDA data for assessing whether lenders are meeting the housing needs of their communities and highlighting opportunities for public and private investment. This reduction may also affect the usefulness of HMDA for identifying possible discriminatory lending patterns—especially for redlining analyses, which focus on market-level data and data on competitors. To better understand these potential costs, the Bureau analyzed the characteristics of the depository institutions that would be excluded by the 25-loan threshold, and compared these characteristics to depository institutions that currently report and would not be excluded. This type of analysis is possible because the proposed rule reduces both the number of depository institutions and the transactions they report, and the total

universe reported under the current regulation is known. For this exercise, the Bureau also excluded purchased loans from its comparisons.

The Bureau analyzed the distribution of various HMDA data fields for depository institutions that would be newly excluded and included under the proposal. Overall, the Bureau found that, relative to depository institutions that would continue to report under the proposal, applications for covered loans at excluded depository institutions were more likely to be (1) made to the depository institutions supervised by the FDIC or NCUA; (2) unsecured or second-lien; (3) home improvement; (4) non-owner-occupied; (5) manufactured housing or multi-family; (6) portfolio loans; (7) higher-priced; and (8) lower-loan amount. Specifically, over 36 percent and 44 percent of applications that would be excluded were submitted to depository institutions regulated by the FDIC and NCUA, respectively. In contrast, for applications at depository institutions that would continue to report under the proposal, 13.74 percent and 10.15 percent were submitted to depository institutions supervised by the FDIC and NCUA, respectively. Over 16 percent and 12 percent of applications at depository institutions that would be excluded were second-lien or unsecured, respectively, compared to 2.92 percent and 2.75 percent of applications at depository institutions not excluded. Over 31 percent of applications at depository institutions that would be excluded were for home improvement products, compared to 6.78 percent of applications at depository institutions not excluded. Over 19 percent of applications at depository institutions that would be excluded were non-owner-occupied, compared to 11.86 percent of applications at depository institutions not excluded. Slightly fewer than 4 percent of applications at depository institutions that would be excluded were manufactured housing and just under 4 percent were multi-family, compared to 1.83 percent and 0.42 percent of applications at depository institutions not excluded, respectively. Slightly fewer

than 13 percent of originations at depository institutions that would be excluded were sold in the secondary market, compared to 67.26 percent of originations at depository institutions not excluded. Nearly 9 percent of originations at depository institutions that would be excluded exceeded HMDA's current rate spread threshold, compared to 1.88 percent of originations at depository institutions not excluded. Finally, the average loan amount for applications at depository institutions that would be excluded was $184,000, compared to $205,333 for applications at depository institutions not excluded.

Excluding small-volume depository institutions currently reporting under HMDA also impacts the volume of records available for analysis at the market level. The geographic data fields currently in the HMDA data provide four possible market levels: State, MSA, county, and census tract. Overall, analysis[611] of these markets shows that for most markets, a small percentage of loan application register records would be lost by excluding small-volume depository institutions. For all but five states, less than 1 percent of loan application register records reported under 2012 HMDA would be excluded. The percentage excluded is greater than 1 percent for Colorado, Texas, Nevada, Alaska and Puerto Rico. Alaska and Puerto Rico had the highest percentage of excluded records at 3.31 percent and 9.27 percent, respectively. Ranked by the percentage of loan application register records that would be excluded for each MSA, the 75th percentile was 0.72 percent, suggesting that for 75 percent of MSAs, excluding small depository institutions would exclude less than 0.72 percent of total loan application register records. The 95th percentile was 1.99 percent, suggesting that for 5 percent of MSAs, excluding small depository institutions would exclude more than 1.99 percent of total loan

[611] This analysis includes purchased loans.

application register records. The top five MSAs were all in Puerto Rico. Counties and census tracts have smaller volumes, so the variation in percentages is naturally expected to be higher. Ranked by the percentage of loan application register records that would be excluded, the 75th and 95th percentiles for counties were 0.61 percent and 4.55 percent, respectively. The 75th and 95th percentiles for census tracts were 0.66 percent and 3.23 percent, respectively

Benefits to covered persons. The proposal would provide some cost savings to depository institutions that would be excluded under the 25-loan threshold. The estimated 1,600 depository institutions that would be excluded under the proposed threshold would no longer incur current operational costs associated with gathering and reporting data. The Bureau expects most of these depository institutions to be tier 3 financial institutions, given the small volume of home purchase, refinance and reverse mortgage originations for them. The Bureau estimates that the current annual, operational costs of reporting under HMDA are approximately $2,200 for representative tier 3 financial institutions with a loan application register sizes of 50 records. This translates into a market-level benefit of approximately $3,500,000 (=2,200*1,600) per year. Using a 7 percent discount rate, the net present value of this impact savings over five years is $14,400,000.[612]

In addition to avoiding ongoing costs, the 1,600 excluded depository institutions would not incur the one-time costs necessary to modify processes in response to the proposed rule. The Bureau estimates these one-time costs to be, on average, $3,000 for tier 3 financial institutions.

[612] Note that the figures above refer to cost savings by the newly -excluded small depository institutions, assuming costs based on the current Regulation C reporting system. With the proposed changes, along with the operational improvements that the Bureau is separately considering, the impact of the proposed rule on operational costs would be approximately $1,000 per year for a representative tier 3 financial institution. This translates into a market-level savings of approximately $1,600,000 (=1,000*1,600) per year. Using a 7 percent discount rate, the net present value of this savings over five years is $6,600,000.

Assuming that all 1,600 depository institutions are tier 3 institutions, this yields an overall market savings of $4,800,000. Using a 7 percent discount rate and a five-year amortization window, the annualized one-time savings is $1,200,000.

One-time costs to covered persons. The estimated additional 450 nondepository institutions that would have to report under the proposal would incur start-up costs to develop policies and procedures, infrastructure, and training. Given the small origination volume by these nondepository institutions, the Bureau expects most of them to be tier 3 financial institutions. Based on outreach discussions with financial institutions, the Bureau believes that these start-up costs would be approximately $25,000 for tier 3 financial institutions. This yields an overall market cost of $11,300,000. Using a 7 percent discount rate and a five-year amortization window, the annualized one-time cost is $2,700,000. The Bureau hopes to learn more about the costs of initiating HMDA reporting through comment letters.

Ongoing costs to covered persons. The estimated 450 nondepository institutions that would have to report under the proposal would incur the operational costs of gathering and reporting data. Including both current operational costs and the impact of the proposed rule, the Bureau estimates that these operational costs will total approximately $3,200 for a representative tier 3 financial institution per year. This yields an overall market impact of $1,400,000. Using a 7 percent discount rate, the net present value of this cost over five years is $5,900,000. These estimates incorporate all of the operational improvements that the Bureau is considering.

4. The scope of the transactional coverage of the proposed rule.

The proposed rule requires financial institutions to report activity only for dwelling-secured loans, regardless of whether the loans are for home purchase, home improvement, or refinancing. As a result, home improvement loans not secured by a dwelling would be removed

from the reporting requirements, while home-equity loans and reverse mortgages would be included regardless of purpose. Importantly, institutions would be required to report data on all open-end line of credit. In addition, for preapproval requests that are approved, but not accepted, reporting would change from optional to mandatory.

Benefits to consumers. The proposed revisions to Regulation C's transactional coverage would have several benefits to consumers. The Bureau believes that data on open-end lines of credit, home-equity loans, reverse mortgages, and preapproval requests that were approved, but not accepted will provide a much more complete picture of the dwelling-secured lending market.

Using home-equity lines of credit and home-equity loans as an example, in the lead up to the financial crisis between 2000 and 2008, the balance of home-equity lending increased by approximately 16.8 percent annually, moving from $275.5 billion to $953.5 billion in total.[613] Various researchers have pointed out that rapidly expanding lending activities in home-equity lines of credit and home-equity loans contributed to the housing bubble as borrowers and lenders both vigorously took on high leverage. Additional research has shown that the growth in home-equity lending was correlated with subsequent home price depreciation, as well as high default and foreclosure rates among first mortgages.[614] Researchers have argued that these correlations were driven in part by consumers using home-equity lines of credit to fund investment properties, which impacted default rates when housing prices began to fall. Researchers have

[613] Michael LaCour-Little, Wei Yu, and Libo Sun, *The Role of Home Equity Lending in the Recent Mortgage Crisis*, 42 Real Estate Economics 153 (2014).
[614] *See* Atif Mian and Amir Sufi, *House Prices, Home Equity-Based Borrowing, and the U.S. Household Leverage Crisis*, 101 American Economic Review 2132, 2154 (2011); Donghoon Lee, Christopher Mayer, and Joseph Tracy, *A New Look at Second Liens*, Fed. Reserve Bank of New York Staff Report No. 569, at 11 (2012); Michael LaCour-Little, Wei Yu, and Libo Sun, *The Role of Home Equity Lending in the Recent Mortgage Crisis*, 42 Real Estate Economics 153 (2014).

also shown evidence that distressed homeowners with closed-end subordinate-lien mortgage loans encountered several challenges when seeking assistance from public and private mortgage relief programs.[615] Data on these loans might have helped public officials improve the effectiveness of these relief programs. However, because HMDA does not currently cover all home-equity loans, and most financial institutions choose not to report home-equity lines of credit, this substantial market is almost completely missing from the HMDA data. Based on information from HUD and Moody's Analytics (May 2013), HMDA data currently include approximately 1 percent of all home-equity lines of credit and 35 percent of home-equity loan originations. Data identifying the presence and purpose of home-equity lending will enable government, industry, and the public to potentially avert similar scenarios in the future. Secondly, housing equity has long been the most important form of household savings and consumers often resort to tapping their home equity for various purposes. Providing a full picture of home-equity secured consumer lending would be especially important for determining whether financial institutions are serving the housing needs of their communities. Again, the optional reporting of these transactions under the current Regulation C leaves this picture incomplete. Finally, mandatory reporting of home-equity secured lending would guard against regulatory gaming by financial institutions. To the extent that home-equity lines of credit and home-equity loans are largely interchangeable for customers applying for credit for a given purpose, lenders could intentionally recommend open-end home-equity lines of credit as substitutes for closed-end home-equity loans in order to avoid mandatory reporting of the home-

[615] *See* Vicki Been, Howell Jackson, and Mark Willis, Furman Ctr. for Real Estate and Urban Policy, *Essay: Sticky Seconds - The Problems Second Liens Pose to the Resolution of Distressed Mortgages* 13-18 (2012).

equity loans. Therefore, mandatory reporting of both home-equity loans and home-equity lines of credit would mitigate such misaligned incentives and ultimately benefit consumers by closing the data reporting gap.

Including mandatory reporting of reverse mortgages also provides benefit to consumers. Reverse mortgages are a special mortgage product designed to satisfy the later-life consumption needs of seniors by leveraging their home equity while permitting them to maintain homeownership. In its Fiscal Year 2013, HUD endorsed in total 60,091 home-equity conversion mortgages (HECM), which counted for almost all of the reverse mortgage market. Various stakeholders and advocates have called for closer monitoring of the reverse mortgage market based on concerns of potential abuse to vulnerable seniors. Mandatory reporting of all reverse mortgages will provide public officials, community organizations, and members of the public with more information to assist consumers age 62 or older. This change is consistent with Congress's decision to include age in the Dodd-Frank Act, signaling its intention to strengthen protections for seniors.

Additionally, the proposed changes to transactional coverage would benefit consumers by improving fair lending analyses. Regulators, community groups, and researchers use HMDA data to identify disparities in mortgage lending based on race, ethnicity, and sex. These analyses are used for prioritization and scoping purposes to select the institutions and parts of institutions to review. Based on information from HUD and Moody's Analytics (May 2013), HMDA data currently include approximately 1 percent of home-equity lines of credit and 35 percent of home-equity loans. The extent of reverse mortgage reporting under HMDA is unknown because the existing data provide no way to distinguish reverse mortgages from other loans, but the Bureau believes that a substantial number of reverse mortgages are not reported under HMDA. Because

a substantial amount of these transactions are not reported, it is not possible during prioritization analyses to develop a clear assessment of the fair lending risk to consumers of these specific products. In addition, all of these products may have unique underwriting and pricing guidelines that would merit separate analyses. It is not currently possible to identify these products in HMDA, however, so most fair lending analyses that use HMDA data combine these products and other products with potentially different underwriting and pricing standards. This shortcoming reduces the reliability of risk assessment analyses, limiting the ability to identify consumers that might have been impacted by potential discrimination.

Mandatory reporting of preapproval requests that are approved but not accepted will also benefit consumers through improved fair lending analyses. Data about preapproval requests that are approved but not accepted are optionally reported. Thus these data are largely absent from the HMDA data that regulators and community groups analyze. Including these preapproval requests would improve fair lending analysis by providing a more accurate comparison between those applications that satisfy a financial institution's underwriting criteria and those that did not.

The proposed rule also improves the ability of public officials to distribute public-sector investment so as to attract private investment to areas where it is needed. HMDA data provide a broadly-representative picture of home lending in the nation unavailable from any other data source. Home-equity lines of credit and home-equity loans are important forms of lending that are considered in evaluations under the CRA. Mandatory reporting of all open-end lines of credit, home-equity loans, and reverse mortgages will improve HMDA's coverage of mortgage markets, which in turn will enhance its usefulness for identifying areas in need of public and private investment and thereby benefit consumers.

Similarly, the proposed rule also improves the ability to determine whether financial institutions are serving the housing needs of their communities. Mandatory reporting of all open-end lines of credit, home-equity loans, and reverse mortgages will improve HMDA's coverage of the market for these specific products. This will enhance the usefulness of the data for assessing whether financial institutions are serving their communities.

Costs to consumers. The proposals related to transactional coverage would eliminate reporting of unsecured home-improvement loans. The Bureau estimates that financial institutions reported approximately 340,000 unsecured home improvement loans under HMDA during 2012. This comprised 1.8 percent of the total record volume. With this proposed revision, regulators, community groups, and researchers will no longer be able to use HMDA data to assess fair lending risks for this product, which would reduce the likelihood of identifying consumers who are potentially disadvantaged when taking out unsecured home-improvement loans. In addition, it is also possible that the general loss of data may negatively affect research in other unexpected ways and thus negatively impact consumers. However, despite these risks, the Bureau is not aware of any instances where HMDA data on unsecured home improvement loans were used to determine if a financial institution was serving the housing needs of a community or to identify opportunities for public or private investment.

The proposed transactional coverage will not impose any direct costs on consumers. Consumers may bear some indirect costs of the proposed changes if financial institutions that would be required to report home-equity lines of credit, home-equity loans, reverse mortgages, and preapproval requests that are approved, but not accepted passed on some or all of the costs imposed on them by the proposed rule. Following microeconomic principles, the Bureau believes that these financial institutions will pass on increased variable costs to future mortgage

applicants, but absorb one-time costs and increased fixed costs. The Bureau estimates that the overall impact of the proposed rule on variable costs per application is approximately $2 for a representative tier 3 financial institution, $0.11 for a representative tier 2 financial institution, and $0.07 for a representative tier 1 financial institution.[616] Thus, the Bureau expects that a representative tier 3 financial institution affected by this proposed change would pass on to mortgage applicants $2 per application; a representative tier 2 financial institution affected by this proposed change would pass on to mortgage applicants $0.11 per application; and a representative tier 1 financial institution affected by this proposed change would pass on to mortgage applicants $0.07 per application. This expense will be amortized over the life of the loan and represents a negligible increase in the cost of a mortgage loan. Therefore, the Bureau does not anticipate any material adverse effect on credit access in the long or short term if financial institutions pass on the costs of reporting under the proposed transaction coverage to consumers.

During the Small Business Review Panel process, some small entity representatives noted that they would attempt to pass on all increased compliance costs associated with the proposed rule, but that this would be difficult in the current market where profit margins for mortgages are tight, especially for smaller financial institutions. In addition, some small entity representatives noted that they would attempt to pass on costs through higher fees on other products offered, leave geographic or product markets, or spend less time on customer service. If lenders attempt

[616] These cost estimates do not incorporate the impact of adding operational changes affecting geocoding, DES processing, and help sources. These estimated changes to variable costs are due solely to the proposed change to transaction coverage requiring reporting of all open-end lines of credit, home-equity loans, and reverse mortgages, as well as preapproval requests that are approved, but not accepted. As such, they differ from estimated changes to variable costs presented earlier, which reflected the impact of all proposed changes including additional data points, alignment with industry data standard and changes in transaction coverage.

and are able to pass on more than increases in variable costs to consumers, these estimates of the cost to consumers may be conservative. Nevertheless, the Bureau believes any such additional costs would be small relative to general cost of credit of mortgage loans amortized over the life of the loans.

Benefits to covered persons. The proposals related to transactional coverage would eliminate reporting of unsecured home improvement loans. Using 2012 HMDA data, as well as information from interviews of financial institutions, the Bureau estimates that, on average, tier 3, tier 2, and tier 1 financial institutions receive approximately 1, 20, and 900 applications for unsecured home improvement products, respectively. Excluding those average numbers of unsecured home improvement loans from reporting would reduce operational costs by approximately $70 for a representative tier 3 financial institution, $750 for a representative tier 2 financial institution, and $5,200 for a representative tier 1 financial institution per year.[617] This translates into a market-level savings of $2,000,000 to $5,000,000 per year. Using a 7 percent discount rate, the net present value of this impact over five years would be a reduction in cost of $8,300,000 to $20,500,000.

Requiring reporting of all open-end lines of credit, home-equity loans, reverse mortgages, and preapprovals that are approved, but not accepted will improve the prioritization process regulators and government enforcement agencies use to identify institutions at higher risk of fair lending violations. This improvement will reduce the false positives that occur when inadequate information causes lenders with low fair lending risk to be initially misidentified as high risk.

[617] These estimates do not include potential cost savings from proposed changes in operations including geocoding, DES process and help sources.

Additional information on these products will explain some of these false positives, so that examination resources are used more efficiently and that lenders with low fair lending risk receive a reduced level of regulatory scrutiny.

One-time costs to covered persons. Based on outreach efforts, the Bureau believes that many financial institutions process applications for home-equity products, including reverse mortgages, on separate data platforms and data systems in different business units than purchase and refinance mortgages. Financial institutions not currently reporting home-equity products under HMDA will incur one-time costs to develop reporting capabilities for these business lines. Financial institutions, whether they use vendors for HMDA compliance or develop software internally, will incur one-time costs associated with preparation, development, implementation, integration, troubleshooting, and testing of new systems for these business units. Management, operation, legal, and compliance personnel in these business lines will likely require time to learn the new reporting requirements and assess legal and compliance risks. In all cases, financial institutions will need to update training materials to reflect new requirements and may incur certain one-time costs for providing initial training to current employees. The Bureau is aware that these activities will take time and that the costs may be sensitive to the time available for them.

The Bureau expects these one-time costs to be smaller for financial institutions that are less complex and less likely to have separate business lines with separate data platforms and data systems for home-equity products. These entities use less complex reporting processes, so tasks are more manual than automated, and new requirements may involve greater use of established processes. As a result, compliance would likely require straightforward changes in systems and workplace practices and therefore impose relatively low one-time costs. The Bureau believes

that for these less-complex financial institutions, the one-time costs associated with the proposed change in transactional coverage would be captured by the overall estimate of the one-time costs the institutions would incur in response to the entire proposed rule. Thus, the Bureau estimates that the proposed rule will impose average one-time costs of $3,000 for tier 3 financial institutions.

For more complex financial institutions, the Bureau expects the one-time costs imposed by the proposed change in transactional coverage to be relatively large. To estimate these one-time costs, the Bureau views the business line responsible for home-equity products as a second business line that has to modify its reporting infrastructure in response to the proposed rule. Industry repeated this view of additional costs during the Bureau's outreach prior to this proposal. However, no financial institutions or trade associations have provided the Bureau with specific estimates of the one-time cost associated with this change. Some industry participants generally stated that the one-time cost of mandatory reporting of all home-equity lines of credit, home-equity loans, and reverse mortgages could be twice as much as the one-time cost of adapting to other parts of the proposed rule, but did not provide any further detail. The Bureau estimates that the overall proposed rule will impose average one-time costs of $250,000 for tier 2 financial institutions and $800,000 for tier 1 financial institutions, excluding reporting of home-equity lines of credit, home-equity loans, and reverse mortgages. The Bureau assumes that the one-time cost of integrating home-equity products into the HMDA reporting processes would be roughly equal to 50 percent of the one-time costs absent mandatory reporting of such products. This estimate accounts for the fact that some new systems may have to be built to facilitate reporting for these lines of business but that some fixed, one-time costs could be shared with lines of business currently subject to Regulation C because both have to undergo systemic

changes. Using this general estimate (*i.e*. one-and-one-half times as much) for all tier 1 and tier 2 institutions, therefore, the Bureau estimates one-time costs of $250,000 and $800,000 for business lines responsible for purchase and refinance products and an additional $125,000 and $400,000 for business lines responsible for home-equity products.

In total, this yields an overall market impact between $383,000,000 and $2,100,000,000. Using a 7 percent discount rate and a five-year amortization window, the annualized one-time cost is $93,400,000 to $514,900,000. As a frame of reference for these market-level, one-time cost estimates, the total non-interest expenses of current HMDA reporters were approximately $420 billion in 2012. The upper bound estimate of $2.1 billion is approximately 0.5 percent of the total annual non-interest expenses.[618] Because these costs are one-time investments, financial institutions are expected to amortize these costs over a period of years.

The Bureau has taken a conservative approach to estimating the one-time costs because of the uncertainty regarding how many financial institutions belong to each of the three representative tiers. Thus, the Bureau has mapped out all possible distributions to arrive at the lower bound and higher bound cost estimates, as explained in part VI.F.2, above. The Bureau hopes to obtain more information on the distribution of financial institutions across the three tiers and to refine its estimate of these one-time costs through feedback received during the rulemaking process. In particular, the Bureau seeks additional information on the number of HMDA reporters that are moderate complexity, tier 2 institutions.

[618] The Bureau estimated the total non-interest expense for banks, thrifts and credit unions that reported to HMDA based on Call Report and NCUA Call Report data for depository institutions and credit unions, and NMLS data for non-depository insitutions, all matched with 2012 HMDA reporters.

For proposed mandatory reporting of preapproval requests that are approved, but not accepted, the Bureau believes that the primary impact will be on ongoing operational costs rather than on one-time costs. Financial institutions are currently required to report whether a preapproval was requested for home purchase loans, and whether the preapproval was approved (if accepted) or denied, so the infrastructure to report preapproval information is already in place. Expanding mandatory reporting to all outcomes of the preapproval process therefore primarily impacts the ongoing, operational tasks required to gather information and data on additional reportable transactions.

Ongoing costs to covered persons. The proposal would mandate reporting of all open-end lines of credit, home-equity loans, and reverse mortgages, as well as preapproval requests that were approved, but not accepted. This change would potentially increase the number of applications and loans that financial institutions must report, thereby increasing the cost of HMDA reporting. Using HMDA data, along with information from HUD, Moody's Analytics (May 2013), and industry interviews, the Bureau estimated the total number of open-end lines of credit, home-equity loans, and reverse mortgages, as well as preapproval requests that were approved, but not accepted in the market and the portion currently in HMDA. Based on these estimates, these transactions were then allocated among lenders proportionately to the lender's loan application register size. The Bureau estimated that, on average, tier 3 financial institutions receive approximately two applications for open-end lines of credit, one application for home-equity loans, no applications for reverse mortgages, and no preapproval requests that were approved, but not accepted. On average, tier 2 financial institutions receive an estimated 45 applications for open-end lines of credit, 15 applications for home-equity loans, no applications for reverse mortgages, and five preapproval requests that were approved, but not accepted. On

average, tier 1 financial institutions receive an estimated 2,200 applications for open-end lines of credit, 700 applications for home-equity loans, five applications for reverse mortgages, and 245 preapproval requests that were approved, but not accepted.

Reporting data for these additional loans would increase operational costs by approximately $265, $2,400 and $16,500 per year for representative tier 3, tier 2 and tier 1 financial institutions, respectively.[619] This translates into a market-level cost of $6,800,000 to $16,000,000 per year. Using a 7 percent discount rate, the net present value of this cost over five years is $27,800,000 to $65,100,000.

Initial outreach efforts, as well as information gathered during the Small Business Review Panel process, indicated that uncertainty regarding reportability generated significant costs for financial institutions. In addition to the proposed rule, the Bureau is separately considering operational enhancements and modifications. For example, the Bureau is considering working to consolidate the outlets for assistance, providing guidance support similar to the guidance provided for title XIV rules; improving point of contact processes for help inquiries; modifying the types of edits and when edits are approved; exploring opportunities to improve current DES; and considering approaches to reduce geocoding burdens. All of these enhancements will clarify reportability issues, improve processing, and reduce burden. With the inclusion of these operational improvements, operational costs would increase by approximately $180, $1,900, and $15,700 per year, for the representative entities in tier 3, tier 2 and tier 1, respectively. This translates into a market-level cost of $5,900,000 to $13,300,000 per year.

[619] These estimates do not include potential cost savings from proposed changes in operations including geocoding, DES process, and help sources.

Using a 7 percent discount rate, the net present value of this cost over five years is $24,300,000 to $54,400,000.

Alternatives considered. Because industry participants raised questions regarding the quality of preapproval data, the Bureau also considered excluding preapprovals from reporting requirements. Based on a review of 2012 HMDA data, the Bureau estimates that on average tier 3 financial institutions receive 1 request for a preapproval a year, tier 2 financial institutions receive 15 requests a year , and tier 1 financial institutions receive 700 requests a year. The estimated reduction in the operational cost of reporting data for these preapprovals is approximately $50, $565 and $3,900 per year, for representative tier 3, tier 2, and tier 1 financial institutions, respectively.[620] This translates into a market-level impact of $1,500,000 to $3,700,000 per year. Using a 7 percent discount rate, the net present value of this savings over five years is $6,200,000 to $15,400,000.

Including the proposed operational improvements reduces the estimated operational costs of reporting data for preapprovals by approximately $45, $460 and $3,700 per year for representative tier 3, tier 2 and tier 1 financial institutions, respectively. This translates into a market-level savings of $1,400,000 to $3,200,000 per year. Using a 7 percent discount rate, the net present value of this savings over five years is $5,800,000 to $12,900,000.

5. The data that financial institutions are required to report about each loan or application.

For each application, originated loan, or purchased loan submitted as part of a financial institution's loan application register, Regulation C currently requires reporting of 35 separate

[620] These estimates do not include potential cost savings from proposed changes in operations including geocoding, DES process and help sources.

pieces of information, and allows for optional reporting of three denial reasons.[621] Throughout this section, the Bureau uses the term "data point" to convey general data information and "data field" to convey the specific information financial institutions must report. For example, race is one data point with ten data fields (five for primary applicant race and five for co-applicant race). The Dodd-Frank Act amended HMDA by enhancing two existing data points (rate spread and application ID) and identifying 11 new data points.[622] As part of this rulemaking, the Bureau is comprehensively reviewing all current data points in Regulation C, carefully examining each data point specifically mentioned in the Dodd-Frank Act, and considering proposals to collect other appropriate data points to fill gaps where additional information could be useful to better understand the HMDA data.

The proposed revisions include improvements and technical revisions to current Regulation C data requirements; the implementation as required or appropriate of the categories of information specifically identified in the Dodd-Frank Act; and the addition of other data points that fill existing informational gaps and would further the purposes of HMDA. To the extent practicable, all of these proposed changes align new data fields and definitions with industry data standards. In order to develop this proposed alignment, the Bureau analyzed each data point currently included in Regulation C, each new data point identified in the Dodd- Frank Act, and each additional data point under consideration by the Bureau to determine whether

[621] The 35 pieces of information are respondent ID, agency code, application number, application date, loan type, property type, purpose, occupancy, loan amount, preapprovals, action, action date, MSA, State, county, census tract, applicant ethnicity, applicant sex, five applicant race data fields, co-applicant ethnicity, co-applicant sex, five co-applicant race data fields, income, purchaser, rate spread, HOEPA status, and lien status.

[622] These 11 data points consist of total points and fees, prepayment penalty term, introductory interest rate term, non-amortizing features, loan term, application channel, universal loan ID, loan originator number, property value, parcel number, age and credit score.

analogous data exist in the ULDD data set (first preference) or the larger MISMO data dictionary (second preference). In each instance, the MISMO/ULDD definitions would need to be adequate to meet the objectives of HMDA and Regulation C. For data points that cannot be aligned with MISMO/ULDD, the Bureau is considering aligning data points with definitions provided by other regulations, or using a completely new definition.

Current HMDA data points. Currently, financial institutions are required to collect and report information for 35 data fields, and have the option of reporting three additional fields conveying denial reasons. For these 35 mandatory fields, the proposed rule will increase the number of required fields by four. Three of these additional data fields convey denial reasons, for which reporting will change from optional to mandatory. The fourth additional data field is for property type. To align this data point with industry data standards, the current property type field will be replaced by two fields (number of units and construction method), both of which are in MISMO and ULDD. This change yields a net increase of one data field for property type.

In addition to adding four data fields, the proposed rule will also change the information reported for eight current HMDA data fields. These revisions address changes required by the Dodd-Frank Act, align current HMDA fields with industry data standards, and close information gaps. Specifically, to address changes required by the Dodd-Frank Act, the financial institution's identifier will be replaced by a Legal Entity Identifier, application ID will be replaced by a unique, robust ID number, and rate spread will be required for all originations covered by Regulation Z. As part of the effort to align current data fields with MISMO/ULDD, occupancy will be revised to convey primary home, second home or investment property, and lien status will be expanded to allow for third, fourth, and fifth liens. Finally, to close information gaps, loan amount will be reported in dollars instead of thousands of dollars; an additional "other"

category will be added to loan purpose; the HOEPA flag will be revised to convey whether HOEPA was triggered by rate, points and fees, or both; and lien status will be required for purchased loans.

Current HMDA data points—benefits to consumers. The Bureau believes that the proposed revisions to the current HMDA data fields, which increase the amount of information included in HMDA, will improve current processes used to identify possible discriminatory lending patterns and enforcing antidiscrimination statutes. The following discussion provides several examples of how the revised existing variables would ultimately benefit consumers by facilitating enhanced fair lending analyses. The supplementary information contained in part V, above, provides more detailed exposition on each of the enhanced data points.

For example, the reason for denial is a key data point used to understand underwriting decisions and focus fair lending reviews. Currently, § 1003.4(c)(1) permits optional reporting of the reasons for denial of a loan application. Mandatory reporting of this information, pursuant to proposed § 1003.4(c)(16), combined with enhanced or additional data points commonly used in underwriting decisions, will provide more consistent and meaningful data, thereby improving the ability to identify both discriminatory lending patterns in underwriting decisions and consumers who have been disadvantaged so that appropriate restitution can be provided. In addition, denial reasons combined with careful analysis of key underwriting variables could help reduce the false positive rate of fair lending prioritization analyses, leading to better targeting of fair lending reviews and thereby reducing compliance costs to some covered persons subject to fair lending exams.

Additionally, rate spread is currently the only quantitative pricing measure in HMDA, and it is only available for originated loans meeting or exceeding the higher-priced mortgage

loan thresholds for first- and second-lien loans. Expanding reporting of rate spread to all originations covered by Regulation Z, except purchased loans and reverse mortgage transactions, greatly enhances HMDA's usefulness for analyzing fair lending risk in pricing decisions. This proposed change will also reduce the false positive rate observed during fair lending prioritization analyses so that the resources of regulators and financial institutions are used more efficiently. This information will also improve the limited picture of the cost of credit provided by current HMDA data.

The proposed rule would revise data regarding occupancy status by requiring separate itemization of second residences and investment properties, and data regarding property type by adding the total number of units and number of units that are income-restricted pursuant to affordable housing programs. These revisions would allow more accurate accounting of the differences in underwriting and pricing policies and outcomes and hence would reduce false positive rates in current fair lending prioritization processes used by regulatory agencies.

The Bureau also believes that the proposed revisions to the current HMDA data fields, which increase the amount of information included in the HMDA dataset, will improve the ability to assess whether financial institutions are meeting the housing needs of their communities and assist public officials in making decisions about public-sector investments. The denial reason data fields will provide greater understanding of why credit is denied or offered to specific communities, and the rate spread data point will provide additional information about the affordability of the credit offered.

Additionally, the proposed revisions to the occupancy status data field would provide finer gradients by separately identifying second homes and investment properties, which would help identify trends involving potentially speculative purchases of housing units similar to those

that contributed to the recent financial crisis. Recent research suggests that speculative purchases by investors were one potential driver of the recent housing bubble and subsequent financial crisis.[623] These impacts may be especially relevant for areas that are experiencing sharp increases in investor purchases. Thus, information related to second homes and investment properties may help communities and local officials develop policies tailored to the unique characteristics associated with these separate segments of the mortgage market.

Finally, proposed revisions to the property type data field would be of particular interest in the wake of the housing crisis as families have increasingly turned to rental housing. Greater detail about multifamily housing finance may provide additional information about whether financial institutions are serving the housing needs of their communities

Current HMDA data points—costs to consumers. The proposed revisions to the current HMDA data fields will not impose any direct costs on consumers. Consumers may bear some indirect costs if financial institutions pass on some or all of the costs imposed on them by the proposed rule. Following microeconomic principles, the Bureau believes that financial institutions will pass on increased variable costs to future mortgage applicants, but absorb one-time costs and increased fixed costs if markets are perfectly competitive and financial institutions are profit maximizers. The impact of the proposed changes to the eight current HMDA data fields will affect only one-time costs, as financial institutions modify their infrastructure to incorporate the proposed data point specifications. The only proposed revision to current HMDA data fields that impacts variable costs is the addition of four data fields. To construct

[623] *See* Andrew Haughwout, Donghoon Lee, Joseph Tracy, and Wilbert van der Klaauw, *Real Estate Investors, the Leverage Cycle, and the Housing Market Crisis*, Fed. Reserve Bank of N.Y. York Staff Report No. 514 (2011).

cost impact estimates, the Bureau treated the three denial reason variables as new variables and the additional property type field as a new variable that aligns with MISMO/ULDD. The Bureau estimates that the impact of this component of the proposed rule on variable costs per application is approximately $2 for a representative tier 3 financial institution, $0.06 for a representative tier 2 financial institution, and $0.01 for a representative tier 1 financial institution. This expense will be amortized over the life of the loan and represents a negligible increase in the cost of a mortgage loan. Therefore, the Bureau does not anticipate any material adverse effect on credit access in the long or short term if financial institutions pass on these costs to consumers.

During the Small Business Review Panel process, some small entity representatives noted that they would attempt to pass on all increased compliance costs associated with the proposed rule, but that this would be difficult in the current market where profit margins for mortgages are tight. In addition, some small entity representatives noted that they would attempt to pass on costs through higher fees on other products offered, leave geographic or product markets, or spend less time on customer service.

Current HMDA data points—benefits to covered persons. Aligning current HMDA data fields with industry data standards would benefit financial institutions. Currently, HMDA data are submitted in the loan application register format, except for financial institutions that report 25 or fewer entries, which may submit their loan application register entries in paper format.[624] The current loan application register format may not be directly compatible with the records of mortgage loan applications in loan origination systems and may have created extra burden on

[624] *See* comment 5(a)-2.

financial institutions that had to use additional software and modify data in existing systems in order to submit HMDA data in the proper format.

The Bureau believes that the burden associated with Regulation C compliance and data submission can be reduced by aligning the requirements of Regulation C to existing industry standards for collecting and transmitting data on mortgage loans and applications. Promoting consistent data standards for both industry and regulatory use has benefits for market efficiency, market understanding, and market oversight. The efficiencies achieved by such alignment should grow over time, as the industry moves toward common data standards platforms. In light of these considerations, the Bureau is proposing to align the HMDA data requirements, to the extent practicable, with the widely-used MISMO standards for residential mortgages, including the ULDD that is used in the delivery of loans to the government-sponsored entities.

For example, many lenders already separately identify second residence and investment properties in their underwriting process and LOS. Separate enumeration of these properties is present in MISMO/ULDD. Therefore, aligning to industry standards would reduce burden for financial institutions by maintaining the same definition for HMDA reporting that they use in the ordinary course of business. Smaller, less-complex financial institutions will experience fewer potential benefits because these institutions rely on more manual reporting processes and are more likely to originate portfolio loans where MISMO/ULDD may have not been adopted.

Among current HMDA data fields, property type, occupancy, and lien status will be modified to align with MISMO/ULDD. This alignment will reduce costs for training and researching questions. The Bureau estimates that this alignment will reduce operational costs by

approximately $100, $900, and $8,600 per year for representative tier 3, 2, and 1 financial institutions, respectively.[625] This translates into a market-level impact of $3,300,000 to $6,500,000 per year. Using a 7 percent discount rate, the net present value of this savings over five years is $13,500,000 to $26,800,000. With the inclusion of proposed operational improvements, the estimated reduction in operational costs is approximately $100, $850, and $8,400 per year for representative tier 3, tier 2, and tier 1 financial institutions, respectively. This translates into a market-level savings of $3,200,000 to $6,200,000 per year. The net present value of this savings over five years is $13,000,000 to $25,500,000. The Bureau seeks comment about the potential impact on financial institutions of aligning the HMDA data requirements with MISMO/ULDD data standards.

Current HMDA data points—ongoing costs to covered persons. Specific to the current set of HMDA data points, the proposed rule increases the number of data fields by four and alters the information provided for eight other fields. The cost impact of these changes on covered persons will vary by data field. For example, some data fields may depend on multiple sub-components or information from multiple platforms. To capture these potential differences, the Bureau estimated different costs depending on whether a proposed data field is aligned with ULDD, MISMO, or another regulation, or is a completely new variable.

Adding three new variables (denial reasons) and one variable aligned with ULDD (occupancy status) increases costs because financial institutions now have to report four additional fields. Adding these additional data fields increases the costs of transcribing data,

[625] These estimates do not include potential cost savings from proposed changes in operations including geocoding, DES process and help sources.

transferring data to HMS, conducting annual edits/checks, and conducting external audits. The Bureau estimates that this component of the proposed rule would increase operational costs by approximately $135, $860, and $2,200 per year for representative tier 3, tier 2, and tier 1 financial institutions, respectively.[626] Property type would be a new data field for all reporters, while denial reason would only be a new data field for reporters currently choosing not to report it. In the 2012 HMDA data, approximately 30 percent of HMDA reporters did not provide denial reasons, and approximately 20 percent of all denials did not have data regarding the reason for denial. Further analysis reveals that, compared to other HMDA reporters, HMDA reporters currently providing data regarding denial reasons had larger loan application registers and reported almost twice as many denials. Therefore, requiring mandatory reporting of denial reasons will only impact about 30 percent of reporters, and these reporters will likely be smaller institutions. With all reporters having to start reporting the additional property type data field and 30 percent of reporters having to start reporting the denial reasons, the Bureau estimates the market-level cost of this proposed change to be between $770,000 and $2,400,000. Using a 7 percent discount rate, the net present value of the cost increase over five years is $3,100,000 to $9,800,000.

With the inclusion of the operational improvements the Bureau is considering, the proposed rule will increase operational costs by approximately $105, $550, and $1,680 per year for representative tier 3, tier 2, and tier 1 financial institutions, respectively. This translates into

[626] These estimates do not include potential cost savings from proposed changes in operations including geocoding, DES process and help sources.

a market-level cost of between $570,000 and $1,500,000. Using a 7 percent discount rate, the net present value over five years would be a cost increase of $2,300,000 to $6,000,000.

The primary cost impact of modifying eight existing data fields, three of which would align with ULDD, will be increases in one-time costs to modify current reporting policies and procedures, update software systems, and conduct training and planning. These cost impacts will generally be addressed in the discussion of one-time costs below, except for the proposed requirement that financial institutions obtain and report an LEI instead of the current reporter's ID. The Bureau estimates that the one-time cost of acquiring an LEI is approximately $200 with an ongoing cost of approximately $100 per year. This translates into an estimated market-level impact of $1,480,000 in one-time costs and an increase of $740,000 in ongoing costs per year. For one-time costs, using a 7 percent discount rate and five-year window, the annualized cost is $361,000. For ongoing costs, using a 7 percent discount rate, the net present value over five years is an increase in costs of approximately $3,000,000.

Current HMDA data points—alternatives considered. The Bureau did not consider any other alternative proposals that would have impacted the current HMDA data points.

New HMDA data points. The proposed rule requires financial institutions to report 37 additional data fields under HMDA. This number does not include unique loan ID, rate spread for all originations, or total units, each of which replaces a data field currently reported under HMDA. The Dodd-Frank Act identified 13 additional data points. Excluding unique loan ID and rate spread, which replace data fields currently reported under HMDA, the remaining 11 Dodd-Frank Act-identified data points translate into 17 data fields financial institutions would have to report on their loan application registers. To fill information and data gaps, the Bureau is proposing to add 13 additional data points, which translates into 20 data fields financial

institutions would have to report on their loan application register. For these 37 additional data fields, 19 are aligned with ULDD, two are aligned with MISMO, one is aligned with another regulation. The remaining 15 data fields are not in MISMO or ULDD, or aligned with another regulation.[627]

New HMDA data points—benefits to consumers. The proposed additional data points would have several benefits to consumers. First, the proposed additional fields will improve the usefulness of HMDA data for analyzing mortgage markets by regulators and the public. For example, data points such as non-amortizing features, introductory interest rate, prepayment penalty, and home-equity line of credit indicator are related to certain high-risk lending concerns, and reporting this information will enable a better understanding of the types of products and features consumers are receiving. Recent research has indicated that each of these products and product characteristics have increased likelihoods of default and foreclosure and may have exacerbated the recent housing crisis. In addition to being better able to identify some of the risk factors that played a role in the recent financial crisis, adding additional data points on pricing and underwriting will improve current research efforts to understand mortgage markets. All of these enhancements will allow for improved monitoring of trends in mortgage markets and help identify and prevent problems that could potentially harm consumers and society overall.

Second, the additional data points will improve current policy efforts designed to address various market failures. As discussed previously, the mortgage market is characterized by information asymmetry and this inherent deficiency was made apparent during the financial

[627] Some data fields were aligned with multiple sources. For example, total points and fees is aligned with ULDD and Regulation Z. For the consideration of costs and benefits, the Bureau assigned each data field to one source. The following hierarchy was used for data fields aligned to multiple sources: (1) ULDD, (2) MISMO, (3) another regulation, and (4) not aligned to another source.

crisis. In response to the recent financial crisis, the government has pursued a number of policies aimed at regulating the market and protecting consumers. The additional data points being proposed will help inform future policy-making efforts by improving consideration of the benefits and costs associated with various choices, resulting in more effective policy. As an example, many recent regulations have limited the types of risky mortgage products that lenders can make to borrowers without fully considering borrowers' ability to repay. New data fields on non-amortizing features, introductory interest rate, prepayment penalty, debit-to-income ratio, and the qualified mortgage indicator can assist future assessment of the effectiveness of such regulations and facilitate adjustments when needed.

Third, the additional data points will help determine whether financial institutions are serving the housing needs of their communities and help public officials target public investment to better attract private investment. For example, the proposed data points related to manufactured housing would reveal more information about this segment of the market. Borrowers in manufactured housing are typically more financially vulnerable than borrowers in site-built housing and may deserve closer attention from government agencies and community groups. Similarly, the proposed data points related to multifamily dwellings would reveal more information about this segment of the market, which mostly serves low- to mid-income renters who live in these financed units. Advocacy groups and government agencies have raised concerns over affordability issues faced by individuals living in multifamily dwellings, who also tend to be more financially vulnerable. Overall, by permitting a better and more comprehensive understanding of these markets, the proposal will improve the usefulness of HMDA data for assessing the supply and demand of credit, and financial institutions' treatment of applicants and borrowers in these communities.

Fourth, the Bureau believes that the additional data points will improve current processes used to identify possible discriminatory lending patterns and enforce antidiscrimination statutes. Financial regulators and enforcement agencies use HMDA data in their initial prioritization and screening processes to select institutions for examination and as the base dataset during fair lending reviews. The additional data will allow for improved segmentation during these analyses, so that applications are compared to other applications for similar products. For example, underwriting and pricing policies often differ for open-end lines of credit, home-equity loans, reverse mortgages, and products with different amortization types. Currently, these products are all combined during prioritization and screening analyses. With additional data fields identifying these products, separate analyses can be conducted for each product, which will more accurately reflect outcomes for consumers. As a second example, pricing often differs across delivery channels, because pricing policies and processing differ, and because intermediaries, such as brokers, add an additional layer requiring compensation. The addition of the origination channel data point will permit the separation of originations for pricing analyses, allowing for a better understanding of the drivers of pricing outcomes. Improved segmentation improves the accuracy of fair lending analyses, which improves the usefulness of HMDA to identify potentially disadvantaged consumers.

The additional data points on pricing will greatly improve the usefulness of HMDA data for assessing pricing outcomes. Currently, the rate spread data field is the only quantitative pricing measure included in the current HMDA data . This data field includes rate spread data only for higher-priced mortgage loans, which currently comprise less than 5 percent of originated loans in the HMDA data. Thus, in today's environment, and for the foreseeable future, the usefulness of this data field is highly limited. In addition, mortgage products and pricing

structure are inherently complex. APR alone, though useful and recognizable to borrowers, fails to capture the true cost of a mortgage loan. Adding discount points, interest rate, and risk-adjusted, pre-discounted interest rate will provide a much clearer understanding of the trade-offs between rates and points that are the foundation of mortgage pricing. The total points and fees and origination-charge data fields will provide a deeper understanding of the third component of mortgage pricing: fees.

Many of the additional data points capture legitimate factors financial institutions use in underwriting and pricing that are currently lacking in the HMDA data, helping regulators and government enforcement agencies to better understand disparities in outcomes. Many, if not all, lenders consider data points such as credit score, CLTV, DTI, and AUS results when either underwriting or pricing mortgage applications. The addition of these types of data points will help users understand patterns in underwriting and pricing outcomes and thus better assess the fair lending risk presented by those outcomes.

Finally, the addition of the age data field will allow users to analyze outcomes for different age groups. Although consumers are protected against discrimination on the basis of age by ECOA and Regulation B, HMDA data lack a direct means of measuring the age of applicants, which limits the ability of government agencies and community groups to monitor and enforce the ECOA and Regulation B against age discrimination in mortgage markets. The addition of the age data field would provide a clearer understanding of different age groups. In particular, older individuals are one demographic group that is potentially at a higher risk of discrimination, as well as unfair, deceptive, or abusive acts or practices. This data is especially important as baby boomers enter retirement. The addition of the age data field would allow regulatory agencies and community groups to identify potential differential treatment of older

Americans for various mortgage products. For example, reverse mortgages are designed to serve senior consumers and are priced based on age factors, providing an illustration of the importance of adding this data field to the HMDA data. The age data field will allow users of HMDA data to better understand reverse mortgages, increasing HMDA's usefulness for assessing whether financial institutions are meeting the credit needs of older populations in their communities when offering these products. Age data might also help inform housing policies designed to assist seniors in maintaining or obtaining home ownership, and building or utilizing home equity for improved social welfare.

All of these improvements would reduce the false positive rates that occur when inadequate information causes regulators and enforcement agencies to initially misidentify financial institutions with low fair lending risk as having high risk of fair lending violations. Better alignment between the degrees of regulatory scrutiny and fair lending risk would increase the likelihood of identifying any instances where consumers are being illegally disadvantaged, thereby ultimately benefitting consumers.

New HMDA data points—costs to consumers. The proposed addition of 37 data fields will not impose any direct costs on consumers. Consumers may bear some indirect costs if financial institutions pass on some or all of the costs imposed on them by the proposed rule. Following microeconomic principles, the Bureau believes that financial institutions will pass on increased variable costs to future mortgage applicants, but absorb one-time costs and increased fixed costs if markets are perfectly competitive and financial institutions are profit maximizers. The Bureau estimates that the impact of the additional 37 data fields on variable costs per application is approximately $12 for a representative tier 3 financial institution, $0.30 for a representative tier 2 financial institution, and $0.03 for a representative tier 1 financial

institution. This expense will be amortized over the life of the loan and represents a negligible increase in the cost of a mortgage loan. Therefore, the Bureau does not anticipate any material adverse effect on credit access in the long or short term if financial institutions pass on these costs to consumers.

During the Small Business Review Panel process, some small entity representatives noted that they would attempt to pass on all increased compliance costs associated with the proposed rule, but that this would be difficult in the current market where profit margins for mortgages are tight. In addition, some small entity representatives noted that they would attempt to pass on costs through higher fees on other products offered, leave geographic or product markets, or spend less time on customer service.

New HMDA data points—benefits to covered persons. The Bureau believes that the additional data points will improve current processes used to identify possible discriminatory lending patterns, which could greatly reduce the burden of financial institutions subject to fair lending examinations or investigations. Financial regulators and enforcement agencies use HMDA data in their initial prioritization and screening processes to select institutions for examination or investigation, and as the base dataset during fair lending reviews. During prioritization analyses, the additional data points will provide information about the legitimate factors used in underwriting and pricing that are currently lacking in the HMDA data, helping government agencies better understand disparities in outcomes. They will also allow for improved segmentation, so that applications are compared to other applications for similar products. The additional data points on pricing will greatly enhance screening analyses of pricing decisions. All of these improvements will reduce false positives resulting from

inadequate information. Examination resources will be used more efficiently, so that lenders at low risk of fair lending violations receive a reduced level of regulatory scrutiny.

New HMDA data points—one-time costs to covered persons. The proposed rule will impose one-time costs on HMDA reporters. Management, operation, legal, and compliance personnel will likely require time to learn the new reporting requirements and assess legal and compliance risks. Financial institutions that use vendors for HMDA compliance will incur one-time costs associated with software installation, troubleshooting, and testing. The Bureau is aware that these activities will take time and that the costs may be sensitive to the time available for them. Financial institutions that maintain their own reporting systems will incur one-time costs to develop, prepare, and implement the necessary modifications to those systems. In all cases, financial institutions will need to update training materials to reflect new requirements and may have certain one-time costs for providing initial training to current employees. The Bureau expects these one-time costs to be relatively small for less complex financial institutions. These entities use less complex reporting processes, so the tasks involved are more manual than automated and new requirements may involve greater use of established processes. As a result, compliance would likely require straightforward changes in systems and workplace practices and therefore impose relatively low one-time costs.

The Bureau estimates the additional reporting requirements would impose on average estimated one-time costs of $3,000 for tier 3 financial institutions, $250,000 for tier 2 financial institutions, and $800,000 for tier 1 financial institutions and without considering the expansion of transactional coverage to include mandatory reporting of all open-end lines of credit, home-

equity loans, and reverse mortgages.[628] Including the estimated one-time costs to modify processes and systems for home-equity products, the Bureau estimates that the total one-time costs would be $3,000 for tier 3 institutions, $375,000 for tier 2 institutions, and $1,200,000 for tier 1 institutions. In total, this yields an overall market impact between $383,000,000 and $2,100,000,000. Using a 7 percent discount rate and a five-year amortization window, the annualized one-time cost is $93,400,000 to $514,900,000. As a frame of reference for these market-level, one-time cost estimates, the total non-interest expenses of current HMDA reporters were approximately $420 billion in 2012. The upper bound estimate of $2.1 billion is approximately 0.5 percent of the total annual non-interest expenses.[629] Because these costs are one-time investments, financial institutions are expected to amortize these costs over a period of years.

The Bureau has taken a conservative approach to estimating the one-time costs because of the uncertainty regarding how many financial institutions belong to each of the three representative tiers. Thus, the Bureau has mapped out all possible distributions to arrive at the lower bound and higher bound cost estimates, as explained in part VI.F.2, above. The Bureau hopes to obtain more information on the distribution of financial institutions across the three tiers and to refine its estimate of these one-time costs through feedback received during the rulemaking process. In particular, the Bureau seeks additional information on the number of HMDA reporters that are moderate complexity, tier 2 institutions.

[628] The Bureau realizes that the impact to one-time costs varies by institution due to many factors, such as size, operational structure, and product complexity, and that this variance exists on a continuum that is impossible to fully capture. As a result, the one-time cost estimates will be high for some financial institutions, and low for others.
[629] The Bureau estimated the total non-interest expense for banks, thrifts and credit unions that reported to HMDA based on Call Report and NCUA Call Report data for depository institutions and credit unions, and NMLS data for non-depository insitutions, all matched with 2012 HMDA reporters.

The Bureau has taken a conservative approach to estimating the one-time costs because of the uncertainty regarding how many financial institutions belong to each of the three representative tiers. Thus, the Bureau has mapped out all possible distributions to arrive at the lower bound and higher bound cost estimates, as explained in part VI.F.2, above. The Bureau hopes to obtain more information on the distribution of financial institutions across the three tiers and to refine its estimate of these one-time costs through feedback received during the rulemaking process. In particular, the Bureau seeks additional information on the number of HMDA reporters that are moderate complexity, tier 2 institutions.

New HMDA data points—ongoing costs to covered persons. The proposed rule requires financial institutions to report 37 additional data fields under HMDA. Adding these additional data fields increases the cost of many operational steps required to report data, including transcribing data, transferring data to HMS, conducting annual edits/checks, and conducting external audits. The Bureau estimates that the impact of the additional 37 data fields on annual operational costs is approximately $13,200 for a representative tier 3 financial institution, $8,400 for a representative tier 2 financial institution, and $20,800 for a representative tier 1 financial institution. This translates into a market-level cost of $15,500,000 to $48,400,000 per year. Using a 7 percent discount rate, the net present value of this cost over five years is $63,500,000 to $198,500,000. With the inclusion of the operational improvements, the estimated increase in the operational cost of reporting these 37 additional data fields is approximately $1,100, $5,300 and $15,700 per year for representative tier 3, tier 2, and tier 1 financial institutions, respectively. This translates into a market-level cost of $12,600,000 to $32,100,000 per year. The net present value of this impact over five years would be a cost increase of $51,800,000 to $131,800,000.

New HMDA data points—alternatives considered. During the rulemaking process, the Bureau considered a wide range of data fields identified during internal discussions, as well as through outreach efforts to other regulatory agencies, community groups, and industry. These alternative data fields included such items as identification of whether an applicant or borrower is self-employed, a military member, or a first-time homeowner; loan performance indicators; Principal, Interest, Taxes, and Insurance payment (PITI); and initial pricing offer. Although the cost of reporting varies by data field, the general estimated impact of an additional data field on operational costs per year is approximately $35 for a representative tier 3 financial institution, $230 for a representative tier 2 financial institution, and $560 for a representative tier 1 financial institution. The benefits are more difficult to measure, so it was not possible to identify which data fields to include by directly comparing costs and benefits. The Bureau believes that the proposed data points advance HMDA's statutory purposes while reducing unnecessary burden on financial institutions. However, the Bureau seeks additional comment and data to better understand the costs and benefits of data points. Specifically, the Bureau seeks additional comment and data on the one-time and ongoing costs of implementing each proposed new data point, which data points are more costly to gather and report and estimates of the amount of this additional cost, and supporting explanations. The Bureau is also seeking information on what data points are applicable to specific products, or whether there are any alternatives to or adjustments in each data point that would reduce burden on small while still meeting the purposes of HMDA.

6. The proposed modifications to disclosure and reporting requirements

The proposed rule would make several changes to the disclosure and reporting requirements under Regulation C. Regulation C currently requires that a financial institution

must make its "modified" loan application register available to the public after removing three fields to protect applicant and borrower privacy: the application or loan number, the date that the application was received, and the date action was taken. The Bureau's proposal would require that financial institutions make available to the public a modified loan application register showing only the data fields that are currently released on the modified loan application register. The proposal would also permit a financial institution to make its disclosure statement available to the public by making available a notice that clearly conveys that the disclosure statement may be obtained on the FFIEC website and that includes the FFIEC's website address. The Bureau is also proposing to require that a financial institution that reported at least 75,000 covered loans, applications, and purchased covered loans, combined, for the preceding calendar year submit its loan application registers to the Bureau or appropriate agency on a quarterly, rather than annual, basis. Finally, the proposal would eliminate the option for financial institutions with 25 or fewer reported transactions to submit the loan application register in paper format.

Benefits to consumers. The proposals to require that financial institutions make available to the public a modified loan application register showing only the data fields that are currently released on the modified loan application register, to eliminate the option of paper reporting for financial institutions reporting 25 or fewer records, and to permit financial institutions to make their disclosure statements available to the public through a notice that clearly conveys that the disclosure statement may be obtained on the FFIEC website would have little direct benefit to consumers. These proposals do not change in any significant way either the substance of the information required to be reported or the manner in which this information is collected or released to the public.

However, quarterly reporting by financial institutions that reported at least 75,000 transactions in the preceding calendar year may have a number of benefits to consumers. Currently, there is significant delay between the time that final action is taken on an application and the time this information about the application or loan is reported to the Bureau and the appropriate agencies under HMDA. This time delay ranges from 2 months if the date of final action occurs during December to 14 months if the date of final action occurs during January The Bureau believes that timelier data would improve the ability of the Bureau and the appropriate agencies to identify current trends in mortgage markets, detect early warning signs of future housing finance crises, and determine, in much closer to "real time," whether financial institutions are fulfilling their obligations to serve the housing needs of communities in which they are located. Timelier identification of risks to mortgage markets and troublesome trends by the Bureau and the appropriate agencies would allow for more effective interventions by public officials. Finally, although the Bureau currently does not plan for the FFIEC to release HMDA data to the public more frequently than annually, it believes that quarterly reporting may allow the Bureau and FFIEC to expedite the disclosure of annual HMDA data to the public because it would permit the processing of a significant volume of HMDA data throughout the year. Because, based on 2012 data, financial institutions that would be subject to quarterly reporting likely would report approximately 50 percent of all reported transactions, the benefits described above would relate to a substantial segment of the mortgage market.

Benefits to covered persons. The Bureau believes that the proposals to require that financial institutions make available to the public a modified loan application register showing only the data fields that are currently released on the modified loan application register, to eliminate the option of paper reporting for financial institutions reporting 25 or fewer records,

and to require quarterly reporting for financial institutions that reported at least 75,000 transactions in the preceding calendar year would provide little benefit to covered persons. However, the proposal to permit a financial institution to make its disclosure statements available to the public through a notice that clearly conveys that the disclosure statement may be obtained on the FFIEC website would free financial institutions from having to print and download their disclosure statements in order to provide them to requesters. Initial outreach efforts indicated that tier 3 financial institutions rarely receive requests for disclosure statements. However, some tier 3 financial institutions indicated that they nevertheless download and print a disclosure statement in preparation for requests. The Bureau has represented this cost as equivalent to receiving 1 request for a disclosure statement each year. The Bureau estimates that tier 2 and tier 1 financial institutions receive 3 and 15 requests for disclosure statements each year, respectively. Based on these estimated volumes, the Bureau estimates that this proposed change would reduce ongoing operational costs by approximately $15 per year for a representative tier 3 financial institution, approximately $40 per year for a representative tier 2 financial institution, and approximately $210 per year for a representative tier 1 financial institution. This translates into a market-level reduction in cost of approximately $161,000 to $278,000 per year. Using a 7 percent discount rate, the net present value of this savings over five years is $659,000 to $1,140,000.

Costs to consumers. The proposals to require that financial institutions make available to the public a modified loan application register showing only the data fields that are currently released on the modified loan application register, to eliminate the option of paper reporting for financial institutions reporting 25 or fewer records, and to require quarterly reporting by financial institutions that reported at least 75,000 transactions in the preceding year would not impose any

direct costs on consumers. Permitting financial institutions to make their disclosure statements available to the public through notices that clearly convey that the disclosure statements may be obtained on the FFIEC website would require consumers to obtain these disclosure statements online. Given the prevalence of internet access and the ease of using the FFIEC website, the Bureau also believes this proposal will impose minimal direct costs on consumers. Any potential costs to consumers of obtaining disclosure statements online are likely no greater than the costs of obtaining disclosure statements from the physical offices of financial institutions, or from a floppy disk or other electronic data storage medium that may be used with a personal computer, as contemplated in HMDA section 304(k)(1)(b).

However, consumers may bear some indirect costs of the proposed changes if financial institutions pass on some or all of their increased costs to consumers. Following microeconomic principles, the Bureau believes that financial institutions will pass on increased variable costs to future loan applicants, but absorb one-time costs and increased fixed costs if financial institutions are profit maximizers and the market is perfectly competitive. The Bureau defines variable costs as costs that depend on the number of applications received. Based on initial outreach efforts, five of the 18 operational tasks are variable cost tasks: transcribing data, resolving reportability questions, transferring data to an HMS, geocoding, and researching questions. The Bureau believes that the four proposed changes discussed in this section would have either no, or only a minimal, effect on these variable cost tasks. The proposal to require that financial institutions make available to the public a modified loan application register showing only the data fields that are currently released on the modified loan application register will not impact any operational step. Eliminating the option of paper reporting for financial institutions reporting 25 or fewer records may increase transcribing costs for financial institutions that qualify for this

option and currently report HMDA data in paper form. However, the Bureau believes that the number of financial institutions that report in paper format is very low. Also, if the proposal to exclude from the definition of financial institution any institution that originated less than 25 covered loans, excluding open-end lines of credit, is adopted,[630] the number of financial institutions that would be eligible to submit their loan application register in paper format would be significantly reduced.[631] Finally, as part of its efforts to improve and modernize HMDA operations, the Bureau is considering various improvements to the HMDA data submission process that should reduce even further the need for institutions to compile and submit their HMDA data in paper format. Given these factors and the small loan application register size at issue (25 or fewer records), the Bureau estimates that the impact of this cost is negligible. Permitting financial institutions to make their disclosure statements available to the public through a notice that clearly conveys that the disclosure statement may be obtained on the FFIEC website would impact the "distributing disclosure report" task, but none of the variable cost tasks. Finally, requiring quarterly reporting by financial institutions that reported at least 75,000 transactions in the preceding calendar year would affect annual edits and internal checks, checking post-submission edits, filing post-submission edits, internal audits, and external audits. None of these tasks are variable cost tasks and hence would not lead financial institutions to pass through some of the incremental costs to consumers in a perfectly competitive market with profit-maximizing financial institutions.

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[630] *See* proposed § 1003.2(g).

[631] If proposed § 1003.2(g) is adopted and the Bureau continues to allow a financial institution that reports 25 or fewer entries on its loan application register to submit its register in paper format, only a financial institution that originated exactly 25 covered loans would be eligible to submit its register in paper format.

During the Small Business Review Panel process, some small entity representatives noted that they would attempt to pass on all increased compliance costs associated with the proposed rule, but that whether costs were passed on would depend upon the competiveness of the market in which they operate, especially for smaller financial institutions. In addition, some small entity representatives noted that they would attempt to pass on costs through higher fees on other products, would leave geographic or product markets, or would spend less time on customer service. To the extent that lenders are able to pass on a greater amount of these compliance costs, the costs to consumers would be slightly larger than the estimates described above. Nevertheless, the Bureau still believes that the potential costs that would be passed on to consumers are small.

Ongoing costs to covered persons. The Bureau believes that the proposals to require that financial institutions make available to the public a modified loan application register showing only the data fields that are currently released on the modified loan application register and to permit financial institutions to make their disclosure statements available through a notice that clearly conveys that the disclosure statement may be obtained on the FFIEC website would not impact ongoing costs to covered persons. Leaving the modified loan application register in its current state would require financial institutions to redact additional proposed data fields, but the ongoing costs of doing so are negligible. Eliminating the option of paper reporting for financial institutions reporting 25 or fewer records may increase transcribing costs for financial institutions that currently maintain all HMDA data in paper form. However, as discussed above, the Bureau believes that the number of financial institutions that do this is very low, and given proposed changes to the institutional coverage criteria, potential improvements to the data

submission process under consideration, and the small size of the loan application register at issue (25 or fewer records), the Bureau estimates that the impact of this cost is negligible.

Requiring quarterly reporting by financial institutions that reported at least 75,000 transactions in the preceding calendar year would increase ongoing costs to covered persons, as costs would increase for annual edits and internal checks, checking post-submission edits, filing post-submission edits, internal audits, and external audits. The Bureau estimates that this proposed change would increase ongoing operational costs by approximately $19,000 per year for a representative tier 3 financial institutions.[632]

Based on 2012 HMDA data, 28 financial institutions reported at least 75,000 transactions in the preceding calendar year, which is substantially larger than the average loan application register sizes of the representative tier 3 (50 records), tier 2 institutions (1,000 records), and tier 1 institutions (50,000) assumed by the Bureau. Therefore, the Bureau believes that it is reasonable to regard all of these institutions as tier 1 HMDA reporters. This yields an estimated market cost of $532,000 (=28*19000). Using a 7 percent discount rate, the net present value of this impact over five years would be approximately an increase in costs of $2,200,000.

One-time costs to covered persons. The Bureau believes that the proposals to require that financial institutions make available to the public a modified loan application register showing only the data fields that are currently released on the modified loan application register, to permit financial institutions to make their disclosure statements available through a notice that clearly conveys that the disclosure statement may be obtained on the FFIEC website, and to require

[632] The Bureau also estimates that this proposed change would increase ongoing operational costs by approximately $800 and $5000 per year for representative tier 3 and 2 institutions, respectively, were these institutions required to report quarterly. However, since the Bureau believes that all the financial institutions subject to quarterly reporting under the proposal would be tier 1 institutions, the estimates for tier 3 and tier 2 institutions have been excluded.

quarterly reporting by financial institutions that reported at least 75,000 transactions in the preceding calendar year would not impose any significant one-time costs on covered persons. Although leaving the modified loan application register in its current state would require financial institutions to develop the capability to redact additional data fields from the loan application register, the Bureau views the cost of doing so as insubstantial because financial institutions already possess the infrastructure necessary to redact information prior to publicly disclosing the modified loan application register. Reporting HMDA data on a quarterly basis would require repetition of processes currently in place, and eliminating the option of paper reporting would only impact ongoing transcription costs.

The proposal to permit financial institutions to make their disclosure statements available to the public through a notice that clearly conveys that the disclosure statement may be obtained on the FFIEC website would require a one-time cost to create the notice. However the Bureau believes that the one-time cost to create this notice would be negligible.

G. Potential Specific Impacts of the Proposed Rule

1. Depository Institutions and Credit Unions With $10 Billion or Less in Total Assets, as Described in § 1026

As discussed above, the proposed rule would exclude financial institutions with fewer than 25 originated covered loans, excluding open-end lines of credit; require reporting of home-equity lines of credit, home-equity loans, and reverse mortgages; exclude reporting of unsecured home improvement loans; modify current HMDA data points to address the Dodd-Frank Act amendments to HMDA and align the data points with industry data standards to the extent practicable; and add additional data points to implement the requirements of the Dodd-Frank Act and to fulfill the purposes of HMDA.

The Bureau believes that the benefits of these proposed rules to depository institutions and credit unions with $10 billion or less in total assets will be similar to the benefit to creditors as a whole, as discussed above. Regarding costs, other than as noted here, the Bureau also believes that the impact of the proposed rule on the depository institutions and credit unions with $10 billion or less in total assets will be similar to the impact for creditors as a whole. The primary difference in the impact on these institutions is likely to come from differences in the level of complexity of operations, compliance systems and software of these institutions.

Based on Call Report data for December 2012, 13,998 of 14,110 depository institutions and credit unions had $10 billion or less in total assets. The 112 depository institutions and credit unions with over $10 billion in assets are most likely tier 1 institutions based on the Bureau's definition. The 28 institutions that reported at least 75,000 transactions in the preceding calendar year and would be required to report quarterly with the proposals and are assumed to be tier 1 institutions. Under these assumptions, the Bureau estimates that the market-level impact of the proposed rule on operational costs for depository institutions and credit unions with $10 billion or less in total assets would be a cost of between $6,400,000 and $10,500,000. Using a discount rate of 7 percent, the net present value of this cost over five years is between $26,200,000 and $42,800,000. Regarding one-time costs, the Bureau estimates that the market-level impact of the proposed rule for depository institutions and credit unions with $10 billion or less in total assets is between $186,400,000 and $1,700,000,000. Using a 7 percent discount rate and a five-year amortization window, the annualized one-time cost is $45,500,000 and $410,000,000.

2. Impact of the Proposed Provisions on Consumers in Rural Areas

The proposed provisions will not directly impact consumers in rural areas. However, as with all consumers, consumers in rural areas may bear some indirect costs of the proposal. This would occur if financial institutions serving rural areas are HMDA reporters and if these institutions pass on some or all of the cost increase to consumers.

Recent research suggests that financial institutions that primarily serve rural areas are generally not HMDA reporters.[633] The Housing Assistance Council (HAC) suggests that the asset and geographic coverage criteria disproportionately exempt small lenders operating in rural communities. For example, HAC uses 2009 Call Report data to show that approximately 700 FDIC-insured lending institutions had assets totaling less than the HMDA institutional coverage threshold and were headquartered in rural communities. These institutions, which would not be HMDA reporters, may represent one of the few sources of credit for many rural areas. Research by economists at the Federal Reserve Board also suggests that HMDA's coverage of rural areas is limited, especially areas further from MSAs.[634] If a large portion of the rural housing market is serviced by financial institutions that are not HMDA reporters, any indirect impact of the proposed changes on consumers in rural areas would be limited, as the proposed changes directly involve none of those financial institutions.

However, although some research suggests that HMDA currently does not cover a significant number of financial institutions serving the rural housing market, HMDA data do contain information for some covered loans involving properties in rural areas. These data can

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[633] Keith Wiley, Housing Assistance Council, What *Are We Missing? HMDA Asset-Excluded Filers*, (2011); Lance George and Keith Wiley, Housing Assistance Council, *Improving HMDA: A Need to Better Understand Rural Mortgage Markets*, (2010).

[634] Robert B. Avery, Kenneth P. Brevoort, and Glenn B. Canner, *Opportunities and Issues in Using HMDA Data*,29 J. of Real Estate Research 352 (2007).

be used to estimate the number of HMDA reporters servicing rural areas, and the number of consumers in rural areas that might potentially be affected by the proposed changes to Regulation C. For this analysis, the Bureau uses non-MSA areas as a proxy for rural areas, with the understanding that portions of MSAs and non-MSAs may contain urban and rural territory and populations. In 2012, 5,525 HMDA reporters reported applications or purchased loans for property located in geographic areas outside of an MSA.[635] This count provides an upper bound of the estimate of the number of financial institutions that would be impacted by the proposed changes and that also might attempt to pass on these cost increases to consumers in rural areas. In total, these 5,525 financial institutions reported 1,925,937 applications or purchased loans for properties in non-MSA areas. This number provides an upper bound estimate of the number of consumers in rural areas that could be impacted indirectly by the proposed changes. In general, individual financial institutions report small numbers of covered loans from non-MSAs, as approximately 70 percent reported fewer than 100 covered loans from non-MSAs.

Following microeconomic principles, the Bureau believes that financial institutions will pass on increased variable costs to future mortgage applicants, but absorb one-time costs and increased fixed costs if financial institutions are profit maximizers and the market is perfectly competitive.[636] The Bureau defines variable costs as costs that depend on the number of applications received. Based on initial outreach efforts, the following five operational steps affect variable costs: transcribing data, resolving reportability questions, transferring data to an

[635] These counts exclude preapproval requests that were denied or approved but not accepted, because geographic information is typically not available for these transactions.
[636] If markets are not perfectly competitive or financial institutions are not profit maximizers then what financial institutions pass on may differ. For example, they may attempt to pass on one-time costs and increases in fixed costs, or they may not be able to pass on variable costs.

HMS, geocoding, and researching questions. The primary impact of the proposed rule on these operational steps is an increase in time spent per task. Overall, the Bureau estimates that the impact of the proposed rule on variable costs per application is $13 for a representative tier 3 financial institution, $0.20 for a representative tier 2 financial institution, and $0.11 for a representative tier 1 financial institution.[637] The 5,525 financial institutions that serviced rural areas would attempt to pass these variable costs on to all future mortgage customers, including the estimated 2 million consumers from rural areas. Amortized over the life of the loan, this expense would represent a negligible increase in the cost of a mortgage loan. Therefore, the Bureau does not anticipate any material adverse effect on credit access in the long or short term even if these financial institutions pass on these costs to consumers.

During the Small Business Review Panel process, some small entity representatives noted that they would attempt to pass on all increased compliance costs associated with the proposed rule, but that this would depend upon the competiveness of the market in which they operate, especially for smaller financial institutions. In addition, some small entity representatives noted that they would attempt to pass on costs through higher fees on other products, exit geographic or product markets, or spend less time on customer service. To the extent that the market is less than perfectly competitive and the lenders are able to pass on a greater amount of these compliance costs, the costs to consumers would be slightly larger than the estimates described above. Nevertheless, the Bureau believes that the potential costs that would be passed on to consumers are small.

[637] These cost estimates do not incorporate the impact of adding operational changes affecting geocoding, DES processing, and help sources.

Given the differences between rural and non-rural markets in structure, demand, supply, and competition level, consumers in rural areas may experience benefits and costs from the proposed rule that are different than those experienced by consumers in general. To the extent that the impacts of the proposal on creditors differ by type of creditor, this may affect the costs and benefits of the proposal on consumers in rural areas. The Bureau will further consider the impact of the proposed rule on consumers in rural areas. The Bureau therefore asks interested parties to provide data, research results, and other factual information on the impact of the proposed rule on consumers in rural areas. For example, this would include any evidence and supporting information indicating that access to credit would fall or the cost of credit would increase.

H. Additional Analysis Being Considered and Request for Information

The Bureau will further consider the benefits, costs and impacts of the proposed provisions and additional alternatives before finalizing the proposed rule. As noted above, there are a number of areas where additional information would allow the Bureau to better estimate the benefits, costs, and impacts of this proposed rule and more fully inform the rulemaking. The Bureau asks interested parties to provide comment or data on various aspects of the proposed rule, as detailed in the section-by-section analysis.

VII. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) of any

rule subject to notice-and-comment rulemaking requirements.[638] These analyses must "describe the impact of the proposed rule on small entities."[639] An IRFA or FRFA is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.[640] The Bureau also is subject to certain additional procedures under the RFA involving the convening of a panel to consult with small business representatives prior to proposing a rule for which an IRFA is required.[641]

The Bureau has not certified that the proposed rule would not have a significant economic impact on a substantial number of small entities within the meaning of the RFA. Accordingly, the Bureau convened and chaired a Small Business Review Panel under the Small Business Regulatory Enforcement Fairness Act (SBREFA) to consider the impact of the proposed rule on small entities that would be subject to that rule and to obtain feedback from representatives of such small entities. The Small Business Review Panel for this rulemaking is discussed below in part VII.A.

The Bureau is publishing an IRFA. Among other things, the IRFA estimates the number of small entities that will be subject to the proposed rule and describes the impact of that rule on those entities. The IRFA for this rulemaking is set forth below in part VII.B.

A. Small Business Review Panel

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[638] 5 U.S.C. 601 *et. seq.*

[639] 5 U.S.C. 603(a). For purposes of assessing the impacts of the proposed rule on small entities, "small entities" is defined in the RFA to include small businesses, small not-for-profit organizations, and small government jurisdictions. 5 U.S.C. 601(6). A "small business" is determined by application of Small Business Administration regulations and reference to the North American Industry Classification System (NAICS) classifications and size standards. 5 U.S.C. 601(3). A "small organization" is any "not-for-profit enterprise which is independently owned and operated and is not dominant in its field." 5 U.S.C. 601(4). A "small governmental jurisdiction" is the government of a city, county, town, township, village, school district, or special district with a population of less than 50,000. 5 U.S.C. 601(5).

[640] 5 U.S.C. 605(b).

[641] 5 U.S.C. 609.

Under section 609(b) of the RFA, as amended by SBREFA and the Dodd-Frank Act, the Bureau seeks, prior to conducting the IRFA, information from representatives of small entities that may potentially be affected by its proposed rules to assess the potential impacts of that rule on such small entities.[642] Section 609(b) sets forth a series of procedural steps with regard to obtaining this information. The Bureau first notifies the Chief Counsel for Advocacy (Chief Counsel) of the SBA and provides the Chief Counsel with information on the potential impacts of the proposed rule on small entities and the types of small entities that might be affected.[643] Not later than 15 days after receipt of the formal notification and other information described in section 609(b)(1) of the RFA, the Chief Counsel then identifies the small entity representatives, the individuals representative of affected small entities for the purpose of obtaining advice and recommendations from those individuals about the potential impacts of the proposed rule.[644] The Bureau convenes a Small Business Review Panel for such rule consisting wholly of full-time Federal employees of the office within the Bureau responsible for carrying out the proposed rule, the Office of Information and Regulatory Affairs (OIRA) within the OMB, and the Chief Counsel.[645] The Small Business Review Panel reviews any material the Bureau has prepared in connection with the SBREFA process and collects the advice and recommendations of each individual small entity representative identified by the Bureau after consultation with the Chief Counsel on issues related to sections 603(b)(3) through (b)(5) and 603(c) of the RFA.[646] Not

[642] 5 U.S.C. 609(b).
[643] 5 U.S.C. 609(b)(1).
[644] 5 U.S.C. 609(b)(2).
[645] 5 U.S.C. 609(b)(3).
[646] 5 U.S.C. 609(b)(4). As described in the IRFA in part VII.B, below, sections 603(b)(3) through (b)(5) and 603(c) of the RFA, respectively, require a description of and, where feasible, provision of an estimate of the number of small entities to which the proposed rule will apply; a description of the projected reporting, record keeping, and

later than 60 days after the date the Bureau convenes the Small Business Review Panel, the panel reports on the comments of the small entity representatives and its findings as to the issues on which the Small Business Review Panel consulted with the small entity representatives, and the report is made public as part of the rulemaking record.[647] Where appropriate, the Bureau modifies the proposed rule or the IRFA in light of the foregoing process.[648]

In December 2013, the Bureau provided the Chief Counsel with the formal notification and other information required under section 609(b)(1) of the RFA. To obtain feedback from small entity representatives to inform the Small Business Review Panel pursuant to sections 609(b)(2) and 609(b)(4) of the RFA, the Bureau, in consultation with the Chief Counsel, identified three categories of small entities that may be subject to the proposed rule for purposes of the IRFA: commercial banks and savings institutions, credit unions, and mortgage companies (*i.e.*, nondepository mortgage lenders). Section 3 of the IRFA, in part VII.B.3, below, describes in greater detail the Bureau's analysis of the number and types of entities that may be affected by the proposed rule. Having identified the categories of small entities that may be subject to the proposed rule for purposes of an IRFA, the Bureau then, in consultation with the Chief Counsel, selected 20 small entity representatives to participate in the SBREFA process. As discussed in chapter 7 of the SBREFA Final Report, described below, the small entity representatives selected by the Bureau in consultation with the Chief Counsel included representatives from each of the

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other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; an identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap, or conflict with the proposed rule; and a description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities. 5 U.S.C. 603(b)(3)-(5), 603(c).

[647] 5 U.S.C. 609(b)(5).

[648] 5 U.S.C. 609(b)(6).

categories identified by the Bureau and comprised a diverse group of individuals with regard to geography and type of locality (*i.e.*, rural, urban, suburban, or metropolitan areas).

On February 27, 2014, the Bureau formally convened the Small Business Review Panel pursuant to section 609(b)(3) of the RFA. Afterwards, to collect the advice and recommendations of the small entity representatives under section 609(b)(4) of the RFA, the Small Business Review Panel held an outreach meeting/teleconference with the small entity representatives on March 6, 2014 (Panel Outreach Meeting). To help the small entity representatives prepare for the Panel Outreach Meeting beforehand, the Small Business Review Panel circulated briefing materials prepared in connection with section 609(b)(4) of the RFA that summarized the proposals under consideration at that time, posed discussion issues, and provided information about the SBREFA process generally.[649] All 20 small entity representatives participated in the outreach meeting either in person or by telephone. The Small Business Review Panel also provided the small entity representatives with an opportunity to submit written feedback until March 20, 2014. In response, the Small Business Review Panel received written feedback from 15 of the representatives.[650]

On April 24, 2014, the Director of the Bureau, Richard Cordray, signed the written SBREFA Final Report[651] submitted by the Small Business Review panel that includes the following: background information on the proposals under consideration at the time; information

[649] The Bureau posted these materials on its Web site and invited the public to email remarks on the materials. *See* U.S. Consumer Fin. Prot. Bureau, *Small Business Review Panel for Home Mortgage Disclosure Act Rulemaking: Outline of Proposals Under Consideration and Alternative Considered* (Feb. 7, 2014) (Outline of Proposals), *available at* http://files.consumerfinance.gov/f/201402_cfpb_hmda_outline-of-proposals.pdf.
[650] This written feedback is attached as appendix A to the Small Business Review Panel Final Report discussed below.
[651] *Final Report of the Small Business Review Panel on the CFPB's Proposals Under Consideration for Home Mortgage Disclosure Act Rulemaking,* dated April 28, 2014. As discussed above, this report is available on the Bureau's Web site.

on the types of small entities that would be subject to those proposals and on the small entity representatives who were selected to advise the Small Business Review Panel; a summary of the Small Business Review Panel's outreach to obtain the advice and recommendations of those small entity representatives; a discussion of the comments and recommendations of the small entity representatives; and a discussion of the Small Business Review Panel findings, focusing on the statutory elements required under section 603 of the RFA.[652]

In preparing this proposed rule and the IRFA, the Bureau has carefully considered the feedback from the small entity representatives participating in the SBREFA process and the findings and recommendations in the SBREFA Final Report. The section-by-section analysis of the proposed rule in part V, above, and the IRFA discuss this feedback and the specific findings and recommendations of the Small Business Review Panel, as applicable. The SBREFA process provided the Small Business Review Panel and the Bureau with an opportunity to identify and explore opportunities to minimize the burden of the rule on small entities while achieving the rule's purposes. It is important to note, however, that the Small Business Review Panel prepared the SBREFA Final Report at a preliminary stage of the proposal's development and that the SBREFA Final Report—in particular, the Small Business Review Panel's findings and recommendations—should be considered in that light. Also, any options identified in the SBREFA Final Report for reducing the proposed rule's regulatory impact on small entities were expressly subject to further consideration, analysis, and data collection by the Bureau to ensure that the options identified were practicable, enforceable, and consistent with HMDA, the Dodd-

[652] 5 U.S.C. 609(b)(5).

Frank Act, and their statutory purposes. The proposed rule and the IRFA reflect further consideration, analysis, and data collection by the Bureau.

B. Initial Regulatory Flexibility Analysis

Under RFA section 603(a), an IRFA "shall describe the impact of the proposed rule on small entities."[653] Section 603(b) of the RFA sets forth the required elements of the IRFA. Section 603(b)(1) requires the IRFA to contain a description of the reasons why action by the agency is being considered.[654] Section 603(b)(2) requires a succinct statement of the objectives of, and the legal basis for, the proposed rule.[655] The IRFA further must contain a description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply.[656] Section 603(b)(4) requires a description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirement and the types of professional skills necessary for the preparation of the report or record.[657] In addition, the Bureau must identify, to the extent practicable, all relevant Federal rules which may duplicate, overlap, or conflict with the proposed rule.[658] Furthermore, the Bureau must describe any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities.[659] Finally, as amended by the Dodd-Frank Act, RFA section 603(d) requires that the IRFA include a description of any projected

[653] 5 U.S.C. 603(a).
[654] 5 U.S.C. 603(b)(1).
[655] 5 U.S.C. 603(b)(2).
[656] 5 U.S.C. 603(b)(3).
[657] 5 U.S.C. 603(b)(4).
[658] 5 U.S.C. 603(b)(5).
[659] 5 U.S.C. 603(b)(6).

increase in the cost of credit for small entities, a description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any increase in the cost of credit for small entities (if such an increase in the cost of credit is projected), and a description of the advice and recommendations of representatives of small entities relating to the cost of credit issues.[660]

1. Description of the Reasons Why Agency Action Is Being Considered

As discussed in the background, part II above, for more than 30 years HMDA has required financial institutions to collect, report to regulators, and disclose to the public data about applications and originations of home mortgage loans. HMDA was intended to provide the public with information that can be used to help determine whether financial institutions are serving the housing needs of their communities, to assist public officials in distributing public-sector investment so as to attract private investment, and to assist in identifying possible discriminatory lending patterns and enforcing antidiscrimination statutes. HMDA data represent the primary data source for regulators, industry, advocates, researchers, and economists studying and analyzing trends in the mortgage market for a variety of purposes, including general market and economic monitoring, as well as assessing housing needs, public investment, and possible discrimination. Historically, HMDA has been implemented by the Board through Regulation C, 12 CFR part 203. In 2011, the Bureau established a new Regulation C, 12 CFR part 1003, substantially duplicating the Board's Regulation C, making only non-substantive, technical, formatting, and stylistic changes. Congress has periodically modified the law, and the Board

[660] 5 U.S.C. 603(d)(1); Public Law 111-203, section 1100G(d)(1).

routinely updated Regulation C, in order to ensure that the data continued to fulfill HMDA's purposes.

Users of HMDA data, however, have consistently advocated for expansion of HMDA data to keep pace with the mortgage market's evolution, particularly during the market's rapid growth into nontraditional lending products and its subsequent collapse in 2008. In 2010, Congress responded to the mortgage crisis in the Dodd-Frank Act by enacting changes to HMDA as well as directing reforms to the mortgage market and the broader financial system. In addition to transferring rulemaking authority for HMDA from the Board to the Bureau, section 1094 of the Dodd-Frank Act, among other things, directed the Bureau to implement changes requiring the collection and reporting of several new data points, and authorized the Bureau to require financial institutions to collect and report such other information as the Bureau may require.

The proposed rule, therefore, both follows on the prior efforts of the Board to address shortcomings in HMDA's reporting requirements, and effectuates Congress's specific mandate to the Bureau to implement changes regarding the collection and reporting of HMDA data. For a further description of the reasons why agency action is being considered, see the background discussion for the proposed rule in part II, above.

2. Succinct Statement of the Objectives of, and Legal Basis for, the Proposed Rule

This rulemaking has multiple objectives. First, the proposed rule is designed to improve the usefulness of HMDA data for determining whether institutions are serving the housing needs of their communities, identifying potentially discriminatory lending patterns and enforcing antidiscrimination laws, and helping public officials target public investment so as to attract private investment to areas where it is needed. To achieve these objectives, the proposed rule requires financial institutions to report additional information regarding originations and

applications of mortgage loans, and makes several modifications to the institutional and transactional coverage of Regulation C. To improve the quality and timeliness of HMDA data, the Bureau is also proposing to require financial institutions with large numbers of reported transactions to submit their HMDA data on a quarterly, rather than an annual, basis.

The Bureau also intends for the proposal to reduce unnecessary burden on financial institutions. To this end, the Bureau is proposing to adjust Regulation C's institutional coverage test to simplify the institutional coverage requirements by adopting, for all financial institutions, a uniform loan-volume threshold of 25 loans. The proposed rule would also increase the clarity of the regulation by, among other things, modifying the definitions of certain ambiguous terms, adopting certain new definitions, and consolidating the list of exempt institutions and excluded transactions in the same section. Under the proposed regulation, financial institutions would make available to the public a modified loan application register showing only the data fields that are currently released on the modified loan application register, and financial institutions would be permitted to direct members of the public to a publicly available website to obtain their disclosure statements. Finally, the proposed rule would modernize and streamline the manner in which financial institutions collect and report HMDA data. Among other things, the Bureau is proposing to align the data requirements with the widely-used MISMO data standards to the extent practicable, and is separately considering various improvements to the HMDA data submission process, such as moving the HMDA data entry software to the web and restructuring the geocoding process.

As described above, the Dodd-Frank Act transferred to the Bureau the "consumer financial protection functions" previously vested in certain other Federal agencies, and authorized the Bureau to prescribe rules necessary or appropriate to administer and carry out the

purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof, including HMDA. As amended by the Dodd-Frank Act, HMDA section 305(a) broadly authorizes the Bureau to prescribe such regulations as may be necessary to carry out HMDA's purposes. These regulations can include "classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for any class of transactions, as in the judgment of the Bureau are necessary and proper to effectuate the purposes of [HMDA], and prevent circumvention or evasion thereof, or to facilitate compliance therewith." HMDA section 304 requires itemization of specified categories of information, including information about borrowers and loan features and pricing, as well as "such other information as the Bureau may require." Finally, HMDA also grants the Bureau authority over the formats required for compilation and public disclosure of HMDA data, the format required for disclosure to the Bureau or other Federal agencies, and the improvement of methods of matching addresses and census tracts to facilitate HMDA compliance. The legal basis for the proposed rule is discussed in detail in the legal authority analysis in part IV and in the section-by-section analysis in part V, above.

3. Description and, Where Feasible, Provision of an Estimate of the Number of Small Entities to Which the Proposed Rule Will Apply

The following table provides the Bureau's estimate of the number and types of entities that may be affected by the proposals under consideration:

Table 1:
Classes of Small Entities Subject to Requirements of Proposal

Category	NAICS	Small Entity Threshold	Total Entities	Small Entities	Entities engaged in dwelling-secured mortgage transactions	Small entities engaged in dwelling-secured mortgage transactions	All HMDA Reporters (7406)	Small Entities HMDA Reporters
Commercial banks & savings institutions[1]	522110, 522120	$500M assets	7,150	5,816	6,977	5,677	4,368	3,131
Credit Unions[2]	522130	$500M assets	6,960	6,550	4,385	3,976	2,005	1,602
Mortgage brokers and mortgage companies (Non-bank lenders)[3]	522310, 522292, 522298	$7M revenues $35.5M revenues	14,566	14,328	8,351	8,260	1,033	791

[1] Asset size is obtained from December 2012 Call Report data as compiled by SNL Financial. Savings institutions include thrifts, savings banks, mutual banks, and similar institutions. Estimated number of lenders originating any mortgage transactions includes all open- and closed-end loans secured by 1-4 family residential properties, and all loans secured by multifamily residential properties from Schedule RC-C of the Call Report. Call report data aggregates lenders at the HMDA reporter level to the parent company, so these counts slightly understate the potential number of HMDA reporters.
[2] Asset size and engagement in closed-end mortgage loans obtained from December 2012 National Credit Union Administration Call Report. Count of credit unions engaged in closed-end mortgage transactions includes total first mortgage and other real estate loans, year-to-date from Section 2 of the Call Report. Call report data aggregates lenders at the HMDA reporter level to the parent company, so these counts slightly understate the potential number of HMDA reporters.
[3] Total number of entities and small entities estimated based on HMDA data and the Nationwide Mortgage Licensing System and Registry Mortgage Call Report (MCR) data for 2012. Difficulties merging HMDA and NMLSR data affected the accuracy of the count estimates. To provide reasonable estimates without overstating the level of accuracy supported by the available data, the Bureau rounds all counts to the nearest 500.

4. Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule, Including an Estimate of the Classes of Small Entities Which Will Be Subject to the Requirement and the Type of Professional Skills Necessary for the Preparation of the Report

Reporting Requirements. HMDA requires financial institutions to report certain information related to covered loans. Financial institutions are required to report HMDA data to the Bureau or to the appropriate Federal agency.[661] All reportable transactions must be recorded within 30 calendar days[662] after the end of the calendar quarter in which final action is taken on a loan application register, and a modified version of the loan application register must be disclosed to the public upon request.[663] Under the proposed regulation, financial institutions would make available to the public a modified loan application register showing only the data fields that are currently released on the modified loan application register. Additionally, financial institutions that reported at least 75,000 covered loans, applications, and purchased covered loans, combined, in the preceding calendar year will be required to report HMDA data quarterly to the Bureau or to the appropriate Federal agency. Financial institutions must also make their disclosure statements, which are prepared by the FFIEC from data submitted by the institutions, available to the public upon request.[664]

The proposed rule would modify current reporting requirements and impose new reporting requirements by requiring financial institutions to report additional information required by the Dodd-Frank Act, as well as certain information determined by the Bureau to be necessary and proper to effectuate HMDA's purposes. The proposed rule also modifies the scope of the institutional and transactional coverage thresholds. The Bureau is also proposing to allow a financial institution to make its disclosure statement available to the public by making available at its home office and each branch office located in an MSA and MD a notice that

[661] 12 U.S.C. 2803(h)(1).
[662] 12 CFR 1003.4(a)
[663] 12 U.S.C. 2803(j)
[664] 12 U.S.C. 2803(k); 12 CFR 1003.5(b).

clearly conveys that the institution's disclosure statement may be obtained on the FFIEC website and that includes the website address. The section-by-section analysis of the proposed rule in part V, above, discusses the additional required data points and the scope of the proposed rule in greater detail. More information is also available in section 3 of the SBREFA Final Report.[665]

Recordkeeping Requirements. HMDA currently requires financial institutions to compile and maintain information related to certain transactions involving covered loans. HMDA section 304(c) requires that information required to be compiled and made available under HMDA section 304, other than loan application register information required under section 304(j), must be maintained and made available for a period of five years. HMDA section 304(j)(6) requires that loan application register information for any year shall be maintained and made available, upon request, for three years. Regulation C requires that all reportable transactions be recorded within thirty calendar days after the end of the calendar quarter in which final action is taken on a loan application register.[666] Regulation C further specifies that a financial institution shall retain a copy of its loan application register for its records for at least three years.[667] The proposed rule would not modify the recordkeeping period for covered financial institutions. The proposed rule would, however, potentially require additional recordkeeping in that it would require financial institutions to maintain additional information as a result of the expanded reporting requirements described above. Furthermore, the proposal would allow financial institutions to provide disclosure statements by directing members of the public to the FFIEC website rather than

[665] *Final Report of the Small Business Review Panel on the CFPB's Proposals Under Consideration for Home Mortgage Disclosure Act Rulemaking,* dated April 28, 2014. As discussed above, this report is available on the Bureau's Web site.
[666] 12 CFR 1003.4(a).
[667] 12 CFR 1003.5(a).

requiring the institutions to download or print the statements from the website so as to have them available for members of the public that make a request.

Benefits to small entities. HMDA is a data reporting statute, so all provisions of the proposed rule affect reporting requirements. Overall, the proposed rule has several potential benefits for small entities. First, the proposed revision to the institutional coverage criteria, which imposes a loan volume threshold of 25 loans, excluding open-end lines of credit, applicable to all financial institutions, would benefit depository institutions that are not significantly involved in originating dwelling-secured loans. The Bureau expects that most of these depository institutions are small entities. These depository institutions would no longer have to report under HMDA and would no longer have to incur current operational costs, or the increase in operational cost and the one-time costs, created by the proposed rule.

Second, the proposed revisions to the transactional coverage criteria would eliminate reporting of unsecured home improvement loans. The Bureau believes most small entities will be comparable to the representative tier 3 institution based on the Bureau's assumptions discussed extensively in part VI.E of this supplementary information, and that the volume of applications for unsecured home improvement loans for these financial institutions is small. Therefore, the benefit from this change will be small for most small entities. However, some small entities may receive larger volumes of applications for unsecured home improvement products, and the benefit will be larger for these financial institutions.

Third, the proposed revisions requiring mandatory reporting of all home-equity lines of credit, home-equity loans, reverse mortgages, and preapproval requests that have been approved but not accepted, combined with the additional data points being proposed, will improve the prioritization process that regulators and enforcement agencies use to identify institutions with

higher fair lending risk. During prioritization analyses, the additional transactions and data points will allow for improved segmentation, so that applications are compared to other applications for similar products. In addition, the data points will add to the legitimate factors used in underwriting and pricing that are currently lacking in the HMDA data, helping regulators and government enforcement agencies better understand disparities in outcomes. These improvements will reduce false positives that occur when inadequate information causes lenders with low fair lending risk to be initially misidentified as having high-risk. The additional information on these products and data points will explain some of these false positives, so that examination resources can be used more efficiently and lenders with low fair lending risk receive a reduced level of regulatory scrutiny. For small entities currently receiving regulatory oversight, this could greatly reduce the burden from fair lending examinations and enforcement actions.

Fourth, incorporating into the proposed rule alignment of current HMDA data fields with industry data standards provides a benefit to small entities. The Bureau believes that the burden associated with Regulation C compliance and data submission can be reduced by aligning to the extent practicable the requirements of Regulation C to existing industry standards for collecting and transmitting data on mortgage loans and applications. The Bureau believes that promoting consistent data standards for both industry and regulatory use has benefits for market efficiency, market understanding, and market oversight. The efficiencies achieved by aligning HMDA data with widely used industry data standards should grow over time. Specific to small entities, outreach efforts have determined that aligning HMDA with industry data standards will reduce costs for training and researching questions.

Finally, the proposed additional fields will improve the usefulness of HMDA data for analyzing mortgage markets by the regulators and the public. For instance, data points such as non-amortizing features, introductory interest rate, and prepayment penalty that are commonly related to higher risk lending will provide a better understanding of the types of products and features consumers are receiving. This will allow for improved monitoring of trends in mortgage markets and help identify problems that could potentially harm consumers and society overall. Lowering the likelihood of future financial crises benefits all financial institutions, including small entities.

Costs to small entities. The proposed revision to the coverage criteria raises the reporting threshold for depository institutions from 1 to 25 originations and lowers the reporting thresholds for nondepository institutions from 100 to 25 originations. The Bureau expects most of the affected nondepository institutions to be small entities. The additional nondepository institutions that would now be required to report under HMDA would incur one-time start-up costs to develop the necessary reporting infrastructure, as well as the ongoing operational costs to report.

The proposed revisions to transaction coverage would make reporting of open-end lines of credit mandatory, rather than optional; require reporting of all home-equity loans, not just those to be used for home purchase, refinancing, or home improvement; and require reporting of all reverse mortgages. These additional reporting requirements would increase operational costs for small entities as costs increase to transcribe data, resolve reportability questions, transfer data to HMS, and research questions.

The proposed rule adds additional data points identified by the Dodd-Frank Act and that the Bureau believes are necessary to close information gaps. As part of this proposal, the Bureau is aligning all current and proposed data points to industry data standards to the extent

practicable. The additional data points will increase ongoing operational costs, and impose one-time costs as small entities modify reporting infrastructure to incorporate additional fields. The transition to industry data standards would offset this cost slightly through reduced costs of researching questions and training.

Estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for the preparation of the report or record.

The following table conveys the classes of small entities affected:

Table 2:
Classes of Small Entities Subject to Requirements of Proposal

Category	NAICS	Small Entity Threshold	Total Entities	Small Entities	Entities engaged in dwelling-secured mortgage transactions	Small entities engaged in dwelling-secured mortgage transactions	All HMDA Reporters (7406)	Small Entities HMDA Reporters
Commercial banks & savings institutions[1]	522110, 522120	$500M assets	7,150	5,816	6,977	5,677	4,368	3,131
Credit Unions[2]	522130	$500M assets	6,960	6,550	4,385	3,976	2,005	1,602
Mortgage brokers and mortgage companies (Non-bank lenders)[3]	522310, 522292, 522298	$7M revenues $35.5M revenues	14,566	14,328	8,351	8,260	1,033	791

[1] Asset size is obtained from December 2012 Call Report data as compiled by SNL Financial. Savings institutions include thrifts, savings banks, mutual banks, and similar institutions. Estimated number of lenders originating any mortgage transactions includes all open- and closed-end loans secured by 1-4 family residential properties, and all loans secured by multifamily residential properties from Schedule RC-C of the Call Report. Call report data aggregates lenders at the HMDA reporter level to the parent company, so these counts slightly understate the potential number of HMDA reporters.
[2] Asset size and engagement in closed-end mortgage loans obtained from December 2012 National Credit Union Administration Call Report. Count of credit unions engaged in closed-end mortgage transactions includes total first mortgage and other real estate loans, year-to-date from Section 2 of the Call Report. Call report data aggregates lenders at the HMDA reporter level to the parent company, so these counts slightly understate the potential number of HMDA reporters.
[3] Total number of entities and small entities estimated based on HMDA data and the Nationwide Mortgage Licensing System and Registry Mortgage Call Report (MCR) data for 2012. Difficulties merging HMDA and NMLSR data affected the accuracy of the count estimates. To provide reasonable estimates without overstating the level of accuracy supported by the available data, the Bureau rounds all counts to the nearest 500.

Type of professional skills required. Section 603(b)(4) of the RFA also requires an estimate of the type of professional skills necessary for the preparation of the reports or records. The recordkeeping and compliance requirements of the proposed rule that would affect small entities are summarized above.

Based on outreach with financial institutions, vendors, and governmental agency representatives, the Bureau classified the operational activities that financial institutions

currently use for HMDA data collection and reporting into 18 operational "tasks" which can be further grouped into four "primary tasks." These are:

1. Data collection: transcribing data, resolving reportability questions, and transferring data to an HMS.

2. Reporting and resubmission: geocoding, standard annual edit and internal checks, researching questions, resolving question responses, checking post-submission edits, filing post-submission documents, creating public loan application register, distributing public loan application register, distributing disclosure report, and using vendor HMS software.

3. Compliance and internal audits: training, internal audits, and external audits.

4. HMDA-related exams: exam preparation and exam assistance.

All these tasks are related to the preparation of reports or records and most of them are performed by compliance personnel in the compliance department of financial institutions. For some financial institutions, however, the data intake and transcribing stage could involve loan officers or processors whose primary function is to evaluate or process loan applications. For example, the loan officers would take in government monitoring information from the applicants and input that information into the reporting system. However, the Bureau believes that such roles generally do not require any additional professional skills related to recordkeeping or other compliance requirements of this proposed rule that are not otherwise required during the ordinary course of business for small entities.

The type of professional skills required for compliance varies depending on the particular task involved. For example, data transcribing requires data entry skills. Transferring data to an HMS and using vendor HMS software requires knowledge of computer systems and the ability to use them. Researching and resolving reportability questions requires a more

complex understanding of the regulatory requirements and the details of the relevant line of business. Geocoding requires skills in using the geocoding software, web systems, or, in cases where geocoding is difficult, knowledge of the local area in which the property is located. Standard annual editing, internal checks, and post-submission editing require knowledge of the relevant data systems, data formats, and HMDA regulatory requirements in addition to skills in quality control and assurance. Filing post-submission documents, creating public loan application registers, and distributing public loan application registers and disclosure reports requires skills in information creation, dissemination, and communication. Training, internal audits, and external audits requires communications skills, educational skills, and regulatory knowledge. HMDA-related exam preparation and exam assistance involve knowledge of regulatory requirements, the relevant line of business, and the relevant data systems.

The Standard Occupational Classification (SOC) code has compliance officers listed under code 13-1041. The Bureau believes that most of the skills required for preparation of the reports or records related to this proposal are the skills required for job functions performed in this occupation. However, the Bureau recognizes that under this general occupational code there is a high level of heterogeneity in the type of skills required as well as the corresponding labor costs incurred by the financial institutions performing these functions.

During the SBREFA process, some small entity representatives noted that due to the small size of their institutions, they do not have separate compliance departments exclusively dedicated to HMDA compliance. Their HMDA compliance personnel are often engaged in other corporate compliance functions. To the extent that the compliance personnel of a small entity are divided between HMDA compliance and other functions, the skills required for those personnel may differ from the skills required for fully-dedicated HMDA compliance personnel.

For instance, some small entity representatives noted that high-level corporate officers such as CEOs and senior vice presidents could be directly involved in some HMDA tasks. The Bureau seeks comment regarding the skills required for the preparation of the reports or records related to this proposed rule.

Due to the proposed changes, the Bureau acknowledges the possibility that certain aspects of the proposed rule may require some small entities to hire additional compliance staff. The Bureau has no evidence that such additional staff will possess a qualitatively different set of professional skills than small entity staff employed currently for HMDA purposes. It is possible, however, that compliance with the proposed rule may emphasize certain skills. For example, additional data points may increase demand for skills involved in researching questions, standard annual editing, and post-submission editing. On the other hand, the Bureau is separately considering operational enhancements and modifications to alleviate some of the compliance burden. For example, the Bureau is considering working to consolidate the outlets for assistance, providing guidance support similar to the guidance provided for Title XIV rules; improving points of contact processes for help inquiries; modifying the types of edits and when edits are approved; exploring opportunities to improve the current DES; and considering approaches to reduce geocoding burdens. Such enhancements may also change the relative composition of HMDA compliance personnel and the skills involved in recording and reporting data. Nevertheless, the Bureau believes that compliance would still involve the general set of skills identified above.

The recordkeeping and reporting requirements associated with this proposal would also involve skills for information technology system development, integration, and maintenance. Financial institutions often use the HMS for HMDA purpose. HMS could be developed by the

institution internally or purchased from a third-party vendor. Under the proposed rule, the Bureau anticipates that most of these systems would need substantial upgrades to comply with the proposed requirements. It is possible that other systems used by financial institutions, such as loan origination systems, might also need upgrades to be compatible with the upgraded HMS. The professional skills required for this one-time upgrade would be related to software development, testing, system engineering, information technology project management, budgeting and operation.

Based on feedback from the small entity representatives, many small business HMDA reporters rely on FFIEC DES tools and do not use a dedicated HMS. The Bureau is separately considering upgrades to the HMDA DES, such as moving DES to the web, which would allow financial institutions to use the software from multiple terminals in different branches and might reduce the required information technology implementation cost for small financial institutions that choose to employ this new web-based DES.

5. Identification, to the Extent Practicable, of All Relevant Federal Rules Which May Duplicate, Overlap, or Conflict With the Proposed Rule

The proposed rule contains requirements related to the disclosure of mortgage loan information by certain financial institutions. The Bureau has identified certain other Federal rules that relate in some fashion to these areas and has considered the extent to which they may duplicate, overlap, or conflict with this proposal.[668] Each of these is discussed below.

[668] Rules are duplicative or overlapping if they are based on the same or similar reasons for the regulation, the same or similar regulatory goals, and if they regulate the same classes of industry. Rules are conflicting when they impose two conflicting regulatory requirements on the same classes of industry.

The Community Reinvestment Act (CRA), implemented by Office of Comptroller of the Currency, Board, and Federal Deposit Insurance Corporation regulations requires some financial institutions to collect, maintain, and report certain data about small business, farm, and consumer lending to ensure they are serving their communities. HMDA data are frequently used in CRA exams as part of evaluating home mortgage lending under the CRA lending test, and many CRA definitions and concepts are aligned with HMDA. The Bureau intends to work with CRA regulatory agencies to ensure that HMDA and the CRA do not conflict and that HMDA data can continue to be used as part of the CRA compliance process.

The Equal Credit Opportunity Act (ECOA), implemented by the Bureau's Regulation B (12 CFR part 1002), among other things, prohibits creditors from discriminating in credit transactions and requires creditors to notify applicants of reasons for denial and provide copies of appraisals for certain home-secured loans. Regulation B requires creditors to collect race, ethnicity, sex, marital status, and age of applicants for some home purchase loans and refinancings and to maintain that information for 25 months for purposes of monitoring compliance with antidiscrimination laws. One of HMDA's purposes is to provide data that can be used to assist in enforcing antidiscrimination statutes, which include ECOA.

The Truth in Lending Act (TILA) and Real Estate Settlement Procedures Act (RESPA), implemented by the Bureau's Regulation Z (12 CFR part 1026) and Regulation X (12 CFR part 1024), provide protections to consumers who apply for and receive mortgage loans. These protections include disclosures and restrictions on certain types of transactions. The Bureau recently issued a final rule on integrated mortgage disclosures under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z). The Bureau has

considered the definitions, requirements, and purposes of TILA and RESPA as it developed its proposals under Regulation C.

Proposed Regulation AB II (17 CFR part 229, subpart 229.1100) from the Securities and Exchange Commission (SEC) would require private issuers of asset-backed securities, including mortgage-backed securities, to disclose certain asset-level information.

The Fair Housing Home Loan Data System (12 CFR part 27), promulgated by the OCC, provides for a data collection system for monitoring national bank compliance with the Fair Housing Act and ECOA. Under the regulations governing the Fair Housing Loan Data System, financial institutions generally maintain these data in a format similar to that currently prescribed under Regulation C, except that financial institutions are required to report the reasons for denial on the loan application register.[669] Under section 1003.4(a)(16) of the proposed rule, financial institutions would report the reasons for denial of a loan application.

The Bureau requests comment to identify any additional such Federal rules that impose duplicative, overlapping, or conflicting requirements on servicers and potential changes to the proposed rules in light of duplicative, overlapping, or conflicting requirements.

6. Description of Any Significant Alternatives to the Proposed Rule Which Accomplish the Stated Objectives of Applicable Statutes and Minimize Any Significant Economic Impact of the Proposed Rule on Small Entities

The small entity representatives generally were receptive to the Bureau's proposals to modernize and streamline the HMDA data collection and reporting processes, but expressed

[669] *See* 12 CFR 128.6 (requiring certain financial institutions to report denial reasons to OCC for nondiscriminatory lending purposes. Certain financial institutions supervised by the FDIC are also required to report denial reasons under 12 CFR 390.147.

some concerns about the proposals under consideration to add new data points to the HMDA reporting requirements. Where the small entity representatives expressed concern about the costs of complying with a proposed provision, the Bureau considered alternatives that might impose lower costs on small entities. One component of this consideration was to ensure that any alternative would accomplish the stated objectives of HMDA.

Institutional coverage threshold. As described above, Regulation C's institutional coverage is determined by complicated tests based on assets, loan volume, geographic location, and whether the financial institution makes loans that are federally related. The institutional coverage tests differ depending on whether the financial institution is a depository institution or nondepository institution. The proposed regulation would adopt a uniform 25-loan volume threshold for both depository and nondepository institutions.

The uniform standard promotes simplicity and clarity, an objective of the proposal, and was generally favored by the small entity representatives. Many small entity representatives suggested a higher coverage threshold, with recommendations ranging from 100 to 500 loans. The Bureau understands that some burden reduction may result from a threshold higher than 25 loans. However, the Bureau was concerned that a higher threshold would result in the elimination of data that are important in fulfilling the purposes of HMDA. Therefore, the Bureau is proposing a threshold of 25 loans.

Disclosure and reporting requirements. As described above, Regulation C currently requires that a financial institution must make its loan application register available to the public after removing three fields to protect applicant and borrower privacy: the application or loan number, the date that the application was received, and the date action was taken. An institution must make this "modified loan application register" available following the calendar year for

which the data are compiled, by March 31 for a request received on or before March 1, and within 30 calendar days for a request received after March 1.

The Bureau is seeking comment on whether it should eliminate the requirement that the modified loan application register be made available to the public by smaller institutions. During the Small Business Review Panel process, the Bureau heard from small entity representatives that they rarely, if ever, receive requests for their modified loan application registers. The Small Business Review Panel recommended that the Bureau consider whether there is a continued need for small institutions to make their modified loan application registers available. Accordingly, the Bureau is soliciting comment on whether institutions should be excluded from the obligation to make their modified loan application registers available to the public, and, if so, which institutions should be excluded.

7. Discussion of Impact on Cost of Credit for Small Entities

Section 603(d) of the RFA requires the Bureau to consult with small entities regarding the potential impact of the proposed rule on the cost of credit for small entities and related matters.[670] To satisfy these statutory requirements, the Bureau provided notification to the Chief Counsel for Advocacy of the SBA in December 2013 that the Bureau would collect the advice and recommendations of the same small entity representatives identified in consultation with the Chief Counsel for Advocacy of the SBA through the Small Business Review Panel outreach concerning any projected impact of the proposed rule on the cost of credit for small entities as well as any significant alternatives to the proposed rule which accomplish the stated objectives of

[670] 5 U.S.C. 603(d).

applicable statutes and which minimize any increase in the cost of credit for small entities.[671] The Bureau sought to collect the advice and recommendations of the small entity representatives during the Panel Outreach Meeting regarding these issues because, as small financial service providers, the small entity representatives could provide valuable input on any such impact related to the proposed rule.[672]

Following microeconomic principles, the Bureau believes that financial institutions will pass on increased variable costs to future mortgage applicants, but absorb one-time costs and increased fixed costs if financial institutions are profit maximizers and the market is perfectly competitive. Overall, the Bureau estimates that the impact of the proposed rule on variable costs per application is approximately $13 for a representative tier 3 financial institution, $0.20 for a representative tier 2 financial institution, and $0.11 for a representative tier 1 financial institution.

At the time the Bureau circulated the Small Business Review Panel outreach materials to the small entity representatives in advance of the Panel Outreach Meeting, it believed that the proposals under consideration would result in a minimal increase in the cost of business credit for small entities. Although the proposals would apply primarily to mortgage loans obtained by consumers for personal, family, or household purposes, the proposals under consideration would also cover certain dwelling-secured loans used for business purposes.

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[671] *See* 5 U.S.C. 603(d)(2). The Bureau provided this notification as part of the notification and other information provided to the Chief Counsel for Advocacy of the SBA with respect to the Small Business Review Panel outreach pursuant to RFA section 609(b)(1).
[672] *See* 5 U.S.C. 603(d)(2)(B).

At the Small Business Review Panel Outreach Meeting, the Bureau asked the small entity representatives a series of questions regarding the cost of business credit.[673] These questions were focused on determining which proposals, if any, might impact the cost of credit for small entities, and whether feasible alternatives existed that would minimize the impact on small entities while accomplishing the statutory objectives addressed by the proposed rule. Specifically, the Bureau asked the small entity representatives whether they extended consumer mortgage loans used secondarily to finance small businesses. For nondepository institutions, the Bureau asked whether they had taken out a consumer mortgage loan that was also used secondarily to finance a small business.

The small entity representatives had few comments on the impact on the cost of business credit. Not all of the small entity representatives made loans to small businesses. One credit union small entity representatives, however, noted that many of its home-equity loans are used by individuals to fund a business. Two bank small entity representatives stated that a high percentage of their loans are small business or commercial loans where homes are typically used as additional collateral. These two small entity representatives explained that, because competition for loans currently is strong, they have to absorb extra costs. One of these small entity representatives also stated that so far it has improved efficiency to cut costs and has not imposed a regulatory compliance fee or marketed its data, as have other financial institutions, to offset compliance costs. A few small entity representatives noted that they would likely have to pass additional costs on to business customers. A third bank small entity representative stated that it charges a loan documentation fee to its commercial clients, but because borrowers are fee-

[673] *See* Small Business Review Panel Report at 35.

sensitive, the financial institution could lose business with additional fees. When asked, the small entity representatives did not identify significant alternatives to any of the proposals under consideration that might minimize the impact on the cost of credit for small entities while accomplishing the statutory objectives addressed by the proposals under consideration.

Based on the feedback obtained from small entity representatives at the Panel Outreach Meeting, the Bureau currently anticipates that the proposed rule will result in a minimal increase in the cost of credit for small business entities. To further evaluate this question, the Bureau solicits comment on whether the proposed rule will have any impact on the cost of credit for small entities.

VIII. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA),[674] Federal agencies are generally required to seek approval from the Office of Management and Budget (OMB) for information collection requirements prior to implementation. Further, the Bureau may not conduct or sponsor a collection of information unless OMB approves the collection under the PRA and displays a currently valid OMB control number. Notwithstanding any other provision of law, no person is required to comply with, or is subject to penalty for failure to comply with, a collection of information if the collection instrument does not display a currently valid OMB control number. The information collection requirements contained in Regulation C are currently approved by OMB under OMB control number 3170-0008.

As part of its continuing effort to reduce paperwork and respondent burden, the Bureau conducts a preclearance consultation program to provide the general public and Federal agencies

[674] 44 U.S.C. 3501 *et seq.*

with an opportunity to comment on the revised information collection requirements in accordance with the PRA.[675] This helps ensure that the public understands the Bureau's requirements or instructions, that respondents can provide the requested data in the desired format, that reporting burden (time and financial resources) is minimized, that collection instruments are clearly understood, and that the Bureau can properly assess the impact of collection requirements on respondents.

As described below, the proposal would amend the information collection requirements contained in Regulation C[676] and currently approved under OMB control number 3170-0008. The revised information collection requirements are contained in sections 1003.4 and 1003.5 of the prosed rule. The Bureau's information collection requirements contained in this proposal, and identified as such, will be submitted to OMB for review under section 3507(d) of the PRA on or before publication of this proposal in the Federal Register.

The title of this information collection is Home Mortgage Disclosure (Regulation C). The frequency of response is annually, quarterly, and on-occasion. The Bureau's regulation would require covered financial institutions that meet certain thresholds to maintain data about originations and purchases of mortgage loans, as well as mortgage loan applications that do not result in originations, to update the information quarterly, and to report the information annually or quarterly. Financial institutions must also make certain information available to the public upon request.

[675] 44 U.S.C. 3506(c)(2)(A).
[676] 12 CFR 1003.

The information collection requirements in this proposed rule would be mandatory.[677] Certain of data fields are redacted before they are made available to the public, as required by the statute and regulation. The non-redacted data are made publicly available and are not considered confidential. The rest of the data, including information that might identify an individual borrower or applicant, such as loan number, date the application was received, and the date the application was taken, is considered confidential under the Bureau's confidentiality regulations, 12 CFR part 1070 *et seq.*, and the Freedom of Information Act.[678] The likely respondents will be financial institutions—specifically banks, savings associations, or credit unions (depository institutions), and for-profit mortgage-lending institutions (nondepository institutions)—that meet the tests for coverage under Regulation C. These respondents would be required under the proposal to maintain, disclose to the public, and report to Federal agencies, information regarding covered loans and applications for covered loans.

For the purposes of this PRA analysis, the Bureau estimates that, under the proposal, approximately 1,600 depository institutions that currently report HMDA data would no longer be required to report, and that approximately 450 more nondepository institutions would now be required to report. In 2012, approximately 7,400 financial institutions reported data under HMDA. The proposed coverage changes would reduce the number of reporters by an estimated 1,150 reporters for an estimated total of approximately 6,250. Under the proposal, the Bureau generally would account for the paperwork burden for all respondents under Regulation C. Using the Bureau's burden estimation methodology, which projects the estimated burden on

[677] *See* 12 U.S.C. 2801 *et seq.*
[678] 5 U.S.C. 552(b)(6).

several types of representative respondents to the entire market, the Bureau believes the total estimated industry burden for the approximately 6,250 respondents[679] subject to the proposed rule would be approximately 4,700,000 hours per year.[680] The Bureau expects that the amount of time required to implement each of the proposed changes for a given institution may vary based on the size, complexity, and practices of the respondent.

197 financial institutions reported HMDA data to the Bureau in 2012. Currently, only depository institutions with over $10 billion in assets and their affiliates report their HMDA data to the Bureau. Given their large asset size, it is reasonable to believe that Bureau reporters are most likely aligned with the representative tier 1 institution.[681] Therefore, to calculate burden hours, the Bureau assumes all 197 financial institutions that reported HMDA data to the Bureau are tier 1 institutions. The Bureau estimates that the current time burden for the Bureau reporters is approximately 1,787,000 hours per year. 18 of these 197 institutions reported over 75,000 HMDA loan application register records, and would therefore be required to report data quarterly. Including the modifications to the information collection requirements contained in the proposed rule, and the operations modernization measures, the Bureau estimates that the time burden for annual and quarterly Bureau reporters would be 1,694,000 and 183,000 hours per year, respectively, for a total estimated burden hours of 1,877,000 per year. This represents an increase of approximately 90,000 burden hours.

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[679] The count of 6,250 is constructed as the number of HMDA reporters in 2012 (7400) less the estimated 1600 depository institutions that would no longer have to report under the proposed coverage rules plus the additional 450 estimated non-depository institutions that would have to begin reporting under the proposed coverage rules.
[680] The Bureau estimates that, for all HMDA reporters, the burden hours will be approximately 3,356,000 to 5,953,000 hours per year. 4,700,000 is approximately the mid-point of this estimated range.
[681] The Bureau's estimation methodology is fully described in section VI, above.

A. Information Collection Requirements[682]

The Bureau believes the following aspects of the proposed rule would be information collection requirements under the PRA: (1) the requirement that financial institutions maintain loan application register information for three years, disclosure statements for five years, and update information regarding reportable transactions quarterly; (2) the requirement that financial institutions report HMDA data annually—or, in the case of financial institutions with at least 75,000 loan application register entries for the preceding calendar year, quarterly—to the Bureau or to the appropriate Federal agency; and (3) the requirement that financial institutions provide modified loan application registers to the public upon request, and provide notices that clearly convey that disclosure statements may be obtained on the FFIEC website.

1. Recordkeeping Requirements

Financial institutions are required to maintain loan application register information for three years and disclosure statements for five years. The proposed rule would not modify the recordkeeping period for covered financial institutions, or increase the documentation or non-data-specific information that financial institutions would have to maintain. The proposed rule would increase the number of data fields, and possibly the number of records, that financial institutions are required to gather and report. The Bureau estimates that the current time burden of reporting for the Bureau reporters is approximately 810,000 hours per year. The Bureau estimates that, with the proposed changes and the operations modernization, the time burden for annual and quarterly Bureau reporters would be approximately 766,000 and 77,000 hours per

[682] A detailed analysis of the burdens and costs described in this section can be found in the Paperwork Reduction Act Supporting Statement that corresponds with this proposal. The Supporting Statement is available at www.reginfo.gov.

year, respectively, for a total estimate of approximately 843,000 burden hours per year. This represents an increase of approximately 33,000 burden hours.

2. Reporting Requirements

HMDA is a data reporting statute, so most provisions of the proposed rule affect reporting requirements, as described above. Specifically, financial institutions are required to report HMDA data to the Bureau or to the appropriate Federal agency.[683] All reportable transactions must be recorded within 30 calendar days[684] after the end of the calendar quarter in which final action is taken on a loan application register, and a modified version of the loan application register must be disclosed to the public upon request.[685] Under the proposed regulation, financial institutions would make available to the public a modified loan application register showing only the data fields that are currently released on the modified loan application register. Additionally, financial institutions that reported at least 75,000 covered loans, applications, and purchased covered loans, combined, in the preceding calendar year will be required to report HMDA data quarterly to the Bureau or the appropriate Federal agency.

The Bureau estimates that the current time burden of reporting for the Bureau reporters is approximately 971,000 hours per year. The Bureau estimates that, with the proposed changes and the operations modernization, the time burden for annual and quarterly Bureau reporters would be approximately 921,000 and 105,000 hours per year, respectively, for a total estimate of approximately 1,026,000 burden hours per year. This represents an increase of approximately 55,000 burden hours.

[683] 12 U.S.C. 2803(h)(1).
[684] 12 CFR 1003.4(a).
[685] 12 U.S.C. 2803(j).

3. Disclosure Requirements

The proposed rule would modify Regulation C's requirements for financial institutions to disclose information to third parties. Covered financial institutions would continue to make their modified loan application registers available to the public upon request, but, as described above, the modified loan application register would be limited to the data that are currently released under Regulation C. Additionally, the proposed rule would allow financial institutions to provide their disclosure statements to the public by making available a notice that clearly conveys that the disclosure statement may be obtained on the FFIEC website and that includes the FFIEC's website address.

The Bureau estimates that the current time burden of disclosure for the Bureau reporters is approximately 6,000 hours per year. The Bureau estimates that, with the proposed changes and the operations modernization, the time burden for annual and quarterly Bureau reporters would be approximately 7,000 and 1,000 hours per year, respectively, for a total estimate of approximately 8,000 burden hours per year. This represents an increase of approximately 2,000 burden hours.

4. One-Time Costs Associated with the Proposed Information Collections

Financial institutions' management, legal, and compliance personnel will likely take time to learn new reporting requirements and assess legal and compliance risks. Financial institutions that use vendors for HMDA compliance will incur one-time costs associated with software installation, troubleshooting, and testing. The Bureau is aware that these activities will require time and that the costs may be sensitive to the time available for them. Financial institutions that maintain their own reporting systems will incur one-time costs to develop, prepare, and implement necessary modifications to those systems. In all cases, financial institutions will need

to update training materials to reflect new requirements and activities and may have certain one-time costs for providing initial training to current employees.

For current HMDA reporters, the Bureau estimates that the proposed rule will impose on average one-time costs of $3,000 for tier 3 financial institutions, $250,000 for tier 2 financial institutions and $800,000 for tier 1 financial institutions without considering the expansion of transactional coverage to include open-end lines of credit and reverse mortgages.[686] Including the estimated one-time costs to modify processes and systems for home-equity products, the Bureau estimates that the total one-time costs would be $3,000 for tier 3 institutions, $375,000 for tier 2 institutions, and $1,200,000 for tier 1 institutions. This yields an overall estimated market impact of between $383,000,000 and $2,100,000,000. Using a 7 percent discount rate and a five-year window, the annualized one-time, additional cost is $93,400,000 to $514,900,000. The Bureau expects to obtain more information about these one-time costs through this NPRM process and other outreach efforts.

The proposed revisions to the institutional coverage criteria will require an estimated 450 nondepository institutions that are currently not reporting under HMDA to begin reporting. These nondepository institutions will incur start-up costs to develop policies and procedures, infrastructure, and training. Based on outreach discussions with financial institutions, the Bureau believes that these start-up costs will be similar to the one-time costs current reporters will incur in response to the proposed rule, which average $3,000 for tier 3 financial institutions, $375,000 for tier 2 financial institutions, and $1,200,000 for tier 1 financial institutions. Although

[686] The Bureau realizes that the impact to one-time costs varies by institution due to many factors, such as size, operational structure, and product complexity, and that this variance exists on a continuum that is impossible to fully capture. As a result, the one-time cost estimates will be high for some financial institutions, and low for others.

origination volumes for these 450 nondepository institutions are slightly higher, the Bureau still expects most of these nondepository institutions to be tier 3 financial institutions. Under this assumption, the estimated overall market cost would be $1,350,000.

B. Summary of Burden Hours

The tables below summarize the estimated annual burdens under Regulation C associated with the information collections described above for Bureau reporters and all HMDA reporters, respectively. The tables combine all three aspects of information collection: reporting, recordkeeping, and disclosure requirements. The Paperwork Reduction Act Supporting Statement that corresponds with this proposal provides more information as to how these estimates were derived and further detail regarding the burden hours associated with each information collection. The first table presents burden hour estimates for financial institutions that report HMDA data to the Bureau, and the second table provides information for all HMDA reporters.

Table 1
Total Annual Burden, All Information Collections-Financial Institutions Reporting to the Bureau

	Number of Respondents	Total Burden per Respondent	Total Burden Hours (Rounded to Nearest Thousand)
Tier One: Annual Reporter	179	9,464 hours	1,694,000
Tier One: Quarterly Reporter	18	10,133 hours	183,000
Tier Two	0	764 hours	0
Tier Three	0	90 hours	0
Total Estimated Burden for Bureau Reporters			**1,877,000 hours**

Table 2
Total Annual Burden, All Information Collections- All Regulated Entities

	Lower Bound Estimate			Upper Bound Estimate		
	Number of Respondents	Total Burden per respondent	Total Burden Hours (Rounded to Nearest Thousand)	Number of Respondents	Total Burden per respondent	Total Burden Hours (Rounded to Nearest Thousand)
Tier One Annual Reporter	268	9,464 hours	2,536,000	194	9,464 hours	1,836,000
Tier One Quarterly Reporter	28	10,133 hours	284,000	28	10,133 hours	284,000
Tier Two	0	764 hours	0	4,884	764 hours	3,730,000
Tier Three	5,954	90 hours	536,000	1,144	90 hours	103,000

Total Estimated Burden for All Respondents **4,700,000 hours**

C. Comments

Comments are specifically requested concerning: (i) whether the proposed collections of information are necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (ii) the accuracy of the estimated burden associated with the proposed collections of information; (iii) how to enhance the quality, utility, and clarity of the information to be collected; and (iv) how to minimize the burden of complying with the proposed collections of information, including the application of automated collection techniques or other forms of information technology. Comments regarding the burden estimate, or any other aspect of these collections of information, including suggestions for reducing the burden, should be sent to: The Office of Management and Budget (OMB), Attention: Desk

Officer for the Consumer Financial Protection Bureau, Office of Information and Regulatory Affairs, Washington, D.C., 20503, or by the internet to submissions@omb.eop.gov. If you wish to share your comments with the Bureau, please send a copy of these comments to the docket for this proposed rule at www.regulations.gov. The ICR submitted to OMB requesting approval under the PRA for the information collection requirements contained herein is available both at www.regulations.gov as well as OMB's public-facing docket at www.reginfo.gov.

List of Subjects in 12 CFR Part 1003

Banks, Banking, Credit unions, Mortgages, National banks, Savings associations, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set forth above, the Bureau of Consumer Financial Protection proposes to amend Regulation C, 12 CFR part 1003, as set forth below:

PART 1003—HOME MORTGAGE DISCLOSURE (REGULATION C)

1. The authority citation for part 1003 continues to read as follows:

AUTHORITY: 12 U.S.C. 2803, 2804, 2805, 5512, 5581

2. Section 1003.1 is amended by revising paragraph (c) to read as follows:

§ 1003.1 Authority, purpose, and scope.

* * * * *

(c) *Scope*. This part applies to financial institutions as defined in § 1003.2(g). The regulation requires a financial institution to report data to the Bureau or to the appropriate Federal agency for the financial institution about covered loans secured by a dwelling located in a State of the United States of America, the District of Columbia, or the Commonwealth of

Puerto Rico that it originates or purchases, or for which it receives applications; and to disclose certain data to the public.

3. Section 1003.2 is amended by adding paragraph numbers to the existing definitions, by adding new paragraphs (d), (e), (k), (n), (o), and (q), and by revising the definitions for "application," "branch office," "dwelling," "financial institution," "home improvement loan," "home purchase loan," "manufactured home," and "refinancing" to read as follows:

§ 1003.2 Definitions.

* * * * *

(b) *Application*. (1) *In general.* Application means an oral or written request for a covered loan that is made in accordance with procedures used by a financial institution for the type of credit requested.

(2) *Preapproval programs.* A request for preapproval for a home purchase loan is an application under this section if the request is reviewed under a program in which the financial institution, after a comprehensive analysis of the creditworthiness of the applicant, issues a written commitment to the applicant valid for a designated period of time to extend a home purchase loan up to a specified amount. The written commitment may not be subject to conditions other than:

(i) Conditions that require the identification of a suitable property;

(ii) Conditions that require that no material change has occurred in the applicant's financial condition or creditworthiness prior to closing; and

(iii) Limited conditions that are not related to the financial condition or creditworthiness of the applicant that the financial institution ordinarily attaches to a traditional home mortgage application.

(c) *Branch office* means:

(1) Any office of a depository financial institution, as defined in paragraph (g)(1) of this section, that is considered a branch by the Federal or State supervisory agency applicable to that financial institution, excluding automated teller machines and other free-standing electronic terminals; and

(2) Any office of a nondepository financial institution, as defined in paragraph (g)(2) of this section, that takes applications from the public for covered loans. A nondepository financial institution is also deemed to have a branch office in an MSA or in an MD, if, in the preceding calendar year, it received applications for, originated, or purchased five or more covered loans related to property located in that MSA or MD, respectively.

(d) *Closed-end mortgage loan* means a debt obligation secured by a lien on a dwelling that is not an open-end line of credit under paragraph (o) of this section, a reverse mortgage under paragraph (q) of this section, or excluded from this part pursuant to § 1003.3(c).

(e) *Covered loan* means a transaction that is, as applicable, a closed-end mortgage loan under paragraph (d) of this section, an open-end line of credit under paragraph (o) of this section, or a reverse mortgage under paragraph (q) of this section.

(f) *Dwelling* means a residential structure, whether or not attached to real property. The term includes but is not limited to a detached home, an individual condominium or cooperative unit, a manufactured or other factory-built home, or a multifamily residential structure.

(g) *Financial institution* means a depository financial institution or a nondepository financial institution, where:

(1) *Depository financial institution* means a bank, savings association, or credit union that:

(i) On the preceding December 31 had assets in excess of the asset threshold established and published annually by the Bureau for coverage by the Act, based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers, not seasonally adjusted, for each twelve month period ending in November, with rounding to the nearest million;

(ii) On the preceding December 31, had a home or branch office in an MSA;

(iii) In the preceding calendar year, originated 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;

(iv) Meets one or more of the following three criteria:

(A) The institution is Federally insured or regulated;

(B) The loan referred to in paragraph (g)(1)(iii) of this section was insured, guaranteed, or supplemented by a Federal agency; or

(C) The loan referred to in paragraph (g)(1)(iii) of this section was intended by the institution for sale to the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation; and

(v) In the preceding calendar year, originated at least 25 covered loans, excluding open-end lines of credit; and

(2) *Nondepository financial institution* means a for-profit mortgage-lending institution (other than a bank, savings association, or credit union) that:

(i) On the preceding December 31, had a home or branch office in an MSA; and

(ii) In the preceding calendar year, originated at least 25 covered loans, excluding open-end lines of credit.

* * * * *

(i) *Home improvement loan* means a covered loan that is for the purpose, in whole or in part, of repairing, rehabilitating, remodeling, or improving a dwelling or the real property on which it is located.

(j) *Home purchase loan* means a covered loan that is for the purpose of purchasing a dwelling.

(k) *Loan application register* means a register in the format prescribed in appendix A to this part.

(l) *Manufactured home* means any residential structure as defined under regulations of the U.S. Department of Housing and Urban Development establishing manufactured home construction and safety standards (24 CFR 3280.2).

* * * * *

(n) *Multifamily dwelling* means a dwelling, regardless of construction method, that contains five or more individual dwelling units.

(o) *Open-end line of credit* means a transaction that:

(1) Is an open-end credit plan as defined in § 1026.2(a)(20) of Regulation Z, but without regard to whether the credit is for personal, family, or household purposes, without regard to whether the person to whom credit is extended is a consumer, and without regard to whether the person extending credit is a creditor, as those terms are defined under Regulation Z, 12 CFR part 1026;

(2) Is secured by a lien on a dwelling, as defined under paragraph (f) of this section;

(3) Is not a reverse mortgage under paragraph (q) of this section; and

(4) Is not excluded from this part pursuant to § 1003.3(c).

(p) *Refinancing* means a covered loan in which a new debt obligation satisfies and replaces an existing debt obligation by the same borrower, in which both the existing debt obligation and the new debt obligation are secured by liens on dwellings.

(q) *Reverse mortgage* means a transaction that:

(1) Is a reverse mortgage transaction as defined in Regulation Z, 12 CFR 1026.33(a); and

(2) Is not excluded from this part pursuant to § 1003.3(c).

4. Section 1003.3 is amended by revising the heading and adding new paragraph (c) to read as follows:

§ 1003.3 Exempt institutions and excluded transactions.

* * * * *

(c) *Excluded transactions.* The requirements of this part do not apply to:

(1) A loan originated or purchased by the financial institution acting in a fiduciary capacity;

(2) A loan secured by a lien on unimproved land;

(3) Temporary financing;

(4) The purchase of an interest in a pool of loans;

(5) The purchase solely of the right to service loans;

(6) The purchase of loans as part of a merger or acquisition, or as part of the acquisition of all of the assets and liabilities of a branch office as defined in § 1003.2(c);

(7) A loan or application for which the total dollar amount is less than $500;

(8) The purchase of a partial interest in a covered loan; or

(9) A loan used primarily for agricultural purposes.

5. Section 1003.4 is amended by revising the heading and by revising paragraphs (a), (a)(1), (a)(2), (a)(3), (a)(4), (a)(5), (a)(6), (a)(7), (a)(9), (a)(10), (a)(11), (a)(12)(i), (a)(13), and (a)(14) under that heading, by adding new paragraphs (a)(15), (a)(16), (a)(17), (a)(18), (a)(19), (a)(20), (a)(21), (a)(22), (a)(23), (a)(24), (a)(25), (a)(26), (a)(27), (a)(28), (a)(29), (a)(30), (a)(31), (a)(32), (a)(33), (a)(34), (a)(35), (a)(36), (a)(37), (a)(38), (a)(39), (b), and (f) under that heading, and by removing and reserving paragraphs (c)(1), (c)(2), (c)(3), and (d) to read as follows:

§ 1003.4 Compilation of reportable data.

(a) *Data format and itemization.* A financial institution shall collect data regarding applications for covered loans which it receives, originations of covered loans on which it makes a credit decision, and covered loans it purchases for each calendar year. A financial institution shall collect data regarding requests under a preapproval program, as defined in § 1003.2(b)(2), only if the preapproval request is denied, is approved by the financial institution but not accepted by the applicant, or results in the origination of a home purchase loan. The data collected shall include the following items:

(1)(i) A universal loan identifier (ULI) for the covered loan or application that can be used to retrieve the covered loan or application file. For covered loans or applications for which any financial institution has previously reported a ULI under this part, the ULI shall consist of the ULI that was previously reported for the covered loan or application under this part. For all other covered loans and applications, the ULI shall:

(A) Begin with the financial institution's Legal Entity Identifier described in § 1003.5(a)(3); and

(B) Follow the Legal Entity Identifier described in § 1003.5(a)(3) with up to 25 additional characters to identify the covered loan or application, which:

(*1*) May be letters, numerals, symbols, or a combination of any of these;

(*2*) Must be unique within the financial institution; and

(*3*) Must not include any information that could be used to directly identify the applicant or borrower.

(ii) Except for purchased covered loans, the date the application was received or the date shown on the application form.

(2) Whether the covered loan or application is insured under title II of the National Housing Act, is insured under title V of the Housing Act of 1949, or is guaranteed under chapter 37 of title 38 of the United States Code.

(3) Whether the covered loan is, or the application is for, a home purchase loan, a home improvement loan, a refinancing, or for a purpose other than home purchase, home improvement, or refinancing.

(4) Whether the application is a request for preapproval for a home purchase loan.

(5) Whether the construction method for the dwelling related to the property identified in paragraph (a)(9) of this section is site built or a manufactured home.

(6) Whether the property identified in paragraph (a)(9) of this section is or will be used by the applicant or borrower as a principal residence, as a second residence, or as an investment property.

(7) The amount of the covered loan or the amount applied for, as applicable.

(i) For a closed-end mortgage loan, other than a purchased loan or an assumption, the amount of the covered loan is the amount to be repaid as disclosed on the legal obligation. For a

purchased closed-end mortgage loan or an assumption of a closed-end mortgage loan, the amount of the covered loan is the unpaid principal balance on the covered loan or assumption at the time of purchase or assumption.

(ii) For an open-end line of credit, including a purchased open-end line of credit or an assumption of an open-end line of credit, the amount of the covered loan is the amount of credit available to the borrower under the terms of the plan.

(iii) For a reverse mortgage, the amount of the covered loan is the initial principal limit, as determined pursuant to section 255 of the National Housing Act (12 U.S.C. 1715z-20) and implementing regulations and mortgagee letters prescribed by the U.S. Department of Housing and Urban Development.

* * * * *

(9) The following information about the location of the property securing the covered loan or, in the case of an application, proposed to secure the covered loan:

(i) The postal address; and

(ii) If the property is located in an MSA or MD in which the financial institution has a home or branch office, the location of the property by:

(A) State;

(B) County;

(C) MSA or MD; and

(D) Census tract if the property is located in a county with a population of more than 30,000 according to the most recent decennial census conducted by the U.S. Census Bureau.

(10) The following information about the applicant or borrower:

(i) Ethnicity, race, sex, and age; and

(ii) Gross annual income relied on in making the credit decision requiring consideration of income or, if a credit decision requiring consideration of income was not made, the gross annual income collected as part of the application process.

(11) The type of entity purchasing a covered loan that the financial institution originates or purchases and then sells within the same calendar year.

(12)(i) For covered loans subject to Regulation Z, 12 CFR part 1026, other than purchased covered loans and reverse mortgages, the difference between the covered loan's annual percentage rate and the average prime offer rate for a comparable transaction as of the date the interest rate is set.

* * * * *

(13) For covered loans subject to the Home Ownership and Equity Protection Act of 1994, as implemented in Regulation Z, 12 CFR 1026.32, whether the covered loan is a high-cost mortgage under Regulation Z, 12 CFR 1026.32(a), and the reason that the covered loan is a high-cost mortgage, if applicable.

(14) The priority of the lien against the property identified under paragraph (a)(9) of this section.

(15)(i) Except for purchased covered loans, the credit score or scores relied on in making the credit decision and the name and version of the scoring model used to generate each credit score.

(ii) "Credit score" has the meaning set forth in 15 U.S.C. 1681g(f)(2)(A).

(16) The reason(s) the financial institution denied the application.

(17) For covered loans or applications subject to the Home Ownership and Equity Protection Act of 1994, as implemented in Regulation Z, 12 CFR 1026.32, or covered loans or

applications subject to Regulation Z, 12 CFR 1026.43(e)(2)(iii), other than purchased covered loans, the total points and fees payable in connection with the covered loan or application, expressed in dollars and calculated in accordance with Regulation Z, 12 CFR 1026.32(b)(1) or (2), as applicable.

(18) For covered loans subject to the disclosure requirements in Regulation Z, 12 CFR 1026.19(f), the total of all itemized amounts that are designated borrower-paid at or before closing, expressed in dollars, as disclosed pursuant to Regulation Z, 12 CFR 1026.38(f)(1).

(19) For covered loans subject to the disclosure requirements in Regulation Z, 12 CFR 1026.19(f), the points designated as paid to the creditor to reduce the interest rate, expressed in dollars, as described in Regulation Z, 12 CFR 1026.37(f)(1)(i).

(20) For covered loans subject to the disclosure requirements in Regulation Z, 12 CFR 1026.19(f), other than purchased covered loans, the interest rate that the borrower would receive if the borrower paid no bona fide discount points, as calculated pursuant to Regulation Z, 12 CFR 1026.32.

(21) The interest rate that is or would be applicable to the covered loan at closing or account opening.

(22) Except for purchased covered loans, the term in months of any prepayment penalty, as defined in Regulation Z, 12 CFR 1026.32(b)(6)(i) or (ii), as applicable.

(23) For a covered loan that is not, or an application that is not for, a reverse mortgage, the ratio of the applicant's or borrower's total monthly debt to the total monthly income relied on in making the credit decision.

(24) The ratio of the total amount of debt secured by the property to the value of the property, determined as follows:

(i) For a covered loan that is a home-equity line of credit, by dividing the sum of the unpaid principal balance of the first mortgage, the full amount of any home-equity line of credit (whether drawn or undrawn), and the balance of any other subordinate financing by the property value identified in paragraph (a)(28) of this section;

(ii) For a covered loan that is not a home-equity line of credit, by dividing the combined unpaid principal balance amounts of the first and all subordinate mortgages, excluding undrawn home-equity lines of credit amounts, by the property value identified in paragraph (a)(28) of this section.

(25) The scheduled number of months after which the legal obligation will mature or would have matured.

(26) The number of months until the first date the interest rate may change after loan origination.

(27) Whether the contractual terms include or would have included any of the following:

(i) A balloon payment as defined in Regulation Z, 12 CFR 1026.18(s)(5)(i);

(ii) Interest-only payments as defined in Regulation Z, 12 CFR 1026.18(s)(7)(iv);

(iii) A contractual term that would cause the covered loan to be a negative amortization loan as defined in Regulation Z, 12 CFR 1026.18(s)(7)(v); or

(iv) Any other contractual term that would allow for payments other than fully amortizing payments, as defined in Regulation Z, 12 CFR 1026.43(b)(2), during the loan term, other than the terms described in paragraphs (a)(27)(i), (ii), and (iii) of this section.

(28) The value of the property securing the covered loan or, in the case of an application, proposed to secure the covered loan relied on in making the credit decision.

(29) If the dwelling related to the property identified in paragraph (a)(9) of this section is a manufactured home, whether it is legally classified as real property or as personal property.

(30) If the dwelling related to the property identified in paragraph (a)(9) of this section is a manufactured home, whether the applicant or borrower owns the land on which it is or will be located through a direct or indirect ownership interest or leases the land through a paid or unpaid leasehold.

(31) The number of individual dwelling units related to the property securing the covered loan or, in the case of an application, proposed to secure the covered loan.

(32) If the property securing the covered loan or, in the case of an application, proposed to secure the covered loan includes a multifamily dwelling, the number of individual dwelling units related to the property that are income-restricted pursuant to Federal, State, or local affordable housing programs.

(33) Except for purchased covered loans, the following information about the application channel of the covered loan or application:

(i) Whether the applicant or borrower submitted the application for the covered loan directly to the financial institution; and

(ii) Whether the obligation arising from the covered loan was, or in the case of an application, would have been initially payable to the financial institution.

(34) For a covered loan or application, the unique identifier assigned by the Nationwide Mortgage Licensing System and Registry (NMLSR ID) for the mortgage loan originator, as defined in Regulation G, 12 CFR 1007.102, or Regulation H, 12 CFR 1008.23, as applicable.

(35)(i) Except for purchased covered loans, the name of the automated underwriting system used by the financial institution to evaluate the application and the recommendation generated by that automated underwriting system.

(ii) For purposes of this section, an automated underwriting system means 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.

(36) Whether the covered loan is, or the application is for, a reverse mortgage, as defined in § 1003.2(q), and whether the reverse mortgage is an open- or closed-end transaction.

(37) Whether the covered loan is, or the application is for, an open-end line of credit, as defined in § 1003.2(o), and whether the covered loan is, or the application is for, a home-equity line of credit, as defined in § 1003.2(h).

(38) Whether the covered loan is subject to the ability-to-repay provisions of Regulation Z, 12 CFR 1026.43, and whether the covered loan is a qualified mortgage, as described under Regulation Z, 12 CFR 1026.43(e) or (f).

(39) For a home-equity line of credit and an open-end reverse mortgage, the amount of the draw on the covered loan, if any, made at account opening.

(b) *Collection of data on ethnicity, race, sex, age, and income.* (1) A financial institution shall collect data about the ethnicity, race, sex, and age of the applicant or borrower as prescribed in appendices A and B to this part.

(2) Ethnicity, race, sex, age, and income data may but need not be collected for covered loans purchased by the financial institution.

(c) *Optional data.* A financial institution may report:

(1) [Reserved]

(2) [Reserved]

(3) [Reserved]

(d) [Reserved]

* * * * *

(f) *Quarterly recording of data*. A financial institution shall record the data collected pursuant to this section on a loan application register within 30 calendar days after the end of the calendar quarter in which final action is taken (such as origination or purchase of a covered loan, or denial or withdrawal of an application).

6. Section 1003.5 is amended by revising the headings of paragraphs (b), (c), (e) and (f), revising paragraphs (a)(1), (b)(1), (b)(2), (c), (d), (e), and (f), removing paragraph (b)(3), and adding paragraphs (a)(3) and (a)(4) to read as follows:

§ 1003.5 Disclosure and reporting.

(a) *Reporting to agency.* (1)(i) Except as described in paragraph (a)(1)(ii) of this section, by March 1 following the calendar year for which data are compiled and recorded as required by § 1003.4, a financial institution shall submit its complete loan application register in electronic format to the Bureau or to the appropriate Federal agency for the financial institution in accordance with the instructions in appendix A to this part. The financial institution shall retain a copy of its complete loan application register for its records for at least three years.

(ii) Effective [x], within 60 calendar days after the end of each calendar quarter, a financial institution that reported at least 75,000 covered loans, applications, and purchased covered loans, combined, for the preceding calendar year shall submit its loan application register containing all data required to be recorded for that quarter pursuant to § 1003.4(f). The

financial institution shall submit its quarterly loan application register in electronic format to the Bureau or to the appropriate Federal agency for the financial institution in accordance with the instructions in appendix A to this part. The financial institution shall retain a copy of its complete loan application register for its records for at least three years.

(iii) An officer of the financial institution shall certify to the accuracy of data submitted.

* * * * *

(3) When reporting its data, a financial institution shall provide a Legal Entity Identifier (LEI) for the financial institution issued by:

(i) A utility endorsed by the LEI Regulatory Oversight Committee; or

(ii) A utility endorsed or otherwise governed by the Global LEI Foundation (GLEIF) (or any successor of the GLEIF) after the GLEIF assumes operational governance of the global LEI system.

(4) When reporting its data, a financial institution shall identify its parent company, if any.

(b) *Disclosure statement.* (1) The Federal Financial Institutions Examination Council (FFIEC) will make available a disclosure statement based on the data each financial institution submits for the preceding calendar year.

(2) No later than three business days after receiving notice that its disclosure statement is available, a financial institution shall make its disclosure statement available to the public by making available at its home office and each branch office located in each MSA and each MD a notice that clearly conveys that the institution's disclosure statement may be obtained on the FFIEC website and that includes the FFIEC's website address.

(c) *Public disclosure of modified loan application register*. (1) A financial institution shall make its loan application register available to the public after, for each entry:

(i) Removing the information required to be reported under § 1003.4(a)(1), the date required to be reported under § 1003.4(a)(8), the postal address required to be reported under § 1003.4(a)(9), the age of the applicant or borrower required to be reported under § 1003.4(a)(10), and the information required to be reported under § 1003.4(a)(15) and (a)(17) through (39); and

(ii) Rounding the information required to be reported under § 1003.4(a)(7) to the nearest thousand.

(2) A financial institution shall make available its loan application register, modified as required by paragraph (c)(1) of this section, following the calendar year for which the data are compiled, as follows:

(i) By March 31 for a request received on or before March 1; and

(ii) Within 30 calendar days for a request received after March 1.

(3) The modified loan application register made available pursuant to this paragraph (c) need contain data relating to only the MSA or MD for which the request is made.

(d) *Availability of data.* (1) A financial institution shall make its modified loan application register available to the public for a period of three years and its disclosure statement available to the public for a period of five years. An institution shall make its data available during the hours the office is normally open to the public for business.

(2) A financial institution may impose a reasonable fee for any cost incurred in providing or reproducing its data.

(e) *Notice of availability of data.* A financial institution shall post a general notice about the availability of its HMDA data in the lobby of its home office and of each branch office located in each MSA and each MD.

(f) *Aggregated data.* Using the data submitted by financial institutions, the FFIEC will make available reports for individual institutions and reports of aggregate data for each MSA and MD, showing lending patterns by property location, age of housing stock, and income level, sex, ethnicity, and race. These reports will be made available to the public online at the FFIEC's website (www.ffiec.gov/hmda).

7. Appendix A to Part 1003 is revised to read as follows:

APPENDIX A TO PART 1003—FORM AND INSTRUCTIONS FOR COMPLETION OF HMDA LOAN APPLICATION REGISTER

PAPERWORK REDUCTION ACT NOTICE

This report is required by law (12 U.S.C. 2801–2810 and 12 CFR 1003). An agency may not conduct or sponsor, and an organization is not required to respond to, a collection of information unless it displays a valid Office of Management and Budget (OMB) Control Number. See 12 CFR 1003.1(a) for the valid OMB Control Numbers applicable to this information collection. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the respective agencies and to OMB, Office of Information and Regulatory Affairs, Paperwork Reduction Project, Washington, DC 20503. Be sure to reference the applicable agency and the OMB Control Number, as found in 12 CFR 1003.1(a), when submitting comments to OMB.

I. INSTRUCTIONS FOR COMPLETION OF LOAN APPLICATION REGISTER

1. *Instructions and designations.* This part to this appendix contains instructions for the completion of the loan application register. Each instruction in this appendix is identified by a number and the regulatory section and paragraph which provides the reporting requirement. The instructions are designated according to the particular regulatory provision addressed. For example, the first instruction in this appendix for reporting the action taken under § 1003.4(a)(8) may be cited as instruction 4(a)(8)-1. This paragraph may be cited as instruction I-1.

Paragraph 4(a)(1)(i)—ULI.

1. Enter the ULI assigned to the covered loan or application.

Paragraph 4(a)(1)(ii)—Date Application Received.

1. Enter the date the application was received or the date shown on the application form by year, month, and day, using numerals in the form YYYYMMDD. Enter "NA" for covered loans purchased by your institution.

Paragraph 4(a)(2)—Loan or Application Type.

1. Indicate the type of covered loan or application by entering the applicable Code from the following:

Code 1—Conventional

Code 2—FHA

Code 3—VA

Code 4—USDA Rural Development

a. Use Code 2 if the covered loan or application is insured under title II of the National Housing Act.

b. Use Code 3 if the covered loan or application is guaranteed under chapter 37 of title 38 of the United States Code.

c. Use Code 4 if the covered loan or application is insured under title V of the Housing Act of 1949.

d. Use Code 1 if the covered loan or application is not insured under title II of the National Housing Act, not insured under title V of the Housing Act of 1949, and not guaranteed under chapter 37 of title 38 of the United States Code.

Paragraph 4(a)(3)—Purpose of Loan or Application.

1. Indicate the purpose of the loan or application by entering the applicable Code from the following:

Code 1—Home purchase

Code 2—Home improvement

Code 3—Refinancing

Code 4—Other

a. For refinancings, enter Code 4 if, under the terms of the agreement, you were unconditionally obligated to refinance the obligation, or you were obligated to refinance the obligation subject to conditions within the borrower's control.

Paragraph 4(a)(4)—Preapproval.

1. Indicate whether the application or covered loan involved a request for preapproval for a home purchase loan by entering the applicable Code from the following:

Code 1—Preapproval requested

Code 2—Preapproval not requested

Code 3—Not applicable

a. Enter Code 1 if your institution has a preapproval program as defined in § 1003.2(b)(2) and the applicant requests a preapproval for a home purchase loan. Do not use Code 1 if a

request for preapproval is withdrawn or for requests for preapproval that are closed for incompleteness; such preapproval requests are not reported under HMDA as implemented by Regulation C.

b. Enter Code 2 if your institution has a preapproval program as defined in § 1003.2(b)(2) but the applicant does not request a preapproval.

c. Enter Code 3 if your institution does not have a preapproval program as defined in § 1003.2(b)(2).

d. Enter Code 3 for applications for or originations of home improvement loans, refinancings, open-end lines of credit, home-equity lines of credit, reverse mortgages, and for purchased loans.

Paragraph 4(a)(5)—Construction Method.

1. Indicate the construction method for the dwelling related to the covered loan or application by entering the applicable Code from the following:

Code 1—Site Built

Code 2—Manufactured Home

Code 3—Other

a. Enter Code 1 if most of the dwelling's elements were created at the dwelling's permanent site (including the use of prefabricated components), or if the dwelling is a modular or other factory-built home (including a modular home with a permanent metal chassis) that does not meet the definition of a manufactured home under § 1003.2(l).

b. Enter Code 2 if the dwelling meets the definition of a manufactured home under § 1003.2(l).

c. Enter Code 3 for a dwelling that is not site built or a manufactured home under § 1003.2(l).

Paragraph 4(a)(6)—Occupancy Type.

1. Indicate the occupancy status of the property to which the covered loan or application relates by entering the applicable Code from the following:

Code 1—Principal residence

Code 2—Second residence

Code 3—Investment property with rental income

Code 4—Investment property without rental income

a. For purchased loans, use Code 1 unless the application or documents for the covered loan indicate that the property will not be occupied as a principal residence.

b. Use Code 2 for second homes or vacation homes.

c. Use Code 3 for investment properties that are owned for the purpose of generating income by renting the property.

d. Use Code 4 for investment properties that are not owned for the purpose of generating income by renting the property.

Paragraph 4(a)(7)—Loan Amount.

1. Enter the amount of the covered loan or the amount applied for, as applicable, in dollars.

Paragraph 4(a)(8)—Action Taken.

1. Type of Action. Indicate the type of action taken on the application or covered loan by using one of the following Codes.

Code 1—Loan originated

Code 2—Application approved but not accepted

Code 3—Application denied

Code 4—Application withdrawn

Code 5—File closed for incompleteness

Code 6—Loan purchased by your institution

Code 7—Preapproval request denied

Code 8—Preapproval request approved but not accepted

a. Use Code 1 for a covered loan that is originated, including one resulting from a request for preapproval.

b. For a counteroffer (your offer to the applicant to make the covered loan on different terms or in a different amount from the terms or amount applied for), use Code 1 if the applicant accepts. Use Code 3 if the applicant turns down the counteroffer or does not respond.

c. Use Code 2 when the application is approved but the applicant (or the party that initially received the application) fails to respond to your notification of approval or your commitment letter within the specific time. Do not use this Code for a preapproval request.

d. Use Code 4 only when the application is expressly withdrawn by the applicant before satisfying all underwriting or creditworthiness conditions and before the institution denies the application or closes the file for incompleteness. Do not use Code 4 if a request for preapproval is withdrawn; preapproval requests that are withdrawn are not reported under HMDA.

e. Use Code 5 if you sent a written notice of incompleteness under § 1002.9(c)(2) of Regulation B (Equal Credit Opportunity Act) and the applicant did not respond to your request for additional information within the period of time specified in your notice. Do not use this

Code for requests for preapproval that are incomplete; these preapproval requests are not reported under HMDA.

2. Date of Action. Enter the date of action taken by year, month, and day, using numerals in the form YYYYMMDD.

a. For covered loans originated, enter the settlement or closing date.

b. For covered loans purchased, enter the date of purchase by your institution.

c. For applications and preapprovals denied, applications and preapprovals approved but not accepted by the applicant, and files closed for incompleteness, enter the date that the action was taken by your institution or the date the notice was sent to the applicant.

d. For applications withdrawn, enter the date you received the applicant's express withdrawal, whether received in writing or orally, or enter the date shown on the notification from the applicant, in the case of a written withdrawal.

e. For preapprovals that lead to a loan origination, enter the date of the origination.

Paragraph 4(a)(9)—Postal Address and Location of Subject Property.

1. Property Location Information. Enter the following information about the location of the property securing the covered loan or, in the case of an application, proposed to secure the covered loan:

a. Street Address. Enter the street address of the property.

i. For originations and purchases, the address must correspond to the property identified on the legal obligation related to the covered loan. For applications that did not result in an origination, the address must correspond to the property identified by the applicant.

ii. Include, as applicable, the address number, the street name, the street direction, address unit designators, and the address unit value, using U.S. Postal Service official abbreviations. For example, 100 N Main St Apt 1.

iii. Do not enter a post office box.

iv. Enter "NA" only if the street address is not known. For example, if the property does not have a postal address at closing or if the applicant did not provide the postal address of the property to the financial institution before the application was denied, withdrawn, or closed for incompleteness.

b. City Name. Enter the name of the city.

i. Enter "NA" only if the city location is not known. For example, if the property does not have a postal address at closing or if the applicant did not provide the postal address of the property to the financial institution before the application was denied, withdrawn, or closed for incompleteness.

c. State Code. Enter the two letter State code for the applicable State, using the U.S. Postal Service official State abbreviations.

d. Zip Code. Enter the zip code. The zip code may be five or nine digits. Do not enter dashes.

i. Enter "NA" only if the zip code is not known. For example, if the property does not have a postal address at closing or if the applicant did not provide the postal address of the property to the financial institution before the application was denied, withdrawn, or closed for incompleteness.

e. Metropolitan Statistical Area (MSA) or Metropolitan Division (MD). Enter the five-digit MSA or MD number if the MSA is divided into MDs. MSA and MD boundaries and five-

digit codes are defined by the U.S. Office of Management and Budget. Use the boundaries and codes that were in effect on January 1 of the calendar year for which you are reporting.

i. Enter "NA" if the property is not located in an MSA or an MD.

f. County. Enter the Federal Information Processing Standards (FIPS) three-digit numerical code for the county. These codes are available from the appropriate Federal agency to which you report data.

g. Census Tract. Enter the census tract number. Census tract numbers are defined by the U.S. Census Bureau. Use the boundaries and codes that were in effect on January 1 of the calendar year for which you are reporting.

i. You may enter "NA" if the property is located in a county with a population of 30,000 or less according to the most recent decennial census conducted by the U.S. Census Bureau.

2. Certain Location Information not Required. If your institution is not required to report data for CRA purposes under § 1003.4(e), you may elect to enter "NA" for County, MSA, and census tract for entries related to properties that are not located in the MSAs or MDs in which you have a home or branch office.

Paragraph 4(a)(10)—Applicant or Borrower Information.

1. Appendix B to this part contains instructions for the collection of data on ethnicity, race, and sex, and also contains a sample form for data collection.

2. Applicability. Report this information for covered loans that you originate as well as for applications that do not result in an origination.

a. You need not collect or report this information for covered loans purchased. If you choose not to report this information for covered loans that you purchase, use the Codes for "not applicable."

b. If the borrower or applicant is not a natural person (a corporation, partnership, or trust, for example), use the Codes for "not applicable."

Paragraph 4(a)(10)(i)—Ethnicity, Race, Sex, and Age.

1. Ethnicity of Borrower or Applicant. Use the following Codes to indicate the ethnicity of the applicant or borrower under column "A" and of any co-applicant or co-borrower under column "CA."

Code 1—Hispanic or Latino

Code 2—Not Hispanic or Latino

Code 3—Information not provided by applicant in mail, internet, or telephone application

Code 4—Not applicable

Code 5—No co-applicant

2. Race of Borrower or Applicant. Use the following Codes to indicate the race of the applicant or borrower under column "A" and of any co-applicant or co-borrower under column "CA."

Code 1—American Indian or Alaska Native

Code 2—Asian

Code 3—Black or African American

Code 4—Native Hawaiian or Other Pacific Islander

Code 5—White

Code 6—Information not provided by applicant in mail, internet, or telephone application

Code 7—Not applicable

Code 8—No co-applicant

a. If an applicant selects more than one racial designation, enter all Codes corresponding to the applicant's selections.

b. Use Code 3 (for ethnicity) and Code 6 (for race) if the applicant or co-applicant does not provide the information in an application taken by mail, internet, or telephone.

c. Use Code 4 (for ethnicity) and Code 7 (for race) for "not applicable" only when the applicant or co-applicant is not a natural person or when applicant or co-applicant information is unavailable because the covered loan has been purchased by your institution.

d. If there is more than one co-applicant, provide the required information only for the first co-applicant listed on the application form. If there are no co-applicants or co-borrowers, use Code 5 (for ethnicity) and Code 8 (for race) for "no co-applicant" in the co-applicant column.

3. Sex of Borrower or Applicant. Use the following Codes to indicate the sex of the applicant or borrower under column "A" and of any co-applicant or co-borrower under column "CA."

Code 1—Male

Code 2—Female

Code 3—Information not provided by applicant in mail, internet, or telephone application

Code 4—Not applicable

Code 5—No co-applicant

a. Use Code 3 if the applicant or co-applicant does not provide the information in an application taken by mail, internet, or telephone.

b. Use Code 4 for “not applicable” only when the applicant or co-applicant is not a natural person or when applicant or co-applicant information is unavailable because the covered loan has been purchased by your institution.

c. If there is more than one co-applicant, provide the required information only for the first co-applicant listed on the application form. If there are no co-applicants or co-borrowers, use Code 5 for “no co-applicant” in the co-applicant column.

4. Age of Borrower or Applicant. Enter the age of the applicant or borrower, as of the date of application, derived from the date of birth as shown on the application form, in number of years under column “A” and of any co-applicant or co-borrower under column “CA.” Or, use the following Codes as applicable.

Code 1—Not applicable

Code 2—No co-applicant

a. Use Code 1 for “not applicable” only when the applicant or co-applicant is not a natural person or when applicant or co-applicant information is unavailable because the covered loan has been purchased by your institution.

b. If there is more than one co-applicant, provide the required information only for the first co-applicant listed on the application form. If there are no co-applicants or co-borrowers, use Code 2 for “no co-applicant” in the co-applicant column.

Paragraph 4(a)(10)(ii)—Income.

1. Income. Enter the gross annual income that your institution relied on in making the credit decision requiring consideration of income or, if the application was denied or withdrawn or the file was closed for incompleteness before a credit decision requiring consideration of income was made, the gross annual income collected as part of the application process.

a. Round all dollar amounts to the nearest thousand (round $500 up to the next $1,000), and show in thousands. For example, report $35,500 as 36.

b. For a covered loan or application related to a multifamily dwelling, enter "NA."

c. If no income information is collected as part of the application process or the covered loan applied for would not or did not require consideration of income, enter "NA."

d. If the applicant or co-applicant is not a natural person or the applicant or co-applicant information is unavailable because the covered loan has been purchased by your institution, enter "NA."

Paragraph 4(a)(11)—Type of Purchaser.

1. Enter the applicable Code to indicate whether a covered loan that your institution originated or purchased was then sold to a secondary market entity within the same calendar year:

Code 0—Covered loan was not originated or was originated or purchased but was not sold to a secondary market entity in calendar year covered by register.

Code 1—Fannie Mae

Code 2—Ginnie Mae

Code 3—Freddie Mac

Code 4—Farmer Mac

Code 5—Private securitization

Code 6—Commercial bank, savings bank, or savings association

Code 7—Life insurance company, credit union, mortgage bank, or finance company

Code 8—Affiliate institution

Code 9—Other type of purchaser

a. Use Code 0 for applications that were denied, withdrawn, or approved but not accepted by the applicant; and for files closed for incompleteness.

b. Use Code 0 if you originated or purchased a covered loan and did not sell it during that same calendar year. For purposes of recording the type of purchaser within 30 calendar days after the end of the calendar quarter pursuant to § 1003.4(f), use Code 0 if you originated or purchased a covered loan and did not sell it during the calendar quarter for which you are recording the data. If you sell the covered loan in a subsequent quarter of the same calendar year, use the appropriate code for the type of purchaser on your loan application register for the quarter in which the covered loan was sold. If you sell the covered loan in a succeeding year, you need not report the sale.

c. Use Code 2 if you conditionally assign a covered loan to Ginnie Mae in connection with a mortgage-backed security transaction.

d. Use Code 5 for private securitizations by purchasers other than by one of the government-sponsored enterprises identified in Codes 1 through 4. If you know or reasonably believe that the covered loan you are selling will be securitized by the institution purchasing the covered loan, then use Code 5 regardless of the type or affiliation of the purchasing institution.

e. Use Code 8 for covered loans sold to an institution affiliated with you, such as your subsidiary or a subsidiary of your parent corporation. For purposes of § 1003.4(a)(11), the term "affiliate" means any company that controls, is controlled by, or is under common control with, another company, as set forth in the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*).

Paragraph 4(a)(12)—Rate Spread.

1. Enter the rate spread to three decimal places and use a leading zero, or two leading zeroes, if the rate is less than 1 percent. If the APR exceeds the APOR, enter a positive value. For example, enter 03.295. If the APOR exceeds the APR, enter a negative value. For example, enter -03.295. If the difference between the annual percentage rate and the average prime offer rate is a figure with more than three decimal places, round the figure to three decimal places.

2. Enter "NA" in the case of a covered loan not subject to Regulation Z, 12 CFR part 1026, a reverse mortgage, a loan that you purchased or assumed, or an application that does not result in a loan origination or the opening of a line of credit, except for applications that have been approved but not accepted by the applicant.

Paragraph 4(a)(13)—HOEPA Status.

1. For a covered loan that you originated or purchased that is a high-cost mortgage under the Home Ownership and Equity Protection Act of 1994 (HOEPA), as implemented in Regulation Z § 1026.32, use the following Codes as applicable:

Code 1—HOEPA loan because of APR

Code 2—HOEPA loan because of points and fees

Code 3—HOEPA loan because of both APR and points and fees

Code 4—Other

a. Enter Code 1 if the annual percentage rate for the transaction exceeds the high-cost mortgage thresholds.

b. Enter Code 2 if the points and fees for the transaction exceed the high-cost mortgage thresholds.

c. Enter Code 3 if both the annual percentage rate and the points and fees for the transaction exceed the high-cost mortgage thresholds.

d. Enter Code 4 in all other cases. For example, enter Code 4 for a covered loan that you originated or purchased that is not a high-cost mortgage for any reason, including because the transaction is not subject to coverage under HOEPA (*e.g.*, reverse mortgage transactions). Also enter Code 4 in the case of an application that does not result in a loan origination.

Paragraph 4(a)(14)—Lien Status.

1. Enter the applicable Code for covered loans that you originate or purchase and for applications that do not result in an origination.

Code 1—Secured by a first lien

Code 2—Secured by a second lien

Code 3—Secured by a third lien

Code 4— Secured by a fourth lien

Code 5—Other

a. Use Codes 1 through 5 for covered loans that you originate or purchase, as well as for applications that do not result in an origination (applications that are approved but not accepted, denied, withdrawn, or closed for incompleteness).

b. Use Code 5 when the priority of the lien against the property is other than one identified in Codes 1 through 4 (for example, secured by a fifth lien or sixth lien).

Paragraph 4(a)(15)—Credit Score.

1. Score. Enter the credit score(s) relied on in making the credit decision, using column "A" for the applicant or borrower and, where required by Regulation C, column "CA" for the first co-applicant or co-borrower. Where Regulation C requires you to report a single score for the transaction that corresponds to multiple applicants or borrowers, use column "A."

2. Name and Version of Model. For each credit score reported, use the following Codes to indicate the name and version of the model used to generate the credit score relied on in making the credit decision, using column "A" and column "CA" as applicable.

Code 1—Equifax Beacon 5.0

Code 2—Experian Fair Isaac

Code 3—FICO Risk Score Classic 04

Code 4—FICO Risk Score Classic 98

Code 5—VantageScore 2.0

Code 6—VantageScore 3.0

Code 7—More than one credit scoring model

Code 8—Other credit scoring model

Code 9—Not applicable

Code 10—Purchased loan

a. Use Code 7 if more than one credit scoring model was used in developing the credit score.

b. Use Code 8 for any credit scoring model that is not listed above, and provide the name and version of the scoring model used.

c. Use Code 9 if the file was closed for incompleteness or the application was withdrawn before a credit decision was made or if you did not rely on a credit score in making the credit decision.

d. Use Code 10 if the loan is a purchased loan.

Paragraph 4(a)(16)—Reason(s) for Denial.

1. Use the following Codes to indicate the principal reason(s) for denial, indicating up to three reasons.

Code 1—Debt-to-income ratio

Code 2—Employment history

Code 3—Credit history

Code 4—Collateral

Code 5—Insufficient cash (downpayment, closing costs)

Code 6—Unverifiable information

Code 7—Credit application incomplete

Code 8—Mortgage insurance denied

Code 9—Other

Code 10—Not applicable

2. Use Code 9 for "other" when a principal reason your institution denied the application is not listed in Codes 1 through 8. For a transaction in which your institution enters Code 9, enter the principal reason(s) the application was denied.

3. Use Code 10 for "not applicable" if the action taken on the application, pursuant to § 1003.4(a)(8), is not a denial. For example, use Code 10 if the application was withdrawn before a credit decision was made or the file was closed for incompleteness.

4. If your institution uses the model form for adverse action contained in appendix C to Regulation B (Form C–1, Sample Notice of Action Taken and Statement of Reasons), use the foregoing Codes as follows:

a. Code 1 for: Income insufficient for amount of credit requested, and Excessive obligations in relation to income.

b. Code 2 for: Temporary or irregular employment, and Length of employment.

c. Code 3 for: Insufficient number of credit references provided; Unacceptable type of credit references provided; No credit file; Limited credit experience; Poor credit performance with us; Delinquent past or present credit obligations with others; Number of recent inquiries on credit bureau report; Garnishment, attachment, foreclosure, repossession, collection action, or judgment; and Bankruptcy.

d. Code 4 for: Value or type of collateral not sufficient.

e. Code 6 for: Unable to verify credit references; Unable to verify employment; Unable to verify income; and Unable to verify residence.

f. Code 7 for: Credit application incomplete.

g. Code 9 for: Length of residence; Temporary residence; and Other reasons specified on the adverse action notice. For a transaction in which your institution enters Code 9 for Other reasons, enter the principal reason(s) the application was denied.

Paragraph 4(a)(17)—Total Points and Fees.

1. Enter in dollars the amount of the total points and fees payable in connection with the covered loan or application, rounded to the nearest whole dollar. For example, enter 5472.

2. Enter "NA" for covered loans or applications subject to this reporting requirement for which the total points and fees were not known at or before closing in connection with the covered loan, or for covered loans not subject to this reporting requirement, such as purchased covered loans.

Paragraph 4(a)(18)—Total Origination Charges.

1. Enter in dollars the total of all itemized amounts that are designated borrower-paid at or before closing, rounded to the nearest whole dollar. For example, enter 1078.

2. Enter “NA” for covered loans subject to this reporting requirement for which no amounts paid by the borrower were known at or before closing in connection with the covered loan, or for covered loans not subject to this reporting requirement, such as open-end lines of credit or reverse mortgages.

Paragraph 4(a)(19)—Total Discount Points.

1. Enter in dollars the total amount of the points designated as paid to the creditor to reduce the interest rate, rounded to the nearest whole dollar. For example, enter 405.

2. Enter “NA” for covered loans subject to this reporting requirement for which no points to reduce the interest rate were known at or before closing in connection with the covered loan, or for covered loans not subject to this reporting requirement, such as open-end lines of credit or reverse mortgages.

Paragraph 4(a)(20)—Risk-Adjusted, Pre-Discounted Interest Rate.

1. Enter the interest rate to three decimal places and use a leading zero if the interest rate is under 10 percent. For example, enter 04.125. If the interest rate applicable to the covered loan or application is a figure with more than three decimal places, round the figure to three decimal places.

2. Enter “NA” for covered loans not subject to this reporting requirement, such as purchased covered loans, open-end lines of credit, or reverse mortgages.

Paragraph 4(a)(21)—Interest Rate.

1. Enter the interest rate that will be applicable, or in the case of an application, that would be applicable, to the covered loan at closing or account opening to three decimal places and use a leading zero if the interest rate is under 10 percent. For example, enter 04.125. If the

interest rate applicable to the covered loan is a figure with more than three decimal places, round the figure to three decimal places.

2. Enter "NA" for covered loans for which no interest rate is applicable, or for applications for which the interest rate is unknown, such as applications closed for incompleteness.

Paragraph 4(a)(22)—Prepayment Penalty Term.

1. Enter the term in months of any prepayment penalty applicable to the covered loan or application. For example, if a prepayment penalty may be imposed within the first 24 months after closing, enter 24.

2. Enter "NA" for covered loans for which a prepayment penalty may not be imposed under the terms of the covered loan, for covered loans not subject to this reporting requirement, such as purchased covered loans, or for applications for which the prepayment penalty term is unknown, such as applications closed for incompleteness.

Paragraph 4(a)(23)—DTI Ratio.

1. Enter the applicant's or borrower's debt-to-income ratio to two decimal places. For example, enter 25.25. If the applicant's or borrower's debt-to-income ratio is a figure with more than two decimal places, round up to the next hundredth. For example, for a debt-to-income ratio of 25.251, enter 25.26.

2. If no debt-to-income ratio was relied on in making the credit decision, if a file was closed for incompleteness, or if an application was withdrawn before a credit decision was made, enter "NA." Also enter "NA" for reverse mortgages.

Paragraph 4(a)(24)—CLTV Ratio.

1. Enter the combined loan-to-value ratio applicable to the property to two decimal places. For example, enter 82.95. If the combined loan-to-value ratio is a figure with more than two decimal places, truncate the digits beyond two decimal places.

2. If no combined loan-to-value ratio was calculated in connection with the covered loan or application, enter "NA."

Paragraph 4(a)(25)—Loan Term.

1. Loan Term. Enter the scheduled number of months after which the legal obligation will mature or would have matured.

a. For a covered loan that you purchased, enter the number of months after which the legal obligation matures as measured from the covered loan's origination.

b. For an open-end line of credit with a definite term, enter the number of months from origination until the account termination date, including both the draw and repayment period.

c. For a covered loan or application without a definite term, such as some home-equity lines of credit or reverse mortgages, enter "NA."

Paragraph 4(a)(26)—Introductory Rate Period.

1. Enter the number of months from loan origination until the first date the interest rate may change.

a. For a fixed rate covered loan or an application for a fixed rate covered loan, enter "NA."

b. For a covered loan you purchased, enter the number of months until the first date the interest rate may change as measured from loan origination, or enter "NA" for a purchased fixed rate covered loan.

Paragraph 4(a)(27)(i)—Balloon Payment.

1. Indicate if the covered loan or application requires a payment that is more than two times a regular periodic payment.

Code 1—True

Code 2—False

Paragraph 4(a)(27)(ii)—Interest-Only Payments.

1. Indicate if the covered loan or application would permit one or more periodic payments to be applied solely to accrued interest and not to principal.

Code 1—True

Code 2—False

Paragraph 4(a)(27)(iii)—Negative Amortization.

1. Indicate if the covered loan or application would permit a minimum periodic payment that covers only a portion of the accrued interest, resulting in an increase in the principal balance under the terms of the legal obligation.

Code 1—True

Code 2—False

Paragraph 4(a)(27)(iv)—Other Non-amortizing Features.

1. Indicate if the covered loan or application includes contractual terms other than contractual terms described in §§ 1003.4(a)(27)(i), (ii), and (iii) that would allow for payments other than fully amortizing payments during the loan term.

Code 1—True

Code 2—False

Paragraph 4(a)(28)—Property Value.

1. Enter the value of the property securing the covered loan or, in the case of an application, proposed to secure the covered loan relied on in making the credit decision in dollars.

a. If the value of the property was not relied on in making the credit decision, enter "NA."

Paragraph 4(a)(29)—Manufactured Home Legal Classification.

1. Indicate whether the manufactured home related to the covered loan or application is legally classified as real property or as personal property using the following codes:

Code 1—Real Property

Code 2—Personal Property

Code 3—Not Applicable

a. Use Code 1 if the manufactured home is legally classified as real property under applicable State law.

b. Use Code 2 if the manufactured home is legally classified as personal property under applicable State law.

c. Use Code 3 if the covered loan or application does not relate to a manufactured home.

Paragraph 4(a)(30)—Manufactured Home Land Property Interest.

1. Indicate whether the applicant or borrower owns the land on which a manufactured home is or will be located through a direct or indirect ownership interest or leases the land through a paid or unpaid leasehold according to the following codes:

Code 1—Direct Ownership

Code 2—Indirect Ownership

Code 3—Paid Leasehold

Code 4—Unpaid Leasehold

Code 5—Not Applicable

a. Use Code 1 for a covered loan or application for which the applicant or borrower has a direct ownership interest in the land on which the dwelling is or is to be located, such as fee simple ownership.

b. Use Code 2 for a covered loan or application for which the applicant or borrower holds or will hold an indirect ownership interest in the land on which the dwelling is or is to be located, such as through a resident-owned community structured as a housing cooperative that owns the underlying land.

c. Use Code 3 for a covered loan or application for which the applicant or borrower leases the land on which the dwelling is or is to be located and pays or will make payments pursuant to the lease, such as a lease for a lot in a manufactured home park.

d. Use Code 4 for a covered loan or application for which the applicant or borrower is or will be a tenant on the land on which the dwelling is or is to be located and does not or will not make payments pursuant to the tenancy, such as tenancy on land owned by a family member who has given permission for the location of the manufactured home.

e. Use Code 5 if the covered loan or application does not relate to a manufactured home or if a location for a manufactured home related to a covered loan or application is not determined.

Paragraph 4(a)(31)—Total Units.

1. Enter the number of individual dwelling units related to the property securing the covered loan or, in the case of an application, proposed to secure the covered loan.

Paragraph 4(a)(32)—Multifamily Affordable Units.

1. Enter the number of individual dwelling units related to the property securing the covered loan or, in the case of an application, proposed to secure the covered loan that are income-restricted pursuant to Federal, State, or local affordable housing programs.

a. For a covered loan or application not related to a multifamily dwelling, enter "NA."

b. For a covered loan or application related to a multifamily dwelling that does not contain any such income-restricted individual dwelling units, enter "0."

Paragraph 4(a)(33)—Application Channel.

1. Direct Application. Indicate whether the applicant or borrower submitted the application directly to your institution.

Code 1—True

Code 2—False

Code 3—Not applicable

a. Use Code 1 if the applicant or borrower submitted the application directly to your institution.

b. Use Code 2 if the applicant or borrower did not submit the application directly to your institution.

c. Use Code 3 only if the loan is a purchased loan.

2. Initially Payable. Indicate whether the covered loan was or, in the case of an application, would have been initially payable to your institution.

Code 1—True

Code 2—False

Code 3—Not applicable

a. Use Code 1 if the covered loan was or, in the case of an application, would have been initially payable to your institution.

b. Use Code 2 if the covered loan was not or, in the case of an application, would not have been initially payable to your institution.

c. Use Code 3 only if the loan is a purchased loan.

Paragraph 4(a)(34)—Mortgage Loan Originator Identifier.

1. NMLSR ID: Enter the Nationwide Mortgage Licensing System and Registry mortgage loan originator unique identifier (NMLSR ID) as set forth in the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, title V of the Housing and Economic Recovery Act of 2008 (S.A.F.E. Act), 12 U.S.C. 5101 *et seq.*, as implemented by Regulation G (S.A.F.E. Mortgage Licensing Act—Federal Registration of Residential Mortgage Loan Originators), 12 CFR part 1007, and Regulation H (S.A.F.E. Mortgage Licensing Act—State Compliance and Bureau Registration System), 12 CFR part 1008.

2. No NMLSR ID: If the mortgage loan originator is not required to obtain and has not been assigned an NMLSR ID, enter "NA" for not applicable.

Paragraph 4(a)(35)—Automated Underwriting System (AUS) and Recommendation.

1. Automated Underwriting System: Indicate the name of the automated underwriting system (AUS) used by your institution to evaluate the application by entering the applicable Code from the following:

Code 1—Desktop Underwriter

Code 2—Loan Prospector

Code 3—Technology Open to Approved Lenders (TOTAL) Scorecard

Code 4—Guaranteed Underwriting System (GUS)

Code 5—Other

Code 6—Not applicable

Code 7—Purchased loan

a. Use Code 1 for the AUS developed by the Federal National Mortgage Association (Fannie Mae) or any successor.

b. Use Code 2 for the AUS developed by the Federal Home Loan Mortgage Corporation (Freddie Mac) or any successor.

c. Use Code 3 for the AUS developed by the U.S. Department of Housing and Urban Development for Federal Housing Administration (FHA) loans.

d. Use Code 4 for the AUS developed by the U.S. Department of Agriculture for Single Family Housing Guaranteed Loan Program loans.

e. Use Code 5 for an AUS developed by a securitzer, Federal government insurer, or guarantor not listed in Codes 1 through 4. For a transaction in which your institution enters Code 5, enter the name of the AUS used to evaluate the application.

f. Use Code 6 for "not applicable" if your institution did not use an AUS developed by a securitzer, Federal government insurer, or guarantor to evaluate the application.

g. Use Code 7 if the loan is a purchased loan.

2. Automated Underwriting System Recommendation: Indicate the recommendation generated by the automated underwriting system (AUS) used by your institution to evaluate the application by entering the applicable Code from the following:

Code 1—Approve/Eligible

Code 2—Approve/Ineligible

Code 3—Refer with Caution

Code 4—Out of Scope

Code 5—Error

Code 6—Accept

Code 7—Caution

Code 8—Refer

Code 9—Other

Code 10—Not applicable

Code 11—Purchased loan

a. Use Code 1, 2, 3, 4, or 5 for the AUS recommendation returned by the Federal National Mortgage Association (Fannie Mae) or any successor.

b. Use Code 6 or 7 for the AUS recommendation returned by the Federal Home Loan Mortgage Corporation (Freddie Mac) or any successor.

c. Use Code 6 or 8 for the AUS recommendation returned by FHA TOTAL Scorecard.

d. Use Code 3, 6, or 8 for the AUS recommendation returned by GUS.

e. Use Code 9 for any AUS recommendation not listed in Codes 1 through 8. For a transaction in which your institution enters Code 9, enter the recommendation generated by the AUS developed by a securitzer, Federal government insurer, or guarantor that was used to evaluate the application.

f. Use Code 10 for "not applicable" if your institution did not consider a recommendation generated by an AUS developed by a securitzer, Federal government insurer, or guarantor in its underwriting process. For example, use Code 10 if your institution only manually underwrote the application. Also, use Code 10 if the file was closed for incompleteness or the application was withdrawn before a credit decision was made.

g. Use Code 11 if the loan is a purchased loan.

Paragraph 4(a)(36)—Reverse Mortgage Flag.

1. Indicate whether the covered loan is, or the application is for, a reverse mortgage and, for transactions that are reverse mortgages, whether or not it is an open- or closed-end transaction by entering the applicable Code from the following:

Code 1—Closed-end reverse mortgage

Code 2—Open-end reverse mortgage

Code 3—Not applicable

a. If the transaction is a closed-end reverse mortgage transaction, enter Code 1.

b. If the transaction is an open-end reverse mortgage transaction, enter Code 2.

c. If the transaction is not a reverse mortgage transaction, enter Code 3.

Paragraph 4(a)(37)—HELOC Flag.

1. Indicate whether the covered loan is, or the application is for, an open-end line of credit, and whether the covered loan is, or the application is for, a home-equity line of credit, by entering the applicable Code from the following:

Code 1—Home-equity line of credit

Code 2—Open-end line of credit that is not a home-equity line of credit

Code 3—Not applicable

a. If the transaction is a home-equity line of credit, enter Code 1.

b. If the transaction an open-end line of credit, but is not a home-equity line of credit, enter Code 2.

c. If the transaction is not an open-end line of credit, enter Code 3. Also enter Code 3 for an open-end reverse mortgage transaction.

Paragraph 4(a)(38)—Qualified Mortgage Identifier.

1. Indicate whether the covered loan is a qualified mortgage, as described under Regulation Z, by entering the applicable Code from the following:

Code 1—Standard qualified mortgage

Code 2—Temporary qualified mortgage

Code 3—Small creditor qualified mortgage

Code 4—Balloon-payment qualified mortgage

Code 5—Not a qualified mortgage

Code 6—Not applicable

2. For covered loans subject to the ability-to-repay provisions of Regulation Z:

a. If the covered loan is a standard qualified mortgage pursuant to Regulation Z § 1026.43(e)(2), enter Code 1.

b. If the covered loan is a temporary qualified mortgage pursuant to Regulation Z § 1026.43(e)(4), enter Code 2.

c. If the covered loan is a small creditor qualified mortgage pursuant to Regulation Z § 1026.43(e)(5), enter Code 3.

d. If the covered loan is a balloon-payment qualified mortgage pursuant to Regulation Z § 1026.43(f), enter Code 4.

e. If the covered loan is not a qualified mortgage pursuant to Regulation Z § 1026.43(e) or (f), enter Code 5.

3. For applications for covered loans and for covered loans not subject to the ability-to-repay provisions of Regulation Z, enter "not applicable."

Paragraph 4(a)(39)—HELOC and Open-End Reverse Mortgage First Draw.

1. Enter in dollars the amount of any draw on a home-equity line of credit or on an open-end reverse mortgage made at the time of account opening.

II. INSTRUCTIONS FOR REPORTING TO THE BUREAU OR APPROPRIATE FEDERAL AGENCIES

Paragraph 5(a)—Reporting.

1. Financial institutions are required to submit all required data to the Bureau or appropriate Federal agency via the Bureau's website or via secure electronic submission as specified by the Bureau or appropriate Federal agency in prescribed procedures and technical specifications.

2. With its submission, each financial institution is required:

a. To provide the name, telephone number, facsimile number, and e-mail address of a person who may contacted with questions about the institution's submission;

b. To identify its appropriate Federal agency; and

c. To identify the total entries contained in the submission.

3. Data required to be submitted that are not recorded on the loan application register shall be submitted with the loan application register on the transmittal sheet or in such other format specified by the Bureau or appropriate Federal agency.

* * * * *

8. In Supplement I to Part 1003:

A. The heading *Section 1003.1—Authority, Purpose, and Scope*, the subheading *1(c) Scope* under that heading, and paragraphs 1, 2, 3, 4, 5, 6, 7, 8, and 9 under that subheading are removed.

B. Under *Section 1003.2—Definitions*:

i. The subheading *Application* and paragraphs 1, 2, and 3 under that subheading are revised.

ii. The subheading *Branch office* is revised and paragraphs 2 and 3 under that subheading are revised.

iii. The subheading *Dwelling* is revised, paragraphs 1 and 2 under that subheading are revised, and new paragraph 3 under that subheading is added.

iv. The subheading *Financial institution* is revised and paragraphs 1, 3, 4, 5, and 6 under that subheading are revised.

v. The subheading *Home improvement loan* is revised, paragraphs 1 and 4 under that subheading are revised, and paragraph 5 under that subheading is removed and reserved.

vi. The subheading *Home purchase loan* and paragraphs 1, 2, 3, and 7 under that subheading are revised.

vii. The subheading *Manufactured home* is revised, paragraph 1 under that subheading is revised, and new paragraph 2 under that subheading is added.

viii. The subheading *2(o) Open-end line of credit* and paragraph 1 under that subheading are added.

ix. The subheading *2(p) Refinancing* and paragraphs 1, 2, and 3 under that subheading are added.

C. The subheading *Section 1003.3—Exempt institutions and excluded transactions* is added. Under that subheading:

i. The subheading *3(c) Excluded transactions* is added.

ii. The subheading *Paragraph 3(c)(1)* and paragraph 1 under that subheading are added.

iii. The subheading *Paragraph 3(c)(2)* and paragraph 1 under that subheading are added.

iv. The subheading *Paragraph 3(c)(3)* and paragraphs 1 and 2 under that subheading are added.

v. New subheading *Paragraph 3(c)(4)* and paragraph 1 under that subheading are added.

vi. New subheading *Paragraph 3(c)(6)* and paragraph 1 under that subheading are added.

vii. New subheading *Paragraph 3(c)(8)* and paragraph 1 under that subheading are added.

viii. New subheading *Paragraph 3(c)(9)* and paragraph 1 under that subheading are added.

D. The heading *Section 1003.4—Compilation of Reportable Data* is revised, and under that heading:

i. Under the subheading *4(a) Data format and itemization*, paragraph 1 is revised, and new paragraphs 4, 5, and 6 are added.

ii. The subheading *Paragraph 4(a)(1)* and paragraphs 1, 2, 3, 4, and 5 under that subheading are removed.

iii. The subheading *Paragraph 4(a)(1)(i*) and paragraphs 1 and 2 under that subheading are added.

iv. The subheading *Paragraph 4(a)(1)(ii*) and paragraphs 1, 2, 3, and 4 under that subheading are added.

v. Under subheading *Paragraph 4(a)(3)*, paragraph 2 is revised, and paragraph 3 is added.

vi. The subheading *Paragraph 4(a)(5)* and paragraphs 1 and 2 under that subheading are added.

vii. Under subheading *Paragraph 4(a)(6)*, new paragraphs 2, 3, and 4 are added.

viii. Under the subheading *Paragraph 4(a)(7)*, paragraphs 1, 2, 3, and 4 are removed and new paragraphs 1, 2, 3, 4, 5, and 6 are added.

ix. Under subheading *Paragraph 4(a)(8)*, paragraphs 1, 2, 3, 4, 5, 6 and 7 are removed and new paragraphs 1, 2, 3, 4, 5, 6, 7, 8, and 9 are added.

x. Under the subheading *Paragraph 4(a)(9)*, paragraphs 1, 2, 3, and 4 are revised and new paragraph 5 is added.

xi. The subheading *Paragraph 4(a)(10)* and paragraphs 1, 2, 3, 4, 5, 6, 7, and 8 under that subheading are removed.

xii. The subheading *Paragraph 4(a)(10)(i)* and paragraphs 1, 2, 3, 4, and 5 under that subheading are added.

xiii. The subheading *Paragraph 4(a)(10)(ii)* and paragraphs 1, 2, 3, 4, 5, and 6 under that subheading are added.

xiv. Under the subheading *Paragraph 4(a)(11)*, paragraphs 1 and 2 are removed, and new paragraphs 1, 2, 3, 4, 5, 6, 7, and 8 are added.

xv. The subheading *Paragraph 4(a)(12)(ii)* is revised, paragraphs 2 and 3 under that subheading are revised, and paragraphs 4, 5, and 6 are added.

xvi. Under the subheading *Paragraph 4(a)(14)*, paragraph 1 is revised and new paragraph 2 is added.

xvii. The subheading *Paragraph 4(a)(15)* and paragraphs 1, 2, 3, and 4 under that subheading are added.

xviii. The subheading *Paragraph 4(a)(16)* and paragraphs 1 and 2 under that subheading are added.

xix. The subheading *Paragraph 4(a)(21)* and paragraph 1 under that subheading are added.

xx. The subheading *Paragraph 4(a)(23)* and new paragraphs 1, 2, 3, and 4 under that subheading are added.

xxi. The subheading *Paragraph 4(a)(24)* and new paragraphs 1, 2, and 3 under that subheading are added.

xxii. The subheading *Paragraph 4(a)(25)* and paragraphs 1 and 2 under that subheading are added.

xxiii. The subheading *Paragraph 4(a)(26)* and paragraphs 1 and 2 under that subheading are added.

xxiv. The subheading *Paragraph 4(a)(27)* and paragraph 1 under that subheading is added.

xxv. The subheading *Paragraph 4(a)(28)* and paragraphs 1 and 2 under that subheading are added.

xxvi. The subheading *Paragraph 4(a)(29)* and paragraph 1 under that subheading is added.

xxvii. The subheading *Paragraph 4(a)(30)* and paragraphs 1, 2, and 3 under that subheading are added.

xxviii. The subheading *Paragraph 4(a)(31)* and paragraph 1 under that subheading are added.

xxix. The subheading *Paragraph 4(a)(32)* and paragraphs 1, 2, 3, and 4 under that subheading are added.

xxx. New subheading *Paragraph 4(a)(33)* is added, and new paragraphs 1, 2, and 3 under that subheading are added.

xxxi. The subheading *Paragraph 4(a)(34)* and paragraphs 1, 2, and 3 under that subheading are added.

xxxii. The subheading *Paragraph 4(a)(35)* and paragraphs 1, 2, and 3 under that subheading are added.

xxxiii. The subheading *Paragraph 4(a)(38)* and new paragraph 1 under that subheading are added.

xxxiv. Under subheading *Paragraph 4(c)(3)*, paragraph 1 is removed and reserved.

xxxv. The subheading *4(d) Excluded data* is removed and paragraph 1 under that subheading is removed.

E. Under *Section 1003.5—Disclosure and Reporting*:

i. Under subheading *5(a) Reporting to Agency*, paragraphs 1, 2, 3, 4, and 5 are revised, and paragraphs 6, 7, and 8 are removed.

ii. The subheading *5(b) Public disclosure of statement* is revised, paragraph 2 under that subheading is revised, and paragraph 3 under that subheading is added.

iii. The subheading *5(c) Public Disclosure of modified loan/application register* is revised and paragraphs 2 and 3 under that subheading are added.

iv. Under subheading *5(e) Notice of availability*, paragraph 1 is revised and paragraph 2 is removed.

Supplement I to Part 1003—Staff Commentary

* * * * *

Section 1003.2—Definitions

2(b) Application.

1. *Consistency with Regulation B.* Bureau interpretations that appear in the official staff commentary to Regulation B (Equal Credit Opportunity Act, 12 CFR part 1002, Supplement I) are generally applicable to the definition of application under Regulation C. However, under Regulation C the definition of an application does not include prequalification requests.

2. *Prequalification*. A prequalification request is a request by a prospective loan applicant (other than a request for preapproval) for a preliminary determination on whether the prospective loan applicant would likely qualify for credit under an institution's standards, or for a determination on the amount of credit for which the prospective applicant would likely qualify. Some institutions evaluate prequalification requests through a procedure that is separate from the institution's normal loan application process; others use the same process. In either case, Regulation C does not require an institution to report prequalification requests on the loan application register, even though these requests may constitute applications under Regulation B for purposes of adverse action notices.

3. *Requests for preapproval*. To be a preapproval program as defined in § 1003.2(b)(2), the written commitment issued under the program must result from a comprehensive review of the creditworthiness of the applicant, including such verification of income, resources, and other matters as is typically done by the institution as part of its normal credit evaluation program. In addition to conditions involving the identification of a suitable property and verification that no material change has occurred in the applicant's financial condition or creditworthiness, the written commitment may be subject only to other conditions (unrelated to the financial condition or creditworthiness of the applicant) that the lender ordinarily attaches to a traditional home mortgage application approval. These conditions are limited to conditions such as requiring an

acceptable title insurance binder or a certificate indicating clear termite inspection, and, in the case where the applicant plans to use the proceeds from the sale of the applicant's present home to purchase a new home, a settlement statement showing adequate proceeds from the sale of the present home. Regardless of its name, a program that satisfies the definition of a preapproval program in § 1003.2(b)(2) is a preapproval program for purposes of Regulation C. Conversely, a program that a financial institution describes as a "preapproval program" that does not satisfy the requirements of § 1003.2(b)(2) is not a preapproval program for purposes of Regulation C. If a financial institution does not regularly use the procedures specified in § 1003.2(b)(2), but instead considers requests for preapprovals on an *ad hoc basis*, the financial institution need not treat *ad hoc* requests as part of a preapproval program for purposes of Regulation C. A financial institution should, however, be generally consistent in following uniform procedures for considering such *ad hoc* requests.

2(c) Branch office.

1. * * *

2. *Depository financial institution.* A branch office of a depository financial institution does not include a loan-production office if the loan production office is not considered a branch by the Federal or State supervisory authority applicable to that institution. A branch office also does not include the office of an affiliate or of a third party, such as a third-party broker.

3. *Nondepository financial institution.* A branch office of a nondepository financial institution does not include the office of an affiliate or of a third party, such as a third party broker.

2(f) Dwelling.

1. *General.* The definition of a dwelling is not limited to the principal or other residence of the applicant or borrower, and thus includes vacation or second homes and investment properties. A dwelling also includes a multifamily residential structure such as an apartment, condominium, or cooperative building or complex.

2. *Exclusions.* Recreational vehicles, including boats, campers, travel trailers, and park model recreational vehicles, are not considered dwellings for purposes of § 1003.2(f), regardless of whether they are used as residences. Houseboats, floating homes, and mobile homes constructed before June 15, 1976, are also excluded, regardless of whether they are used as residences. Also excluded are transitory residences such as hotels, hospitals, and college dormitories, and structures originally designed as dwellings but used exclusively for commercial purposes such as homes converted to daycare facilities or professional offices.

3. *Mixed-use properties.* A property used for both residential and commercial purposes, such as a building containing apartment units and retail space, is a dwelling if the property's primary use is residential. An institution may use any reasonable standard to determine the primary use of the property, such as by square footage or by the income generated. An institution may select the standard to apply on a case-by-case basis. However, an institution shall consider a property that includes five or more individual dwelling units to have a primary residential use.

2(g) Financial institution.

1. *Preceding calendar year and preceding December 31.* The definition of financial institution refers both to the preceding calendar year and the preceding December 31. These terms refer to the calendar year and the December 31 preceding the current calendar year. For

example, in year two, year one is the preceding calendar year and December 31 of year one is the preceding December 31. Accordingly, in year two, Financial Institution A satisfies the asset threshold described in § 1003.2(g)(1)(i) if its assets exceeded the threshold specified in comment 2(g)-2 on December 31 of year one. Likewise, in year two, Financial Institution A does not meet the loan volume test described in § 1003.2(g)(1)(v) if it originated fewer than 25 covered loans during year one.

2. * * *

3. *Coverage after a merger or acquisition.* Several scenarios of data-collection responsibilities for the calendar year of a merger or acquisition are described below. For the purposes of these illustrations, a "covered institution" means a financial institution, as defined in § 1003.2(g), that is not exempt from reporting under § 1003.3(a), and "an institution that is not covered" means an institution that is not a financial institution, as defined in § 1003.2(g) or that is exempt from reporting under § 1003.3(a). Under all the scenarios, if the merger or acquisition results in a covered institution, that institution must begin data collection on January 1 of the calendar year following the merger.

i. Two institutions that are not covered merge. The merged entity meets all of the requirements necessary to be a covered institution. No data collection is required for the calendar year of the merger (even though the merger creates an institution that meets all of the requirements necessary to be a covered institution). When a branch office of an institution that is not covered is acquired by another institution that is not covered, and the acquisition results in a covered institution, no data collection is required for the calendar year of the acquisition.

ii. A covered institution and an institution that is not covered merge. The covered institution is the surviving institution, or a new covered institution is formed. For the calendar

year of the merger, data collection is required for the covered institution's covered loans and applications and is optional for covered loans and applications handled in offices of the institution that was previously not covered. When a covered institution acquires a branch office of an institution that is not covered, data collection is optional for covered loans and applications handled by the acquired branch office for the calendar year of the acquisition.

iii. A covered institution and an institution that is not covered merge. The institution that is not covered is the surviving institution, or a new institution that is not covered is formed. For the calendar year of the merger, data collection is required for covered loans and applications of the covered institution that take place prior to the merger. Data collection by the previously covered institution is optional for that calendar year for transactions taking place after the merger date. When an institution remains not covered after acquiring a branch office of a covered institution, data collection is required for transactions of the covered branch office that take place prior to the acquisition. Data collection by the previously covered branch office is optional for transactions taking place after the acquisition.

iv. Two covered institutions merge. Data collection is required for the entire year. The surviving or new institution files either a consolidated submission or separate submissions for that calendar year. When a covered institution acquires a branch office of a covered institution, data collection is required for the entire year. Data for the acquired branch office may be submitted by either institution.

4. *Originations.* Whether an institution meets the definition of a financial institution depends in part on whether an institution has originated a certain number and type of covered loans. To determine whether activities with respect to a particular covered loan constitute an origination, institutions should consult comments 4(a)-4 and 4(a)-5.

5. *Branches of foreign banks—treated as banks.* A Federal branch or a State-licensed or insured branch of a foreign bank that meets the definition of a "bank" under section 3(a)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(a)) is a bank for the purposes of § 1003.2(g).

6. *Branches and offices of foreign banks and other entities—treated as nondepository financial institutions.* A Federal agency, State-licensed agency, State-licensed uninsured branch of a foreign bank, commercial lending company owned or controlled by a foreign bank, or entity operating under section 25 or 25A of the Federal Reserve Act, 12 U.S.C. 601 and 611 (Edge Act and agreement corporations) may not meet the definition of "bank" under the Federal Deposit Insurance Act and may thereby fail to satisfy the definition of a depository financial institution under § 1003.2(g)(1). An entity is nonetheless a financial institution if it meets the definition of nondepository financial institution under § 1003.2(g)(2).

2(i) Home improvement loan.

1. *General.* Section 1003.2(i) defines a home improvement loan by reference to the purpose of the obligation. For example, a closed-end mortgage loan obtained for the purpose of repairing a dwelling by replacing a roof is a home improvement loan for purposes of § 1003.2(i). An obligation is a home improvement loan even if only a part of the purpose is for repairing, rehabilitating, remodeling, or improving a dwelling. For example, a home-equity line of credit obtained in part for the purpose of remodeling a kitchen and in part for purposes other than repairing, rehabilitating, remodeling, or improving a dwelling is a home improvement loan for purposes of § 1003.2(i).

* * * * *

4. *Mixed-use property.* A covered loan to improve property used for residential and commercial purposes (for example, a building containing apartment units and retail space) is a

home improvement loan if the loan proceeds are used primarily to improve the residential portion of the property. If the loan proceeds are used to improve the entire property (for example, to replace the heating system), the covered loan is a home improvement loan if the property itself is primarily residential. A financial institution may use any reasonable standard to determine the primary use of the property, such as by square footage or by the income generated. A financial institution may select the standard to apply on a case-by-case basis.

5. [Reserved]

2(j) Home purchase loan.

1. *General.* Section 1003.2(j) defines a home purchase loan as a covered loan that is for the purpose of purchasing a dwelling. For example, if a person obtains a closed-end mortgage loan for the purpose of purchasing a dwelling, the closed-end mortgage loan is a home purchase loan for purposes of § 1003.2(j). However, if a person purchases a dwelling by entering into an installment contract that is not secured by a lien on a dwelling, that contract is not a home purchase loan for purposes of § 1003.2(j).

2. *Multiple properties.* A home purchase loan includes a covered loan secured by one dwelling and used to purchase another dwelling. For example, if a person obtains a reverse mortgage secured by one dwelling for the purpose of purchasing another dwelling, the reverse mortgage is a home purchase loan for purposes of § 1003.2(j).

3. *Mixed-use property.* A covered loan to purchase property used primarily for residential purposes (for example, an apartment building containing a convenience store) is a home purchase loan. A financial institution may use any reasonable standard to determine the primary use of the property, such as by square footage or by the income generated. A financial institution may select the standard to apply on a case-by-case basis.

* * * * *

7. *Assumptions.* For purposes of § 1003.2(j), an assumption is a home purchase loan when a financial institution enters into a written agreement accepting a new borrower as the obligor on an existing obligation for a covered loan. If an assumption does not involve a written agreement between a new borrower and the financial institution, it is not a home purchase loan for purposes of § 1003.2(j).

2(l) Manufactured home.

1. *Definition of a manufactured home.* The definition in § 1003.2(l) refers to the Federal building code for manufactured housing established by the U.S. Department of Housing and Urban Development (HUD) (24 CFR part 3280.2). Modular or other factory-built homes that do not meet the HUD code standards are not manufactured homes for purposes of § 1003.2(l). Recreational vehicles are excluded from the HUD code standards pursuant to 24 CFR 3282.8(g) and are also excluded from the definition of dwelling for purposes of § 1003.2(f). *See* comment 2(f)-2.

2. Identification. A manufactured home will generally bear a data plate affixed in a permanent manner near the main electrical panel or other readily accessible and visible location noting its compliance with the Federal Manufactured Home Construction and Safety Standards in force at the time of manufacture and providing other information about its manufacture pursuant to 24 CFR 3280.5. A manufactured home will generally also bear a HUD Certification Label pursuant to 24 CFR 3280.11.

* * * * *

2(o) Open-end line of credit.

1. *General.* Section 1003.2(o) defines an open-end line of credit for purposes of Regulation C. Among other things, § 1003.2(o) defines an open-end line of credit by reference to Regulation Z, 12 CFR 1026.2(a)(20), but without regard to whether the credit is for personal, family, or household purposes, without regard to whether the person to whom credit is extended is a consumer, and without regard to whether the person extending credit is a creditor, as those terms are defined under Regulation Z. For example, assume a business-purpose transaction that is exempt from Regulation Z pursuant to § 1026.3(a)(1), but that otherwise would be considered open-end credit under § 1026.2(a)(20). In this example, the business-purpose transaction is an open-end line of credit, provided the other requirements of § 1003.2(o) are met. Similarly, assume a transaction in which the person extending open-end credit is a financial institution under § 1003.2(g), but is not a creditor under § 1026.2(a)(17). In this example, the transaction is an open-end line of credit, assuming the other requirements of § 1003.2(o) are met. Aside from these distinctions, financial institutions may rely on § 1026.2(a)(20) and the related commentary in determining whether a transaction is open-end credit under § 1003.2(o)(1).

2(p) Refinancing.

1. *General.* Section 1003.2(p) defines a refinancing as a covered loan in which a new debt obligation satisfies and replaces an existing debt obligation by the same borrower, in which both the existing debt obligation and the new debt obligation are secured by liens on dwellings. For example, if a borrower obtains a new closed-end mortgage loan that satisfies and replaces one or more existing closed-end mortgage loans, the new closed-end mortgage loan is a refinancing for purposes of § 1003.2(p). Similarly, if a borrower obtains a home-equity line of credit that satisfies and replaces an existing closed-end mortgage loan, the new home-equity line

of credit is a refinancing for purposes of § 1003.2(p). However, if a borrower enters into a new debt obligation that modifies that terms of the existing debt obligation, but does not satisfy and replace the existing debt obligation, the new debt obligation is not a refinancing for purposes of § 1003.2(p). See also § 1003.2(g) and the related commentary regarding the refinancings that are considered for purposes of determining whether a person is a financial institution.

2. *Debt obligation.* For purposes of determining whether the transaction is a refinancing under § 1003.2(p), both the existing debt obligation and the new debt obligation must be secured by liens on dwellings. For example, assume that a borrower has an existing $30,000 covered loan secured by a dwelling. If the borrower obtains a new $50,000 covered loan secured by a dwelling that satisfies and replaces the existing $30,000 covered loan, the new $50,000 covered loan is a refinancing for purposes of § 1003.2(p). However, if the borrower obtains a new $50,000 loan secured by a guarantee that satisfies and replaces the existing $30,000 loan, the new $50,000 loan is not a refinancing for purposes of § 1003.2(p).

3. *Same borrower*. Section 1003.2(p) provides that the existing and new obligation must both be by the same borrower. For purposes of § 1003.2(p), only one borrower must be the same on both the existing and new obligation. For example, if two borrowers are obligated on an existing obligation, and only one of those two borrowers are obligated on a new obligation that satisfies and replaces the existing obligation, the new obligation is a refinancing for purposes of § 1003.2(p), assuming the other requirements of that section are met. However, assume a scenario where two spouses are divorcing. If only one spouse is obligated on an existing obligation, and the other spouse is obligated on a new obligation that satisfies and replaces the existing obligation, the new obligation is not a refinancing for purposes of § 1003.2(p).

Section 1003.3—Exempt institutions and excluded transactions

3(c) Excluded transactions.

Paragraph 3(c)(1).

1. *Financial institution acting in a fiduciary capacity.* A financial institution is acting in a fiduciary capacity if, for example, the financial institution is acting as a trustee.

Paragraph 3(c)(2).

1. *Loan secured by a lien on unimproved land.* Section 1003.3(c)(2) provides that a loan secured by a lien on unimproved land is an excluded transaction. A loan that is secured by vacant land under Regulation X, 12 CFR 1024.5(b)(4), is a loan secured by a lien on unimproved land. However, a loan does not qualify for this exclusion if the financial institution knows or reasonably believes that within two years after the loan closes, a dwelling will be constructed or placed on the land using the loan proceeds.

Paragraph 3(c)(3).

1. *Temporary financing—general.* Temporary financing refers to loans that are designed to be replaced by permanent financing at a later time. For example, a bridge loan or swing loan is considered temporary financing, as is a loan that meets the definition of temporary financing in Regulation X, 12 CFR 1024.5(b)(3). A construction loan with a term of two years or more to construct a new dwelling, other than a loan to a bona fide builder (a person who regularly constructs dwellings for sale or lease), is not considered temporary financing.

2. *Temporary financing—loans that convert to permanent financing.* A loan that is designed to be converted to permanent financing by the same financial institution is not temporary financing. For example, a loan made to finance construction of a dwelling is not considered temporary financing if the loan is designed to be converted to permanent financing by the same institution or if the loan is used to finance transfer of title to the first user. Likewise, if

an institution issues a commitment for permanent financing, with or without conditions, the loan is not considered temporary financing.

Paragraph 3(c)(4).

1. *Purchase of an interest in a pool of loans*. The purchase of an interest in a pool of loans includes, for example, mortgage-participation certificates, mortgage-backed securities, or real estate mortgage investment conduits.

Paragraph 3(c)(6).

1. *Mergers, purchases in bulk, and branch office acquisitions.* If a financial institution acquires covered loans in bulk from another institution (for example, from the receiver for a failed institution), but no merger or acquisition of an institution, or acquisition of a branch office, is involved, the acquiring financial institution reports the covered loans as purchased loans.

Paragraph 3(c)(8).

1. *Partial interest*. If a financial institution acquires only a partial interest in a covered loan, the institution does not report the transaction even if the institution participated in the underwriting and origination of the loan. If a financial institution acquires a 100 percent interest in a covered loan, the transaction is not excluded under § 1003.3(c)(8).

Paragraph 3(c)(9).

1. *Farm loan.* A financial institution does not report a loan to purchase property used primarily for agricultural purposes, even if the property includes a dwelling. A financial institution may use any reasonable standard to determine the primary use of the property, such as by reference to the exemption from Regulation X, 12 CFR 1024.5(b)(1), for a loan on property of 25 acres or more. An institution may select the standard to apply on a case-by-case basis.

Section 1003.4—Compilation of Reportable Data

4(a) Data format and itemization.

1. *General.* Section 1003.4(a) describes a financial institution's obligation to collect data on applications which it received, covered loans on which it made a credit decision, and on covered loans that it purchased during the calendar year described in the loan application register.

i. A financial institution reports these data even if the covered loans were subsequently sold by the institution.

ii. A financial institution reports data for applications that did not result in an origination but on which action was taken–for example, an application that the institution denied, that it approved but was not accepted, that it closed for incompleteness, or that the applicant withdrew during the calendar year covered by the register. A financial institution is required to report data regarding requests under a preapproval program (as defined in § 1003.2(b)(2)) only if the preapproval request is denied, results in the origination of a home purchase loan, or was approved but not accepted.

iii. A financial institution reports the data for an application on the loan application register for the calendar year during which the application was acted upon even if the institution received the application in a previous calendar year.

iv. A financial institution may report data on a single loan application register, separate loan application registers at different branches, or on separate loan application registers for different loan types (such as for home purchase or home improvement loans, or for loans on multifamily dwellings).

* * * * *

4. *Originations and applications involving more than one institution*. Each origination and application is only reported by one financial institution as an origination or application, although a second institution may report the loan as a purchase depending on the circumstances. If more than one institution was involved in an origination of a covered loan, the financial institution that made the credit decision before the loan closed reports the origination or application. In the case of an application for a covered loan that did not result in an origination, the financial institution that made the credit decision or that was reviewing the application when the application was withdrawn or closed for incompleteness reports the application. It is not relevant whether the loan closed or, in the case of an application, would have closed in the institution's name. The following scenarios illustrate which institution reports a particular origination or application. Comment 4(a)-5 discusses how to report actions taken by agents.

i. Financial Institution A received an application for a covered loan from an applicant and forwarded that application to Financial Institution B. Financial Institution B reviewed the application and approved the loan prior to closing. The loan closed in Financial Institution A's name. Financial Institution B purchased the loan from Financial Institution A after closing. Financial Institution B was not acting as Financial Institution A's agent. Since Financial Institution B made the credit decision prior to closing, Financial Institution B reports the transaction as an origination, not as a purchase. Financial Institution A does not report the transaction.

ii. Financial Institution A received an application for a covered loan from an applicant and forwarded that application to Financial Institution B. Financial Institution B reviewed the application before the loan would have closed, but the application did not result in an origination because, for example, the application was denied or the application was withdrawn by the

applicant. Financial Institution B was not acting as Financial Institution A's agent. If the loan had been originated, the loan would have closed in Financial Institution A's name and Financial Institution B would have purchased the loan after closing. Since Financial Institution B made the credit decision before the loan would have closed or, in the case of a withdrawal, was in the process of reviewing the application to make a credit decision when the application was withdrawn, Financial Institution B reports the application. Financial Institution A does not report the application.

iii. Financial Institution B purchased a covered loan from Financial Institution A. Financial Institution B did not review the application before closing. Financial Institution A approved the application before closing. Financial Institution A was not acting as Financial Institution B's agent. Since Financial Institution A made the credit decision before closing, Financial Institution A reports the loan as an origination. Financial Institution B reports the loan as a purchase.

iv. Financial Institution A received an application directly from an applicant. If approved, the loan would have closed in Financial Institution B's name. Financial Institution A denied the application without sending it to Financial Institution B for approval. Financial Institution A was not acting as Financial Institution B's agent. Since Financial Institution A made the credit decision before the loan would have closed, Financial Institution A reports the application. Financial Institution B does not report the application.

v. Financial Institution A reviewed and made a credit decision on an application using Financial Institution B's underwriting criteria. Financial Institution B did not review the application. Financial Institution A was not acting as Financial Institution B's agent. Financial

Institution A reports the application or origination. Financial Institution B does not report the transaction.

vi. Financial Institution A reviewed and made a credit decision on an application based on the criteria of a third-party insurer or guarantor (including a government or private insurer or guarantor). Financial Institution A reports the application or origination.

5. *Agents*. If a financial institution made a credit decision on a covered loan or application through the actions of an agent, the institution reports the application or origination. State law determines whether one party is the agent of another. For example, acting as Financial Institution A's agent, Financial Institution B approved an application prior to closing and a covered loan was originated. Financial Institution A reports the loan as an origination.

6. *Repurchased loans*. When a covered loan that a financial institution initially originated and sold to a secondary market entity is repurchased by the originating financial institution within the same calendar year as it was originated, the originating financial institution should report it as not sold under § 1003.4(a)(11), and the purchasing entity, if a financial institution, should not report it as purchased. However, if the repurchase happens in a subsequent calendar year, the purchase and repurchase, reported as a purchase, should be reported in their respective calendar years. If a financial institution is required to report on a quarterly basis under § 1003.5(a)(1)(ii) and it originates and repurchases a covered loan in different quarters of the same calendar year, in its submission for the quarter during which it repurchased the covered loan it should update its previous submission to remove the reported sale of the covered loan to the financial institution from which it repurchased the covered loan. If a financial institution is required to report on a quarterly basis under § 1003.5(a)(1)(ii) and it purchases a covered loan from the originating institution and sells the covered loan back to the

originating financial institution in different quarters of the same calendar year, in its submission for the quarter during which it sold the covered loan back to the originating financial institution it should update its previous submission to delete the reported purchase. The following scenarios illustrate if and when a purchase or repurchase is reported:

i. Financial Institution A originates covered loan 001 in year one and sells it to Financial Institution B in year one. Later in year one, Financial Institution B requires Financial Institution A to repurchase covered loan 001. Financial Institution A reports the origination of covered loan 001 in year one and does not report the sale of covered loan 001 or the repurchase of covered loan 001. Financial Institution B does not report the purchase of covered loan 001 in year one.

ii. Financial Institution A originates covered loan 001 in year 1 and sells it to Financial Institution B in year one. In year two, Financial Institution B requires Financial Institution A to repurchase covered loan 001. Financial Institution A reports the origination and sale of covered loan 001 in year one and the repurchase, reported as a purchase, of covered loan 001 in year two. Financial Institution B reports the purchase of covered loan 001 in year one.

iii. Financial Institution A originates covered loan 001 in year one and sells it to Financial Institution B in year two. In year two, Financial Institution B requires Financial Institution A to repurchase covered loan 001. Financial Institution A reports the origination of covered loan 001 in year one and the repurchase, reported as a purchase, of covered loan 001 in year two but does not report the sale of covered loan 001 in year two. Financial Institution B reports the purchase and the sale of covered loan 001 in year two.

Paragraph 4(a)(1)(i).

1. *ULI—uniqueness.* Section 1003.4(a)(1)(i)(B)(*2*) requires a financial institution that assigns a ULI to ensure that the character sequence it assigns is unique within the institution.

Only one ULI should be assigned to any particular application or covered loan, and each ULI should correspond to a single application and ensuing loan in the case that the application is approved and a loan is originated. A financial institution shall use a ULI that was reported previously to refer only to the same loan or application for which the ULI was used previously or a loan that ensues from an application for which the ULI was used previously. For example, if a loan origination was previously reported under this part with a ULI, a financial institution would report the later purchase of the loan using the same ULI. A financial institution may not, however, report an application for a covered loan in 2030 using a ULI that was reported for a covered loan that was originated in 2020. Similarly, refinancings or applications for refinancing should be assigned a different ULI than the loan that is being refinanced. A financial institution with multiple branches must ensure that its branches do not use a single ULI to refer to multiple covered loans or applications.

2. *ULI—privacy*. Section 1003.4(a)(1)(i)(B)(*3*) prohibits a financial institution from including information that could be used to directly identify the applicant or borrower in the identifier that it assigns for the application or covered loan of the applicant or borrower. Information that could be used to directly identify the applicant or borrower includes but is not limited to the applicant's or borrower's name, date of birth, Social Security number, official government-issued driver's license or identification number, alien registration number, government passport number, or employer or taxpayer identification number.

Paragraph 4(a)(1)(ii).

1. *Application date—consistency*. Section 1003.4(a)(1)(ii) requires that in reporting the date of application, a financial institution report the date it received the application or the date shown on the application form. Although a financial institution need not choose the same

approach for its entire HMDA submission, it should be generally consistent (such as by routinely using one approach within a particular division of the institution or for a category of loans).

2. *Application date—indirect application.* For an application that was not submitted directly to the financial institution, the institution may report the date the application was received by the party who initially received the application, the date the application was received by the institution, or the date shown on the application. Although an institution need not choose the same approach for its entire HMDA submission, it should be generally consistent (such as by routinely using one approach within a particular division of the institution or for a category of loans).

3. *Application date—reinstated application.* If, within the same calendar year, an applicant asks a financial institution to reinstate a counteroffer that the applicant previously did not accept (or asks the institution to reconsider an application that was denied, withdrawn, or closed for incompleteness), the institution may treat that request as the continuation of the earlier transaction or as a new transaction. If the institution treats the request for reinstatement or reconsideration as a new transaction, it reports the date of the request as the application date.

4. *Application—year action taken.* A financial institution must report an application as occurring in the calendar year in which the institution takes final action on the application.

Paragraph 4(a)(3).

* * * * *

2. *Purpose—multiple-purpose loan.* Section 1003.4(a)(3) requires a financial institution to report the purpose of a covered loan or application and also specifies the order of importance if a covered loan or application is for more than one purpose. If a covered loan is a home purchase loan as well as a home improvement loan or a refinancing, § 1003.4(a)(3) requires the

institution to report the loan as a home purchase loan. If a covered loan is a home improvement loan as well as a refinancing, but the covered loan is not a home purchase loan, § 1003.4(a)(3) requires the institution to report the covered loan as a home improvement loan. If a covered loan is a refinancing as well as for another purpose, such as for the purpose of paying educational expenses, but the covered loan is not a home purchase loan or a home improvement loan, § 1003.4(a)(3) requires the institution to report the covered loan as a refinancing.

3. *Purpose—other.* If a covered loan is not, or an application is not for, a home purchase loan, a home improvement loan, or a refinancing, § 1003.4(a)(3) requires a financial institution to report the covered loan or application as for a purpose other than home purchase, home improvement, or refinancing. For example, if a covered loan is for the purpose of paying educational expenses, the financial institution complies with § 1003.4(a)(3) by reporting the covered loan as for a purpose other than home purchase, home improvement, or refinancing.

Paragraph 4(a)(5).

1. *Modular homes.* Covered loans or applications related to modular homes should be reported with a construction method of site built, regardless of whether they are on-frame or off-frame modular homes. Modular homes comply with local or other recognized buildings codes rather than standards established by the National Manufactured Housing Construction and Safety Standards Act, 42 U.S.C. 5401 *et seq*. Modular homes are not required to have HUD Certification Labels under 24 CFR 3280.11 or data plates under 24 CFR 3280.5. Modular homes may have a certification from a State licensing agency that documents compliance with State or other applicable building codes. On-frame modular homes are constructed on permanent metal chassis similar to those used in manufactured homes. The chassis are not removed on site and are secured to the foundation. Off-frame modular homes typically have floor construction

similar to the construction of other site built homes, and the construction typically includes wooden floor joists and does not include permanent metal chassis.

2. *Multiple properties.* See comment 4(a)(9)-2 regarding transactions involving multiple properties with more than one property taken as security.

Paragraph 4(a)(6).

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2. *Principal residence.* Section 1003.4(a)(6) requires a financial institution to identify whether the property to which the covered loan or application relates is or will be used as a residence that the applicant or borrower physically occupies and uses, or will occupy and use, as his or her principal residence. For purposes of § 1003.4(a)(6) an applicant or borrower can have only one principal residence at a time. Thus, a vacation or other second home would not be a principal residence. However, if an applicant or borrower buys or builds a new dwelling that will become the applicant's or borrower's principal residence within a year or upon the completion of construction, the new dwelling is considered the principal residence for purposes of applying this definition to a particular transaction.

3. *Second residences.* Section 1003.4(a)(6) requires a financial institution to identify whether the property to which the loan or application relates is or will be used as a second residence. For purposes of § 1003.4(a)(6), a property is an applicant's or borrower's second residence if the property is or will be occupied by the applicant or borrower for a portion of the year and is not the applicant's or borrower's principal residence. For example, if a person purchases a property, occupies the property for a portion of the year, and rents the property for the remainder of the year, the property is a second residence for purposes of § 1003.4(a)(6). Similarly, if a couple occupies a property near their place of employment on weekdays, but the

couple returns to their principal residence on weekends, the property near the couple's place of employment is a second residence for purposes of § 1003.4(a)(6).

4. *Investment properties.* Section 1003.4(a)(6) requires a financial institution to identify whether the property to which the covered loan or application relates is or will be used as an investment property. For purposes of § 1003.4(a)(6), a property is an investment property if the owner does not occupy the property. For example, if a person purchases a property, does not occupy the property, and generates income by renting the property, the property is an investment property for purposes of § 1003.4(a)(6). Similarly, if a person purchases a property, does not occupy the property, and does not generate income by renting the property, but intends to generate income by selling the property at some point in time, the property is an investment property for purposes of § 1003.4(a)(6). Section 1003.4(a)(6) requires a financial institution to identify a property as an investment property if the owner does not occupy the property, even if the owner does not consider the property as owned for investment purposes. For example, if a corporation purchases a property that is a dwelling under § 1003.2(f), that it does not occupy, and that is for the use of its employees, the property is an investment property for purposes of § 1003.4(a)(6), even if the corporation considers the property as owned for business purposes rather than investment purposes, does not generate income by renting the property, and does not intend to generate income by selling the property at some point in time.

5. *Multiple properties.* See comment 4(a)(9)-2 regarding transactions involving multiple properties with more than one property taken as security.

Paragraph 4(a)(7).

1. *Covered loan amount—counteroffer*. If an applicant accepts a counteroffer for an amount different from the amount for which the applicant applied, the financial institution

reports the covered loan amount granted. If an applicant does not accept a counteroffer or fails to respond, the institution reports the amount initially requested.

2. *Covered loan amount—application denied or withdrawn*. For an application that was denied or withdrawn, a financial institution reports the amount for which the applicant applied.

3. *Covered loan amount—multiple-purpose loan*. A financial institution reports the entire amount of the covered loan, even if only a part of the proceeds is intended for home purchase or home improvement.

4. *Covered loan amount—open-end line of credit.* A financial institution reports the entire amount of credit available to the borrower under the terms of the plan.

5. *Covered loan amount—refinancing*. For a refinancing, a financial institution reports the amount of credit extended under the terms of the new legal obligation.

6. *Covered loan amount—home improvement loan.* A financial institution reports the entire amount of a home improvement loan, even if only a part of the proceeds is intended for home improvement.

Paragraph 4(a)(8).

1. *Action taken—counteroffers.* If a financial institution makes a counteroffer to lend on terms different from the applicant's initial request (for example, for a shorter loan maturity or in a different amount) and the applicant does not accept the counteroffer or fails to respond, the institution reports the action taken as a denial on the original terms requested by the applicant.

2. *Action taken—rescinded transactions.* If a borrower rescinds a transaction after closing and before a financial institution is required to submit its loan application register containing the information for the transaction under § 1003.5(a), the institution reports the transaction as an application that was approved but not accepted.

3. *Action taken—purchased loans.* An institution reports the covered loans that it purchased during the calendar year, and does not report the covered loans that it declined to purchase, unless, as discussed in comment 4(a)-4.i, the institution reviewed the application prior to closing and reports it as an origination.

4. *Action taken—repurchased covered loans.* See comment 4(a)-6 regarding reporting requirements when a covered loan is repurchased by the originating financial institution.

5. *Action taken—conditional approvals.* If an institution issues an approval other than a commitment pursuant to a preapproval program as defined under § 1003.2(b)(2), and that approval is subject to the applicant meeting certain conditions, the institution reports the action taken as provided below dependent on whether the conditions are solely customary commitment or closing conditions or if the conditions include any underwriting or creditworthiness conditions.

i. *Action taken examples.* If the approval is conditioned on satisfying underwriting or creditworthiness conditions and they are not met, the institution reports the action taken as a denial. If, however, the conditions involve submitting additional information about creditworthiness that the institution needs to make the credit decision, and the institution has sent a written notice of incompleteness under Regulation B, 12 CFR 1002.9(c)(2) and the applicant did not respond within the period of time specified in the notice, the institution reports the action taken as file closed for incompleteness. If the conditions are solely customary commitment or closing conditions and the conditions are not met, the institution reports the action taken as approved but not accepted. If all the conditions (underwriting, creditworthiness, or customary commitment or closing conditions) are satisfied and the institution agrees to extend credit but the covered loan is not originated, the institution reports the action taken as application approved but

not accepted. If the applicant expressly withdraws before satisfying all underwriting or creditworthiness conditions and before the institution denies the application or closes the file for incompleteness, the institution reports the action taken as application withdrawn. If all underwriting and creditworthiness conditions have been met, and the conditions are solely customary commitment or closing conditions and the applicant expressly withdraws before the covered loan is originated, the institution reports the action taken as application approved but not accepted.

ii. *Customary commitment or closing conditions.* Customary commitment or closing conditions include, for example: a clear-title requirement, an acceptable property survey, acceptable title insurance binder, clear termite inspection, a subordination agreement from another lienholder, and, where the applicant plans to use the proceeds from the sale of one home to purchase another, a settlement statement showing adequate proceeds from the sale.

iii. *Underwriting or creditworthiness conditions.* Underwriting or creditworthiness conditions include, for example: conditions that constitute a counter-offer, such as a demand for a higher down-payment; satisfactory debt-to-income or loan-to-value ratios, determination of need for private mortgage insurance, or a satisfactory appraisal requirement; or verification or confirmation, in whatever form the institution requires, that the applicant meets underwriting conditions concerning applicant creditworthiness, including documentation or verification of income or assets.

6. *Action taken—transactions involving more than one institution.* A financial institution reports the action taken on a covered loan or application involving more than one institution in accordance with the instructions in comment 4(a)-4.

7. *Action taken date—approved but not accepted.* For a covered loan approved by an institution but not accepted by the applicant, the institution reports any reasonable date, such as the approval date, the deadline for accepting the offer, or the date the file was closed. Although an institution need not choose the same approach for its entire HMDA submission, it should be generally consistent (such as by routinely using one approach within a particular division of the institution or for a category of covered loans).

8. *Action taken date—originations.* For covered loan originations, an institution generally reports the settlement or closing date. For covered loan originations that an institution acquires from a party that initially received the application, the institution reports either the settlement or closing date, or the date the institution acquired the covered loan from the party that initially received the application. If the disbursement of funds takes place on a date later than the settlement or closing date, the institution may use the date of disbursement. For a construction/permanent covered loan, the institution reports either the settlement or closing date, or the date the covered loan converts to the permanent financing. Although an institution need not choose the same approach for its entire HMDA submission, it should be generally consistent (such as by routinely using one approach within a particular division of the institution or for a category of covered loans). Notwithstanding this flexibility regarding the use of the closing date in connection with reporting the date action was taken, the institution must report the origination as occurring in the year in which the origination goes to closing.

9. *Action taken—pending applications.* An institution does not report any covered loan application still pending at the end of the calendar year; it reports that application on its loan application register for the year in which final action is taken.

Paragraph 4(a)(9).

1. *Multiple properties with one property taken as security.* If a covered loan is related to more than one property, but only one property is taken as or, in the case of an application, proposed to be taken as security, a financial institution reports the information required by § 1003.4(a)(9) for the property taken as or, in the case of an application, proposed to be taken as security. A financial institution does not report the information required by § 1003.4(a)(9) for the property or properties related to the loan that are not taken as, or in the case of an application, proposed to be taken as security. For example, if a covered loan is secured by property A, and the proceeds are used to purchase or rehabilitate property B, the institution reports the information required by § 1003.4(a)(9) for property A and does not report the information required by § 1003.4(a)(9) for property B.

2. *Multiple properties with more than one property taken as security.* If more than one property is taken or, in the case of an application, proposed to be taken as security for a single covered loan, a financial institution may report one of the properties in a single entry on its loan application register or report all of the properties using multiple entries on its loan application register. If a financial institution opts to report all of the properties, the multiple entries should be identical except for the required information that relates to the property identified in § 1003.4(a)(9). If an institution is required to report specific information about the property identified in § 1003.4(a)(9), the institution should report the information that relates to the property identified in § 1003.4(a)(9) in that entry. For example, Financial Institution A originated a covered loan that is secured by both property A and property B. Financial Institution A may report the loan as one entry on its loan application register, reporting the information required by § 1003.4(a)(9) for either property A or property B. Financial Institution

A may also report the loan as two entries on its loan application register. If Financial Institution A elects to report the loan as two entries, in the first entry, Financial Institution A reports the information required by § 1003.4(a)(9) for property A and the information required by § 1003.4(a)(5), (6), (14), (29), and (30) related to property A. In the second entry, Financial Institution A reports the information required by § 1003.4(a)(9) for property B and the information required by § 1003.4(a)(5), (6), (14), (29), and (30) related to property B. For aspects of the entries that are not specific to the property identified in § 1003.4(a)(9) (*i.e.*, § 1003.4(a)(1) through (4), (7), (8), (10) through (13), (15) through (28), (31) through (39)), Financial Institution A reports the same information in both entries.

3. *Multifamily dwellings*. A single multifamily dwelling may have more than one postal address. For example, three apartment buildings, each with a different street address, comprise a single multifamily dwelling that secures a covered loan. For the purposes of § 1003.4(a)(9), a financial institution reports the information required by § 1003.4(a)(9) in the same manner described in comment 4(a)(9)-2. As discussed below in comments 4(a)(31)-1 and 4(a)(32)-4, regardless of whether the financial institution elects to report the covered loan using one or more than one entry, the information required by § 1003.4(a)(31) and (32) should refer to the total number of applicable units in the property or properties securing or, in the case of an application, proposed to secure the covered loan.

4. *Loans purchased from another institution.* The requirement to report the property location information required by § 1003.4(a)(9) applies not only to applications and originations but also to covered loans purchased from another institution.

5. *Manufactured home.* If the site of a manufactured home has not been identified, a financial institution reports the transaction on its loan application register using "not applicable" in each of the fields required by § 1003.4(a)(9).

Paragraph 4(a)(10)(i).

1. *Applicant data—completion by applicant.* A financial institution reports the government monitoring information as provided by the applicant. For example, if an applicant checks the "Asian" box the institution reports using the "Asian" Code. With respect to age, § 1003.4(a)(10)(i) requires that a financial institution report the age of the applicant or borrower, as of the application date under § 1003.4(a)(1)(ii), in number of years as derived from the date of birth as shown on the application form. For example, if an applicant indicates a date of birth of 01/15/1970 on the application form that the financial institution receives on 01/15/2014, the institution reports 44 as the age of the applicant.

2. *Applicant data—completion by financial institution.* If an applicant fails to provide the requested information for an application taken in person, the financial institution reports the data on the basis of visual observation or surname, other than the age of the applicant which the financial institution reports in number of years as derived from the date of birth as shown on the application form and the application date under § 1003.4(a)(1)(ii).

3. *Applicant data—application completed in person.* When an applicant meets in person with a financial institution to complete an application that was begun by mail, internet, or telephone, the financial institution must request the government monitoring information. If the meeting occurs after the application process is complete, for example, at closing or account opening, the financial institution is not required to obtain government monitoring information.

4. *Applicant data—joint applicant.* A joint applicant may provide the government monitoring information on behalf of an absent joint applicant. If the information is not provided, the financial institution reports using the Code for "information not provided by applicant in mail, internet, or telephone application."

5. *Applicant data—video and other electronic-application processes.* A financial institution that accepts applications through electronic media with a video component treats the applications as taken in person and collects the information about the ethnicity, race, and sex of applicants. A financial institution that accepts applications through electronic media without a video component (for example, the internet or facsimile) treats the applications as accepted by mail.

Paragraph 4(a)(10)(ii).

1. *Income data—income relied on.* When an institution evaluates income as part of a credit decision, it reports the gross annual income relied on in making the credit decision. For example, if an institution relies on an applicant's salary to compute a debt-to-income ratio but also relies on the applicant's annual bonus to evaluate creditworthiness, the institution reports the salary and the bonus to the extent relied upon. However, if an institution relies on an applicant's income, but does not rely on certain income from an applicant in its determination, it does not report that portion of income not relied on. For example, the income relied on would not include commission income if the institution, pursuant to lender and investor guidelines, does not rely on an applicant's commission income because it has been earned for less than 12 months. Similarly, if an institution relies on the income of a cosigner to evaluate creditworthiness, the institution includes this income to the extent relied upon. But an institution does not include the income of a guarantor who is only secondarily liable.

2. *Income data—co-applicant.* If two persons jointly apply for a covered loan and both list income on the application, but the institution relies only on the income of one applicant in computing ratios and in evaluating creditworthiness, the institution reports only the income relied on.

3. *Income data—loan to employee.* An institution may report "NA" in the income field for covered loans to or applications from its employees to protect their privacy, even though the institution relied on their income in making its credit decisions.

4. *Income data—assets.* An institution does not include as income amounts considered in making a credit decision based on factors that an institution relies on in addition to income, such as amounts derived from annuitization or depletion of an applicant's remaining assets.

5. *Income data—collected income.* An institution reports income information collected as part of the application process if the application is denied or withdrawn or the file is closed for incompleteness before a credit decision requiring consideration of income is made. For example, if an institution receives an application that includes an applicant's self-reported income, but the application is withdrawn before a credit decision requiring consideration of income is made, the institution reports the income provided on the application.

6. *Income data—credit decision not requiring consideration of income.* An institution does not report income if the application did not or would not have required a credit decision requiring consideration of income under the policies and practices of the financial institution. For example, if the institution does not consider income for a streamlined refinance program but obtained income information submitted by the borrower, the institution reports neither gross annual income relied on nor gross annual income collected.

Paragraph 4(a)(11).

1. *Type of purchaser—loan-participation interests sold to more than one entity.* A financial institution that originates a covered loan, and then sells it to more than one entity, reports the "type of purchaser" based on the entity purchasing the greatest interest, if any. For purposes of § 1003.4(a)(11), if a financial institution sells a covered loan but retains a majority interest in that loan, it does not report the sale.

2. *Type of purchaser—swapped covered loans.* Covered loans "swapped" for mortgage-backed securities are to be treated as sales; the purchaser is the type of entity receiving the covered loans that are swapped.

3. *Type of purchaser—affiliate institution.* For purposes of § 1003.4(a)(11), the term "affiliate" means any company that controls, is controlled by, or is under common control with, another company, as set forth in the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*).

4. *Type of purchaser—private securitizations*. A financial institution that knows or reasonably believes that the covered loan it is selling will be securitized by the institution purchasing the covered loan, other than by one of the government-sponsored enterprises, reports the purchasing entity type as a private securitization regardless of the type or affiliation of the purchasing entity. Knowledge or reasonable belief could, for example, be based on the purchase agreement or other related documents, the financial institution's previous transactions with the purchaser, or the purchaser's role as a securitizer (such as an investment bank). If a financial institution selling a covered loan does not know or reasonably believe that the purchaser will securitize the loan, and the seller knows that the purchaser frequently holds or disposes of loans by means other than securitization, then the financial institution should report the covered loan as

purchased by, as appropriate, a commercial bank, savings bank, savings association, life insurance company, credit union, mortgage bank, finance company, affiliate institution, or other type of purchaser.

5. *Type of purchaser—mortgage bank.* For purposes of § 1003.4(a)(11), a mortgage bank, often referred to as a mortgage company, means an institution that purchases covered loans and typically originates such loans. A mortgage bank might be an affiliate or a subsidiary of a bank holding company or thrift holding company, or it might be an independent mortgage company. In either case, a financial institution reports the purchasing entity type as a mortgage bank, unless the mortgage bank is an affiliate of the seller institution, in which case the seller institution should report the loan as purchased by an affiliate institution.

6. *Purchases by subsidiaries.* A financial institution that sells a covered loan to its subsidiary that is a commercial bank, savings bank, or savings association, should report the covered loan as purchased by a commercial bank, savings bank, or savings association. A financial institution that sells a covered loan to its subsidiary that is a life insurance company, credit union, mortgage bank, or finance company, should report the covered loan as purchased by a life insurance company, credit union, mortgage bank, or finance company. If the subsidiary that purchases the covered loan is not a commercial bank, savings bank, savings association, life insurance company, credit union, mortgage bank, or finance company, the seller institution should report the loan as purchased by other type of purchaser. The financial institution should report the covered loan as purchased by an affiliate institution when the subsidiary is an affiliate of the seller institution.

7. *Type of purchaser—bank holding company or thrift holding company*. When a financial institution sells a covered loan to a bank holding company or thrift holding company

(rather than to one of its subsidiaries), it should report the loan as purchased by other type of purchaser, unless the bank holding company or thrift holding company is an affiliate of the seller institution, in which case the seller institution should report the loan as purchased by an affiliate institution.

8. *Repurchased covered loans.* See comment 4(a)-6 regarding reporting requirements when a covered loan is repurchased by the originating financial institution.

Paragraph 4(a)(12).

* * * * *

2. *Bureau tables*. The Bureau publishes on the FFIEC's website (*http://www.ffiec.gov/hmda*), in tables entitled "Average Prime Offer Rates-Fixed" and "Average Prime Offer Rates-Adjustable," current and historic average prime offer rates for a wide variety of closed-end transaction types. The Bureau calculates an annual percentage rate, consistent with Regulation Z (see 12 CFR 1026.22 and part 1026, appendix J), for each transaction type for which pricing terms are available from the survey described in comment 4(a)(12)–1. The Bureau uses loan pricing terms available in the survey and other information to estimate annual percentage rates for other types of transactions for which direct survey data are not available. The Bureau publishes on the FFIEC's website the methodology it uses to arrive at these estimates. A financial institution may either use the average prime offer rates published by the Bureau or may determine average prime offer rates itself by employing the methodology published on the FFIEC website. A financial institution that determines average prime offer rates itself, however, is responsible for correctly determining the rates in accordance with the published methodology.

3. *Rate spread calculation—annual percentage rate*. The requirements of § 1003.4(a)(12)(i) refer to the covered loan's annual percentage rate. A financial institution complies with § 1003.4(a)(12)(i) by relying on the annual percentage rate for the covered loan, as calculated and disclosed pursuant to Regulation Z, 12 CFR 1026.18 (closed-end credit transactions) or 1026.40 (open-end credit plans), as applicable.

4. *Rate spread calculation—comparable transaction*. The rate spread calculation in § 1003.4(a)(12)(i) is defined by reference to a comparable transaction, which is determined according to the covered loan's amortization type (*i.e.*, fixed- or variable-rate) and loan term. For open-end covered loans, § 1003.4(a)(12)(i) requires a financial institution to identify the most closely comparable closed-end transaction. The tables of average prime offer rates published by the Bureau (*see* comment 4(a)(12)–2) provide additional detail about how to identify the comparable transaction.

i. *Fixed-rate transactions*. For fixed-rate covered loans, the term for identifying the comparable transaction is the transaction's maturity (*i.e.*, the period until the last payment will be due under the loan contract or open-end credit agreement). If an open-end credit plan has a fixed rate but no definite plan length, a financial institution complies with § 1003.4(a)(12)(i) by using a 30-year fixed-rate loan as the most closely comparable closed-end transaction. Financial institutions may refer to the table on the FFIEC website entitled "Average Prime Offer Rates-Fixed" when identifying a comparable fixed-rate transaction.

ii. *Variable-rate transactions*. For variable-rate covered loans, the term for identifying the comparable transaction is the initial, fixed-rate period (*i.e.*, the period until the first scheduled rate adjustment). For example, five years is the relevant term for a variable-rate transaction with a five-year, fixed-rate introductory period that is amortized over thirty years. Financial

institutions may refer to the table on the FFIEC website entitled "Average Prime Offer Rates-Variable" when identifying a comparable variable-rate transaction. If an open-end credit plan has a variable rate and an optional, fixed-rate feature, a financial institution uses the rate table for variable-rate transactions.

iii. *Term not in whole years*. When a covered loan's term to maturity (or, for a variable-rate transaction, the initial fixed-rate period) is not in whole years, the financial institution uses the number of whole years closest to the actual loan term or, if the actual loan term is exactly halfway between two whole years, by using the shorter loan term. For example, for a loan term of ten years and three months, the relevant term is ten years; for a loan term of ten years and nine months, the relevant term is 11 years; for a loan term of ten years and six months, the relevant term is ten years. If a loan term includes an odd number of days, in addition to an odd number of months, the financial institution rounds to the nearest whole month, or rounds down if the number of odd days is exactly halfway between two months. The financial institution rounds to one year any covered loan with a term shorter than six months, including variable-rate covered loans with no initial, fixed-rate periods. For example, if an open-end covered loan has a rate that varies according to an index plus a margin, with no introductory, fixed-rate period, the transaction term is one year.

iv. *Amortization period longer than loan term.* If the amortization period of a covered loan is longer than the term of the transaction to maturity, § 1003.4(a)(12)(i) requires a financial institution to use the loan term to determine the applicable average prime offer rate. For example, assume a financial institution originates a closed-end, fixed-rate loan that has a term to maturity of five years and a thirty-year amortization period that results in a balloon payment. The financial institution complies with § 1003.4(a)(12)(i) by using the five-year loan term.

5. *Rate-set date*. The relevant date to use to determine the average prime offer rate for a comparable transaction is the date on which the covered loan's interest rate was set by the financial institution for the final time before closing or account opening.

i. *Rate-lock agreement*. If an interest rate is set pursuant to a "lock-in" agreement between the financial institution and the borrower, then the date on which the agreement fixes the interest rate is the date the rate was set. Except as provided in comment 4(a)(12)-5.ii, if a rate is reset after a lock-in agreement is executed (for example, because the borrower exercises a float-down option or the agreement expires), then the relevant date is the date the financial institution exercises discretion in setting the rate for the final time before closing or account opening. The same rule applies when a rate-lock agreement is extended and the rate is reset at the same rate, regardless of whether market rates have increased, decreased, or remained the same since the initial rate was set. If no lock-in agreement is executed, then the relevant date is the date on which the institution sets the rate for the final time before closing or account opening.

ii. *Change in loan program*. If a financial institution issues a rate-lock commitment under one loan program, the borrower subsequently changes to another program that is subject to different pricing terms, and the financial institution changes the rate promised to the borrower under the rate-lock commitment accordingly, the rate-set date is the date of the program change. However, if the financial institution changes the promised rate to the rate that would have been available to the borrower under the new program on the date of the original rate-lock commitment, then that is the date the rate is set, provided the financial institution consistently follows that practice in all such cases or the original rate-lock agreement so provided. For example, assume that a borrower locks a rate of 2.5 percent on June 1 for a 30-year, variable-rate loan with a 5-year, fixed-rate introductory period. On June 15, the borrower decides to switch to

a 30-year, fixed-rate loan, and the rate available to the borrower for that product on June 15 is 4.0 percent. On June 1, the 30-year, fixed-rate loan would have been available to the borrower at a rate of 3.5 percent. If the financial institution offers the borrower the 3.5 percent rate (*i.e.*, the rate that would have been available to the borrower for the fixed-rate product on June 1, the date of the original rate-lock) because the original agreement so provided or because the financial institution consistently follows that practice for borrowers who change loan programs, then the financial institution should use June 1 as the rate-set date. In all other cases, the financial institution should use June 15 as the rate-set date.

iii. *Brokered loans*. When a financial institution has reporting responsibility for a covered loan that it received from a broker, as discussed in comment 4(a)-4 (*e.g.*, because the financial institution makes a credit decision prior to closing or account opening), the rate-set date is the last date the financial institution set the rate with the broker, not the date the broker set the borrower's rate.

6. *Compare the annual percentage rate to the average prime offer rate*. Section 1003.4(a)(12)(i) requires a financial institution to compare the covered loan's annual percentage rate to the most recently available average prime offer rate that was in effect for the comparable transaction as of the rate-set date. For purposes of § 1003.4(a)(12)(i), the most recently available rate means the average prime offer rate set forth in the applicable table with the most recent effective date as of the date the interest rate was set. However, § 1003.4(a)(12)(i) does not permit a financial institution to use an average prime offer rate before its effective date.

Paragraph 4(a)(14).

1. *Determining lien status for applications and covered loans originated and purchased.* i. Financial institutions are required to report lien status for covered loans they originate and

purchase and applications that do not result in originations. For covered loans purchased by a financial institution, lien status is determined by reference to the best information readily available to the financial institution at the time of purchase. For covered loans that a financial institution originates and applications that do not result in originations, lien status is determined by reference to the best information readily available to the financial institution at the time final action is taken and to the financial institution's own procedures. Thus, financial institutions may rely on the title search they routinely perform as part of their underwriting procedures—for example, for home purchase loans. Regulation C does not require financial institutions to perform title searches solely to comply with HMDA reporting requirements. Financial institutions may rely on other information that is readily available to them at the time final action is taken and that they reasonably believe is accurate, such as the applicant's statement on the application or the applicant's credit report. If an application does not result in an origination and the best information readily available to the financial institution at the time final action is taken indicates that there is a mortgage on the property that would not have been paid off as part of the transaction, but the financial institution is not able to determine, based on the best information readily available to it, the exact lien priority of the loan applied for, the financial institution complies with § 1003.4(a)(14) by reporting that the property would have been secured by a second lien.

ii. Financial institutions may also consider their established procedures when determining lien status for applications that do not result in originations. For example, an applicant applies to a financial institution to refinance a $100,000 first mortgage; the applicant also has a home-equity line of credit for $20,000. If the financial institution's practice in such a case is to ensure that it will have first-lien position—through a subordination agreement with the holder of the

mortgage on the home-equity line of credit—then the financial institution should report the application as an application for a first-lien covered loan.

2. *Multiple properties*. See comment 4(a)(9)-2 regarding transactions involving multiple properties with more than one property taken as security.

Paragraph 4(a)(15).

1. *Credit score—relied on*. Except for purchased covered loans, § 1003.4(a)(15) requires a financial institution to report the credit score or scores relied on in making the credit decision and information about the scoring model used to generate each score. A financial institution relies on a credit score in making the credit decision if the credit score was a factor in the credit decision even if it was not a dispositive factor. For example, if a credit score is one of multiple factors in a financial institution's credit decision, the financial institution has relied on the credit score even if the financial institution denies the application because one or more underwriting requirements other than the credit score are not satisfied.

2. *Credit score—multiple credit scores.* When a financial institution obtains or creates two or more credit scores for a single applicant or borrower but relies on only one score in making the credit decision (for example, by relying on the lowest, highest, most recent, or average of all of the scores), the financial institution complies with § 1003.4(a)(15) by reporting that credit score and information about the scoring model used. When a financial institution obtains or creates two or more credit scores for an applicant or borrower and relies on multiple scores for the applicant or borrower in making the credit decision (for example, by relying on a scoring grid that considers each of the scores obtained or created for the applicant or borrower without combining the scores into a composite score), § 1003.4(a)(15) requires the financial institution to report one of the credit scores for the borrower or applicant that was relied on in

making the credit decision. In choosing which credit score to report in this circumstance, a financial institution need not use the same approach for its entire HMDA submission, but it should be generally consistent (such as by routinely using one approach within a particular division of the institution or for a category of covered loans). In instances such as these, the financial institution should report the name and version of the credit scoring model for the score reported.

3. *Credit score—multiple applicants or borrowers*. In a transaction involving two or more applicants or borrowers for which the financial institution relies on a single credit score in making the credit decision for the transaction, the institution complies with § 1003.4(a)(15) by reporting that credit score. Otherwise, a financial institution complies with § 1003.4(a)(15) by reporting a credit score for the applicant or borrower that it relied on in making the credit decision, if any, and a credit score for the first co-applicant or co-borrower that it relied on in making the credit decision, if any. To illustrate, assume a transaction involves one applicant and one co-applicant and that the financial institution obtains or creates two credit scores for the applicant and two credit scores for the co-applicant. Assume further that the financial institution relies on the lowest, highest, most recent, or average of all of the credit scores obtained or created to make the credit decision for the transaction. The financial institution complies with § 1003.4(a)(15) by reporting that credit score and information about the scoring model used. Alternatively, assume a transaction involves one applicant and one co-applicant and that the financial institution obtains or creates three credit scores for the applicant and three credit scores for the co-applicant. Assume further that the financial institution relies on the middle credit score for the applicant and the middle credit score for the co-applicant to make the credit

decision for the transaction. The financial institution complies with § 1003.4(a)(15) by reporting both the middle score for the applicant and the middle score for the co-applicant.

4. *No credit decision or credit decision made without reliance on a credit score.* If a file was closed for incompleteness or the application was withdrawn before a credit decision was made, the financial institution complies with § 1003.4(a)(15) by reporting not applicable. If a financial institution makes a credit decision without relying on a credit score for the applicant or borrower, the financial institution complies with § 1003.4(a)(15) by reporting not applicable.

Paragraph 4(a)(16).

1. *Reason(s) for denial—general.* A financial institution complies with § 1003.4(a)(16) by reporting the principal reason(s) it denied the application, indicating up to three reasons. The reasons reported must be specific and accurately describe the principal reasons the financial institution denied the application.

2. *Reason(s) for denial—other reason(s).* When a principal reason a financial institution denied the application is not provided on the list of denial reasons in appendix A, a financial institution complies with § 1003.4(a)(16) by entering "Other" and reporting the principal reason(s) it denied the application. If a financial institution chooses to provide the applicant the reason(s) it denied the application using the model form contained in appendix C to Regulation B (Form C–1, Sample Notice of Action Taken and Statement of Reasons) or a similar form, the financial institution complies with § 1003.4(a)(16) by entering the "Other" reason(s) that were specified on the form by the financial institution. If a financial institution chooses to provide a disclosure of the applicant's right to a statement of specific reasons using the model form contained in appendix C to Regulation B (Form C–5, Sample Disclosure of Right to Request Specific Reasons for Credit Denial) or a similar form, or chooses to provide the denial reason(s)

orally under Regulation B, 12 CFR 1002.9(a)(2)(ii), the financial institution complies with § 1003.4(a)(16) by entering the principal reason(s) it denied the application.

Paragraph 4(a)(21).

1. *General.* Section 1003.4(a)(21) requires a financial institution to identify the interest rate applicable to the covered loan at closing or account opening, as applicable. For covered loans subject to the disclosure requirements of Regulation Z, 12 CFR 1026.38, a financial institution complies with § 1003.4(a)(21) by identifying the interest rate as the rate disclosed pursuant to Regulation Z, 12 CFR 1026.37(b)(2). For an adjustable-rate covered loan subject to the disclosure requirements of Regulation Z, 12 CFR 1026.38, if the interest rate at closing is not known, a financial institution complies with § 1003.4(a)(21) by identifying the fully-indexed rate, which, for purposes of § 1003.4(a)(21), means the interest rate calculated using the index value and margin at the time of closing, pursuant to Regulation Z, 12 CFR 1026.37(b)(2).

Paragraph 4(a)(23).

1. *General.* For covered loans that are not reverse mortgages, § 1003.4(a)(23) requires a financial institution to report the ratio of the applicant's or borrower's total monthly debt to total monthly income (DTI ratio) relied on in making the credit decision. For example, if a financial institution calculated the applicant's or borrower's DTI ratio twice—once according to the financial institution's own requirements and once according to the requirements of a secondary market investor—and the financial institution relied on the DTI ratio calculated according to the secondary market investor's requirements in making the credit decision, § 1003.4(a)(23) requires the financial institution to report the debt-to-income ratio calculated according to the requirements of the secondary market investor.

2. *Transactions for which a debt-to-income ratio is one of multiple factors.* If a financial institution relies on a set of underwriting requirements in making a credit decision, and the requirements include the ratio of the applicant's or borrower's total monthly debt to total monthly income (DTI ratio) as one of multiple factors, § 1003.4(a)(23) requires the financial institution to report the DTI ratio considered as part of the set of underwriting requirements relied on by the financial institution. For example, if a financial institution relies on a set of underwriting requirements in making a credit decision, the requirements include the applicant's or borrower's DTI ratio as one of multiple factors, and the financial institution approves the application, the financial institution complies with § 1003.4(a)(23) by reporting the DTI ratio considered as part of the set of underwriting requirements. Similarly, if a financial institution relies on a set of underwriting requirements in making a credit decision, the requirements include the applicant's or borrower's DTI ratio as one of multiple factors, and the financial institution denies the application because an underwriting requirement other than the DTI ratio requirement is not satisfied, the financial institution complies with § 1003.4(a)(23) by reporting the DTI ratio considered as part of the set of underwriting requirements.

3. *Transactions for which no credit decision was made.* If a file was closed for incompleteness, or if an application was withdrawn before a credit decision was made, a financial institution complies with § 1003.4(a)(23) by reporting that no credit decision was made, even if the financial institution had calculated the ratio of the applicant's total monthly debt to total monthly income (DTI ratio). For example, if a file is incomplete and is so reported in accordance with § 1003.4(a)(8), the financial institution complies with § 1003.4(a)(23) by reporting that no credit decision was made, even if the financial institution had calculated the applicant's DTI ratio. Similarly, if an application was withdrawn by the applicant before a credit

decision was made, the financial institution complies with § 1003.4(a)(23) by reporting that no credit decision was made, even if the financial institution had calculated the applicant's DTI ratio.

4. *Transactions for which no debt-to-income ratio is relied on.* Section 1003.4(a)(23) does not require a financial institution to calculate the ratio of an applicant's or borrower's total monthly debt to total monthly income (DTI ratio), nor does it require a financial institution to rely on an applicant's or borrower's DTI ratio in making a credit decision. If a financial institution makes a credit decision without relying on the applicant's or borrower's DTI ratio, the financial institution complies with § 1003.4(a)(23) by reporting that no DTI ratio was relied on in connection with the credit decision.

Paragraph 4(a)(24).

1. *General.* Section 1003.4(a)(24) requires a financial institution to report the ratio of the total amount of debt secured by the property to the property value identified under § 1003.4(a)(28). If a financial institution makes a credit decision without calculating the ratio of the total amount of debt secured by the property to the value of the property, the financial institution complies with § 1003.4(a)(24) by reporting that this ratio was not calculated in connection with the credit decision.

2. *Calculation for transactions that are home-equity lines of credit.* For home-equity lines of credit, as defined under § 1003.2(h), § 1003.4(a)(24)(i) requires a financial institution to calculate the ratio of the total amount of debt secured by the property to the value of the property by including the full amount of any home-equity line of credit, whether drawn or undrawn. For example, assume that an applicant applies for a home-equity line of credit to be secured by a subordinate lien on the property, where the initial draw amount will be $10,000 and the full

amount of credit available under the line of credit will be $20,000. Assume further that a home-equity line of credit with an amount outstanding of $23,000, and in which the full amount of credit available under the line of credit is $25,000, is secured by a first lien on the property; that a loan with a $10,000 unpaid principal balance that is not a home-equity line of credit is secured by a subordinate-lien on the property; and that no other debts are secured by the property. The financial institution complies with § 1003.4(a)(24)(i) by dividing $55,000, representing the $45,000 amount of credit that will be available to the applicant under the home-equity lines of credit plus the $10,000 unpaid principal balance of the subordinate-lien loan, by the value of the property identified under § 1003.4(a)(28).

3. *Calculation for transactions that are not home-equity lines of credit.* For transactions that are not home-equity lines of credit, as defined under § 1003.2(h), § 1003.4(a)(24)(ii) requires a financial institution to calculate the ratio of the total amount of debt secured by the property to the value of the property by including the amounts outstanding under home-equity lines of credit secured by the property. For example, assume that an applicant applies for a $10,000 loan that is not a home-equity line of credit to be secured by a subordinate lien on the property. Assume further that a home-equity line of credit with an amount outstanding of $10,000, and in which the full amount of credit available under the line of credit is $20,000, is secured by a subordinate lien on the property; that a home-equity line of credit with an amount outstanding of $23,000, and in which the full amount of credit available under the line of credit is $25,000, is secured by a first lien on the property; and that no other debts are secured by the property. The financial institution complies with § 1003.4(a)(24)(ii) by dividing $43,000, representing the $33,000 amount of credit outstanding under the home-equity lines of credit plus

the $10,000 subordinate-lien loan for which the applicant is applying, by the value of the property identified under § 1003.4(a)(28).

Paragraph 4(a)(25).

1. *Amortization and maturity*. For a fully amortizing covered loan, the number of months after which the legal obligation matures is the number of months in the amortization schedule, ending with the final payment. Some covered loans do not fully amortize during the maturity term, such as covered loans with a balloon payment; such loans should still be reported using the maturity term rather than the amortization term, even in the case of covered loans that mature before fully amortizing but have reset options. For example, a 30-year fully amortizing covered loan would be reported with a term of "360," while a five year balloon covered loan would be reported with a loan term of "60."

2. *Non-monthly repayment periods.* If a covered loan or application includes a schedule with repayment periods measured in a unit of time other than months, the financial institution should report the covered loan or application term using an equivalent number of whole months without regard for any remainder.

Paragraph 4(a)(26).

1. *Types of introductory rates.* Section 1003.4(a)(26) requires a financial institution to report the number of months from loan origination until the first date the interest rate may change. For example, assume a home-equity line of credit contains an introductory or "teaser" interest rate for two months after the date of account opening, after which the interest rate may adjust. In this example, the financial institution complies with § 1003.4(a)(26) by reporting the number of months as "2." Section 1003.4(a)(26) requires a financial institution to report the number of months based on when the first interest rate adjustment may occur, even if an interest

rate adjustment is not required to occur, or if the rates that will apply or the periods for which they will apply, are not known at loan origination. For example, if a closed-end mortgage loan with a 30-year term is an adjustable rate product with an introductory interest rate for the first 60 months, after which the interest rate is permitted to vary, but not required to vary, according to the terms of an index rate, the financial institution complies with § 1003.4(a)(26) by reporting the number of months as "60." Similarly, if a closed-end mortgage loan with a 30-year term is a step rate product with an introductory interest rate for the first 24 months, after which the interest rate will increase to a different known interest rate for the next 36 months, the financial institution complies with § 1003.4(a)(26) by reporting the number of months as "24."

2. *Preferred rates*. Section 1003.4(a)(26) does not requiring reporting of introductory interest rate periods based on preferred rates unless the terms of the legal obligation provide that the preferred rate will expire at a defined future date. Preferred rates include terms of the legal obligation which provide that the initial underlying rate is fixed but will increase upon the occurrence of some future event, such as an employee leaving the employ of the financial institution, the borrower closing an existing deposit account with the financial institution, or the borrower revoking an election to make automated payments.

Paragraph 4(a)(27).

1. *General.* Section 1003.4(a)(27) requires reporting of contractual features that would allow payments other than fully amortizing payments. Section 1003.4(a)(27) defines the contractual features by reference to Regulation Z, 12 CFR part 1026, but without regard to whether the covered loan is credit for personal, family, or household purposes, without regard to whether the person to whom credit is extended is a consumer, without regard to whether the property is a dwelling, and without regard to whether the person extending credit is a creditor, as

those terms are used in Regulation Z. For example, assume that a financial institution originates a business-purpose transaction pursuant to Regulation Z, 12 CFR 1026.3(a)(1), to finance a multifamily dwelling that is not a dwelling under Regulation Z, 12 CFR 1026.2(a)(19), but that qualifies as a covered loan pursuant to § 1003.2(e). The transaction is secured by a lien on a dwelling pursuant to § 1003.2(f) and has a balloon payment as defined by Regulation Z, 12 CFR 1026.18(s)(5)(i), such as a home purchase loan for a multifamily dwelling that has a balloon payment at the end of the loan term. In this example, the financial institution should report the business-purpose transaction as having a balloon payment under § 1003.4(a)(27)(i), assuming the other requirements of this part are met. Aside from these distinctions, financial institutions may rely on the definitions and related commentary provided in the appropriate sections of Regulation Z referenced in § 1003.4(a)(27) of this part and in determining whether the contractual feature should be reported.

Paragraph 4(a)(28).

1. *Property value relied on.* A financial institution reports the property value relied on in making the credit decision. For example, if the institution relies on an appraisal or other valuation for the property in calculating the loan-to-value ratio, it reports that value; if the institution relies on the purchase price of the property in calculating the loan-to-value ratio, it reports that value.

2. *Multiple property values*. When a financial institution obtains two or more valuations of the property securing or proposed to secure the covered loan, the financial institution complies with § 1003.4(a)(28) by reporting the value relied on in making the credit decision. For example, when a financial institution obtains two appraisals or other valuations with different values for the property, it reports the value relied on in making the credit decision.

Paragraph 4(a)(29).

1. *Multiple properties.* See comment 4(a)(9)-2 regarding transactions involving multiple properties with more than one property taken as security.

Paragraph 4(a)(30).

1. *Indirect land ownership.* Indirect land ownership can occur when the applicant is or will be a member of a resident-owned community structured as a housing cooperative in which the occupants own an entity that holds the underlying land of the manufactured home community. In such communities, the applicant may still pay rent for the lot on which his or her manufactured home is or will be located and have a lease, but the property interest type for such an arrangement should be reported as indirect ownership if the applicant is or will be a member of the cooperative that owns the underlying land of the manufactured home. If an applicant resides or will reside in such a community but is not a member, the property interest type should be reported as a paid leasehold.

2. *Leasehold interest.* A leasehold interest could be formalized in a lease with a defined term and specified rent payments, or could arise as a tenancy at will through permission of a land owner without any written, formal arrangement. For example, assume a borrower will locate the manufactured home in a manufactured home park, has a written lease for a lot in that park, and the lease specifies rent payments. In this example, a financial institution complies with § 1003.4(a)(30) by reporting a paid leasehold. However, if instead the borrower will locate the manufactured home on land owned by a family member without a written lease and with no agreement as to rent payments, a financial institution complies with § 1003.4(a)(30) by reporting an unpaid leasehold.

3. *Multiple properties.* See comment 4(a)(9)-2 regarding transactions involving multiple properties with more than one property taken as security.

Paragraph 4(a)(31).

1. *Multiple properties and multifamily dwelling.* Comments 4(a)(9)-2 and -3 explain that a financial institution may elect to report a single covered loan or application in a single or multiple entries if the covered loan or application is secured by or, in the case of an application, proposed to be secured by multiple properties or a multifamily dwelling with more than one postal address. Regardless of whether the institution reports the loan in a single or multiple entries, an institution reports the information required by § 1003.4(a)(31) for all of the property or properties securing or, in the case of an application, proposed to secure the covered loan. See comments 2(f)-1 and 4(a)(9)-2. For example, assume a financial institution originated a covered loan secured by a multifamily dwelling, comprised of two 10-unit apartment buildings, each with a different postal address. If the financial institution elects to report the loan in two entries, reporting the information required for § 1003.4(a)(9) for each of the two apartment buildings, the financial institution reports, as required by § 1003.4(a)(31), 20 individual dwelling units in each of the two entries. The financial institution also reports, as required by § 1003.4(a)(31), 20 individual dwelling units, if the financial institution elects to report the loan in a single entry by reporting the information required for § 1003.4(a)(9) for only one of the two buildings.

Paragraph 4(a)(32).

1. *Affordable housing income restrictions.* For purposes of § 1003.4(a)(32), affordable housing income-restricted units are individual dwelling units that have restrictions based on the income level of occupants. Such income levels are frequently expressed as a percentage of area median income by household size as established by the U.S. Department of Housing and Urban

Development or another agency responsible for implementing the applicable affordable housing program. Such restrictions are frequently part of compliance with programs that provide public funds, special tax treatment, or density bonuses to encourage development or preservation of affordable housing. Rent control or rent stabilization laws, and the acceptance by the owner or manager of a multifamily dwelling of Housing Choice Vouchers (24 CFR part 982) or other similar forms of portable housing assistance that are tied to an occupant and not an individual dwelling unit are not affordable housing income-restricted dwelling units for purposes of § 1003.4(a)(32).

2. *Federal affordable housing sources.* Examples of Federal programs and funding sources that may result in individual dwelling units that are reportable under § 1003.4(a)(32) include, but are not limited to:

i. Affordable housing programs pursuant to Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f);

ii. Public housing (42 U.S.C. 1437a(b)(6));

iii. The HOME Investment Partnerships program (24 CFR part 92);

iv. The Community Development Block Grant program (24 CFR part 570);

v. Multifamily tax subsidy project funding through tax-exempt bonds or tax credits (26 U.S.C. 42; 26 U.S.C. 142(d));

vi. Project-based vouchers (24 CFR part 983);

vii. Federal Home Loan Bank affordable housing program funding (12 CFR part 1291); and

viii. Rural Housing Service multifamily housing loans and grants (7 CFR part 3560).

3. *State and local government affordable housing sources.* Examples of State and local sources that may result in individual dwelling units that are reportable under § 1003.4(a)(32) include, but are not limited to: State or local administration of Federal funds or programs; State or local funding programs for affordable housing or rental assistance, including programs operated by independent public authorities; inclusionary zoning laws; and tax abatement or tax increment financing contingent on affordable housing requirements.

4. *Multiple properties and multifamily dwelling.* Comments 4(a)(9)-2 and -3 explain that a financial institution may elect to report a single covered loan or application in a single or multiple entries if the covered loan or application is secured by or, in the case of an application, proposed to be secured by multiple properties or a multifamily dwelling with more than one postal address. Regardless of whether the institution reports the loan in a single or multiple entries, an institution reports the information required by § 1003.4(a)(32) for all of the property or properties securing or, in the case of an application, proposed to secure the covered loan. *See* comments 2(f)-1 and 4(a)(9)-2. For example, a financial institution originated a covered loan secured by a multifamily dwelling, comprised of two 50-unit apartment buildings that each contain 10 income-restricted individual dwelling units, each with a different postal address. If the financial institution elects to report the loan in two entries, reporting the information required for § 1003.4(a)(9) for each of the two apartment buildings, the financial institution reports, as required by § 1003.4(a)(32), 20 income-restricted individual dwelling units in each of the two entries. The financial institution also reports, as required by § 1003.4(a)(32), 20 income-restricted individual dwelling units, if the financial institution elects to report the loan in a single entry by reporting the information required for § 1003.4(a)(9) for only one of the two buildings.

Paragraph 4(a)(33).

1. *Direct submission*. An application is submitted directly to the financial institution if the institution receives the application directly from the applicant or borrower. For example, if an applicant submits an application through the financial institution's website, the application is submitted directly to the institution. An application is not submitted directly to an institution if the institution does not receive the application directly from the applicant or borrower. For example, if an applicant completes an application over the telephone with a broker or correspondent and the broker or correspondent forwards the application to the institution for approval, the institution does not receive the application directly from the applicant or borrower. For example, assume that an applicant submits an application for a covered loan to a correspondent lender that approves the application, originates the covered loan in its name, and sells the covered loan to another financial institution. The correspondent reports the covered loan as an origination and indicates that it received the application directly from the applicant. The purchasing financial institution reports the loan as a purchase, and uses the code for "not applicable" for the information required by § 1003.4(a)(33).

2. *Initially payable*. Section 1003.4(a)(33) requires financial institutions to report whether the obligation arising from a covered loan was or, in the case of an application, would have been initially payable to the institution. An obligation is initially payable to the institution if, for example, the loan closed in the institution's name or if the institution meets the definition of creditor in Regulation Z, 12 CFR 1026.2(a)(17), with respect to the transaction at issue. Conversely, if, for example, a covered loan closed in the name of another financial institution, such as a correspondent lender, the covered loan was not initially payable to the institution.

3. *Agents.* If a financial institution is reporting the credit decision made by its third party agent consistent with comment 4(a)-5, the agent is not considered the financial institution for the purposes of § 1003.4(a)(33). For example, assume that an applicant submitted an application to Financial Institution A, and Financial Institution A made the credit decision acting as Financial Institution B's agent under State law. A covered loan was originated and closed in Financial Institution A's name. Financial Institution B purchased the loan. Financial Institution B reports the origination and not the purchase, and indicates that the application was not submitted directly to the financial institution and that the transaction was not initially payable to the financial institution.

Paragraph 4(a)(34).

1. *NMLSR ID*. Section 1003.4(a)(34) requires a financial institution to report the Nationwide Mortgage Licensing System and Registry unique identifier (NMLSR ID) for the mortgage loan originator, as defined in Regulation G, 12 CFR 1007.102, or Regulation H, 12 CFR 1008.23, as applicable. The NMLSR ID is a unique number or other identifier generally assigned to individuals registered or licensed through NMLSR to provide loan originating services. For more information, see the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, title V of the Housing and Economic Recovery Act of 2008 (S.A.F.E. Act), 12 U.S.C. 5101 *et seq.*, and its implementing regulations (12 CFR part 1007 and 12 CFR part 1008).

2. *Mortgage loan originator without NMLSR ID*. An NMLSR ID for the mortgage loan originator is not required by § 1003.4(a)(34) to be reported by a financial institution if the mortgage loan originator is not required to obtain and has not been assigned an NMLSR ID. For example, certain individual mortgage loan originators may not be required to obtain an NMLSR

ID for the particular transaction being reported by the financial institution, such as a commercial loan. However, some mortgage loan originators may have obtained an NMLSR ID even if they are not required to obtain one for that particular transaction. If a mortgage loan originator has been assigned an NMLSR ID, a financial institution complies with § 1003.4(a)(34) by reporting the mortgage loan originator's NMLSR ID regardless of whether the mortgage loan originator is required to obtain an NMLSR ID for the particular transaction being reported by the financial institution. In the event that the mortgage loan originator is not required to obtain and has not been assigned an NMLSR ID, a financial institution complies with § 1003.4(a)(34) by reporting "NA" for not applicable.

3. *Multiple mortgage loan originators*. If more than one individual meets the definition of a mortgage loan originator, as defined in Regulation G, 12 CFR 1007.102, or Regulation H, 12 CFR 1008.23, for a covered loan or application, a financial institution complies with § 1003.4(a)(34) by reporting the NMLSR ID of the individual mortgage loan originator with primary responsibility for the transaction. A financial institution that establishes and follows a reasonable, written policy for determining which individual mortgage loan originator has primary responsibility for the reported transaction complies with § 1003.4(a)(34).

Paragraph 4(a)(35).

1. *AUS recommendation—considered in underwriting*. Except for purchased covered loans, § 1003.4(a)(35) requires a financial institution to report the recommendation generated by the automated underwriting system (AUS) used to evaluate the application. A financial institution complies with § 1003.4(a)(35) by reporting an AUS recommendation if the recommendation was considered by the financial institution in its underwriting process. For example, when a financial institution takes into account a combination of an AUS

recommendation and manual underwriting in making the credit decision, the financial institution has considered the AUS recommendation in its underwriting process and reports the AUS recommendation.

2. *Reporting AUS data*. i. *Multiple systems*. When a financial institution uses more than one AUS to evaluate an application, the financial institution complies with § 1003.4(a)(35) by reporting the name of the AUS developed by a securitizer, Federal government insurer, or guarantor that the financial institution used closest in time to the credit decision. For example, when a financial institution processes an application through the AUS of two different government-sponsored enterprises, such as the Federal National Mortgage Association (Fannie Mae) or the Federal Home Loan Mortgage Corporation (Freddie Mac), the financial institution complies with § 1003.4(a)(35) by reporting the name of the AUS that was used closest in time to the credit decision. If a financial institution processes an application through multiple AUSs at the same time, the financial institution complies with § 1003.4(a)(35) by reporting the name of the AUS that generated the recommendation that was a factor in the credit decision.

ii. *Multiple recommendations*. When a financial institution obtains two or more recommendations for an applicant or borrower that are generated by a single or multiple AUSs developed by a securitizer, Federal government insurer, or guarantor, the financial institution complies with § 1003.4(a)(35) by reporting the AUS recommendation generated closest in time to the credit decision. For example, when a financial institution receives a recommendation from an AUS that requires the financial institution to manually underwrite the loan, but in addition the financial institution subsequently processes the application through a different AUS that also generates a recommendation, the financial institution complies with § 1003.4(a)(35) by reporting the AUS recommendation generated closest in time to the credit decision. If a financial

institution obtains multiple AUS recommendations at the same time, the financial institution complies with § 1003.4(a)(35) by reporting the AUS recommendation that was a factor in the credit decision.

3. *No credit decision or AUS not considered in underwriting*. If a financial institution does not use an AUS developed by a securitizer, Federal government insurer, or guarantor to evaluate the application, the financial institution complies with § 1003.4(a)(35) by reporting "not applicable." For example, if a financial institution only manually underwrites an application and does not consider an AUS recommendation in its underwriting process, the financial institution complies with § 1003.4(a)(35) by reporting "not applicable." Also, if the file was closed for incompleteness or the application was withdrawn before a credit decision was made, the financial institution complies with § 1003.4(a)(35) by reporting "not applicable."

Paragraph 4(a)(38).

1. *General.* Section 1003.4(a)(38) requires a financial institution to identify whether the covered loan is subject to the ability-to-repay provisions of Regulation Z, 12 CFR 1026.43, and whether the covered loan is a qualified mortgage, as described under Regulation Z, 12 CFR 1026.43(e) or (f). Financial institutions may rely on 12 CFR 1026.43, the related commentary in supplement I to part 1026, and appendix Q to part 1026 in determining whether a covered loan is a qualified mortgage. If a covered loan, as defined in § 1003.2(e), is subject to 12 CFR 1026.43, but is not a qualified mortgage pursuant to 12 CFR 1026.43(e) or (f), § 1003.4(a)(38) requires a financial institution to identify the covered loan as a loan that is not a qualified mortgage. For example, if a covered loan, as defined in § 1003.2(e), is subject to the requirements of 12 CFR 1026.43, but does not meet the criteria for the definition of qualified mortgage under Regulation Z 12 CFR 1026.43(e)(2), (e)(4), (e)(5), or (f), the financial institution

complies with § 1003.4(a)(38) by identifying the covered loan as a loan that is not a qualified mortgage. If a covered loan, as defined in § 1003.2(e), is not subject to paragraphs (c) through (f) of 12 CFR 1026.43, § 1003.4(a)(38) requires the financial institution to identify the covered loan as a loan that is not subject to the reporting requirements of 12 CFR 1026.43. For example, if a covered loan, such as a reverse mortgage, is not subject to paragraphs (c) through (f) of 12 CFR 1026.43, the financial institution complies with § 1003.4(a)(38) by identifying the loan as not subject to the ability-to-repay provisions.

Paragraph 4(c)(3).

1. [Reserved]

Section 1003.5—Disclosure and Reporting

5(a) Reporting to agency.

1. *Quarterly reporting—coverage.* Section 1003.5(a)(1)(ii) requires that a financial institution that reported at least 75,000 covered loans, applications, and purchased covered loans, combined, for the preceding calendar year must submit on a quarterly basis the HMDA data required to be recorded on a loan application register pursuant to § 1004.4(f). For example, if for calendar year one Financial Institution A reports 75,001 purchased covered loans, it must submit its data on a quarterly basis in calendar year two. Similarly, if for calendar year one Financial Institution A reports 25,001 covered loans and 50,000 purchased covered loans, it must submit its data on a quarterly basis in calendar year two. If for calendar year two Financial Institution A reports a total of fewer than 75,000 covered loans, applications, and purchased covered loans, combined, it will return to submitting its data on a calendar year basis for calendar year three.

2. *Change in appropriate Federal agency.* If the appropriate Federal agency for a financial institution changes (as a consequence of a merger or a change in the institution's

charter, for example), the institution must submit its data to the Bureau or the new appropriate Federal agency beginning in the calendar year following the change or, for institutions reporting on a quarterly basis, in the quarter following the change.

3. *Subsidiaries.* A financial institution is a subsidiary of a bank or savings association (for purposes of reporting HMDA data to the same agency as the parent) if the bank or savings association holds or controls an ownership interest in the institution that is greater than 50 percent. For purposes of § 1003.5(a)(4), an entity that holds or controls an ownership interest in the financial institution that is greater than 50 percent should be listed as a parent company.

4. *Retention.* A financial institution shall retain a copy of its complete loan application register for its records in either electronic or paper form.

5. *Quarterly reporting—retention*. Section 1003.5(a)(1)(ii) requires that a financial institution that reports on a quarterly basis shall retain a copy of its complete loan application register for its records for at least three years. A complete loan application register reflects all data reported for a calendar year. A financial institution that reports data on a quarterly basis satisfies the retention requirement in § 1003.5(a)(1)(ii) by retaining the data for the calendar year combined on one loan application register or on four quarterly loan application registers.

5(b) Disclosure statement.

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2. *Format of notice.* An institution may make the notice required under § 1003.5(b)(2) available in paper or electronic form.

3. *Notice—suggested text.* A financial institution may use any text that meets the requirements of § 1003.5(b)(2). The following language is suggested but is not required:

HOME MORTGAGE DISCLOSURE ACT NOTICE

The HMDA data about our residential mortgage lending are available online for review. The data show geographic distribution of loans and applications; ethnicity, race, sex, age, and income of applicants and borrowers; and information about loan approvals and denials. This data is available online at the websites of the Federal Financial Institutions Examination Council (www.ffiec.gov/hmda) and the Consumer Financial Protection Bureau (www.consumerfinance.gov).

5(c) Public disclosure of modified loan application register.

* * * * *

2. *Loan amount*. Before it makes available to the public its modified loan application register, a financial institution must round the loan amount for each covered loan, application, and purchased covered loan to the nearest thousand (round $500 up to the next $1,000). For example, a loan for $167,300 should be shown as 167,000 and one for $15,500 shown as 16,000.

3. *Modified loan application register data.* The modified loan application register is the loan application register reflecting all data reported for a calendar year, modified as described in § 1003.5(c)(1), whether the data were submitted on a quarterly or annual basis. A financial institution that submits its HMDA data on a quarterly basis must show on the modified loan application register all data reported for the calendar year, not just data reported for a particular quarter.

5(e) Notice of availability.

1. *Posted notice—suggested text.* A financial institution may use any text that meets the requirements of § 1003.5(e). The Bureau or an appropriate Federal agency may provide HMDA posters that an institution can use to inform the public of the availability of its HMDA data, or an institution may create its own notice. The following language is suggested but is not required:

HOME MORTGAGE DISCLOSURE ACT NOTICE

The HMDA data about our residential mortgage lending are available for review. The data show geographic distribution of loans and applications; ethnicity, race, sex, age, and income of applicants and borrowers; and information about loan approvals and denials. Inquire at this office about how to obtain our HMDA data. HMDA data for this and many other financial institutions are also available online. For more information, visit the website of the Federal Financial Institutions Examination Council (www.ffiec.gov/hmda) or the Consumer Financial Protection Bureau (www.consumerfinance.gov).

[THIS SIGNATURE PAGE PERTAINS TO THE PROPOSED RULE TITLED "HOME MORTGAGE DISCLOSURE (REGULATION C)"]

Dated: July 23, 2014.

Richard Cordray

Richard Cordray,

Director, Bureau of Consumer Financial Protection.