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BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1003

[Docket No. CFPB-2017-0021]

RIN 3170-AA76

Home Mortgage Disclosure (Regulation C) Temporary Increase in Institutional and Transactional Coverage Thresholds for Open-End Lines of Credit

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Proposed rule with request for public comment.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau or CFPB) proposes amendments to Regulation C that would, for a period of two years, increase the threshold for collecting and reporting data with respect to open-end lines of credit so that financial institutions originating fewer than 500 open-end lines of credit in either of the preceding two years would not be required to begin collecting such data until January 1, 2020.

DATES: Comments must be received on or before July 31, 2017.

ADDRESSES: You may submit comments, identified by Docket No. CFPB-2017-0021 or RIN 3170-AA76, by any of the following methods:

- *Email*: FederalRegisterComments@cfpb.gov. Include Docket No. CFPB-2017-0021 or RIN 3170-AA76 in the subject line of the email.
- *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 5:30 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: Alexandra W. Reimelt, Counsel, Office of Regulations, Consumer Financial Protection Bureau, at 202-435-7700 or cfpb_reginquiries@cfpb.gov.

SUPPLEMENTARY INFORMATION:

I. Summary of the Proposed Rule

Regulation C implements the Home Mortgage Disclosure Act (HMDA). For over four decades, HMDA has provided the public and public officials with information about mortgage lending activity within communities by requiring financial institutions to collect, report, and disclose certain data about their mortgage activities. The Dodd-Frank Wall Street Reform and

Consumer Protection Act (Dodd-Frank Act) amended HMDA and, among other things, expanded the scope of information that must be collected, reported, and disclosed under HMDA and transferred rule writing authority from the Board of Governors of the Federal Reserve System (Board) to the Bureau.[1]

In October 2015, the Bureau published a final rule implementing the Dodd-Frank Act amendments to HMDA (2015 HMDA Final Rule).[2] In that rule, the Bureau adopted significant changes to Regulation C, most of which will be effective on January 1, 2018. Among other changes, the 2015 HMDA Final Rule required collection and reporting of data with regard to open-end, dwelling-secured lines of credit.[3] However, the 2015 HMDA Final Rule contained an exclusion with respect to an open-end line of credit if a financial institution originated fewer than 100 such lines of credit in each of the two preceding calendar years (open-end transactional coverage threshold).[4] The 2015 HMDA Final Rule contained parallel provisions as part of the definition of "financial institution," which limit Regulation C's institutional coverage to include only institutions that, in addition to meeting the other applicable coverage criteria, originated at least 25 closed-end mortgage loans or 100 open-end lines of credit in each of the two preceding calendar years (institutional coverage threshold).[5]

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[1] Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, section 1094, 124 Stat. 1376, 2097-101 (2010).

[2] Home Mortgage Disclosure (Regulation C); Final Rule, 80 FR 66128 (Oct. 28, 2015). In this notice, citations to Regulation C as amended by the 2015 HMDA Final Rule are to the applicable sections of title 12 of the Code of Federal Regulations as they will read following their effective date. *See generally* 12 CFR 1003.

[3] 12 CFR 1003.2(e). Prior to this amendment, reporting with respect to open-end lines of credit was voluntary. *See infra* note 10.

[4] 12 CFR 1003.3(c)(12). As adopted by the 2015 HMDA Final Rule, this provision states the test as "fewer than 100 open-end lines of credit in each of the two preceding calendar years," but this was a drafting error; the intent was to require that a financial institution have exceeded the threshold in both of the preceding calendar years to be subject to open-end line of credit reporting, thus the exclusion should require that a financial institution originate fewer than 100 such lines of credit in either of the two preceding calendar years. As discussed below, the Bureau has since proposed to correct this error. *See* 82 FR 19142, 19148-49 (Apr. 25, 2017).

[5] 12 CFR 1003.2(g)(1)(v) and (g)(2)(ii).

The Bureau has heard concerns that, in setting the open-end transactional coverage threshold at 100 transactions, the Bureau set it too low. The Bureau is now proposing to increase that threshold to 500 or more open-end lines of credit for two years (calendar years 2018 and 2019). During that period, the Bureau will reconsider the open-end transactional coverage threshold: This temporary increase would allow the Bureau to do so without requiring financial institutions originating fewer than 500 open-end lines of credit per year to collect and report data with respect to open-end lending in the meanwhile.

This proposal seeks comment on whether the Bureau should temporarily increase the threshold in this manner.

II. Background

A. Collecting and Reporting Data Concerning Open-End Lines of Credit Under the 2015 HMDA Final Rule

HMDA and its implementing regulation, Regulation C, require certain banks, savings associations, credit unions, 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). In 2010, Congress enacted the Dodd-Frank Act, which amended HMDA and also transferred HMDA rulemaking authority and other functions from the Board to the Bureau.[6] Among other changes, the Dodd-Frank Act expanded the scope of information relating to mortgage applications and loans that must be collected, reported, and disclosed under HMDA.

[6] Public Law 111-203, 124 Stat. 1376, 1980, 2035-38, 2097-101 (2010).

The Dodd-Frank Act also provides the Bureau with the authority to require "such other information as the Bureau may require."[7]

In October 2015, the Bureau issued the 2015 HMDA Final Rule, which implemented the Dodd-Frank Act amendments to HMDA.[8] That final rule modified the types of institutions and transactions subject to Regulation C, the types of data that institutions are required to collect, and the processes for reporting and disclosing the required data.

Home-equity lines of credit were uncommon in the 1970s and early 1980s when Regulation C was first implemented. In 1988, the Board amended Regulation C to permit, but not require, financial institutions to report home-equity lines of credit that were for the purpose of home improvement or home purchase.[9] In practice, few financial institutions elected to do so and the Bureau estimated that only about 1 percent of open-end lines of credit secured by dwellings were reported under HMDA.[10]

In 2000, in response to the increasing importance of open-end lending in the housing market, the Board proposed to revise Regulation C to require mandatory reporting of all home-equity lines of credit.[11] However, the Board's 2002 final rule left open-end reporting voluntary, as the Board determined at that time that the benefits of mandatory reporting relative to other

[7] *Id.*
[8] 2015 HMDA Final Rule, 80 FR 66128 (Oct. 28, 2015).
[9] 53 FR 31683, 31685 (Aug. 19, 1988). Under this provision, data with respect to "home equity lines of credit made in whole or in part for home purchase or home improvement" is "optional data" which a financial institution may report. 12 CFR 1003.4(c)(3). A "home-equity line of credit" is defined in current Regulation C as an "open-end credit plan secured by a dwelling as defined in Regulation Z (Truth in Lending), 12 CFR part 1026." 12 CFR 1003.2. The definition of "open-end line of credit" in the 2015 HMDA Final Rule, effective January 1, 2018, paralleled this definition, but applies without regard to whether the credit is consumer credit, as defined in 12 CFR 1026.2(a)(12), is extended by a creditor, as defined in 12 CFR 1026.2(a)(17), or is extended to a consumer, as defined in 12 CFR 1026.2(a)(11).
[10] 2015 HMDA Final Rule, *supra* note 8, at 66282.
[11] 65 FR 78656, 78659-60 (Dec. 15, 2000).

then-proposed changes (such as collecting information about higher-priced loans) did not justify the increased burden.[12]

As discussed in the 2015 HMDA Final Rule, open-end mortgage lending continued to increase in the years following the Board's 2002 final rule, particularly in areas with high home-price appreciation. Further, research indicates that speculative real estate investors used open-end, home-secured lines of credit to purchase non-owner occupied properties, which correlated with higher first-mortgage defaults and home-price depression during the financial crisis.[13] Furthermore, in the years leading up to the crisis such home-equity lines of credit often were made and fully drawn more or less simultaneously with first-lien home purchase loans, essentially creating high loan-to-value home purchase transactions that were not visible in the HMDA dataset.[14] Thus, as the Bureau noted in the 2015 HMDA Final Rule, overleverage due to open-end mortgage lending and defaults on dwelling-secured open-end lines of credit contributed to the foreclosure crises that many communities experienced in the late 2000s.[15]

More generally, as the 2015 HMDA Final Rule also noted, dwelling-secured open-end lines of credit liquefy equity that borrowers have built up in their homes, which often are their most important assets, and increase their risk of losing their homes to foreclosure when property values decline.[16] At the same time, home-equity lines of credit have become increasingly important to the housing market, and including data on such lines within the HMDA dataset would help to understand how financial institutions are meeting the housing needs of

[12] 67 FR 7222, 7225 (Feb. 15, 2002).
[13] 2015 HMDA Final Rule, *supra* note 8, at 66160.
[14] *Id.*
[15] *Id.*
[16] *Id.*

communities.[17] For these and other reasons articulated in the 2015 HMDA Final Rule,[18] the Bureau determined that it is important to improve visibility into this key segment of the mortgage market by requiring reporting of open-end lines of credit.[19] As noted in the 2015 HMDA Final Rule, the Bureau believes that including dwelling-secured lines of credit within the scope of Regulation C is a reasonable interpretation of HMDA section 303(2), which defines ‘‘mortgage loan’’ as a loan secured by residential real property or a home improvement loan. In the 2015 HMDA Final Rule, the Bureau interpreted ‘‘mortgage loan’’ to include dwelling-secured lines of credit, as they are secured by residential real property and they may be used for home improvement purposes.[20] As further noted in the 2015 HMDA Final Rule, pursuant to section 305(a) of HMDA, the Bureau believes that requiring reporting of all dwelling-secured, consumer purpose open-end lines of credit is necessary and proper to effectuate the purposes of HMDA and prevent evasions thereof.[21]

To effectuate this decision, the 2015 HMDA Final Rule defined two new terms: "covered loan," which is defined to mean "a closed-end mortgage loan or an open-end line of credit that is not an excluded transaction,"[22] and "open-end line of credit," which is defined to mean an extension of credit that is secured by a lien on a "dwelling" (as that term is defined in the rule) and that is an open-end credit plan as defined in Regulation Z (without regard to certain limitations relevant for Regulation Z, but not Regulation C, purposes).[23]

[17] 2015 HMDA Final Rule, *supra* note 8, at 66157.
[18] *See id.* at 66149, 66160-61.
[19] *Id.* at 66149.
[20] *Id.* at 66160.
[21] *Id.*
[22] 12 CFR § 1003.2(e).
[23] *Id.* at § 1003.2(o).

In expanding coverage to include open-end lines of credit, the Bureau recognized that doing so would impose one-time and ongoing operational costs on reporting institutions; that the one-time costs of modifying processes and systems and training staff to begin open-end line of credit reporting likely would impose significant costs on some institutions; and that institutions' ongoing reporting costs would increase as a function of their open-end lending volume.[24]

The Bureau sought to avoid imposing these costs on small institutions with limited open-end lending, where the benefits of reporting the data do not justify the costs of reporting.[25] In seeking to draw such a line, the Bureau acknowledged that it was handicapped by the lack of available data concerning open-end lending.[26] This created challenges both in estimating the distribution of open-end origination volume across financial institutions and estimating the one-time and ongoing costs that would be incurred by institutions of various sizes in collecting and reporting data on open-end lending.

With respect to open-end origination volume, the Bureau used multiple data sources, including credit union Call Reports, Call Reports for banks and thrifts, and data from the Bureau's Consumer Credit Panel to develop estimates for different potential thresholds.[27] The Bureau assumed that all of the depository institutions that were exempted from HMDA reporting under Regulation C because of their location or asset size would continue to be exempt.[28] With

[24] 2015 HMDA Final Rule, *supra* note 8, at 66161. The definition of "open-end line of credit" replaced the definition of a "home-equity line of credit. *See supra* note 9.
[25] 2015 HMDA Final Rule, *supra* note 8, at 66149.
[26] *Id.*
[27] *Id.* at 66261, 66275 n.477. As the Bureau explained, credit union Call Reports provide the number of originations of open-end lines of credit secured by real estate but exclude lines of credit with first-lien status and may include business loans that are excluded from reporting under the 2015 HMDA Final Rule. *Id.* at 66281 n. 489
[28] *Id.* at 66281 n.489. The Bureau limited its estimate to depositories because it believes that most nondepositories do not originate open-end lines of credit. *Id.* at 66281.

respect to the remaining depositories, the Bureau developed the following estimates:[29]

Table 8. Estimates of Depository Institution Coverage by Open-End Line of Credit Thresholds

Potential Open-End-Line-of-Credit Threshold	Number of Reporting Financial Institutions	Number of Open-End Lines of Credit (rounded to nearest ten thousand)	Percentage of Market Covered	Number of Reporting Financial Institutions that also Report Closed-End Mortgage Loans	
				Not a Closed-End Reporter	Closed-End Reporter
Proposed	4, 146	910,000	94%	0	4,146
25	1, 770	900,000	93	103	1,667
50	1, 155	870,000	91	55	1,100
100	749	850,000	88	24	725
500	231	730,000	76	3	228
1000	123	650,000	68	0	123
5000	25	440,000	46	0	25

The Bureau noted that expansions or contractions in the number of financial institutions, or changes in product offerings and demands during implementation could alter the estimated impacts.[30]

To estimate the one-time and ongoing costs of collecting and reporting data under HMDA, the Bureau identified seven "dimensions" of compliance operations and used those to define three broadly representative financial institutions according to the overall level of complexity of their compliance operations: "tier 1" (high-complexity); "tier 2" (moderate-complexity); and "tier 3" (low-complexity).[31] In estimating costs specific to collecting and reporting data for open-end lines of credit, the Bureau assumed that tier 1 institutions originate more than 7,000 such lines of credit, that tier 2 institutions originate between 200 and 7,000 such

[29] The first row in the chart, labeled "Proposed" assumed that financial institutions would be required to report on their open-end lines of credit regardless of the number originated so long as the institution originated at least 25 closed-end mortgages during each of the prior two calendar years. This row reflects the impact of the rule that the Bureau had proposed. The remaining rows assume that reporting of open-end lines of credit would be required without regard to the number of closed-end loans originated but only if the financial institution originated the number of open-end lines of credit shown in the various rows. *Id.* at 66281.
[30] *Id.* at 66275 n.477.
[31] *Id.* at 66261. The seven factors were: 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. *Id.* at 66269.

lines of credit, and that tier 3 institutions originate fewer than 200 such lines of credit.[32] The Bureau then sought to estimate one-time and ongoing costs for the average-size institution in each tier.[33]

With respect to one-time costs, the Bureau recognized that the one-time cost of reporting open-end lines of credit could be substantial because most financial institutions do not currently report open-end lines of credit and thus would have to develop completely new reporting infrastructures to begin reporting these data. As a result, there would be one-time costs to create processes and systems for open-end lines of credit in addition to the one-time costs to modify processes and systems for other mortgage products.[34] However, for tier 3, low-complexity institutions, the Bureau stated that it believed that the additional one-time costs of open-end reporting would be relatively low because the Bureau believed that these institutions are less reliant on information technology systems for HMDA reporting and that they may process open-end lines of credit on the same system and in the same business unit as closed-end mortgage loans, so that their one-time costs would be derived mostly from new training and procedures adopted for the overall changes in the final rule.[35]

With respect to ongoing costs, the Bureau acknowledged that costs for open-end reporting vary by institutions due to many factors, such as size, operational structure, and product complexity, and that this variance exists on a continuum that was impossible to fully

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[32] *Id.* at 66285.
[33] For purposes of calculating aggregate costs, the Bureau assumed that the average tier 1 institution received 30,000 applications for open-end lines of credit; the average tier 2 institution received 1,000 such applications; and the average tier 3 institution received 150 such applications. *Id.* at 66286.
[34] *Id.* at 66264; *see also id.* at 66284-85.
[35] *Id.* at 66265; *see also id.* at 66284.

represent.[36] At the same time, the Bureau stated it believed that the HMDA reporting process and ongoing operational cost structure for open-end reporters would be fundamentally similar to closed-end reporting.[37] Thus, using the ongoing cost estimates developed for closed-end reporting, the Bureau estimated that for the average tier 1 institutions the ongoing operational costs would be $273,000 per year; for the average tier 2 institution $43,400 per year; and for the average tier 3 institution $8,600 per year.[38] These translated into average costs per HMDA record of $9, $43, and $57 respectively.[39] Importantly, the Bureau acknowledged that, precisely because no good source of publicly available data exists concerning dwelling-secured open-end lines of credit, it was difficult to predict the accuracy of the Bureau's cost estimates, but also stated its belief that they were reasonably reliable.[40]

Drawing on all of these estimates, the Bureau decided to establish an open-end transactional coverage threshold that would require institutions that originate 100 or more open-end lines of credit to collect and report data. The Bureau estimated that this threshold would avoid imposing the burden of establishing open-end reporting on approximately 3,000 predominantly smaller-sized institutions with low open-end lending[41] and would require reporting by only 749 financial institutions, all but 24 of which would also report data on their closed-end mortgage lending.[42] The Bureau explained that it believed this threshold

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[36] *Id.* at 66285.
[37] *Id.*
[38] *Id.* at 66286.
[39] *Id.*
[40] *Id.* at 66162.
[41] *Id.* The estimate of the number of institutions that would be excluded by the transaction coverage threshold was relative to the number that would have been covered under the Bureau's proposal that led to the 2015 HMDA Final Rule. Under that proposal, a financial institution would have been required to report its open-end lines of credit if it had originated at least 25 closed-end mortgage loans in each of the preceding two years without regard to how many open-end lines of credit the institution originated. *See* 79 FR 51731 (Aug. 29, 2014).
[42] *Id.* at 66281.

appropriately balanced the benefits and burdens of covering institutions based on their open-end mortgage lending.[43]

To effectuate this decision, the 2015 HMDA Final Rule amended Regulation C to define two discrete thresholds that were intended to work in tandem. First, the rule established an institutional coverage threshold that limits the definition of "depository financial institution" and "nondepository financial institution" to include only those institutions that either originated at least 25 covered closed-end mortgages in each of the preceding years or that originated at least covered 100 open-end lines of credit in each of the two preceding years.[44] Second, the rule separately established a transactional coverage threshold for open-end lines of credit by providing that an open-end line of credit is an excluded transaction if the financial institution originated fewer than 100 open-end lines of credit in each of the two preceding calendar years.[45]

B. *Proposed Technical Corrections and Clarifying Amendments to the 2015 HMDA Final Rule*

On April 13, 2017, the Bureau issued a Notice of Proposed Rulemaking (2017 HMDA Proposal) containing a set of proposed technical corrections and clarifying amendments to the Regulation C as amended by the 2015 HMDA Final Rule.[46] Among the corrections included in that proposal is an amendment to the open-end transactional coverage threshold. Under the 2017 HMDA Proposal, an open-end line of credit would be an excluded transaction if the institution

[43] *Id.* at 66162.
[44] 12 CFR 1003.2(g)(1)(v) and (g)(2)(ii). The final rule excluded certain transactions from the definition of covered loans and those excluded transactions do not count towards the institutional transaction threshold.
[45] 12 CFR 1003.3(c)(12). As noted above and discussed again below, the exclusion as adopted in the 2015 HMDA Final Rule was intended to apply if the financial institution originated fewer than 100 open-end lines of credit in either of the two preceding calendar years; the current text of the rule was a drafting error that the Bureau has now proposed to correct. The final rule created a separate transactional coverage threshold for closed-end mortgages, treating those as excluded transactions if an institution originated fewer than 25 closed-end mortgage loans in each of the two preceding calendar years. *Id.* at § 1003.3(c)(11). The Bureau has proposed to change the "each" in this text to "either" as well. *See infra* note 46, at 19148.
[46] 82 FR 19142 (Apr. 25, 2017).

originated fewer than 100 open-end lines of credit in either of the two preceding calendar years.[47] This would change the provision as adopted by the 2015 HMDA Final Rule to correct a drafting error.

The 2017 HMDA Proposal noted that, under the institutional coverage threshold in the 2015 HMDA Final Rule, the definition of financial institution included only institutions that originate either 25 or more closed-end mortgage loans or 100 or more open-end lines of credit in each of the two preceding calendar years. That threshold and the transaction coverage threshold were intended to be complementary exclusions.[48] But, if the transactional coverage threshold is to mirror the loan volume threshold for financial institutions, as the 2017 HMDA Proposal noted, the transactional coverage threshold should provide that an open-end line of credit is an excluded transaction if a financial institution originated fewer than 100 open-end lines of credit in either, rather than each, of the two preceding calendar years.[49] The use of the word "each" in the financial transaction threshold in the 2015 HMDA Final Rule thus was a drafting error.[50]

The 2017 HMDA Proposal sought comment on this and other proposed changes. The comment period closed on May 25, 2017. The Bureau is in the process of reviewing the comments and preparing a final rule, which the Bureau expects to issue on or before the date on which this proposal would be finalized. Accordingly, this proposal reflects the amended language of the 2017 HMDA Proposal.[51] Further, if this proposal is finalized, the Bureau would

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[47] *Id.* at 19168.
[48] *Id.* at 19149.
[49] *Id.*
[50] *Id.* at 19148. The proposal similarly would change the transactional coverage threshold for closed-end mortgage loans. *Id.*
[51] The 2017 HMDA Proposal also added a new category of excluded transaction that would not count towards the institutional transaction threshold, and amended § 1003.2(g)(1)(v) and (g)(2)(ii) accordingly. Those amendments are not reflected in this proposal but are still under consideration by the Bureau.

adopt final language that reflects not only this proposal but also the final changes that would be adopted pursuant to the 2017 HMDA Proposal's final rule.

C. Questions Regarding the Open-End Transactional Coverage Threshold

Since the Bureau issued the 2015 HMDA Final Rule, many industry stakeholders have expressed concerns over the levels for the transactional coverage thresholds. The Bureau has sought to listen to and understand the basis for these concerns. In the 2015 HMDA Final Rule, the Bureau modified Regulation C's 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 adopted uniform loan volume thresholds for depository and nondepository institutions. The loan volume thresholds require an institution that originated at least 25 closed-end mortgage loans or at least 100 open-end lines of credit in each of the two preceding calendar years to report HMDA data, provided that the institution meets all of the other criteria for institutional coverage.

As discussed above, the Bureau did not have robust data for making the estimates that went into establishing the open-end coverage threshold. The Bureau now has some reason to question whether it struck the appropriate balance in establishing a threshold of 100 open-end lines of credit.

In striking that balance, the Bureau estimated, based upon 2013 data, that under that threshold 749 depository institutions would be required to report their open-end lines of credit. Since 2013, the number of dwelling-secured open-end lines of credit originated has increased by

36 percent and continues to grow.[52] To the extent that institutions that are originating fewer than 100 open-end lines of credit share in that growth, the number of institutions at the margin that will be required to report under the 2015 HMDA Final Rule open-end transaction coverage threshold necessarily will increase.

The data available to the Bureau with respect to open-end line of credit institutions by banks and thrifts is not sufficiently robust to allow the Bureau to estimate with any precision the number of such institutions that have crossed over the open-end transactional threshold in the 2015 HMDA Final Rule. However, there is reliable data with respect to credit unions which are required to report open-end originations in their Call Reports. The Bureau's review of credit union Call Report data indicates that the number of credit unions that originated 100 or more open-end lines of credit in 2015 was up 31 percent over 2013.[53] If there were a comparable increase among banks and thrifts, that would imply that the total number of open-end reporters under the transactional coverage threshold would be 980, as compared to the estimate of 749 in the 2015 HMDA Final Rule.[54] Of course, if volumes have increased at these institutions, the breadth and importance of the credit they extend may also have increased and therefore the benefits from collecting and reporting those data may have as well.

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[52] Experian-Oliver Wyman Market Intelligence Reports show that in 2013 there were 1.14 million home-equity lines of credit originated. In 2016 that number grew to 1.55 million.

[53] The 2015 HMDA Final Rule contained aggregated estimates for credit unions, banks, and thrifts. In developing those estimates, the Bureau had constructed separate estimates for credit unions using the credit union Call Report data. Specifically, the Bureau estimated that in 2013 there were 534 credit unions that originated 100 or more open-end lines of credit. Based on 2015 credit union Call Report data, that number is now 699.

[54] The estimates contained in the 2015 HMDA Final Rule and those stated in text are based on origination volumes for a single-year. The two-year lookback period intended in the 2015 HMDA Final Rule and contained in the 2017 HMDA Proposal and in this proposal as well – that is, the exclusion for institutions that fell below the transactional coverage threshold in either of the two preceding years – would likely reduce the number of reporters below those stated in text at least during the first year after the rule takes effect. On the other hand, the fact that the estimates are based upon credit union Call Report data which, as noted in the 2015 HMDA Final Rule, exclude open-end lines of credit originated in a first position may mean that the estimates understate the number of reporters.

Additionally, information received by the Bureau since issuing the 2015 HMDA Final Rule has caused the Bureau to question its assumption, as set forth above, that low-complexity (tier 3) institutions process their home-equity lines of credit on the same data platforms as their closed-end mortgages, which in turn drove the Bureau's corresponding assumptions that the one-time costs for these institutions would be minimal. The Bureau has heard anecdotal evidence suggesting that one-time costs could be as high as $100,000 for tier 3 institutions. The Bureau likewise has heard anecdotal evidence suggesting that the ongoing costs for these institutions – which the Bureau estimated would be under $10,000 per year and add under $60 per line of credit – could be at least three times higher.

These reports, coupled with the additional evidence discussed above with respect to the number of institutions that would be covered by the open-end transactional coverage test contained in the 2015 HMDA Final Rule, have led the Bureau to believe that it is appropriate to seek comment to determine whether an adjustment in the threshold is appropriate. Although this could be accomplished by delaying the effective date for the reporting requirement for open-end lines of credit in toto, for the reasons set forth above and those articulated in the 2015 HMDA Final Rule, the Bureau continues to believe that it is vitally important to begin to collect data on the burgeoning market for home-equity lines of credit. Accordingly, in light of the considerations set forth above, the Bureau is proposing to increase temporarily the open-end transactional coverage threshold – and to make a parallel change in the institutional coverage threshold – so that institutions originating fewer than 500 open-end lines of credit in either of the two preceding calendar years will not be required to commence collecting or reporting data on their open-end lines of credit until the Bureau has the opportunity to reassess whether to adjust the threshold.

In developing a proposed temporary adjustment of the threshold, the Bureau has examined the coverage estimates contained in the 2015 HMDA Final Rule, as well as the Bureau's analysis of more recent credit union Call Report data.

As shown above in Table 8 from the 2015 HMDA Final Rule, the Bureau had estimated, using 2013 data, that a 500 line-of-credit threshold would have reduced the number of reporting institutions from 749 to 231, a 69 percent reduction, while reducing the share of lines of credit reported from 88 percent to 76 percent, a fourteen percent reduction.[55] Of the 231 depositories that the Bureau estimated were originating 500 or more open-end lines of credit, 175 were credit unions. The Bureau's review of credit union Call Report data from 2015 suggests that the number of credit unions originating 500 or fewer lines of credit has increased, but at a slightly slower pace than the increase in credit unions originating between 100 and 499 open-end lines of credit.[56] Assuming comparable trends among banks and thrifts, the Bureau now estimates that in 2015, 289 depository institutions originated 500 or more open-end lines of credit, as compared to an estimated 980 such institutions that originated at least 100 such lines. On average, the institutions that would be excluded by increasing the threshold to 500 originated fewer than 250 open-end lines of credit per year.[57] At the same time, the Bureau estimates that under a 500 loan open-end transactional coverage threshold, roughly three-quarters of the loan application volume in the open-end market would be reported.[58]

[55] 2015 HMDA Final Rule, *supra* note 8, at 66281. Note that the estimates contained in the 2015 HMDA Final Rule were based on origination volumes in a single year (2013), and did not reflect the intended two-year lookback period for determining whether reporting would be required.
[56] According to the Bureau's analysis of credit union Call Report data, in 2015 there were 219 credit unions that reported originating 500 or more open-end lines of credit.
[57] This estimate is based on an analysis of the credit union Call Report data for 2015. The Bureau also has reviewed 2013 and 2014 credit union Call Report data which likewise shows an average at or below 250 for credit unions originating between 100 and 500 open-end lines of credit
[58] The 2015 HMDA Final Rule estimated that an open-end transactional coverage threshold of 500 would cover 76 percent of the market. The credit union Call Report data suggests that the share of the credit union market covered by credit unions originating at least 500 open-end lines increased by 6 percent in 2015 relative to 2013. However, we conservatively rely on the estimate contained in the 2015 HMDA Final Rule.

The Bureau has considered, as an alternative, increasing the open-end transactional coverage threshold to 1,000. The Bureau estimates that there are approximately 110 depository institutions that originated between 500 and 1,000 open-end lines of credit in 2015.[59] Increasing the open-end transactional coverage threshold to 1,000 and applying that test to institutions that originated at least 1,000 open-end lines of credit in each of the prior two years (*i.e.*, in 2014 and 2015) would have relieved approximately 90 depository institutions of the obligation to report on their open-end lines of credit in 2016 relative to a 500 threshold. In 2016, those institutions originated, on average, close to 1,000 open-end lines of credit per year.[60] Furthermore, a 1,000 loan open-end transactional coverage threshold would reduce coverage of the open-end line of credit market to approximately 68 percent and would reduce coverage of the credit union open-end line of credit marketplace to just 49 percent.[61]

Beyond that, the Bureau believes that institutions that have originated at least 500 dwelling-secured open-end lines of credit in each of the last two years – and that are averaging closer to 1,000 such lines – are, at a minimum, moderately-complex operations able to shoulder the costs of collecting and reporting data on their open-end lines of credit. For example, information supplied to the Bureau from the credit league of one State indicates that of the seven credit unions in that State that had originated more than 250 home-equity lines of credit in the

[59] The estimates contained in the 2015 HMDA Final Rule were predicated on an estimate that in 2013 there were 93 credit unions that originated between 500 and 1,000 open-end lines of credit. The Bureau's analysis of 2015 credit union Call Report data shows that in 2015 there were 95 such credit unions. The Bureau thus assumes that the total number of depository institutions originating between 500 and 1,000 open-end lines of credit held constant between 2013 and 2015.

[60] According to the Bureau's calculations, of the credit unions originating between 500 and 1,000 open-end lines of credit in 2015, fewer than 80 percent had done so in both 2014 and 2015. Those credit unions originated, on average, 959 and 1,032 open-end lines of credit in 2014 and 2015 respectively.

[61] The estimates in the 2015 HMDA Final Rule were predicated on an estimate that an open-end transactional coverage threshold of 1,000 would reduce coverage of the credit union marketplace to 50 percent. The Bureau's review of 2015 credit union Call Report data indicates that remains true.

first six months of 2016 (and thus were on track to originate 500 for the year), six had assets over $1 billion.

For all these reasons, the Bureau is proposing to amend the open-end transactional coverage threshold in Regulation C as adopted by the 2015 HMDA Final Rule, effective January 1, 2018, to increase the threshold from 100 to 500 and is proposing to amend the threshold, effective January 1, 2020, to restore it to 100. The Bureau is proposing a parallel change in the institutional coverage threshold. The Bureau believes that this two-year period will give the Bureau sufficient time to assess whether the change being proposed should be made permanent or whether the threshold should be set at some lower level, and to finalize its determination in time to allow institutions who may be covered under the permanent threshold but not by the temporary threshold to complete their implementation process.

The Bureau seeks comment on whether to increase temporarily the open-end transactional coverage threshold and, if so, whether to raise the threshold to 500 or to a larger or smaller number. The Bureau also seeks comment on whether, if it elects to increase the open-end transactional coverage threshold, it should do so for a period of two years or a longer or shorter period of time.

The Bureau notes that it is not proposing to adjust the closed-end transactional coverage threshold. As explained above, in establishing that threshold the Bureau was able to base its determination on a robust dataset that enabled the Bureau to evaluate the implications of potential alternative thresholds. This was possible because, prior to January 1, 2017, under Regulation C depository institutions that originated even a single closed-end mortgage and met the location and asset coverage criteria generally were required to report on closed-end mortgage applications under HMDA.

Relying on these data, the Bureau was able to evaluate the implications of alternative potential transactional coverage threshold for closed-end mortgage loans. The Bureau recognized that setting a threshold above 25 closed-end loans would not significantly impact the value of HMDA data at the national level. But the Bureau also recognized that public officials, community advocates, and researchers rely on HMDA data to analyze access to credit at the neighborhood level and to target programs to assist underserved communities and consumers and that, therefore, it was appropriate to consider local impacts in setting a transactional coverage threshold.[62] For example, had the threshold for closed-end mortgage loans been set at 500 loans – the highest level the Bureau considered although well below thresholds urged by some industry stakeholders – more than 5,000 census tracts would have lost 20 percent or more of the then currently-reported HMDA data, of which one-third would have been tracts designated as low- to moderate-income (LMI).[63] In contrast, the 25-loan transactional threshold established by the 2015 HMDA Final Rule resulted in only 46 census tracts losing 20 percent or more of their data. Further, the closed-end transactional coverage threshold established by the 2015 HMDA Final Rule also increased reporting by nondepository institutions – and thus increased visibility into their share of the market – by reducing their preexisting threshold from 100 to 25, thereby leveling the playing field.[64]

Additionally, because many depository financial institutions originating even a small number of loans were at the time of the 2015 HMDA Final Rule required to report under HMDA, in estimating the one-time and incremental ongoing costs of implementing and

[62] 2015 HMDA Final Rule, *supra* note 8, at 66147.
[63] *Id.* at 66279.
[64] The current nondepository institution coverage test includes a loan-volume or asset test, where only nondepository institutions that originated at least 100 applicable loans in the preceding calendar year or had assets of more than $10 million on the preceding December 31 and meet the other applicable criteria are required to report HMDA data. See Section 1026.2 (definition of financial institution).

complying with the final rule, the Bureau was able to draw upon actual experience of institutions of various sizes in collecting and reporting HMDA data.

Despite the objections the Bureau has heard since issuing the 2015 HMDA Final Rule to the transactional coverage threshold for closed-end mortgage loans, the Bureau does not have reason to believe that it underestimated the costs of implementation or overestimated the adverse consequences of establishing a higher threshold for analyses at the local level. The Bureau also continues to believe that there are significant benefits in obtaining increased visibility into the originations by nondepositories that originate fewer than 100 closed-end mortgages. For these reasons, as well as those set forth in the 2015 HMDA Final Rule, the Bureau does not believe it is necessary or appropriate to reconsider that threshold and therefore is not proposing to do so.

The Bureau is not proposing in this notice to change the effective date for any other provision of the 2015 HMDA Final Rule or to make any other substantive changes to that rule.

III. Legal Authority

The Bureau is issuing this proposal pursuant to its authority under the Dodd-Frank Act and HMDA. This proposed rule consists of amendments to the 2015 HMDA Final Rule.[65] 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.[66] 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

[65] 2015 HMDA Final Rule, *supra* note 8, at 66136-37.
[66] 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.*

appropriate functions to promulgate and review such rules, orders, and guidelines."[67] 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."[68] Both HMDA and title X of the Dodd-Frank Act are Federal consumer financial laws.[69] Accordingly, the Bureau has authority to issue regulations to administer HMDA.

HMDA section 305(a) broadly authorizes the Bureau to prescribe such regulations as may be necessary to carry out HMDA's purposes.[70] These regulations may 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."[71]

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."[72] HMDA section 304(j)(7) also directs the Bureau to make every effort in prescribing regulations under that subsection to minimize the costs incurred by a

[67] 12 U.S.C. 5581(a)(1)(A).
[68] 12 U.S.C. 5512(b)(1).
[69] 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).
[70] 12 U.S.C. 2804(a).
[71] *Id.*
[72] *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).

depository institution in complying with such regulations.[73] HMDA also authorizes the Bureau to issue regulations relating to the timing of HMDA disclosures.[74]

In preparing this proposed rule, the Bureau has considered the changes below in light of its legal authority under HMDA and the Dodd-Frank Act. The Bureau has determined that each of the changes addressed below is consistent with the purposes of HMDA and is authorized by one or more of the sources of statutory authority identified in this part.

IV. Section-by-Section Analysis

Section 1003.2 Definitions

2(g) Financial institution

2(g)(1) Depository financial institution

2(g)(1)(v)

2(g)(1)(v)(B)

Regulation C as amended by the 2015 HMDA Final Rule defines "depository financial institution" as a bank, savings association or credit union that meets certain criteria. One of those criteria is that the institution either (A) originated at least 25 closed-end mortgages loans in each of the two preceding calendar years; or (B) originated at least 100 open-end lines of credit in each of the two preceding calendar years. For depositories that do not meet the closed-end mortgage loan component of this test, their status as a depository financial institution under Regulation C turns, in part, on their volume of open-end line of credit originations. Because, as discussed above in section II, the Bureau is proposing to increase temporarily the open-end

[73] 12 U.S.C. 2803(j)(7).
[74] 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).

transactional coverage threshold from 100 to 500, the Bureau is proposing to make a parallel, temporary change in the institutional coverage threshold included in § 1003.2(g) as well. Under this proposed amendment, effective January 1, 2018, a depository institution that did not originate at least 25 closed-end mortgage loans in each of the two preceding years would not be deemed to be a depository financial institution under Regulation C unless it originated 500 or more open-end lines of credit in each of the two preceding years and met the other applicable criteria included in § 1003.2(g)(i).

In accordance with the proposal with respect to the open-end transactional coverage threshold, the Bureau is proposing conforming amendments to the definition of depository financial institution effective January 1, 2020, to revert to the definition established by the 2015 HMDA Final Rule, *i.e.*, to set the open-end institutional coverage threshold at 100 lines of credit.

As a result, under this proposal, for calendar years 2018 and 2019, financial institutions that do not meet the closed-end mortgage loan component of the test and that originate between 100 and 499 open-end lines of credit would not meet the definition of "depository financial institution." Absent further amendments by the Bureau, beginning in calendar year 2020, such depositories would meet the definition of "depository financial institution."

The Bureau solicits comment on this proposal.

2(g)(2) Nondepository financial institution

2(g)(2)(ii)

2(g)(2)(ii)(B)

Under the 2015 HMDA Final Rule a "nondepository financial institution" is defined as a for-profit mortgage lending institution other than a bank, savings association, or credit union that meets certain criteria. One of those criteria is an institutional coverage threshold that is identical to the threshold for depository institutions discussed above. For the reasons discussed above in section II and the section-by-section analysis of § 1003.2(g)(1(v)(B), the Bureau is proposing conforming amendments to § 1003.2(g)(ii)(B), which includes the open-end loan volume threshold for coverage of nondepository financial institution. Under this proposal, for calendar years 2018 and 2019, the open-end loan volume threshold for institutional coverage of nondepository institutions would be raised from 100 to 500. Absent further amendments by the Bureau, beginning in calendar year 2020, such nondepository institutions would meet the definition of "nondepository financial institution."

Comments 2(g)-3 and 2(g)-5 each assumed that the open-end institutional threshold was 100. The proposal would amend these comments effective January 1, 2018, to reflect the temporary higher threshold proposed herein and further amends the comment effective January 1, 2020, to restore the original threshold.

Section 1003.3 Exempt Institutions and Excluded Transactions

3(c) Excluded transactions

3(c)(12)

Under Regulation C as amended by the 2015 HMDA Final Rule, an open-end line of credit is an "excluded transaction" and thus not subject to the collection, reporting, and disclosure requirements of Regulation C, if the financial institution originated fewer than 100 open-end lines of credit in each of the two preceding calendar years. As discussed above in section II, the Bureau has previously proposed to amend this provision to substitute the word "either" for "each," and the Bureau reflects the language of the 2017 HMDA Proposal here. Additionally, for the reasons previously discussed, the Bureau is proposing, effective January 1, 2018, to increase the open-end transactional coverage threshold from 100 to 500 lines of credit.

The Bureau is further proposing, effective January 1, 2020, to restore the open-end transactional coverage threshold to the level adopted by the 2015 HMDA Final Rule, *i.e.*, 100 lines of credit.

Under this proposal, for calendar years 2018 and 2019, a financial institution that originates between 100 and 499 open-end lines of credit in either of the two preceding calendar years would not be required to collect, report, and disclose data on open-end lines of credit. Absent further amendments by the Bureau, beginning in calendar year 2020, such a financial institution would be required to do so.

The Bureau previously proposed to clarify that financial institutions may voluntarily report open-end lines of credit or closed-end mortgage loans even if the institution may exclude those loans pursuant to the transactional thresholds included in § 1003.3(c)(11) or (12) under the 2015 HMDA Final Rule.[75] This proposal reflects this amended language of the 2017 HMDA Proposal and amends that language to reflect the temporary higher threshold proposed herein effective January 1, 2018 and further amends the comment effective January 1, 2020 to restore the original threshold. As noted above, the Bureau is in the process of reviewing the comments on the 2017 HMDA Proposal and preparing a final rule, which the Bureau expects to issue on or before the date on which this proposal would be finalized.

Comment 2(c)(12)-1 assumed that the open-end transactional threshold was 100. The proposal would amend this comment effective January 1, 2018, to reflect the temporary higher threshold proposed herein and further amends the comment effective January 1, 2020, to restore the original threshold.

[75] 82 FR 19142, 19165 (April 25, 2017).

V. Section 1022(b) of the Dodd-Frank Act

In developing the proposed rule, the Bureau has considered the potential benefits, costs and impacts required by section 1022(b)(2) of the Dodd-Frank Act. Specifically, section 1022(b)(2) calls for the Bureau to consider the potential benefits and costs of a regulation to consumers and covered persons, including the potential reduction of consumer access 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. The Bureau has consulted with, or offered to consult with, the prudential regulators, the Department of the Treasury, the Securities and Exchange Commission, the Department of Housing and Urban Development, the Federal Housing Finance Agency, the Federal Trade Commission, the Department of Veterans Affairs, the Department of Agriculture, the Department of Justice, and the Department of the Treasury regarding consistency with any prudential, market, or systemic objectives administered by these agencies.

The Bureau previously considered the costs, benefits, and impacts of the 2015 HMDA Final Rule's major provisions, including the institutional coverage threshold and the open-end transactional coverage threshold.[76]

Compared to the baseline established by the 2015 HMDA Final Rule, the proposed temporary increase in the open-end transactional coverage threshold would generally benefit financial institutions that originate between 100 and 499 open-end lines of credit in either of the two preceding calendar years by, at a minimum, allowing them to delay incurring one-time costs and delay the start of ongoing compliance costs associated with collecting and reporting data on

[76] 2015 HMDA Final Rule, *supra* note 8, at 66282-66287.

open-end lines of credit. Some institutions may incur costs because they have already planned to report open-end lines of credit and now will not be required to and will need to change their systems. The Bureau does not have a reliable basis to estimate those costs. However, as noted above, the Bureau previously proposed to clarify that financial institutions may voluntarily report open-end lines of credit or closed-end mortgage loans even if the institution may exclude those loans pursuant to the transactional thresholds included in § 1003.3(c)(11) or (12) under the 2015 HMDA Final Rule. If the Bureau finalizes this clarification, a temporary increase in the open-end transactional coverage threshold will obviate the need for institutions that are prepared to report open-end lines of credit to change their system. However, to the extent institutions that already have incurred costs in preparing for compliance elect to take advantage of the two-year temporary increase in the open-end transactional coverage threshold, unless the Bureau elects during the two-year review period to make the increase permanent, these institutions would incur one-time expenses which, when added to expenses already incurred, may be greater than the one-time costs that would have been incurred had the institutions completed their compliance work by January 1, 2018. As noted above, the Bureau estimates that roughly 690 such institutions would be able to take advantage of the two-year temporary increase in the open-end transactional coverage threshold.

The Bureau believes that temporarily increasing the open-end transactional coverage threshold for two years would reduce the benefits to consumers from the open-end reporting provisions of the 2015 HMDA Final Rule as those benefits are described in the rule. However, the Bureau believes that such impact may be minimal because the temporary increase in the open-end transactional coverage threshold would still, in the aggregate, result in reporting on approximately three-quarters of all open-end lines of credit. However, the Bureau recognizes that there may be particular localities where the impact of the temporary increase in the open-end transactional coverage threshold would be more pronounced. The Bureau lacks data to be able to estimate the extent to which that may be true.

To the extent there are benefits to covered persons resulting from the temporary increase in the open-end transactional coverage threshold, the Bureau believes those benefits would flow almost exclusively to insured depository institutions and credit unions with under $10 billion assets and to a large extent to depository institutions servicing consumers in rural communities. The Bureau does not believe that the proposed temporary increase in the open-end transactional coverage threshold would reduce consumer access to consumer financial products and services, and it may increase consumer access by decreasing the possibility that certain financial institutions increase their pricing as a result of the requirements of the 2015 HMDA Final Rule or seek to cap the number of open-end lines of credit they originate to stay under the open-end transactional coverage threshold.

The Bureau requests comment on this discussion as well as submission of additional information that could inform the Bureau's consideration of the potential benefits, costs, and impacts of this proposed rule.

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA),[77] as amended by the Small Business Regulatory Enforcement Fairness Act of 1996,[78] requires each agency to consider the potential impact of its regulations on small entities, including small businesses, small governmental units, and small

[77] Public Law 96-354, 94 Stat. 1164 (1980).
[78] Public Law 104-21, section 241, 110 Stat. 847, 864-65 (1996).

not-for-profit organizations.[79] The RFA defines a "small business" as a business that meets the size standard developed by the Small Business Administration (SBA) pursuant to the Small Business Act.[80]

The 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, unless the agency certifies that the rule would not have a significant economic impact on a substantial number of small entities.[81] The Bureau also is subject to certain additional procedures under the RFA involving the convening of a panel to consult with small entity representatives prior to proposing a rule for which an IRFA is required.[82]

As discussed above, the Bureau believes that none of the proposed changes would create a significant impact on any covered persons, including small entities. Therefore, an IRFA is not required for this proposal.

Accordingly, the undersigned certifies that this proposal, if adopted, would not have a significant economic impact on a substantial number of small entities. The Bureau requests comment on the analysis above and requests any relevant data.

[79] 5 U.S.C. 601 through 612. The term "'small organization' means any not-for-profit enterprise which is independently owned and operated and is not dominant in its field, unless an agency establishes [an alternative definition under notice and comment]." 5 U.S.C. 601(4). The term "'small governmental jurisdiction' means governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand, unless an agency establishes [an alternative definition after notice and comment]." 5 U.S.C. 601(5).

[80] 5 U.S.C. 601(3). The Bureau may establish an alternative definition after consulting with the SBA and providing an opportunity for public comment. *Id.*

[81] 5 U.S.C. 601 *et seq*.

[82] 5 U.S.C. 609.

VII. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*), Federal agencies are generally required to seek the Office of Management and Budget (OMB) approval for information collection requirements prior to implementation. The information collection requirements contained in Regulation C have been previously approved by OMB and assigned OMB control number 3170–0008. You may access this information collection on *www.reginfo.gov* by selecting ‘‘Information Collection Review’’ from the main menu, clicking on ‘‘Search,’’ and then entering the OMB control number. Under the PRA, the Bureau may not conduct or sponsor and, notwithstanding any other provision of law, a person is not required to respond to an information collection unless the information collection displays a valid control number assigned by OMB.

The Bureau has determined that this proposed rule would not have any new or revised information collection requirements (recordkeeping, reporting, or disclosure requirements) on covered entities or members of the public that would constitute collections of information requiring OMB approval under the PRA. The Bureau welcomes comments on this determination or any other aspects of this proposal for purposes of the PRA. Comments should be submitted to the Bureau as instructed in the **ADDRESSES** part of this notice and to the attention of the Paperwork Reduction Act Officer. All comments will become a matter of public record.

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 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.

[The following amendments would be effective January 1, 2018, further amending the sections as amended October 28, 2015, at 80 FR 66127.]

2. Amend § 1003.2 by revising paragraphs (g)(1)(v)(B) and (g)(2)(ii)(B) to read as follows:

§ 1003.2 Definitions.

* * * * *

(g) * * *

(1) * * *

* * * * *

(v) * * *

(B) In each of the two preceding calendar years, originated at least 500 open-end lines of credit that are not excluded from this part pursuant to § 1003.3(c)(1) through (10); and

(2) * * *

(ii) * * *

(B) In each of the two preceding calendar years, originated at least 500 open-end lines of credit that are not excluded from this part pursuant to § 1003.3(c)(1) through (10).

* * * * *

3. Amend § 1003.3 by revising paragraph (c)(12) to read as follows:

§ 1003.3 Exempt institutions and excluded transactions.

*   *   *   *   *

(c) * * *

(12) An open-end line of credit, if the financial institution originated fewer than 500 open-end lines of credit in either of the two preceding calendar years; or

*   *   *   *   *

4. In Supplement I to Part 1003—Official Interpretations:

a. Under *Section 1003.2—Definitions*:

i. Under *2(g) Financial institution*, paragraphs 3 and 5 are revised.

b. Under *Section 1003.3—Exempt institutions and excluded transactions*:

i. Under *3(c) Excluded transactions*:

A. Under *Paragraph 3(c)(12)*, paragraphs 1 and 2 are revised.

Supplement I to Part 1003—Official Interpretations

*   *   *   *   *

Section 1003.2—Definitions

*   *   *   *   *

2(g) Financial Institution

*   *   *   *   *

3. *Merger or acquisition—coverage of surviving or newly formed institution.* After a merger or acquisition, the surviving or newly formed institution is a financial institution under § 1003.2(g) if it, considering the combined assets, location, and lending activity of the surviving or newly formed institution and the merged or acquired institutions or acquired branches, satisfies the criteria included in § 1003.2(g). For example, A and B merge. The surviving or

newly formed institution meets the loan threshold described in § 1003.2(g)(1)(v)(B) if the surviving or newly formed institution, A, and B originated a combined total of at least 500 open-end lines of credit in each of the two preceding calendar years. Likewise, the surviving or newly formed institution meets the asset-size threshold in § 1003.2(g)(1)(i) if its assets and the combined assets of A and B on December 31 of the preceding calendar year exceeded the threshold described in § 1003.2(g)(1)(i). Comment 2(g)-4 discusses a financial institution's responsibilities during the calendar year of a merger.

* * *

5. *Originations.* Whether an institution is a financial institution depends in part on whether the institution originated at least 25 closed-end mortgage loans in each of the two preceding calendar years or at least 500 open-end lines of credit in each of the two preceding calendar years. Comments 4(a)-2 through -4 discuss whether activities with respect to a particular closed-end mortgage loan or open-end line of credit constitute an origination for purposes of § 1003.2(g).

* * * * *

Section 1003.3—Exempt Institutions and Excluded Transactions

* * * * *

3(c) Excluded transactions.

* * * * *

Paragraph 3(c)(12).

1. *General*. Section 1003.3(c)(12) provides that an open-end line of credit is an excluded transaction if a financial institution originated fewer than 500 open-end lines of credit in either of the two preceding calendar years. For example, assume that a bank is a financial institution in

2019 under § 1003.2(g) because it originated 50 closed-end mortgage loans in 2017, 75 closed-end mortgage loans in 2018, and met all of the other requirements under § 1003.2(g)(1). Also assume that the bank originated 75 and 85 open-end lines of credit in 2017 and 2018, respectively. The closed-end mortgage loans that the bank originated, or for which it received applications, during 2019 are covered loans and must be reported, unless they otherwise are excluded transactions under § 1003.3(c). However, the open-end lines of credit that the bank originated, or for which it received applications, during 2019 are excluded transactions under § 1003.3(c)(12) and need not be reported. See comments 4(a)-2 through -4 for guidance about the activities that constitute an origination.

2. *Voluntary reporting.* A financial institution voluntarily may report open-end lines of credit and applications for open-end lines of credit that are excluded transactions because the financial institution originated fewer than 500 open-end lines of credit in either of the two preceding calendar years.

[The following amendments would be effective January 1, 2020, further amending the sections as amended October 28, 2015, at 80 FR 66127.]

5. Amend § 1003.2 by revising paragraphs (g)(1)(v)(B) and (g)(2)(ii)(B) to read as follows:

§ 1003.2 Definitions.

* * * * *

(g) * * *

(1) * * *

* * * * *

(v) * * *

(B) In each of the two preceding calendar years, originated at least 100 open-end lines of credit that are not excluded from this part pursuant to § 1003.3(c)(1) through (10); and

(2) * * *

(ii) * * *

(B) In each of the two preceding calendar years, originated at least 100 open-end lines of credit that are not excluded from this part pursuant to § 1003.3(c)(1) through (10).

* * * * *

6. Amend § 1003.3 by revising paragraph (c)(12) to read as follows:

§ 1003.3 Exempt institutions and excluded transactions.

* * * * *

(c) * * *

(12) An open-end line of credit, if the financial institution originated fewer than 100 open-end lines of credit in either of the two preceding calendar years; or

* * * * *

7. In Supplement I to Part 1003—Official Interpretations:

a. Under *Section 1003.2—Definitions*:

i. Under *2(g) Financial institution*, paragraphs 3 and 5 are revised.

b. Under *Section 1003.3—Exempt institutions and excluded transactions*:

i. Under *3(c) Excluded transactions*:

A. Under *Paragraph 3(c)(12)*, paragraphs 1 and 2 are revised.

Supplement I to Part 1003—Official Interpretations

* * * * *

Section 1003.2—Definitions

*   *   *   *   *

2(g) Financial Institution

*   *   *   *   *

3. *Merger or acquisition—coverage of surviving or newly formed institution.* After a merger or acquisition, the surviving or newly formed institution is a financial institution under § 1003.2(g) if it, considering the combined assets, location, and lending activity of the surviving or newly formed institution and the merged or acquired institutions or acquired branches, satisfies the criteria included in § 1003.2(g). For example, A and B merge. The surviving or newly formed institution meets the loan threshold described in § 1003.2(g)(1)(v)(B) if the surviving or newly formed institution, A, and B originated a combined total of at least 100 open-end lines of credit in each of the two preceding calendar years. Likewise, the surviving or newly formed institution meets the asset-size threshold in § 1003.2(g)(1)(i) if its assets and the combined assets of A and B on December 31 of the preceding calendar year exceeded the threshold described in § 1003.2(g)(1)(i). Comment 2(g)-4 discusses a financial institution's responsibilities during the calendar year of a merger.

* * *

5. *Originations.* Whether an institution is a financial institution depends in part on whether the institution originated at least 25 closed-end mortgage loans in each of the two preceding calendar years or at least 100 open-end lines of credit in each of the two preceding calendar years. Comments 4(a)-2 through -4 discuss whether activities with respect to a particular closed-end mortgage loan or open-end line of credit constitute an origination for purposes of § 1003.2(g).

*   *   *   *   *

Section 1003.3—Exempt Institutions and Excluded Transactions

*   *   *   *   *

3(c) Excluded transactions.

*   *   *   *   *

Paragraph 3(c)(12).

1. *General*. Section 1003.3(c)(12) provides that an open-end line of credit is an excluded transaction if a financial institution originated fewer than 100 open-end lines of credit in either of the two preceding calendar years. For example, assume that a bank is a financial institution in 2022 under § 1003.2(g) because it originated 50 closed-end mortgage loans in 2020, 75 closed-end mortgage loans in 2021, and met all of the other requirements under § 1003.2(g)(1). Also assume that the bank originated 75 and 85 open-end lines of credit in 2020 and 2021, respectively. The closed-end mortgage loans that the bank originated, or for which it received applications, during 2022 are covered loans and must be reported, unless they otherwise are excluded transactions under § 1003.3(c). However, the open-end lines of credit that the bank originated, or for which it received applications, during 2022 are excluded transactions under § 1003.3(c)(12) and need not be reported. See comments 4(a)-2 through -4 for guidance about the activities that constitute an origination.

2. *Voluntary reporting.* A financial institution voluntarily may report open-end lines of credit and applications for open-end lines of credit that are excluded transactions because the financial institution originated fewer than 100 open-end lines of credit in either of the two preceding calendar years.

[THIS SIGNATURE PAGE PERTAINS TO THE PROPOSED RULE TITLED "HOME MORTGAGE DISCLOSURE (REGULATION C) TEMPORARY INCREASE IN INSTITUTIONAL AND TRANSACTIONAL COVERAGE THRESHOLDS FOR OPEN-END LINES OF CREDIT"]

Dated: July 13, 2017.

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