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BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1003

[Docket No. CFPB–2019-0021]

RIN 3170-AA76

Home Mortgage Disclosure (Regulation C)

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Final rule; official interpretation.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is amending Regulation C to adjust the threshold for reporting data about open-end lines of credit by extending to January 1, 2022, the current temporary threshold of 500 open-end lines of credit. The Bureau is also incorporating into Regulation C the interpretations and procedures from the interpretive and procedural rule that the Bureau issued on August 31, 2018, and implementing further section 104(a) of the Economic Growth, Regulatory Relief, and Consumer Protection Act.

DATES: This final rule is effective on January 1, 2020, except that the amendments to § 1003.2 in amendatory instruction 6, the amendments to § 1003.3 in amendatory instruction 7, and the amendments to supplement I to part 1003 in amendatory instruction 8 are effective on January 1, 2022.

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SUPPLEMENTARY INFORMATION:

I. Summary of the Final Rule

Regulation C, 12 CFR part 1003, implements the Home Mortgage Disclosure Act (HMDA), 12 U.S.C. 2801 through 2810, and includes institutional and transactional coverage thresholds that determine whether financial institutions are required to collect, record, and report any HMDA data on closed-end mortgage loans or open-end lines of credit (collectively, coverage thresholds).[1] In the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA),[2] Congress added partial exemptions from HMDA's requirements that exempt certain insured depository institutions and insured credit unions from reporting some but not all HMDA data for certain transactions. The final rule incorporates into Regulation C and implements further the EGRRCPA partial exemptions. It also extends for two years a temporary adjustment to Regulation C's institutional and transactional coverage threshold for open-end lines of credit.[3]

A. Extension of Temporary Adjustment to Open-End Coverage Threshold

In an October 2015 final rule (2015 HMDA Rule), the Bureau established institutional and transactional coverage thresholds in Regulation C, and these thresholds affect whether financial institutions need to report any information under HMDA for transactions.[4] The 2015 HMDA Rule set the closed-end threshold at 25 loans in each of the two preceding calendar

[1] HMDA requires financial institutions to collect, record, and report data. To simplify review of this document, the Bureau generally refers herein to the obligation to report data instead of listing all of these obligations in each instance.

[2] Public Law 115–174, 132 Stat. 1296 (2018).

[3] When amending the Bureau's commentary, the Office of the Federal Register requires reprinting of certain subsections being amended in their entirety rather than providing more targeted amendatory instructions and commentary. The subsections of regulatory text and commentary included in this document show the complete language of those subsections. In addition, the Bureau is releasing an unofficial, informal redline to assist industry and other stakeholders in reviewing the changes that it is finalizing to the regulatory text and commentary of Regulation C. This redline can be found on the Bureau's regulatory implementation page for the HMDA Rule at https://www.consumerfinance.gov/policy-compliance/guidance/hmda-implementation/. If any conflicts exist between the redline and this final rule, this final rule is the controlling document.

[4] Home Mortgage Disclosure (Regulation C), 80 FR 66128 (Oct. 28, 2015).

years, and the open-end threshold at 100 open-end lines of credit in each of the two preceding calendar years. In 2017, before those thresholds took effect, the Bureau temporarily increased the open-end threshold to 500 open-end lines of credit for two years (calendar years 2018 and 2019). The final rule extends to January 1, 2022, the current temporary threshold of 500 open-end lines of credit for open-end institutional and transactional coverage. The Bureau intends to address in a separate final rule the changes it proposed to the permanent coverage thresholds for open-end lines of credit and closed-end mortgage loans.[5] In the interim, extending the current temporary increase in the open-end coverage threshold for an additional two years will allow the Bureau to consider fully the appropriate level for the permanent open-end coverage threshold for data collected beginning January 1, 2022, after reviewing additional comments relating to that aspect of the proposal. Such an extension will ensure that any institutions that are covered under the new permanent open-end coverage threshold have until January 1, 2022 to comply.

B. Implementation of Partial Exemptions

The final rule also implements further the partial exemptions from HMDA's requirements that the EGRRCPA recently added to HMDA. In August 2018, the Bureau issued an interpretive and procedural rule to implement and clarify the EGRRCPA amendments to HMDA (2018 HMDA Rule).[6] The 2018 HMDA Rule clarifies that insured depository institutions and insured credit unions covered by a partial exemption have the option of reporting exempt data fields as long as they report all data fields within any exempt data point for which they report data; clarifies that only loans and lines of credit that are otherwise HMDA reportable count toward the thresholds for the partial exemptions; clarifies which of the data points in

[5] *See* Home Mortgage Disclosure (Regulation C); Reopening of Comment Period, 84 FR 37804 (Aug. 2, 2019).
[6] Partial Exemptions from the Requirements of the Home Mortgage Disclosure Act Under the Economic Growth, Regulatory Relief, and Consumer Protection Act (Regulation C), 83 FR 45325 (Sept. 7, 2018).

Regulation C are covered by the partial exemptions; designates a non-universal loan identifier for partially exempt transactions for institutions that choose not to report a universal loan identifier; and clarifies the exception to the partial exemptions for insured depository institutions with less than satisfactory examination histories under the Community Reinvestment Act of 1977 (CRA). The final rule incorporates into Regulation C these interpretations and procedures, with minor adjustments, by adding new § 1003.3(d) relating to the partial exemptions and making various amendments to the data compilation requirements in § 1003.4. The final rule further implements the EGRRCPA by addressing certain additional interpretive issues relating to the partial exemptions that the 2018 HMDA Rule did not specifically address, such as how to determine whether a partial exemption applies to a transaction after a merger or acquisition.

II. Background

A. HMDA and Regulation C

HMDA requires certain depository institutions and for-profit nondepository institutions to report 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). The purposes of HMDA are to provide the public with loan data that can be used: (i) to help determine whether financial institutions are serving the housing needs of their communities; (ii) to assist public officials in distributing public-sector investment so as to attract private investment to areas where it is needed; and (iii) to assist in identifying possible discriminatory lending patterns and enforcing antidiscrimination statutes.[7] Prior to enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), Regulation

[7] 12 CFR 1003.1.

C required reporting of 22 data points and allowed for optional reporting of reasons an institution denied an application.[8]

B. Dodd-Frank Act

In 2010, Congress enacted the Dodd-Frank Act, which amended HMDA and transferred HMDA rulemaking authority and other functions from the Board of Governors of the Federal Reserve System (Board) to the Bureau.[9] Among other changes, the Dodd-Frank Act expanded the scope of information relating to mortgage applications and loans that institutions must compile, maintain, and report under HMDA. Specifically, the Dodd-Frank Act amended HMDA section 304(b)(4) by adding one new data point, the age of loan applicants and mortgagors. The Dodd-Frank Act also added new HMDA section 304(b)(5) and (6), which requires the following additional new data points: information relating to the total points and fees payable at origination (total loan costs or total points and fees); the difference between the annual percentage rate (APR) associated with the loan and a benchmark rate or rates for all loans (rate spread); 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 on the loan; the presence of contract terms allowing non-amortizing payments; the channel through which the application was made; and the credit scores of applicants and mortgagors.[10] New HMDA section 304(b)(6) in addition authorizes the Bureau to require, "as [it] may determine to be appropriate," a unique identifier that identifies the loan originator, a universal loan identifier (ULI), and the parcel number that corresponds to the

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[8] As used in this final rule, the term "data point" refers to items of information that entities are required to compile and report, generally listed in separate paragraphs in Regulation C. Some data points are reported using multiple data fields.

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

[10] Dodd-Frank Act section 1094(3), *amending* HMDA section 304(b), 12 U.S.C. 2803(b).

real property pledged as collateral for the mortgage loan.[11] New HMDA section 304(b)(5)(D) and (6)(J) further provides the Bureau with the authority to mandate reporting of "such other information as the Bureau may require."[12]

C. 2015 HMDA Rule

In October 2015, the Bureau issued the 2015 HMDA Rule implementing the Dodd-Frank Act amendments to HMDA.[13] Most of the 2015 HMDA Rule took effect on January 1, 2018.[14] The 2015 HMDA Rule implemented the new data points specified in the Dodd-Frank Act,[15] added a number of additional data points pursuant to the Bureau's discretionary authority under HMDA section 304(b)(5) and (6),[16] and made revisions to certain pre-existing data points to clarify their requirements, provide greater specificity in reporting, and align certain data points more closely with industry data standards,[17] among other changes.

The 2015 HMDA Rule requires some financial institutions to report data on certain dwelling-secured, open-end lines of credit, including home-equity lines of credit. Prior to the 2015 HMDA Rule, Regulation C allowed, but did not require, reporting of home-equity lines of credit.

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[11] *Id.*

[12] *Id.*

[13] 80 FR 66128 (Oct. 28, 2015).

[14] *Id.* at 66128, 66256–58.

[15] The following 12 data points in 12 CFR 1003.4(a) implement specific provisions in HMDA section 304(b)(5)(A) through (C) or (b)(6)(A) through (I): ULI (1003.4(a)(1)(i)); property address (1003.4(a)(9)(i)); rate spread (1003.4(a)(12)); credit score (1003.4(a)(15)); total loan costs or total points and fees (1003.4(a)(17)); prepayment penalty term (1003.4(a)(22)); loan term (1003.4(a)(25)); introductory rate period (1003.4(a)(26)); non-amortizing features (1003.4(a)(27)); property value (1003.4(a)(28)); application channel (1003.4(a)(33)); and mortgage loan originator identifier (1003.4(a)(34)). *Id.*

[16] For example, the 2015 HMDA Rule added a requirement to report debt-to-income ratio in § 1003.4(a)(23). *Id.* at 66218–20.

[17] For example, the 2015 HMDA Rule replaced property type with number of total units and construction method in § 1003.4(a)(5) and (31). *Id.* at 66180–81, 66227. It also requires disaggregation of ethnicity and race information in § 1003.4(a)(10)(i). *Id.* at 66187–94.

The 2015 HMDA Rule also established institutional coverage thresholds based on loan volume that limit the definition of "financial institution" to include only those institutions that either originated at least 25 closed-end mortgage loans in each of the two preceding calendar years or originated at least 100 open-end lines of credit in each of the two preceding calendar years.[18] The 2015 HMDA Rule separately established transactional coverage thresholds that are part of the test for determining which loans are excluded from coverage and were designed to work in tandem with the institutional coverage thresholds.[19]

D. 2017 HMDA Rule and December 2017 Statement

In April 2017, the Bureau issued a notice of proposed rulemaking to address certain technical errors in the 2015 HMDA Rule, ease the burden of reporting certain data requirements, and clarify key terms to facilitate compliance with Regulation C.[20] In July 2017, the Bureau issued a notice of proposed rulemaking (July 2017 HMDA Proposal) to increase temporarily the 2015 HMDA Rule's open-end coverage threshold of 100 for both institutional and transactional coverage, so that institutions originating fewer than 500 open-end lines of credit in either of the two preceding calendar years would not have to commence collecting or reporting data on their open-end lines of credit until January 1, 2020.[21] In August 2017, the Bureau issued the 2017 HMDA Rule, which, inter alia, temporarily increased the open-end threshold to 500 open-end lines of credit for calendar years 2018 and 2019.[22] In doing so, the Bureau indicated that the

[18] *Id.* at 66148-50, 66309 (codified at 12 CFR 1003.2(g)(1)(v)). The 2015 HMDA Rule excludes certain transactions from the definition of covered loans, and those excluded transactions do not count towards the threshold. *Id.*
[19] *Id.* at 66173, 66310, 66322 (codified at 12 CFR 1003.3(c)(11) and (12)).
[20] Technical Corrections and Clarifying Amendments to the Home Mortgage Disclosure (Regulation C) October 2015 Final Rule, 82 FR 19142 (Apr. 25, 2017).
[21] Home Mortgage Disclosure (Regulation C) Temporary Increase in Institutional and Transactional Coverage Thresholds for Open-End Lines of Credit, 82 FR 33455 (July 20, 2017).
[22] Home Mortgage Disclosure (Regulation C), 82 FR 43088 (Sept. 13, 2017).

two-year period would allow time for the Bureau to decide, through an additional rulemaking, whether any permanent adjustments to the open-end threshold are needed.[23]

Recognizing the significant systems and operations challenges needed to adjust to the revised regulation, the Bureau issued a statement in December 2017 (December 2017 Statement) indicating that, for HMDA data collected in 2018 and reported in 2019, the Bureau did not intend to require data resubmission unless data errors are material.[24] The December 2017 Statement also explained that the Bureau did not intend to assess penalties with respect to errors in data collected in 2018 and reported in 2019.[25] As explained in the statement, any supervisory examinations of 2018 HMDA data would be diagnostic to help institutions identify compliance weaknesses and would credit good-faith compliance efforts. In its December 2017 Statement, the Bureau indicated that it intended to engage in a rulemaking to reconsider various aspects of the 2015 HMDA Rule, such as the institutional and transactional coverage tests and the rule's discretionary data points. The Board, the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), and the Office of the Comptroller of the Currency (OCC) released similar statements relating to their supervisory examinations.[26]

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[23] *Id.* at 43095. The 2017 HMDA Rule also, among other things, replaced "each" with "either" in § 1003.3(c)(11) and (12) to correct a drafting error and to ensure that the exclusion provided in that section mirrors the loan-volume threshold for financial institutions in § 1003.2(g). *Id.* at 43100, 43102.

[24] Bureau of Consumer Fin. Prot., "Statement with Respect to HMDA Implementation" (Dec. 21, 2017), *https://files.consumerfinance.gov/f/documents/cfpb_statement-with-respect-to-hmda-implementation_122017.pdf*.

[25] The statement also indicated that collection and submission of the 2018 HMDA data will provide financial institutions an opportunity to identify any gaps in their implementation of amended Regulation C and make improvements in their HMDA compliance management systems for future years. *Id.*

[26] As part of its spring 2018 Call for Evidence series of Requests for Information, the Bureau issued a Request for Information Regarding the Bureau's Adopted Regulations and New Rulemaking Authorities, 83 FR 12286 (Mar. 21, 2018) (RFI on Adopted Regulations) and a Request for Information Regarding the Bureau's Inherited Regulations and Inherited Rulemaking Authorities, 83 FR 12881 (Mar. 26, 2018). The RFI on Adopted Regulations did not request feedback on the 2015 HMDA Rule nor that rule's subsequent amendments because the Bureau had previously announced in the December 2017 Statement that it intended to engage in a rulemaking process to reconsider the 2015 HMDA Rule. However, the Bureau received a few comments relating to HMDA in response to the RFI on Adopted Regulations. The Bureau considered these comments as well as other input it has received from

E. EGRRCPA and 2018 HMDA Rule

On May 24, 2018, the President signed into law the EGRRCPA.[27] Section 104(a) of the EGRRCPA amends HMDA section 304(i) by adding partial exemptions from HMDA's requirements for certain insured depository institutions and insured credit unions.[28] New HMDA section 304(i)(1) provides that the requirements of HMDA section 304(b)(5) and (6) shall not apply with respect to closed-end mortgage loans of an insured depository institution or insured credit union if it originated fewer than 500 closed-end mortgage loans in each of the two preceding calendar years. New HMDA section 304(i)(2) provides that the requirements of HMDA section 304(b)(5) and (6) shall not apply with respect to open-end lines of credit of an insured depository institution or insured credit union if it originated fewer than 500 open-end lines of credit in each of the two preceding calendar years. Notwithstanding the new partial exemptions, new HMDA section 304(i)(3) provides that an insured depository institution must comply with HMDA section 304(b)(5) and (6) if it has received a rating of "needs to improve record of meeting community credit needs" during each of its two most recent examinations or a rating of "substantial noncompliance in meeting community credit needs" on its most recent examination under section 807(b)(2) of the CRA.[29]

On August 31, 2018, the Bureau issued an interpretive and procedural rule (2018 HMDA Rule) to implement and clarify section 104(a) of the EGRRCPA and effectuate the purposes of

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stakeholders through its efforts to monitor and support industry implementation of the 2015 HMDA Rule and the 2017 HMDA Rule in developing the May 2019 Proposal and the Advance Notice of Proposed Rulemaking that the Bureau released simultaneously with the May 2019 Proposal.

[27] Public Law 115–174, 132 Stat. 1296 (2018).

[28] For purposes of HMDA section 104, the EGRRCPA provides that the term "insured credit union" has the meaning given the term in section 101 of the Federal Credit Union Act, 12 U.S.C. 1752, and the term "insured depository institution" has the meaning given the term in section 3 of the Federal Deposit Insurance Act, 12 U.S.C. 1813.

[29] 12 U.S.C. 2906(b)(2).

the EGRRCPA and HMDA.[30] The 2018 HMDA Rule clarifies that insured depository institutions and insured credit unions covered by a partial exemption have the option of reporting exempt data fields as long as they report all data fields within any exempt data point for which they report data; clarifies that only loans and lines of credit that are otherwise HMDA reportable count toward the thresholds for the partial exemptions; clarifies which of the data points in Regulation C are covered by the partial exemptions; designates a non-universal loan identifier for partially exempt transactions for institutions that choose not to report a ULI; and clarifies the exception to the partial exemptions for insured depository institutions with less than satisfactory CRA examination histories. The 2018 HMDA Rule also explains that, because the EGRRCPA does not provide a specific effective date for section 104(a) and because there are no other statutory indications that section 104(a) becomes effective upon regulatory action or some other event or condition, the best interpretation is that section 104(a) took effect when the EGRRCPA became law on May 24, 2018. In the 2018 HMDA Rule, the Bureau stated that it anticipated that, at a later date, it would initiate a notice-and-comment rulemaking to incorporate the interpretations and procedures into Regulation C and further implement the EGRRCPA. As discussed in part III below, in May 2019 the Bureau issued a notice of proposed rulemaking (May 2019 Proposal) that sought public comment on such an incorporation and further implementation.[31] After reviewing the comments received, the Bureau now issues this final rule

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[30] 83 FR 45325 (Sept. 7, 2018). Prior to issuing the 2018 HMDA Rule, the Bureau, the Board, the FDIC, the NCUA, and the OCC released statements on July 5, 2018, reiterating or referring to their December 2017 compliance statements and providing information about formatting and submission of 2018 loan/application registers. *See, e.g.*, Bureau of Consumer Fin. Prot., "Statement on the Implementation of the Economic Growth, Regulatory Relief, and Consumer Protection Act Amendments to the Home Mortgage Disclosure Act" (July 25, 2018), *https://www.consumerfinance.gov/about-us/newsroom/bureau-consumer-financial-protection-issues-statement-implementation-economic-growth-regulatory-relief-and-consumer-protection-act-amendments-home-mortgage-disclosure-act/*.

[31] Home Mortgage Disclosure (Regulation C), 84 FR 20972 (May 13, 2019).

that incorporates the interpretations and procedures into Regulation C and further implements the EGRRCPA.

F. HMDA Coverage Under Current Regulation C

The Bureau's estimates of HMDA coverage and the sources used in deriving those estimates are explained in detail in the Bureau's analysis under Dodd-Frank Act section 1022(b) in part VII below.[32] The Bureau estimated in the May 2019 Proposal that currently there are about 4,960 financial institutions required to report their closed-end mortgage loans and applications under HMDA. The Bureau estimated that approximately 4,263 of these current reporters are depository institutions and approximately 697 are nondepository institutions. The Bureau estimated that together, these financial institutions originated about 7.0 million closed-end mortgage loans in calendar year 2017. The Bureau estimated that among those 4,960 financial institutions that are currently required to report closed-end mortgage loans under HMDA, about 3,300 insured depository institutions and insured credit unions are partially exempt for closed-end mortgage loans under the EGRRCPA and the 2018 HMDA Rule, and thus are not required to report a subset of the data points currently required by Regulation C for these transactions.

As explained in more detail in part VII.E.3 and table 3 below, under the temporary 500 open-end line of credit coverage threshold set in the 2017 HMDA Rule, the Bureau estimated in the May 2019 Proposal that currently there are about 333 financial institutions required to report about 1.23 million open-end lines of credit under HMDA. Of these institutions, the Bureau

[32] *See infra* part VII.D.1. As discussed further in part VII below, the Bureau's analyses in the May 2019 Proposal were based on HMDA data collected in 2016 and 2017 and other sources. In part VII of this final rule, the Bureau has supplemented the analyses from the May 2019 Proposal relating to the provisions to implement the EGRRCPA and the provisions to extend the temporary open-end coverage threshold with the 2018 HMDA data that were released to the public on August 30, 2019. *See infra* part VII.E.2 & VII.E.3.

estimated that approximately 318 are depository institutions and approximately 15 are nondepository institutions. None of these 333 institutions are partially exempt.

In comparison, if the open-end coverage threshold were to adjust to 100 on January 1, 2020 pursuant to the 2017 HMDA Rule, the Bureau estimated in the May 2019 Proposal that the number of reporters would be about 1,014, who in total originate about 1.41 million open-end lines of credit. The Bureau estimated that approximately 972 of these open-end reporters would be depository institutions and approximately 42 would be nondepository institutions. The Bureau estimated that, among the 1,014 financial institutions that would be required to report open-end lines of credit under a threshold of 100, about 618 insured depository institutions and insured credit unions are partially exempt for open-end lines of credit under the EGRRCPA and the 2018 HMDA Rule, and thus would not be required to report a subset of the data points currently required by Regulation C for these transactions.

III. Summary of the Rulemaking Process

On May 2, 2019, the Bureau issued the May 2019 Proposal relating to Regulation C's coverage thresholds and the EGRRCPA partial exemptions under HMDA and requested public comment.[33] The May 2019 Proposal was published in the *Federal Register* on May 13, 2019.

In the May 2019 Proposal, the Bureau proposed two alternatives to amend Regulation C to increase the current 25-loan coverage threshold for reporting data about closed-end mortgage loans so that institutions originating fewer than either 50 closed-end mortgage loans, or alternatively 100 closed-end mortgage loans, in either of the two preceding calendar years would

[33] 84 FR 20972 (May 13, 2019). The Bureau also issued concurrently with the May 2019 Proposal an Advance Notice of Proposed Rulemaking to solicit comment, data, and information from the public about the data points that the 2015 HMDA Rule added to Regulation C or revised to require additional information and Regulation C's coverage of certain business- or commercial-purpose transactions. Home Mortgage Disclosure (Regulation C) Data Points and Coverage, 89 FR 20049 (May 8, 2019); *see also* Home Mortgage Disclosure (Regulation C), 80 FR 66128 (Oct. 28, 2015). The Advance Notice of Proposed Rulemaking was published in the *Federal Register* on May 8, 2019.

not have to report such data. The May 2019 Proposal proposed an effective date of January 1, 2020 for the amendment to the closed-end coverage threshold. The May 2019 Proposal also proposed to adjust the coverage threshold for reporting data about open-end lines of credit by (a) extending to January 1, 2022 the current temporary coverage threshold of 500 open-end lines of credit, and (b) setting the permanent coverage threshold at 200 open-end lines of credit upon the expiration of the proposed extension of the temporary coverage threshold. In the May 2019 Proposal, the Bureau also proposed to incorporate into Regulation C the interpretations and procedures from the interpretive and procedural rule that the Bureau issued on August 31, 2018 to implement and clarify section 104(a) of the EGRRCPA,[34] and proposed to make other changes to effectuate section 104(a).

The comment period for the May 2019 Proposal closed on June 12, 2019.[35] The Bureau received over 300 comments from lenders, industry trade associations, consumer groups, consumers, members of Congress, and others. As discussed in more detail below, the Bureau has considered these comments in adopting this final rule.

Among the comments received were a number of letters expressing concern that the national loan level dataset for 2018 and the Bureau's annual overview of residential mortgage lending based on that data (collectively, the 2018 HMDA Data) would not be available until after the close of the comment period for the May 2019 Proposal. Stakeholders asked to submit comments on the May 2019 Proposal that reflect consideration of the 2018 HMDA Data. To allow for the submission of such comments, the Bureau reopened the comment period on certain

[34] Partial Exemptions from the Requirements of the Home Mortgage Disclosure Act Under the Economic Growth, Regulatory Relief, and Consumer Protection Act (Regulation C), 83 FR 45325 (Sept. 7, 2018).
[35] A separate comment period related to the Paperwork Reduction Act closed on July 12, 2019. 84 FR 20972 (May 13, 2019).

aspects of the proposal until October 15, 2019.[36] Specifically, the Bureau reopened the comment period with respect to: (1) the Bureau's proposed amendments to the permanent coverage threshold for closed-end mortgage loans, (2) the Bureau's proposed amendments to the permanent coverage threshold for open-end lines of credit, and (3) the appropriate effective date for any amendment to the closed-end coverage threshold.[37] After reviewing the comments it receives by the October 15, 2019 deadline, the Bureau anticipates that it will issue a separate final rule in 2020 addressing the permanent thresholds for closed-end mortgage loans and open-end lines of credit. The Bureau therefore generally does not discuss the proposed amendments to those permanent threshold provisions for the remainder of this document.

The Bureau concluded that further comment was not necessary with respect to the other aspects of the May 2019 Proposal.[38] The Bureau therefore did not reopen the comment period with respect to the May 2019 Proposal's proposed two-year extension of the temporary coverage threshold for open-end lines of credit or the provisions in the May 2019 Proposal that would incorporate the EGRRCPA partial exemptions into Regulation C and further effectuate EGRRCPA section 104(a). This final rule addresses these aspects of the May 2019 Proposal.

IV. Legal Authority

The Bureau is issuing this final 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

[36] 84 FR 37804 (Aug. 2, 2019).
[37] *Id.* at 37806.
[38] *Id.*

Board.[39] 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."[40] 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."[41] Both HMDA and title X of the Dodd-Frank Act are Federal consumer financial laws.[42] Accordingly, the Bureau has authority to issue regulations to implement HMDA.

HMDA section 305(a) broadly authorizes the Bureau to prescribe such regulations as may be necessary to carry out HMDA's purposes.[43] 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.[44]

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[39] 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*.
[40] 12 U.S.C. 5581(a)(1)(A).
[41] 12 U.S.C. 5512(b)(1).
[42] 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).
[43] 12 U.S.C. 2804(a).
[44] *Id.*

V. Section-by-Section Analysis

Section 1003.2 Definitions

2(g) Financial Institution

Regulation C requires financial institutions to report HMDA data. Section 1003.2(g) defines financial institution for purposes of Regulation C and sets forth Regulation C's institutional coverage criteria for depository financial institutions and nondepository financial institutions.[45] In the 2015 HMDA Rule, the Bureau adjusted the institutional coverage criteria under Regulation C so that depository institutions and nondepository institutions are required to report HMDA data if they: (1) originated at least 25 closed-end mortgage loans or 100 open-end lines of credit in each of the two preceding calendar years, and (2) meet all of the other applicable criteria for reporting. In the 2017 HMDA Rule, the Bureau amended § 1003.2(g) and related commentary to increase temporarily from 100 to 500 the number of open-end originations required to trigger reporting responsibilities.[46] In the May 2019 Proposal, the Bureau proposed to amend §§ 1003.2(g)(1)(v)(B) and (g)(2)(ii)(B) and 1003.3(c)(12) and related commentary to extend to January 1, 2022, the current temporary open-end coverage threshold of 500 open-end lines of credit. For the reasons discussed below, the Bureau is finalizing the amendments relating to the two-year extension of the temporary open-end coverage threshold as proposed.

The Bureau also proposed in May 2019 to increase the permanent open-end coverage threshold to 200 open-end lines of credit effective January 1, 2022. As discussed in part III

[45] 12 CFR 1003.2(g)(1) (definition of depository financial institution); 1003.2(g)(2) (definition of nondepository financial institution).
[46] 82 FR 43088, 43095 (Sept. 13, 2017).

above, the Bureau has reopened the comment period relating to the May 2019 Proposal's proposed amendments to the permanent thresholds for closed-end mortgage loans and open-end lines of credit.[47] After reviewing the comments received during the reopened comment period, the Bureau intends to issue a final rule addressing the permanent open-end coverage threshold that would take effect on January 1, 2022.

Legal authority for changes to § 1003.2(g)

In the 2015 HMDA Rule, the Bureau adopted the thresholds for certain depository institutions in § 1003.2(g)(1) pursuant to its authority under section 305(a) of HMDA to provide for such adjustments and exceptions for any class of transactions that in the judgment of the Bureau are necessary and proper to effectuate the purposes of HMDA. Pursuant to section 305(a) of HMDA, for the reasons given in the 2015 HMDA Rule, the Bureau found that the exception in § 1003.2(g)(1) is necessary and proper to effectuate the purposes of and facilitate compliance with HMDA. The Bureau found that the provision, by reducing burden on financial institutions and establishing a consistent loan-volume test applicable to all financial institutions, would facilitate compliance with HMDA's requirements.[48] Additionally, as discussed in the 2015 HMDA Rule, the Bureau adopted the thresholds for certain nondepository institutions in § 1003.2(g)(2) pursuant to its interpretation of 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. The Bureau stated that it interprets these provisions, as the Board also did, to evince the intent to exclude from coverage institutions that make a relatively small number of mortgage loans.[49] Pursuant to its authority

[47] 84 FR 37804 (Aug. 2, 2019).
[48] 80 FR 66128, 66150 (Oct. 28, 2015).
[49] *Id.* at 66153.

under HMDA section 305(a), and for the reasons discussed below, the Bureau believes that this final rule's amendments to extend for two years the temporary thresholds for open-end lines of credit in § 1003.2(g)(1) and (2) are necessary and proper to effectuate the purposes of HMDA and facilitate compliance with HMDA by reducing burden and establishing a consistent loan-volume test, while still providing significant market coverage.

2(g)(1) Depository Financial Institution

2(g)(1)(v)

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

Background on Reporting Data Concerning Open-End Lines of Credit Under the 2015 HMDA Rule and the 2017 HMDA Rule

By its terms, the definition of "mortgage loan" in HMDA covers all loans secured by residential real property and home improvement loans whether open- or closed-end.[50] However, home-equity lines of credit were uncommon in the 1970s and early 1980s when Regulation C was first issued, and the Board's definition covered only closed-end loans. 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, which were optionally reported.[51] However, the Board's 2002 final rule left open-end reporting voluntary, as the Board determined that the benefits of mandatory reporting relative to other then proposed amendments (such as collecting information about higher-priced loans) did not justify the increased burden.[52]

[50] HMDA section 303(2), 12 U.S.C. 2802(2).
[51] 65 FR 78656, 78659–60 (Dec. 15, 2000). In 1988, the Board had amended Regulation C to permit, but not require, financial institutions to report certain home-equity lines of credit. 53 FR 31683, 31685 (Aug. 19, 1988).
[52] 67 FR 7222, 7225 (Feb. 15, 2002).

As discussed in the 2015 HMDA 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.[53] In light of that development and the role that open-end lines of credit may have played in contributing to the financial crisis,[54] the Bureau decided in the 2015 HMDA Rule to require reporting of dwelling-secured, consumer purpose open-end lines of credit,[55] concluding that doing so was a reasonable interpretation of "mortgage loan" in HMDA and necessary and proper to effectuate the purposes of HMDA and prevent evasions thereof.[56]

As noted in the 2015 HMDA Rule, in expanding coverage to include mandatory reporting of 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.[57] The Bureau sought to avoid imposing these costs on small institutions with limited open-end lending, where the benefits of

[53] 80 FR 66128, 66160 (Oct. 28, 2015).
[54] *Id.* The Bureau stated in the 2015 HMDA Rule that research indicated that some 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 depreciation during the financial crisis. *Id.* 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. *Id.*
[55] The Bureau also required reporting of applications for, and originations of, dwelling-secured commercial-purpose lines of credit for home purchase, home improvement, or refinancing purposes. *Id.* at 66171.
[56] *Id.* at 66157-62. HMDA and Regulation C are designed to provide citizens and public officials sufficient information about mortgage lending to ensure that 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 to areas where it is needed, and to assist in identifying possible discriminatory lending patterns and enforcing antidiscrimination statutes. The Bureau believes that collecting information about all dwelling-secured, consumer-purpose open-end lines of credit serves these purposes.
[57] *Id.* at 66128, 66161.

reporting the data do not justify the costs of reporting.[58] In seeking to draw such a line, the Bureau acknowledged that it was handicapped by the lack of available data concerning open-end lending.[59] This created challenges both in estimating the distribution of open-end origination volume across financial institutions and in estimating the one-time and ongoing costs that institutions of various sizes would be likely to incur in reporting data on open-end lending.

To estimate the one-time and ongoing costs of reporting data under HMDA in the 2015 HMDA Rule, 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).[60] The Bureau then sought to estimate one-time and ongoing costs for a representative institution in each tier.[61]

The Bureau recognized in the 2015 HMDA Rule that the one-time cost of reporting open-end lines of credit could be substantial because most financial institutions had not reported open-end lines of credit and thus would have to develop completely new systems 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.[62] However, for tier 3, low-complexity institutions, the Bureau believed that

[58] *Id.* at 66149.
[59] *Id.*
[60] *Id.* at 66261, 66269-70. In the 2015 HMDA Rule and the 2017 HMDA Rule, the Bureau assigned financial institutions to tiers by adopting cutoffs based on the estimated open-end line of credit volume. *Id.* at 66285; 82 FR 43088, 43128 (Sept. 13, 2017). Specifically, the Bureau assumed the lenders that originated fewer than 200 but more than 100 open-end lines of credit were tier 3 (low-complexity) open-end reporters; lenders that originate between 200 and 7,000 open-lines of credit were tier 2 (moderate-complexity) open-end reporters; and lenders that originated more than 7,000 open-end lines of credit were tier 1 (high-complexity) open-end reporters. 80 FR 66128, 66285 (Oct. 28, 2015); 82 FR 43088, 43128 (Sept. 13, 2017). As explained below in part VII.D.1, for purposes of this final rule, the Bureau has used a more precise methodology to assign eligible financial institutions to tiers 2 and 3 for their open-end reporting, which relies on constraints relating to the estimated numbers of impacted institutions and loan/application register records for the applicable provision.
[61] 80 FR 66128, 66264-65 (Oct. 28, 2015); *see also id.* at 66284.
[62] *Id.* at 66264; *see also id.* at 66284–85.

the additional one-time costs of open-end reporting would be relatively low. Because these institutions are less reliant on information technology systems for HMDA reporting and they may process open-end lines of credit on the same system and in the same business unit as closed-end mortgage loans, their one-time costs would be derived mostly from new training and procedures adopted for the overall changes in the final rule, not distinct from costs related to changes in reporting of closed-end mortgage loans.[63]

The Bureau acknowledged in the 2015 HMDA Rule that ongoing 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 capture fully.[64] At the same time, the Bureau stated it believed that the HMDA reporting process and ongoing operational cost structure for open-end reporting would be fundamentally similar to closed-end reporting.[65] Thus, using the ongoing cost estimates developed for closed-end reporting, the Bureau estimated that for a representative tier 1 institution the ongoing operational costs would be $273,000 per year; for a representative tier 2 institution $43,400 per year; and for a representative tier 3 institution $8,600 per year.[66] These translated into costs per HMDA record of approximately $9, $43, and $57 respectively.[67] The Bureau acknowledged that, precisely because no good source of publicly available data exists concerning open-end lines of credit, it was difficult to predict the accuracy of the Bureau's cost estimates but also stated its belief that these estimates were reasonably reliable.[68]

[63] *Id.* at 66265; *see also id.* at 66284.
[64] *Id.* at 66285.
[65] *Id.*
[66] *Id.* at 66264, 66286.
[67] *Id.*
[68] *Id.* at 66162.

Drawing on all of these estimates, the Bureau decided in the 2015 HMDA Rule to establish an open-end coverage threshold that would require institutions that originate 100 or more open-end lines of credit in each of the two preceding calendar years to report data on such lines of credit. The Bureau estimated that this threshold would avoid imposing the burden of establishing mandatory open-end reporting on approximately 3,000 predominantly smaller-sized institutions with low-volume open-end lending[69] and would require reporting by 749 financial institutions, all but 24 of which would also report data on their closed-end mortgage lending.[70] The Bureau explained in the 2015 HMDA Rule that it believed this threshold appropriately balanced the benefits and burdens of covering institutions based on their open-end mortgage lending.[71] However, as discussed in the 2017 HMDA Rule, the Bureau lacked robust data for the estimates that it used to establish the open-end threshold in the 2015 HMDA Rule.[72]

The 2017 HMDA Rule explained that, between 2013 and 2017, the number of dwelling-secured open-end lines of credit financial institutions originated had increased by 36 percent.[73] The Bureau noted that, to the extent institutions that had been originating fewer than 100 open-end lines of credit shared in that growth, the number of institutions at the margin that would be required to report under an open-end threshold of 100 lines of credit would also increase.[74] Additionally, in the 2017 HMDA Rule, the Bureau explained that information received by the

[69] *Id.* The estimate of the number of institutions that would be excluded from reporting open-end lines of credit by the transactional coverage threshold was relative to the number that would have been covered under the Bureau's proposal that led to the 2015 HMDA 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* Home Mortgage Disclosure (Regulation C), 79 FR 51732 (Aug. 29, 2014).

[70] 80 FR 66128, 66281 (Oct. 28, 2015).

[71] *Id.* at 66162.

[72] 82 FR 43088, 43094 (Sept. 13, 2017).

[73] *Id.*

[74] *Id.*

Bureau since issuing the 2015 HMDA Rule had caused the Bureau to question its assumption that certain low-complexity institutions[75] process home-equity lines of credit on the same data platforms as closed-end mortgages, on which the Bureau based its assumption that the one-time costs for these institutions would be minimal.[76] After issuing the 2015 HMDA Rule, the Bureau had heard reports suggesting that one-time costs to begin reporting open-end lines of credit could be as high as $100,000 for such institutions.[77] The Bureau likewise had heard reports suggesting that the ongoing costs for these institutions to report open-end lines of credit, 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 than the Bureau had estimated.[78]

Based on this information regarding one-time and ongoing costs and new data indicating that more institutions would have reporting responsibilities under the 100-loan open-end threshold than estimated in the 2015 HMDA Rule, the Bureau proposed in 2017 to increase for two years (i.e., until January 1, 2020) the open-end threshold to 500.[79] This temporary increase was intended to allow the Bureau to collect additional data and assess what open-end coverage threshold would best balance the benefits and burdens of covering institutions. The Bureau finalized the proposal after notice and comment in the 2017 HMDA Rule.[80]

Developments After the 2015 HMDA Rule and the 2017 HMDA Rule

As the Bureau explained in the May 2019 Proposal, several developments since the Bureau issued the 2015 HMDA Rule have affected the Bureau's analyses of the costs and benefits associated with the open-end line of credit coverage threshold. The Bureau is concerned

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[75] *See supra* notes 60-63 and accompanying text.
[76] 82 FR 43088, 43094 (Sept. 13, 2017).
[77] *Id.*
[78] *Id.*
[79] 82 FR 33455 (July 20, 2017).
[80] 82 FR 43088 (Sept. 13, 2017). Comments received on the July 2017 HMDA Proposal to change temporarily the open-end threshold are discussed in the 2017 HMDA Rule. *Id.* at 43094-95.

that, in establishing a 100-loan threshold for open-end lines of credit in the 2015 HMDA Rule, it may have underestimated the number of institutions that would be covered and the reporting burden on smaller covered institutions. Table 3 in the Bureau's analysis under Dodd-Frank Act section 1022(b) in part VII.E.3 below provides the Bureau's updated coverage estimates from the May 2019 Proposal for reporting thresholds of 100 and 500 open-end lines of credit.[81] As explained in more detail in part VII.E.3, these coverage estimates indicate that the total number of institutions exceeding the open-end coverage threshold of 100 open-end lines of credit in 2018 is approximately 1,014. This estimate is significantly higher than the estimate of 749 in the 2015 HMDA Rule that was based on 2013 data.[82]

As explained in more detail in part VII below, the estimates the Bureau used in the 2015 HMDA Rule may understate the burden that open-end reporting would impose on smaller institutions if they were required to begin reporting on January 1, 2020. For example, in developing the one-time cost estimates for open-end lines of credit in the 2015 HMDA Rule, the Bureau had envisioned that there would be cost sharing at the corporate level between the line of business that conducts open-end lending and the line of business that conducts closed-end lending, as the implementation of open-end reporting that became mandatory under the 2015 HMDA Rule would coincide with the implementation of the changes to closed-end reporting under the 2015 HMDA Rule. However, this type of cost sharing is less likely now because

[81] As discussed further in the analysis under Dodd-Frank Act section 1022(b) in part VII, the Bureau's analyses in the May 2019 Proposal were based on HMDA data collected in 2016 and 2017 and other sources. For part VII of the final rule, the Bureau has supplemented the analyses with the 2018 HMDA data now available and released to the public on August 30, 2019.

[82] 82 FR 43088, 43094 (Sept. 13, 2017).

financial institutions have already implemented almost all of the closed-end reporting changes required under the 2015 HMDA Rule.

Another development since the Bureau finalized the 2015 HMDA Rule is the enactment of the EGRRCPA, which created partial exemptions from HMDA's requirements that certain insured depository institutions and insured credit unions may now use.[83] The partial exemption for open-end lines of credit under the EGRRCPA relieves certain insured depository institutions and insured credit unions that originated fewer than 500 open-end mortgage loans in each of the two preceding calendar years of the obligation to report many of the data points generally required by Regulation C.[84] The partial exemptions are available to the vast majority of the financial institutions that will be excluded by the extension of the temporary open-end coverage threshold.[85] The EGRRCPA has thus changed the costs and benefits associated with different possible coverage thresholds, as discussed in more detail below.

Temporary Open-End Line of Credit Threshold for Institutional Coverage of Depository Institutions

As explained above, the 2015 HMDA Rule established an institutional coverage threshold in § 1003.2(g) for open-end lines of credit of at least 100 open-end lines of credit in each of the two preceding calendar years.[86] In the 2017 HMDA Rule, the Bureau amended § 1003.2(g)(1)(v)(B) and comments 2(g)–3 and –5, effective January 1, 2018, to increase

[83] Public Law 115–174, 132 Stat. 1296 (2018).
[84] See the section-by-section analysis of § 1003.3(d) in part IV above.
[85] *See infra* part VII.E.3.
[86] The 2015 HMDA Rule established complementary thresholds that determine whether a financial institution is required to report data on closed-end mortgage loans or open-end lines of credit, respectively. 80 FR 66128, 66146, 66149, 66162 (Oct. 28, 2015). The 2017 HMDA Rule corrected a drafting error to ensure the institutional coverage threshold and the transactional coverage threshold were complementary. 82 FR 43088, 43100, 43102 (Sept. 13, 2017). These institutional and transactional coverage thresholds are distinct from the thresholds for the EGRRCPA partial exemptions in new § 1003.3(d)(2) and (3).

temporarily the open-end threshold from 100 to 500. In addition, effective January 1, 2020, these amendments restore a permanent threshold of 100.[87] In the May 2019 Proposal, the Bureau proposed to extend the temporary increase for two years and to set the permanent coverage threshold at 200 open-end lines of credit upon the expiration of the proposed extension of the temporary coverage threshold. For the reasons discussed below, the Bureau now amends § 1003.2(g)(1)(v)(B) and comments 2(g)–3 and –5, effective January 1, 2020, to extend until January 1, 2022, the temporary open-end institutional coverage threshold for depository institutions of 500 open-end lines of credit. The Bureau is also finalizing conforming amendments to extend for two years the temporary open-end institutional coverage threshold for nondepository institutions in § 1003.2(g)(2)(ii)(B) and to align the timeframe of the temporary open-end transactional coverage threshold in § 1003.3(c)(12), as discussed below. As noted above, the Bureau intends to address in a separate final rule in 2020 the May 2019 Proposal's proposed amendment to the permanent coverage threshold for open-end lines of credit.[88]

The Bureau received a number of comments relating to the proposed extension of the temporary open-end threshold in §§ 1003.2(g) and 1003.3(c)(12). Commenters typically discussed in a general way the open-end threshold for HMDA coverage, without distinguishing between the threshold applicable to depository institutions under § 1003.2(g)(2)(1)(v)(B) and the threshold applicable to nondepository institutions under § 1003.2(g)(2)(ii)(B).

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[87] 82 FR 43088, 43094 (Sept. 13, 2017). In the 2015 HMDA Rule and 2017 HMDA Rule, the Bureau declined to retain optional reporting of open-end lines of credit, after concluding that improved visibility into this segment of the mortgage market is critical because of the risks posed by these products to consumers and local markets and the lack of other publicly available data about these products. *Id.* at 43095; 80 FR 66128, 66160–61 (Oct. 28, 2015). However, Regulation C as amended by the 2017 HMDA Rule permits voluntary reporting by financial institutions that do not meet the open-end threshold. 12 CFR 1003.3(c)(12).

[88] Because the extension lasts two years, and the Bureau has not yet made a determination about its proposed permanent threshold, the final rule restores effective January 1, 2022 the threshold set in the 2015 HMDA Rule of 100 open-end lines of credit in §§ 1003.2(g) and 1003.3(c)(12), pending further Bureau action. After the reopened comment period relating to the permanent threshold closes, the Bureau intends to issue a final rule in 2020 addressing the permanent threshold for open-end lines of credit that would take effect on January 1, 2022.

Industry commenters generally expressed support for the proposed extension. Many industry commenters described the significant costs that HMDA data collection and reporting imposes on small institutions, and some expressed concern that they might not be able to offer open-end lines of credit at all if the 100 open-end line of credit threshold takes effect. These commenters stated that the anticipated cost savings support extending the current threshold of 500 and noted that the current threshold of 500 would provide relief for over 600 institutions in 2020 and 2021. A number of industry commenters urged the Bureau to make the temporary threshold of 500 open-end lines of credit permanent, either immediately or during the two-year period of the proposed extension; to raise the open-end threshold even further (*e.g.*, to 1,000); or to return to optional rather than mandatory reporting of open-end lines of credit.

Other commenters, including a number of consumer and civil rights groups, a bank, a State attorney general, and some members of Congress, expressed opposition to the proposal as a whole based on their concerns about the consequences of exempting institutions from HMDA. They indicated, for example, that extending the temporary threshold of 500 open-end loans for another two years could exclude a significant percentage of the market. They also expressed concern that lenders and loans might escape public scrutiny and that there would be fewer safeguards to prevent events similar to the 2008 financial crisis. However, even some commenters who opposed increasing the permanent open-end threshold recognized the need to provide additional time for lenders that will be first-time open-end reporters to prepare.

The Bureau has considered the comments received and, pursuant to its authority under HMDA section 305(a) as discussed above, has decided to extend the temporary threshold of 500 open-end lines of credit for two years, as proposed. As discussed below, the extension of the temporary coverage threshold will provide additional time for the Bureau to issue a final rule in

2020 on the permanent open-end coverage threshold and for affected institutions to prepare for compliance with that final rule and will reduce HMDA costs over the next two years, while still providing significant market coverage.

The Bureau continues reviewing HMDA data on open-end lines of credit that financial institutions collected in 2018 and reported to the Bureau in 2019. As explained in part III above, the Bureau reopened the comment period on the May 2019 Proposal to allow for additional comment relating to these open-end data. The two-year temporary extension of the current 500 open-end line of credit coverage threshold will ensure the Bureau has time to consider the initial open-end data submitted pursuant to the 2015 HMDA Rule and any additional comments received about that data before finalizing any change to the permanent threshold.

The two-year extension of the temporary coverage threshold of 500 open-end lines of credit will also ensure that institutions that would be required to report under any new permanent threshold that the Bureau sets in 2020 to take effect in 2022 have time to adapt their systems and prepare for compliance. Consistent with feedback provided by industry stakeholders in connection with the 2015 HMDA Rule and the 2017 HMDA Rule, a number of commenters indicated in response to the May 2019 Proposal that a long implementation period is necessary when coverage changes result in new institutions having reporting obligations under HMDA. The Bureau determines that the two-year extension of the temporary coverage threshold of 500 lines of credit will provide any newly covered institutions with sufficient time to revise and update policies and procedures, implement any necessary systems changes, and train staff before any permanent threshold that the Bureau sets in 2020 takes effect in 2022.

The extension of the temporary coverage threshold will also relieve institutions that originate between 100 and 499 open-end lines of credit of ongoing costs associated with reporting open-end lines of credit over the next two years. As noted above, many financial institutions and trade associations expressed in their comments how costly HMDA compliance can be on an ongoing basis for smaller institutions. In total, the Bureau estimates that extending the temporary open-end coverage threshold for two years will reduce operational costs for institutions by about $9.4 million per year in the years 2020 and 2021.[89]

While the extension of the temporary threshold increase will reduce market coverage compared to a lower threshold, information about a sizeable portion of the market will still be available in the next two years under the temporary threshold of 500. The Bureau has used multiple data sources, including credit union Call Reports, Call Reports for banks and thrifts, HMDA data, and Consumer Credit Panel data, to develop updated estimates about open-end originations for institutions that are active and to assess the impact of various thresholds on the numbers of institutions which report and the number of loans about which they report under various scenarios.[90] Based on this information, the Bureau estimates that, as of 2018, approximately 333 financial institutions originated at least 500 open-end lines of credit in both of the two preceding years, and approximately 1,014 financial institutions originated at least 100 open-end lines of credit in both of the two preceding years.[91] Under the temporary 500-loan

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[89] Additional explanation of the Bureau's cost estimates and how the Bureau's estimate in this final rule of operational savings compares to its estimate in the May 2019 Proposal is provided in the Bureau's analysis under Dodd-Frank Act section 1022(b) in part VII.E.3 below. As explained in part VII below, the Bureau derived these estimates using estimates of savings for open-end lines of credit for representative financial institutions.

[90] Because collection of data on open-end lines of credit only became mandatory starting in 2018 under the 2015 HMDA Rule and 2017 HMDA Rule, no single data source existed as of the time of the May 2019 Proposal that could accurately capture the number of originations of open-end lines of credit in the entire market and by lenders. In part VII of this final rule, the Bureau has supplemented the analyses from the May 2019 Proposal with the 2018 HMDA data that were released to the public on August 30, 2019. For information about the HMDA data used in developing and supplementing the Bureau estimates, see *infra* part VII.E.3.

[91] *See infra* part VII.E.3 at table 3 for estimates of coverage among all lenders that are active in the open-end line of credit market at open-end coverage thresholds of 100 and 500.

open-end threshold, the Bureau estimates about 1.23 million lines of credit or approximately 78 percent of origination volume will be reported by about 5 percent of all institutions providing open-end lines of credit.[92]

Extending the temporary threshold of 500 open-end lines of credit for two years will decrease information about the open-end line of credit market relative to the information that would be reported if the Bureau were to allow the 100-loan threshold to take effect on January 1, 2020. However, the effect of this threshold increase will be limited, because the EGRRCPA now provides a partial exemption that exempts almost all of the institutions that the temporary increase will affect from any obligation to report many of the data points generally required by Regulation C for their open-end lines of credit. In light of the EGRRCPA's partial exemption from reporting certain data for open-end lines of credit for certain insured depository institutions and insured credit unions, continuing the open-end line of credit coverage threshold at 500 will result in a much smaller loss of data than the Bureau anticipated when it adopted a permanent threshold of 100 open-end lines of credit in the 2015 HMDA Rule or when it revisited the open-end line of credit coverage threshold in the 2017 HMDA Rule. The Bureau determines that the limited decrease in information reported occasioned by the temporary adjustment to the open-end threshold is justified by the benefits discussed above of reducing the burden on smaller institutions. This burden reduction is greater than the Bureau anticipated in the 2015 HMDA Rule, because the number of institutions affected and the costs per institution associated with reporting are higher than anticipated, as explained above and in part VII below.

[92] *Id.*

2(g)(2) Nondepository Financial Institution

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

Temporary Open-End Line of Credit Threshold for Institutional Coverage of Nondepository Institutions

The 2015 HMDA Rule established a coverage threshold of 100 open-end lines of credit in § 1003.2(g)(2)(ii)(B) as part of the definition of nondepository financial institution. As discussed in more detail in the section-by-section analysis of § 1003.2(g)(1)(v)(B) above, the 2017 HMDA Rule amended §§ 1003.2(g)(1)(v)(B) and (g)(2)(ii)(B) and 1003.3(c)(12) and related commentary to raise temporarily the open-end coverage threshold to 500 lines of credit for calendar years 2018 and 2019.[93] In the May 2019 Proposal, the Bureau proposed to extend to January 1, 2022, Regulation C's temporary open-end threshold of 500 open-end lines of credit for institutional and transactional coverage of both depository and nondepository institutions. After the end of the extension, the May 2019 Proposal would set the threshold at 200 open-end lines of credit. The Bureau is now finalizing the amendments to extend for two years the temporary open-end institutional coverage threshold for nondepository institutions in § 1003.2(g)(2)(ii)(B) and intends to address the May 2019 Proposal's proposed amendment to the permanent coverage threshold for open-end lines of credit in a separate final rule in 2020.[94]

Commenters typically discussed generally the open-end threshold for HMDA coverage, without distinguishing between the threshold applicable to depository institutions under § 1003.2(g)(2)(1)(v)(B) and the threshold applicable to nondepository institutions under § 1003.2(g)(2)(ii)(B). Comments received regarding the proposed extension of the temporary open-end threshold are discussed in the section-by-section analysis of § 1003.2(g)(1)(v)(B).

[93] 82 FR 43088, 43095 (Sept. 13, 2017).

[94] *See supra* note 88.

For the reasons discussed in the section-by-section analysis of § 1003.2(g)(1)(v)(B), and to ensure the thresholds are consistent for depository and nondepository institutions, the Bureau is finalizing as proposed the extension to January 1, 2022 of Regulation C's temporary open-end threshold of 500 open-end lines of credit. As discussed in part III above, the Bureau has reopened the comment period relating to the May 2019 Proposal's proposed amendments to the permanent thresholds for closed-end mortgage loans and open-end lines of credit.[95] After the reopened comment period closes, the Bureau intends to issue a final rule in 2020 addressing the permanent threshold for open-end lines of credit. This permanent threshold would take effect on January 1, 2022. This final rule temporarily sets the open-end line of credit threshold for institutional coverage of nondepository institutions in § 1003.2(g)(2)(ii)(B) at 500 for calendar years 2020 and 2021, as proposed. This amendment to the open-end line of credit threshold for institutional coverage of nondepository institutions in § 1003.2(g)(2)(ii)(B) conforms to the amendment that the Bureau is finalizing with respect to the two-year extension of the temporary open-end threshold for institutional coverage for depository institutions in § 1003.2(g)(1)(v)(B) and the two-year extension of the temporary open-end threshold for transactional coverage in § 1003.3(c)(12).

Pursuant to its authority under HMDA section 305(a) as discussed above, the Bureau is extending for two years the temporary threshold for open-end lines of credit in § 1003.2(g)(2)(ii)(B). The Bureau determines that this final rule's amendments to § 1003.2(g)(2)(ii)(B) will effectuate the purposes of HMDA by ensuring significant coverage of nondepository mortgage lending. This extension also facilitates compliance with HMDA by reducing burden on smaller institutions and excluding nondepository institutions that are not

[95] 84 FR 37804 (Aug. 2, 2019).

engaged for profit in the business of mortgage lending. The Bureau believes that the reasons provided for extending the temporary open-end threshold for depository institutions in the section-by-section analysis of § 1003.2(g)(1)(v)(B) above apply to the temporary threshold for nondepository institutions as well. Additionally, the extension of the temporary threshold in § 1003.2(g)(2)(ii)(B) will promote consistency by subjecting nondepository institutions to the same threshold that applies to the depository institutions that make up the bulk of the open-end line of credit market. According to the Bureau's estimates, nondepository institutions account for only a small percentage of the institutions and loans in the open-end line of credit market.[96] Table 3 in the Bureau's analysis under Dodd-Frank Act section 1022(b) in part VII.E.3 below provides coverage estimates for nondepository institutions at the current temporary threshold of 500 open-end lines of credit that the Bureau is extending.

Section 1003.3 Exempt Institutions and Excluded and Partially Exempt Transactions

3(c) Excluded Transactions

3(c)(12)

As adopted in the 2015 HMDA Rule, § 1003.3(c)(12) provides an exclusion from the requirement to report open-end lines of credit for institutions that did not originate at least 100 such loans in each of the two preceding calendar years. This transactional coverage threshold was intended to complement an open-end reporting threshold included in the definition of financial institution in § 1003.2(g), which sets forth Regulation C's institutional coverage. The 2017 HMDA Rule replaced "each" with "either" in § 1003.3(c)(12) to correct a drafting error and to ensure that the exclusions provided in that section mirror the loan-volume thresholds for financial institutions in § 1003.2(g).[97] As discussed in more detail in the section-by-section

[96] See *infra* part VII.E.3 at table 3.
[97] 82 FR 43088, 43102 (Sept. 13, 2017).

analysis of § 1003.2(g), in the 2017 HMDA Rule the Bureau also amended §§ 1003.2(g) and 1003.3(c)(12) and related commentary to raise temporarily the open-end threshold in those provisions to 500 lines of credit for calendar years 2018 and 2019.[98] In the May 2019 Proposal, the Bureau proposed to extend to January 1, 2022, Regulation C's current temporary open-end threshold for institutional and transactional coverage of 500 open-end lines of credit and then to set the threshold at 200 open-end lines of credit upon the expiration of the proposed extension of the temporary threshold. Comments regarding the proposed temporary adjustment to the open-end threshold are discussed in the section-by-section analysis of § 1003.2(g)(1)(v)(B).

For the reasons discussed in the section-by-section analysis of § 1003.2(g)(1)(v)(B), the Bureau is now extending to January 1, 2022, Regulation C's 500 open-end line of credit threshold. As discussed in part III above, the Bureau has reopened the comment period relating to the May 2019 Proposal's proposed amendments to the permanent thresholds for closed-end mortgage loans and open-end lines of credit.[99] After reviewing the comments received during the reopened comment period, the Bureau intends to issue a final rule in 2020 addressing the permanent threshold for open-end lines of credit that would take effect on January 1, 2022. To align the two-year extension of the temporary open-end threshold for institutional coverage in § 1003.2(g) with the timeframe for the transactional coverage threshold, the Bureau is also extending the temporary open-end threshold for transactional coverage in § 1003.3(c)(12) and comments 3(c)(12)-1 and -2 to 500 for calendar years 2020 and 2021, as proposed.

3(d) Partially Exempt Transactions

Section 104(a) of the EGRRCPA amended HMDA section 304(i) by adding partial exemptions from HMDA's requirements that apply to certain transactions of eligible insured

[98] *Id.* at 43095.

[99] 84 FR 37804 (Aug. 2, 2019).

depository institutions and insured credit unions. In the 2018 HMDA Rule, the Bureau implemented and clarified HMDA section 304(i) by addressing a set of interpretive and procedural questions relating to the partial exemptions. The Bureau proposed in § 1003.3(d) and related commentary to incorporate the partial exemptions and the interpretations and procedures from the 2018 HMDA Rule into Regulation C and further implement HMDA section 304(i) by addressing additional questions that have arisen with respect to the partial exemptions.[100] For the reasons stated below, the Bureau is now finalizing the proposed amendments relating to partial exemptions in § 1003.3(d) and its associated commentary as proposed.

Although some commenters expressed general opposition to the May 2019 Proposal in its entirety, there were no specific concerns articulated in the comments regarding the regulation text and commentary that the Bureau proposed to implement EGRRCPA. Commenters that discussed the proposed amendments relating to EGRRCPA generally expressed support for the Bureau's implementation of section 104(a) of the EGRRCPA. A few commenters specifically expressed support for the Bureau's interpretation on issues related to partial exemptions after a merger or acquisition and for the guidance related to determining loans and lines of credit that would be considered originations and counted towards the thresholds for partial exemptions. Many industry commenters stated that they appreciated the Bureau quickly implementing the provisions of the EGRRCPA and did not suggest any changes to the proposed regulation text and commentary relating to the partial exemptions. A group of 148 national and local organizations

[100] This final rule includes related amendments in § 1003.4 and its commentary referencing § 1003.3(d) that are discussed in the section-by-section analysis of § 1003.4. The Filing Instructions Guide for HMDA Data Collected in 2020 (2020 FIG) provides guidance to financial institutions on how to indicate in their HMDA submissions if they are invoking a partial exemption. *See* Fed. Fin. Insts. Examination Council (FFIEC), "Filing Instructions Guide for HMDA Data Collected in 2020" (Sept. 2019), *https://s3.amazonaws.com/cfpb-hmda-public/prod/help/2020-hmda-fig.pdf*.

also expressed their support for the Bureau's proposed commentary clarifying that a financial institution that is not itself an insured credit union or an insured depository institution is not eligible for a partial exemption even if it is an affiliate of an insured credit union or an insured depository institution.[101]

Section 1003.3(d)(1) sets forth definitions relating to the partial exemptions, including a definition of optional data that delineates which data points are covered by the partial exemptions. Section 1003.3(d)(2) and (3) provides the general tests for when the partial exemptions apply for closed-end mortgage loans and open-end lines of credit, respectively. Section 1003.3(d)(4) addresses voluntary reporting of data that are covered by a partial exemption for a partially exempt transaction. Section 1003.3(d)(5) relates to the non-universal loan identifier that financial institutions must report for a partially exempt transaction if a ULI is not provided. Section 1003.3(d)(6) implements the statutory exception to the partial exemptions for insured depository institutions with certain less than satisfactory examination histories under the CRA. Each of these paragraphs and related commentary are discussed in more detail below.

The loan thresholds added by the EGRRCPA to HMDA section 304(i) resemble in many respects the loan thresholds that determine institutional and transactional coverage in Regulation C. For example, both sets of thresholds relate to originations (rather than applications or purchases) and apply separately to closed-end mortgage loans and open-end lines of credit. In light of these similarities, the Bureau has used the institutional and transactional coverage thresholds in existing Regulation C as a model in interpreting certain aspects of the partial exemption thresholds. Because the Bureau recognizes that there are advantages to industry

[101] These groups also stated in their comment letter that the threshold calculations for determining whether an institution reports HMDA data should be applied at the holding company level. This issue is outside the scope of the Bureau's proposal.

stakeholders and others from using consistent language to describe similar requirements, the final rule (like the proposal) uses language that parallels language in existing Regulation C wherever feasible.

Comments 3(d)-1 through -5 address certain issues relating to the partial exemptions that the 2018 HMDA Rule does not specifically discuss. Comments 3(d)-1 through -3 explain how to determine whether a partial exemption applies to a transaction after a merger or acquisition. Comment 3(d)-1 describes the application of the partial exemption thresholds to a surviving or newly formed institution. Comment 3(d)-2 describes how CRA examination history is handled in the event of a merger or acquisition for purposes of § 1003.3(d)(6), which implements the exception to the partial exemptions for certain less than satisfactory CRA examination histories in HMDA section 304(i)(3). Comment 3(d)-3 describes the applicability of partial exemptions during the calendar year of a merger or acquisition and provides various examples. These comments are modeled closely on existing comments 2(g)-3 and -4, which explain how to determine whether an institution satisfies the definition of financial institution in § 1003.2(g) after a merger or acquisition.

Comment 3(d)-4 relates to whether activities with respect to a particular closed-end mortgage loan or open-end line of credit constitute an origination for purposes of the partial exemption loan thresholds. Given the similarities between the coverage thresholds currently in Regulation C[102] and the partial exemption thresholds under the EGRRCPA, the Bureau believes that the same guidance for determining whether activities constitute an origination that applies for purposes of the coverage thresholds in Regulation C's definition of financial institution should apply with respect to the partial exemption thresholds. Consistent with the approach

[102] *See* 12 CFR 1003.2(g)(1)(v) and (g)(2)(ii) and 1003.3(c)(11) and (12).

taken in existing comment 2(g)-5 for the definition of financial institution, comment 3(d)-4 refers to comments 4(a)-2 through -4 for guidance on this issue in the context of the partial exemptions.

Comment 3(d)-5 addresses questions about whether a financial institution that does not itself meet the requirements for a partial exemption can claim an exemption if an affiliate or parent company meets the requirements. It clarifies that a financial institution that is not itself an insured credit union or an insured depository institution[103] is not eligible for a partial exemption under § 1003.3(d)(2) and (3), even if it is owned by or affiliated with an insured credit union or an insured depository institution. This approach is consistent with HMDA section 304(i)(1) and (2), which by its terms applies "[w]ith respect to an insured depository institution or insured credit union" as defined in HMDA section 304(o). To clarify further the EGRRCPA's partial exemptions, the comment also provides an example describing when a subsidiary of an insured credit union or insured depository institution could claim a partial exemption under § 1003.3(d) for its closed-end mortgage loans.

3(d)(1)

Proposed § 1003.3(d)(1) and proposed comment 3(d)(1)(iii)-1 define terms related to the partial exemptions for purposes of proposed § 1003.3(d). As mentioned above, commenters that discussed the proposed amendments relating to the EGRRCPA generally expressed support for the Bureau's implementation of section 104(a) of the EGRRCPA and did not suggest any changes to the proposed regulation text or commentary. For the reasons discussed below, the Bureau is adopting § 1003.3(d)(1) and comment 3(d)(1)(iii)-1 as proposed.

Section 1003.3(d)(1)(i) defines the term "insured credit union" to mean an insured credit union as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752), and

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[103] For purposes of the comment, insured credit union and insured depository institution are defined in § 1003.3(d)(1)(i) and (ii), which, as explained below, mirrors how those terms are defined in HMDA section 304(o).

§ 1003.3(d)(1)(ii) defines the term "insured depository institution" to mean an insured depository institution as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813). These definitions are consistent with the way HMDA section 304(o) defines the two terms for purposes of HMDA section 304.

Section 1003.3(d)(1)(iii) and comment 3(d)(1)(iii)-1 define the term "optional data" for purposes of § 1003.3(d). For the reasons discussed below, § 1003.3(d)(1)(iii) generally defines optional data as the data identified in § 1003.4(a)(1)(i), (a)(9)(i), and (a)(12), (15) through (30), and (32) through (38). Comment 3(d)(1)(iii)-1 explains that the definition of optional data in § 1003.3(d)(1)(iii) identifies the data that are covered by the partial exemptions for certain transactions of insured depository institutions and insured credit unions under § 1003.3(d). It also clarifies that, if a transaction is not partially exempt under § 1003.3(d)(2) or (3), a financial institution must collect, record, and report optional data as otherwise required under part 1003.

The EGRRCPA added partial exemptions to HMDA section 304(i), and the definition of optional data in § 1003.3(d)(1)(iii) specifies the data points covered by the partial exemptions. As the 2018 HMDA Rule explains, if a transaction qualifies for one of the EGRRCPA's partial exemptions, HMDA section 304(i) provides that the requirements of HMDA section 304(b)(5) and (6) shall not apply. In the 2018 HMDA Rule, the Bureau interpreted the requirements of HMDA section 304(b)(5) and (6) to include the 26 data points listed in Table 1 in the 2018 HMDA Rule, which are found in § 1003.4(a)(1)(i), (a)(9)(i), and (a)(12), (15) through (30), and (32) through (38).

The Dodd-Frank Act added HMDA section 304(b)(5) and (6), which requires reporting of certain data points and provides the Bureau discretion to require additional data points.[104] In the 2015 HMDA Rule, the Bureau implemented the new data points specified in the Dodd-Frank Act (including those added in HMDA section 304(b)(5) and (6)), added a number of additional data points pursuant to the Bureau's discretionary authority, and made revisions to certain pre-existing data points to clarify their requirements, provide greater specificity in reporting, and align certain data points more closely with industry data standards.

As explained in the 2018 HMDA Rule, the Bureau interprets the requirements of HMDA section 304(b)(5) and (6) for purposes of HMDA section 304(i) to include the 12 data points that the Bureau added to Regulation C in the 2015 HMDA Rule to implement data points specifically identified in HMDA section 304(b)(5)(A) through (C) or (b)(6)(A) through (I), which are the following: ULI; property address; rate spread; credit score; total loan costs or total points and

[104] HMDA section 304(b)(5) requires disclosure of the number and dollar amount of mortgage loans grouped according to measurements of:

- The total points and fees payable at origination in connection with the mortgage as determined by the Bureau;
- The difference between the APR associated with the 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; and
- Such other information as the Bureau may require.

HMDA section 304(b)(6) requires disclosure of the number and dollar amount of mortgage loans and completed applications grouped according to measurements of:

- 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 rate 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 loan;
- The channel through which application was made;
- As the Bureau may determine to be appropriate, a unique identifier that identifies the loan originator as set forth in section 5102 of this title;
- As the Bureau may determine to be appropriate, a universal loan identifier;
- As the Bureau may determine to be appropriate, the parcel number that corresponds to the real property pledged or proposed to be pledged as collateral;
- The credit score of mortgage applicants and mortgagors, in such form as the Bureau may prescribe; and
- Such other information as the Bureau may require.

fees; prepayment penalty term; loan term; introductory rate period; non-amortizing features; property value; application channel; and mortgage loan originator identifier.[105] As the 2018 HMDA Rule explains, the Bureau also interprets the requirements of HMDA section 304(b)(5) and (6) to include the 14 data points that were not found in Regulation C prior to the Dodd-Frank Act and that the Bureau required in the 2015 HMDA Rule citing its discretionary authority under HMDA section 304(b)(5)(D) and (b)(6)(J). Specifically, these data points are the following: the total origination charges associated with the loan; the total points paid to the lender to reduce the interest rate of the loan (discount points); the amount of lender credits; the interest rate applicable at closing or account opening; the debt-to-income ratio; the ratio of the total amount of debt secured by the property to the value of the property (combined loan-to-value ratio); for transactions involving manufactured homes, whether the loan or application is or would have been secured by a manufactured home and land or by a manufactured home and not land (manufactured home secured property type); the land property interest for loans or applications related to manufactured housing (manufactured home land property interest); the number of individual dwellings units that are income-restricted pursuant to Federal, State, or local affordable housing programs (multifamily affordable units); information related to the automated underwriting system used in evaluating an application and the result generated by the automated underwriting system; whether the loan is a reverse mortgage; whether the loan is an open-end line of credit; whether the loan is primarily for a business or commercial purpose; and the reasons for denial of a loan application, which were optionally reported under the Board's rule but became mandatory in the 2015 HMDA Rule.[106] The 2018 HMDA Rule indicates that

[105] 12 CFR 1003.4(a)(1)(i), (a)(9)(i), and (a)(12), (15), (17), (22), (25) through (28), and (33) and (34).
[106] 12 CFR 1003.4(a)(16), (18) through (21), (23) and (24), (29) and (30), (32), and (35) through (38).

insured depository institutions and insured credit unions need not report these 26 data points for transactions that qualify for a partial exemption, unless otherwise required by their regulator.[107]

As the 2018 HMDA Rule explains, the Bureau interprets the requirements of HMDA section 304(b)(5) and (6) not to include four other data points that are similar or identical to data points added to Regulation C by the Board and that the Bureau re-adopted in the 2015 HMDA Rule: lien status of the subject property; whether the loan is subject to the Home Ownership and Equity Protection Act of 1994 (HOEPA); construction method for the dwelling related to the subject property; and the total number of individual dwelling units contained in the dwelling related to the loan (number of units).[108] The 2015 HMDA Rule did not alter the pre-existing Regulation C HOEPA status and lien status data requirements.[109] Construction method and total units, together, replaced the pre-existing Regulation C property type data point; the information required by the new data points is very similar to what the Board required, but institutions now must report the precise number of units rather than categorizing dwellings into one- to four-family dwellings and multifamily dwellings.[110]

The Board adopted its versions of these data points before HMDA section 304(b)(5) and (6) was added to HMDA by the Dodd-Frank Act, pursuant to HMDA authority that pre-existed section 304(b)(5) and (6). Although the Bureau cited HMDA section 304(b)(5) and (6) as

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[107] Financial institutions regulated by the OCC are required to report reasons for denial on their HMDA loan/application registers pursuant to 12 CFR 27.3(a)(1)(i) and 128.6. Similarly, pursuant to regulations transferred from the Office of Thrift Supervision, certain financial institutions supervised by the FDIC are required to report reasons for denial on their HMDA loan/application registers. 12 CFR 390.147.

[108] 12 CFR 1003.4(a)(5), (13) and (14), and (31).

[109] The 2015 HMDA Rule extended the requirement to report lien status to purchased loans and no longer requires reporting of information about unsecured loans. 80 FR 66128, 66201 (Oct. 28, 2015).

[110] Prior to 2018, Regulation C required reporting of property type as one- to four-family dwelling (other than manufactured housing), manufactured housing, or multifamily dwelling, whereas the current rule requires reporting of whether the dwelling is site-built or a manufactured home, together with the number of individual dwelling units.

additional support for these four data points in the 2015 HMDA Rule, the Bureau relied on HMDA section 305(a), which predates the Dodd-Frank Act and independently provides legal authority for their adoption.[111] Given that these data points were not newly added by the Dodd-Frank Act or the Bureau, the Bureau concluded in the 2018 HMDA Rule that the EGRRCPA's amendments to HMDA section 304 do not affect them.[112] A large number of consumer advocacy and community development groups expressed their agreement with the Bureau that these data points were not affected by the partial exemptions under the EGRRCPA.

The requirements of HMDA section 304(b)(5) and (6), and thus the partial exemptions, also do not include 17 other data points included in the 2015 HMDA Rule that are similar or identical to pre-existing Regulation C data points established by the Board and that were not required by HMDA section 304(b)(5) and (6) or promulgated by the Bureau using discretionary authority under HMDA section 304(b)(5)(D) and (b)(6)(J). These are: the Legal Entity Identifier (which replaced the pre-existing respondent identifier); application date; loan type; loan purpose; preapproval; occupancy type; loan amount; action taken; action taken date; State; county; census tract; ethnicity; race; sex; income; and type of purchaser.[113] Additionally, the requirements of HMDA section 304(b)(5) and (6), and thus the partial exemptions, do not include age because the Dodd-Frank Act added that requirement instead to HMDA section 304(b)(4).[114]

Consistent with the scope of the new partial exemptions as explained in the 2018 HMDA Rule, the general definition of optional data in § 1003.3(d)(1)(iii) encompasses 26 of the 48 data points currently set forth in Regulation C.

[111] 80 FR 66128, 66180–81, 66199–201, 66227 (Oct. 28, 2015).
[112] This interpretation is consistent with the EGRRCPA's legislative history, which suggests that Congress was focused on relieving regulatory burden associated with the Dodd-Frank Act. *See, e.g.*, 164 Cong. Rec. S1423–24 (daily ed. Mar. 7, 2018) (statement of Sen. Crapo), S1529–30 (statement of Sen. McConnell), S1532–33 (statement of Sen. Cornyn), S1537–39 (statement of Sen. Lankford), S1619–20 (statement of Sen. Cornyn).
[113] 12 CFR 1003.4(a)(1)(ii), (a)(2) through (4) and (6) through (8), (a)(9)(ii), and (a)(10) and (11) and 1003.5(a)(3).
[114] Dodd-Frank Act section 1094(3)(A)(i).

For ease of reference throughout § 1003.3(d), § 1003.3(d)(1)(iv) defines partially exempt transaction as a covered loan or application that is partially exempt under § 1003.3(d)(2) or (3).

3(d)(2)

HMDA section 304(i)(1) provides that the requirements of HMDA section 304(b)(5) and (6) shall not apply with respect to closed-end mortgage loans of an insured depository institution or insured credit union if it originated fewer than 500 closed-end mortgage loans in each of the two preceding calendar years. The Bureau proposed § 1003.3(d)(2) and comment 3(d)(2)-1 to implement this provision. As mentioned above, commenters that discussed the proposed amendments relating to EGRRCPA generally expressed support for the Bureau's implementation of section 104(a) of the EGRRCPA and did not suggest any changes to the proposed regulation text or commentary. As explained below, the Bureau is finalizing § 1003.3(d)(2) and comment 3(d)(2)-1 as proposed.

Section 1003.3(d)(2) states that, except as provided in § 1003.3(d)(6), an insured depository institution or insured credit union that, in each of the two preceding calendar years, originated fewer than 500 closed-end mortgage loans that are not excluded from part 1003 pursuant to § 1003.3(c)(1) through (10) or (c)(13) is not required to collect, record, or report optional data as defined in § 1003.3(d)(1)(iii) for applications for closed-end mortgage loans that it receives, closed-end mortgage loans that it originates, and closed-end mortgage loans that it purchases.

The EGRRCPA and HMDA do not define the term "closed-end mortgage loan" for purposes of HMDA section 304(i). They also do not specify whether the term includes loans that would otherwise not be subject to HMDA reporting under Regulation C, such as loans used primarily for agricultural purposes.[115] The Bureau explained in the 2018 HMDA Rule that the term "closed-end mortgage loan" as used in HMDA section 304(i) is best interpreted to include only those closed-end mortgage loans that would otherwise be reportable under HMDA. This interpretation is consistent with how loans are counted for purposes of the thresholds in Regulation C's existing institutional and transactional coverage provisions, which are independent of the new partial exemptions and unaffected by the EGRRCPA.[116] Accordingly, in the 2018 HMDA Rule, the Bureau interpreted the term "closed-end mortgage loan" to include any closed-end mortgage loan as defined in § 1003.2(d) that is not excluded from Regulation C pursuant to § 1003.3(c)(1) through (10) or (c)(13). Section 1003.3(d)(2) incorporates that interpretation into Regulation C.

Comment 3(d)(2)-1 provides an illustrative example of how the closed-end partial exemption threshold works. For the reasons stated in the section-by-section analysis of § 1003.3(d) above, comment 3(d)(2)-1 also provides a cross-reference to comments 4(a)-2 through -4 for guidance about the activities that constitute an origination.

3(d)(3)

HMDA section 304(i)(2) provides that the requirements of HMDA section 304(b)(5) and (6) shall not apply with respect to open-end lines of credit of an insured depository institution or insured credit union if it originated fewer than 500 open-end lines of credit in each of the two

[115] 12 CFR 1003.3(c)(9).

[116] As discussed above in the section-by-section analysis of §§ 1003.2(g) and 1003.3(c), the current definition of "depository financial institution" in § 1003.2(g)(1)(v) is limited to institutions that either (1) originated in each of the two preceding calendar years at least 25 closed-end mortgage loans that are not excluded from Regulation C pursuant to § 1003.3(c)(1) through (10) or (c)(13); or (2) originated in each of the two preceding calendar years at least 500 open-end lines of credit that are not excluded from Regulation C pursuant to § 1003.3(c)(1) through (10). *See also* 12 CFR 1003.3(c)(11), (12) (excluding closed-end mortgage loans from the requirements of Regulation C if the financial institution originated fewer than 25 closed-end mortgage loans in either of the two preceding calendar years, and excluding open-end lines of credit from the requirements of Regulation C if the financial institution originated fewer than 500 open-end lines of credit in either of the two preceding calendar years). The threshold of 500 open-end lines of credit for institutional and transactional coverage in Regulation C is temporary.

preceding calendar years. The Bureau proposed § 1003.3(d)(3) and comment 3(d)(3)-1 to implement this provision. As mentioned above, commenters that discussed the proposed amendments relating to EGRRCPA generally expressed support for the Bureau's implementation of section 104(a) of the EGRRCPA and did not suggest any changes to the regulation text or commentary. The Bureau is finalizing § 1003.3(d)(3) and comment 3(d)(3)-1 as proposed.

Section 1003.3(d)(3) provides that, except as provided in § 1003.3(d)(6), an insured depository institution or insured credit union that, in each of the two preceding calendar years, originated fewer than 500 open-end lines of credit that are not excluded from part 1003 pursuant to § 1003.3(c)(1) through (10) is not required to collect, record, report, or disclose optional data as defined in § 1003.3(d)(1)(iii) for applications for open-end lines of credit that it receives, open-end lines of credit that it originates, and open-end lines of credit that it purchases.

The EGRRCPA and HMDA do not define the term "open-end line of credit" for purposes of HMDA section 304(i). They also do not specify whether the term includes lines of credit that would otherwise not be subject to HMDA reporting under Regulation C, such as loans used primarily for agricultural purposes.[117] The Bureau explained in the 2018 HMDA Rule its view that the term "open-end line of credit" as used in HMDA section 304(i) is best interpreted to include only those open-end lines of credit that would otherwise be reportable under HMDA. This interpretation is consistent with how lines of credit are counted for purposes of the thresholds in Regulation C's existing institutional and transactional coverage provisions, which are independent of the new partial exemptions and unaffected by the EGRRCPA. Accordingly, in the 2018 HMDA Rule, the Bureau interpreted the term "open-end line of credit" to include any open-end line of credit as defined in § 1003.2(o) that is not excluded from Regulation C

[117] *See* 12 CFR 1003.3(c)(9).

pursuant to § 1003.3(c)(1) through (10). Section 1003.3(d)(3) incorporates that interpretation into Regulation C.

Comment 3(d)(3)-1 provides a cross-reference to § 1003.3(c)(12) and comments 3(c)(12)-1 and -2, which provide an exclusion for certain open-end lines of credit from Regulation C and permit voluntary reporting of such transactions under certain circumstances. While the temporary threshold of 500 open-end lines of credit is in place for institutional and transactional coverage, all of the open-end lines of credit that are covered by the partial exemption for open-end lines of credit in HMDA section 304(i)(2) are completely excluded from the requirements of part 1003 under current §§ 1003.2(g)(1)(v) and 1003.3(c)(12). For the reasons stated in the section-by-section analysis of § 1003.3(d) above, comment 3(d)(3)-1 also provides a cross-reference to comments 4(a)-2 through -4 for guidance about the activities that constitute an origination.

3(d)(4)

Some data points required under Regulation C are reported using multiple data fields, such as the property address data point, which consists of street address, city, State, and Zip Code data fields. The 2018 HMDA Rule provides that insured depository institutions and insured credit unions covered by a partial exemption have the option of reporting exempt data fields as long as they report all data fields within any exempt data point for which they report data. Proposed § 1003.3(d)(4) and proposed comments 3(d)(4)-1 to -3 and 3(d)(4)(i)-1 would incorporate this aspect of the 2018 HMDA Rule into Regulation C and provide additional clarity regarding voluntary reporting of the property address data point. As mentioned above, commenters that discussed the proposed amendments relating to EGRRCPA generally expressed support for the Bureau's implementation of section 104(a) of the EGRRCPA and did not suggest any changes. For the reasons explained below, the Bureau is finalizing § 1003.3(d)(4) and comments 3(d)(4)-1 and 3(d)(4)(i)-1 as proposed.

As the 2018 HMDA Rule explains, whether a partial exemption applies to an institution's lending activity for a particular calendar year depends on an institution's origination activity in each of the preceding two years. In some cases, coverage therefore cannot be determined until just before data collection must begin for a calendar year. For example, whether a partial exemption applies to closed-end mortgage loans for which final action is taken in 2020 depends on the number of closed-end mortgage loans originated by the insured depository institution or insured credit union in 2018 and 2019. Thus, an insured depository institution or insured credit union might not know until the end of 2019 what information it needs to collect in 2020 and report in 2021. Some insured depository institutions and insured credit unions eligible for a partial exemption under the EGRRCPA may therefore find it less burdensome to report all of the data, including the exempt data points, than to separate the exempt data points from the required data points and exclude the exempt data points from their submissions.[118] Even when insured depository institutions and insured credit unions have had time to adjust their systems to implement the partial exemptions, some may still find it less burdensome to report data covered by a partial exemption, especially if their loan volumes tend to fluctuate just above or below the threshold from year to year. The Bureau concluded in the 2018 HMDA Rule that section 104(a)

[118] The Bureau recognized in the 2018 HMDA Rule that this might be particularly true with respect to data submission in 2019, as collection of 2018 data was already underway when the EGRRCPA took effect, and system changes implementing the new partial exemptions may take time to complete. In the 2018 HMDA Rule, the Bureau interpreted the EGRRCPA to apply to data that are collected or reported under HMDA on or after May 24, 2018. Because data collected from January 1, 2018, to May 23, 2018, would not be reported until early 2019, the EGRRCPA relieves insured depository institutions and insured credit unions that are eligible for a partial exemption of the obligation to report certain data in 2019 that may have been collected before May 24, 2018. If optional reporting of data covered by a partial exemption were not permitted, such institutions would have had to remove exempt data previously collected before submitting their 2018 data in early 2019, a process that could have been burdensome for some institutions.

is best interpreted as permitting optional reporting of data covered by the EGRRCPA's partial exemptions. Section 104(a) provides that certain requirements do not apply to affected institutions but does not prohibit those affected institutions from voluntarily reporting data. This interpretation is consistent not only with the statutory text but also with the apparent congressional intent to reduce burden on certain institutions. Accordingly, the Bureau interpreted the EGRRCPA in the 2018 HMDA Rule to permit insured depository institutions and insured credit unions voluntarily to report data that are covered by the partial exemptions.

Aspects of the Bureau's current HMDA platform used for receiving HMDA submissions, including edit checks[119] performed on incoming submissions, are set up with the expectation that HMDA reporters will provide data for an entire data point when data are reported for any data field within that data point. The Bureau explained in the 2018 HMDA Rule that adjusting the HMDA platform to accept submissions in which affected institutions report some, but not all, data fields in a data point covered by a partial exemption for a specific transaction would increase operational complexity and costs associated with changing the HMDA edits in the Filing Instructions Guide for HMDA Data Collected. Doing so would result in a less efficient implementation and submission process for the Bureau, HMDA reporters, their vendors, and other key stakeholders. Accordingly, the Bureau indicated in the 2018 HMDA Rule that the HMDA platform would continue to accept submissions of a data field that is covered by a partial exemption under the EGRRCPA for a specific loan or application as long as insured depository

[119] The HMDA edit checks are rules to assist filers in checking the accuracy of HMDA data prior to submission. The 2020 FIG, a compendium of resources to help financial institutions file HMDA data collected in 2019 with the Bureau in 2020, explains that there are four types of edit checks: syntactical, validity, quality, and macro quality. Table 2 (Loan/Application Register) in the 2020 FIG identifies the data fields currently associated with each data point. *See* FFIEC, "Filing Instructions Guide for HMDA Data Collected in 2020," at 15–66 (Sept. 2019), *https://s3.amazonaws.com/cfpb-hmda-public/prod/help/2020-hmda-fig.pdf*.

institutions and insured credit unions that choose to voluntarily report the data include all other data fields that the data point comprises.

Section 1003.3(d)(4) incorporates the voluntary reporting interpretations and procedures from the 2018 HMDA Rule into Regulation C. Since issuing the 2018 HMDA Rule, the Bureau has also received questions relating to voluntary reporting of property address under § 1003.4(a)(9)(i). The property address data point under § 1003.4(a)(9)(i) is covered by the partial exemptions and includes State as a data field, yet State is also a separate data point under § 1003.4(a)(9)(ii)(A) that is not covered by the partial exemptions. To address possible confusion, § 1003.3(d)(4) and comment 3(d)(4)(i)-1 include additional detail about voluntary reporting of property address.

Section 1003.3(d)(4) provides that a financial institution eligible for a partial exemption under § 1003.3(d)(2) or (3) may collect, record, and report optional data as defined in § 1003.3(d)(1)(iii) for a partially exempt transaction as though the institution were required to do so, provided that: (i) If the institution reports the street address, city name, or Zip Code for the property securing a covered loan, or in the case of an application, proposed to secure a covered loan pursuant to § 1003.4(a)(9)(i), it reports all data that would be required by § 1003.4(a)(9)(i) if the transaction were not partially exempt; and (ii) If the institution reports any data for the transaction pursuant to § 1003.4(a)(15), (16), (17), (27), (33), or (35), it reports all data that would be required by § 1003.4(a)(15), (16), (17), (27), (33), or (35), respectively, if the transaction were not partially exempt.

Comment 3(d)(4)-1 provides an example of voluntary reporting that is permitted under § 1003.3(d)(4). Comment 3(d)(4)-2 addresses how financial institutions may handle partially exempt transactions within the same loan/application register. It explains that a financial institution may collect, record, and report optional data for some partially exempt transactions under § 1003.3(d) in the manner specified in § 1003.3(d)(4), even if it does not collect, record, and report optional data for other partially exempt transactions under § 1003.3(d).

Comment 3(d)(4)-3 addresses how to handle a transaction that is partially exempt pursuant to § 1003.3(d) and for which a particular requirement to report optional data is not applicable to the transaction. The comment explains that, in that circumstance, the insured depository institution or insured credit union complies with the particular requirement by reporting either that the transaction is exempt from the requirement or that the requirement is not applicable.[120] It also explains that an institution is considered as reporting data in a data field for purposes of § 1003.3(d)(4)(i) and (ii) if it reports not applicable for that data field for a partially exempt transaction. The comment also provides examples.

Comment 3(d)(4)(i)-1 explains that, if an institution eligible for a partial exemption under § 1003.3(d)(2) or (3) reports the street address, city name, or Zip Code for a partially exempt transaction pursuant to § 1003.4(a)(9)(i), it reports all data that would be required by § 1003.4(a)(9)(i) if the transaction were not partially exempt, including the State. The comment also explains that an insured depository institution or insured credit union that reports the State pursuant to § 1003.4(a)(9)(ii) or comment 4(a)(9)(ii)-1 for a partially exempt transaction without reporting any other data required by § 1003.4(a)(9)(i) is not required to report the street address, city name, or Zip Code pursuant to § 1003.4(a)(9)(i). The Bureau believes that this comment will help to clarify that, even though State is a property address data field under § 1003.4(a)(9)(i), reporting State does not trigger the requirement to report other property

[120] As noted above, the 2020 FIG provides guidance to financial institutions on how to indicate in their HMDA submissions if they are invoking a partial exemption. *See supra* note 100.

address data fields under § 1003.3(d)(4)(i), because State is also a stand-alone data point under § 1003.4(a)(9)(ii)(A) that is not covered by the partial exemptions.

3(d)(5)

Pursuant to HMDA section 304(i), insured depository institutions and insured credit unions are not required to report a ULI for partially exempt transactions.[121] To ensure that partially exempt transactions can be identified in the HMDA data, the 2018 HMDA Rule requires financial institutions to provide a non-universal loan identifier (NULI) that meets certain requirements for any partially exempt transaction for which they do not report a ULI. Proposed § 1003.3(d)(5) and proposed comments 3(d)(5)-1 and -2 would incorporate the NULI requirements from the 2018 HMDA Rule into Regulation C, with minor adjustments for clarity. As mentioned above, commenters that discussed the proposed amendments relating to EGRRCPA generally expressed support for the Bureau's implementation of section 104(a) of the EGRRCPA and did not suggest any changes. With respect to the NULI, a national trade association expressed support for the clarifications on the technical issues provided in the proposal. For the reasons provided below, the Bureau is finalizing § 1003.3(d)(5) and comments 3(d)(5)-1 and -2 as proposed.

In the 2015 HMDA Rule, the Bureau interpreted ULI as used in HMDA section 304(b)(6)(G) to mean an identifier that is unique within the industry and required that the ULI include the Legal Entity Identifier of the institution that assigned the ULI. Although the EGRRCPA exempts certain transactions from the ULI requirement, loans and applications must

[121] Prior to the passage of the Dodd-Frank Act, the Board required reporting of an identifying number for the loan or application but did not require that the identifier be universal. HMDA section 304(b)(6)(G) requires reporting of, "as the Bureau may determine to be appropriate, a universal loan identifier."

be identifiable in the HMDA data to ensure proper HMDA submission, processing, and compliance.[122] The EGRRCPA did not change this fundamental component of data reporting, which predates the Dodd-Frank Act's HMDA amendments and existed under Regulation C prior to the 2015 HMDA Rule. Accordingly, while insured depository institutions and insured credit unions do not have to report a ULI for a partially exempt transaction, they must continue to provide certain information so that each loan and application they report for HMDA purposes is identifiable. The ability to identify individual loans and applications is necessary to facilitate efficient and orderly submission of HMDA data and communications between the institution, the Bureau, and other applicable regulators. For example, identification of loans and applications is necessary to address problems identified in edit checks done upon submission or answer questions that arise when regulators otherwise review HMDA submissions.

To ensure the orderly administration of the HMDA program, § 1003.3(d)(5) and comments 3(d)(5)-1 and -2 incorporate the NULI requirements of the 2018 HMDA Rule into Regulation C with minor adjustments. As the 2018 HMDA Rule explains, a NULI does not need to be unique within the industry and therefore does not need to include a Legal Entity Identifier as the ULI does. A check digit is not required as part of a NULI, as it is for a ULI under § 1003.4(a)(1)(i)(C), but may be voluntarily included in a NULI provided that the NULI, including the check digit, does not exceed 22 characters. Beyond these important differences, there are a number of similarities between the requirements for the ULI and those for the NULI. To the extent that NULI requirements resemble requirements for the ULI, the Bureau has conformed § 1003.3(d)(5) and its commentary to the corresponding text of existing § 1003.4(a)(1)(i) and its commentary for ease of reference and consistency.

[122] HMDA requires that covered loans and applications be "itemized in order to clearly and conspicuously disclose" the applicable data for each loan or application. 12 U.S.C. 2803(a)(2).

Section 1003.3(d)(5) provides that, if, pursuant to § 1003.3(d)(2) or (3), a financial institution does not report a ULI pursuant to § 1003.4(a)(1)(i) for an application for a covered loan that it receives, a covered loan that it originates, or a covered loan that it purchases, the financial institution shall assign and report a NULI. It further provides that, to identify the covered loan or application, the NULI must be composed of up to 22 characters, which:

- May be letters, numerals, or a combination of letters and numerals;
- Must be unique within the annual loan/application register in which the covered loan or application is included; and
- Must not include any information that could be used to directly identify the applicant or borrower.

Comment 3(d)(5)-1 explains the requirement that the NULI must be unique within the annual loan/application register in which the covered loan or application is included. Comment 3(d)(5)-2 clarifies the scope of information that could be used to directly identify the applicant or borrower for purposes of § 1003.3(d)(5)(iii), using the same language that appears in comment 4(a)(1)(i)-2 with respect to the ULI.

The final rule's requirements for the NULI are consistent with those in the 2018 HMDA Rule. However, the 2018 HMDA Rule states that the NULI must be "unique within the insured depository institution or credit union," whereas § 1003.3(d)(5)(ii) states that the NULI must be "unique within the annual loan/application register in which the covered loan or application is included." This adjustment and similar adjustments that appear in comment 3(d)(5)-1 clarify that the NULI must be unique within a financial institution's yearly HMDA submission but the NULI does not need to be unique across reporting years. For the same reason, the final rule does not incorporate the portion of the 2018 HMDA Rule stating that a financial institution may not use a

NULI previously reported if the institution reinstates or reconsiders an application that was reported in a prior calendar year.[123] Thus, the final rule allows a financial institution to use the same NULI for a partially exempt transaction in its 2021 loan/application register that the institution used for a different partially exempt transaction in its 2020 loan/application register. Because final action on an application may be taken in a different year than the year in which a NULI is assigned (for example, for applications received late in the year), insured depository institutions and insured credit unions may opt not to reassign NULIs that they have assigned previously to ensure all NULIs included in their annual loan/application register are unique within that annual loan/application register.

The Bureau recognizes that some insured depository institutions and insured credit unions may prefer to report a ULI for partially exempt transactions even if they are not required to do so. As explained in the 2018 HMDA Rule and in the section-by-section analysis of § 1003.3(d)(4) above and of § 1003.4(a)(1)(i) below, voluntary reporting of ULIs for partially exempt transactions is permissible under the EGRRCPA, and no NULI is required if a ULI is provided.

3(d)(6)

Notwithstanding the EGRRCPA's partial exemptions, new HMDA section 304(i)(3) provides that an insured depository institution shall comply with HMDA section 304(b)(5) and (6) if the insured depository institution has received a rating of "needs to improve record of meeting community credit needs" during each of its two most recent examinations or a rating of "substantial noncompliance in meeting community credit needs" on its most recent examination under section 807(b)(2) of the CRA. To implement this provision, proposed § 1003.3(d)(6)

[123] 83 FR 45325, 45330 (Sept. 7, 2018).

provided that § 1003.3(d)(2) and (3) do not apply to an insured depository institution that, as of the preceding December 31, had received a rating of "needs to improve record of meeting community credit needs" during each of its two most recent examinations or a rating of "substantial noncompliance in meeting community credit needs" on its most recent examination under section 807(b)(2) of the CRA. As mentioned above, commenters that discussed the proposed amendments relating to EGRRCPA generally expressed support for the Bureau's implementation of section 104(a) of the EGRRCPA and did not suggest any changes. For the reasons explained below, the Bureau is finalizing comment 3(d)(6)-1 as proposed.

As the Bureau explained in the 2018 HMDA Rule, the EGRRCPA does not specify the date as of which an insured depository institution's two most recent CRA examinations must be assessed for purposes of the exception in HMDA section 304(i)(3). In the 2018 HMDA Rule, the Bureau interpreted HMDA section 304(i)(3) to require that this assessment be made as of December 31 of the preceding calendar year. This timing is consistent with the timing for assessing Regulation C's asset-size threshold and requirement that a financial institution have a home or branch office located in a Metropolitan Statistical Area (MSA), which are both assessed as of the preceding December 31.[124] It also ensures that financial institutions can determine before they begin collecting information in any given calendar year whether they are eligible for a partial exemption for information collected for certain transactions in that year.
Section 1003.3(d)(6) incorporates this interpretation into Regulation C.

Comment 3(d)(6)-1 explains that the preceding December 31 means the December 31 preceding the current calendar year. It includes the same example that was provided in the 2018 HMDA Rule to illustrate how the exception works, with minor wording changes for clarity.

[124] 12 CFR 1003.2(g)(1)(i) and (ii) and (g)(2)(i); comment 2(g)-1.

Section 1003.4 Compilation of Reportable Data

4(a) Data Format and Itemization

Section 1003.4(a) requires financial institutions to collect specific data about covered loans, applications for covered loans, and purchases of covered loans. The EGRRCPA provides partial exemptions from this requirement for certain transactions of insured depository institutions and insured credit unions. To conform to the EGRRCPA, the Bureau proposed to amend the introductory paragraph of § 1003.4(a) to indicate that the requirement to collect the data identified in § 1003.4(a) is applicable except as specified in proposed § 1003.3(d), which would implement the new partial exemptions. The Bureau also proposed to make a similar change to comment 4(a)-1. The Bureau requested comment on these proposed amendments and the other proposed amendments to § 1003.4(a) relating to the partial exemptions that are discussed below. Commenters that discussed the proposed amendments relating to EGRRCPA generally expressed support for the Bureau's implementation of section 104(a) of the EGRRCPA and did not suggest any changes to the proposed regulation text and commentary relating to the partial exemptions.[125] For the reasons stated below, the Bureau is now finalizing the proposed amendments to § 1003.4(a) relating to the partial exemptions as proposed.[126]

4(a)(1)(i)

Section 1003.4(a)(1)(i) generally requires a financial institution to assign and report a ULI for the covered loan or application that can be used to identify and retrieve the covered loan or application file. As explained in the 2018 HMDA Rule and the section-by-section analysis of § 1003.3(d)(5) above, a financial institution is not required to assign and report a ULI for a

[125] For a more detailed description of the comments received relating to the proposed amendments implementing the EGRRCPA, see the section-by-section analysis of § 1003.3(d) above.

[126] The final rule also includes one technical correction to the fourth sentence of comment 4(a)(8)(i)-9.

partially exempt transaction if it instead assigns and reports a NULI. The Bureau proposed amendments to section 4(a)(1)(i) and comments 4(a)(1)(i)-3, -4, and -6 relating to the NULI. Only one commenter, a national trade association, specifically addressed the proposed amendments relating to the NULI, and it expressed support. For the reasons discussed below, the Bureau is finalizing § 1003.4(a)(1)(i) and comments 4(a)(1)(i)-3, -4, and -6 as proposed.

To incorporate the NULI into Regulation C, the final rule amends § 1003.4(a)(1)(i) to indicate that, for a partially exempt transaction under § 1003.3(d), the data collected shall include either a ULI or a NULI as described in § 1003.3(d)(5), and that a financial institution does not need to assign and report a ULI for a partially exempt transaction for which a NULI is assigned and reported under § 1003.3(d).

The final rule also amends comment 4(a)(1)(i)-3 to indicate that the requirement to report the same ULI that was previously assigned or reported for purchased covered loans does not apply if the purchase of the covered loan is a partially exempt transaction under § 1003.3(d). Because the partial exemptions are only available to insured depository institutions that are not disqualified by their CRA examination histories and insured credit unions for certain transactions as set forth in § 1003.3(d), it is possible that a financial institution's purchase of a covered loan that was partially exempt when originated would not be a partially exempt transaction and that the purchasing financial institution would therefore need to assign a ULI. Therefore, the final rule amends comment 4(a)(1)(i)-3 to clarify that a financial institution that purchases a covered loan and is ineligible for a partial exemption with respect to the purchased covered loan must assign a ULI and record and submit it in its loan/application register pursuant to § 1003.5(a)(1) if the financial institution that originated the loan did not assign a ULI. Consistent with the 2018 HMDA Rule, the final rule amends comment 4(a)(1)(i)-3 to clarify that this may occur, for example, if the loan was assigned a NULI under § 1003.3(d)(5) rather than a ULI by the loan originator.

The final rule also amends comment 4(a)(1)(i)-4 to clarify the example provided in that comment of how ULIs are assigned if a financial institution reconsiders an application that was reported in a prior calendar year. The amendments clarify that the example assumes that the financial institution reported a ULI rather than a NULI in 2020 for the initial denied application and that the financial institution then made an origination that is not partially exempt when it reconsidered in 2021 the previously denied application.

The final rule also adds a new comment 4(a)(1)(i)-6 explaining that, for a partially exempt transaction under § 1003.3(d), a financial institution may report a ULI or a NULI. The comment cross-references § 1003.3(d)(5) and comments 3(d)(5)-1 and -2 for guidance on the NULI. The Bureau believes that these changes will help clarify financial institutions' responsibilities in assigning identifiers to partially exempt transactions.

4(a)(1)(ii)

Section 1003.4(a)(1)(ii) generally requires financial institutions to collect the date the application was received or the date shown on the application form. Current comment 4(a)(1)(ii)-3 explains that, 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 using the same ULI or as a new transaction with a new ULI. The Bureau believes that it is appropriate to apply the same approach with respect to NULIs and proposed to amend comment 4(a)(1)(ii)-3 to reference both ULIs and NULIs. Only one commenter, a national trade association, specifically addressed the proposed amendments relating to the NULI, and it expressed support for the NULI modifications generally. The Bureau is finalizing comment 4(a)(1)(ii)-3 as proposed.

4(a)(9)

Section 1003.4(a)(9) generally requires a financial institution to report the property address of the location of the property securing a covered loan or, in the case of an application, proposed to secure a covered loan (property address), as well as the State, the county, and in some cases the census tract of the property if the property is located in an MSA or Metropolitan Division (MD) in which the financial institution has a home or branch office, or if the institution is subject to § 1003.4(e). Comment 4(a)(9)-2 addresses situations involving multiple properties with more than one property taken as security. The comment explains that, if an institution is required to report specific information about the property identified in § 1003.4(a)(9) by another section of Regulation C such as, for example, § 1003.4(a)(29) or (30), the institution reports the information that relates to the property identified in § 1003.4(a)(9). The Bureau proposed to amend comment 4(a)(9)-2 to clarify that, in this circumstance, if the transaction is partially exempt under § 1003.3(d) and no data are reported pursuant to § 1003.4(a)(9), the institution reports the information that relates to the property that the institution would have identified in § 1003.4(a)(9) if the transaction were not partially exempt. This would mean that, for a partially exempt transaction in which more than one property is taken as security and no data are reported under § 1003.4(a)(9), a financial institution should choose one of the properties taken as a security that contains a dwelling and provide information about that property if the institution is required to report specific information about the property identified in § 1003.4(a)(9) by one or more other sections of Regulation C. The Bureau received no comments on the proposed amendment and is finalizing comment 4(a)(9)-2 as proposed. The Bureau believes that this amendment will assist financial institutions in applying comment 4(a)(9)-2 to partially exempt transactions.

4(a)(9)(i)

Section 1003.4(a)(9)(i) generally requires a financial institution to report the property address. To implement the EGRRCPA's partial exemptions, the Bureau proposed to amend comment 4(a)(9)(i)-1 to clarify that the requirement to report property address does not apply to partially exempt transactions under § 1003.3(d). The Bureau received no comments on the proposed amendment and is finalizing comment 4(a)(9)(i)-1 as proposed.

4(a)(12)

Section 1003.4(a)(12) generally requires a financial institution to report the rate spread for covered loans and applications that are approved but not accepted, and that are subject to Regulation Z, 12 CFR part 1026, other than assumptions, purchased covered loans, and reverse mortgages. To implement the EGRRCPA's partial exemptions, the Bureau proposed to amend comment 4(a)(12)-7 to provide that § 1003.4(a)(12) does not apply to transactions that are partially exempt under proposed § 1003.3(d). The Bureau received no comments on the proposed amendment and is finalizing comment 4(a)(12)-7 as proposed.

4(a)(15)

Section 1003.4(a)(15) generally requires financial institutions 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. To implement the EGRRCPA's partial exemptions, the Bureau proposed to amend comment 4(a)(15)-1 to clarify that the requirement 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 does not apply to transactions that are partially exempt under proposed § 1003.3(d). The Bureau received no comments on the proposed amendment and is finalizing comment 4(a)(15)-1 as proposed.

4(a)(16)

Section 1003.4(a)(16) generally requires financial institutions to report the principal reason(s) for denial of an application. To implement the EGRRCPA's partial exemptions, the Bureau proposed to amend comment 4(a)(16)-4 to clarify that the requirement to report the principal reason(s) for denial of an application does not apply to transactions that are partially exempt under proposed § 1003.3(d). The Bureau received no comments on the proposed amendment and is finalizing comment 4(a)(16)-4 as proposed.

4(a)(17)

Section 1003.4(a)(17) generally requires that, for covered loans subject to Regulation Z § 1026.43(c), a financial institution shall report the amount of total loan costs if a disclosure is provided for the covered loan pursuant to Regulation Z § 1026.19(f), or the total points and fees charged in connection with the covered loan if the covered loan is not subject to the disclosure requirements in Regulation Z § 1026.19(f). To implement the EGRRCPA's partial exemptions, the Bureau proposed to amend comments 4(a)(17)(i)-1 and (ii)-1 to clarify that the requirement to report total loan costs or total points and fees, as applicable, does not apply to transactions that are partially exempt under proposed § 1003.3(d). The Bureau received no comments on the proposed amendments and is finalizing comments 4(a)(17)(i)-1 and (ii)-1 as proposed.

4(a)(18)

Section 1003.4(a)(18) generally requires financial institutions to report, for covered loans subject to the disclosure requirements in Regulation Z § 1026.19(f), the total of all borrower-paid origination charges. To implement the EGRRCPA's partial exemptions, the Bureau proposed to amend comment 4(a)(18)-1 to clarify that the requirement to report borrower-paid origination charges does not apply to transactions that are partially exempt under proposed § 1003.3(d). The Bureau received no comments on the proposed amendment and is finalizing comment 4(a)(18)-1 as proposed.

4(a)(19)

Section 1003.4(a)(19) generally requires financial institutions to report, for covered loans subject to the disclosure requirements in Regulation Z § 1026.19(f), the points paid to the creditor to reduce the interest rate. To implement the EGRRCPA's partial exemptions, the Bureau proposed to amend comment 4(a)(19)-1 to clarify that the requirement to report discount points does not apply to transactions that are partially exempt under proposed § 1003.3(d). The Bureau received no comments on the proposed amendment and is finalizing comment 4(a)(19)-1 as proposed.

4(a)(20)

Section 1003.4(a)(20) generally requires financial institutions to report, for covered loans subject to the disclosure requirements in Regulation Z § 1026.19(f), the amount of lender credits. To implement the EGRRCPA's partial exemptions, the Bureau proposed to amend comment 4(a)(20)-1 to clarify that the requirement to report lender credits does not apply to transactions that are partially exempt under proposed § 1003.3(d). The Bureau received no comments on the proposed amendment and is finalizing comment 4(a)(20)-1 as proposed.

4(a)(21)

Section 1003.4(a)(21) generally requires financial institutions to report the interest rate applicable to the approved application or to the covered loan at closing or account opening. To implement the EGRRCPA's partial exemptions, the Bureau proposed to amend comment 4(a)(21)-1 to clarify that the requirement to report interest rate does not apply to transactions that are partially exempt under proposed § 1003.3(d). The Bureau received no comments on the proposed amendment and is finalizing comment 4(a)(21)-1 as proposed.

4(a)(22)

Section 1003.4(a)(22) generally requires financial institutions to report the term in months of any prepayment penalty for covered loans or applications subject to Regulation Z, 12 CFR part 1026. To implement the EGRRCPA's partial exemptions, the Bureau proposed to amend comment 4(a)(22)-1 to clarify that the requirement to report the term of any prepayment penalty does not apply to transactions that are partially exempt under proposed § 1003.3(d). The Bureau received no comments on the proposed amendment and is finalizing comment 4(a)(22)-1 as proposed.

4(a)(23)

Section 1003.4(a)(23) generally requires financial institutions to 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 (debt-to-income ratio). To implement the EGRRCPA's partial exemptions, the Bureau proposed to amend comment 4(a)(23)-1 to clarify that the requirement to report the debt-to-income ratio does not apply to transactions that are partially exempt under proposed § 1003.3(d). The Bureau received no comments on the proposed amendment and is finalizing comment 4(a)(23)-1 as proposed.

4(a)(24)

Section 1003.4(a)(24) generally requires financial institutions to report the ratio of the total amount of debt secured by the property to the value of the property relied on in making the credit decision (combined loan-to-value ratio). To implement the EGRRCPA's partial exemptions, the Bureau proposed to amend comment 4(a)(24)-1 to clarify that the requirement to report the combined loan-to-value ratio does not apply to transactions that are partially exempt under proposed § 1003.3(d). The Bureau received no comments on the proposed amendment and is finalizing comment 4(a)(24)-1 as proposed.

4(a)(25)

Section 1003.4(a)(25) generally requires financial institutions to report the scheduled number of months after which the legal obligation will mature or terminate or would have matured or terminated (loan term). To implement the EGRRCPA's partial exemptions, the Bureau proposed to amend comment 4(a)(25)-5 to clarify that the requirement to report loan term does not apply to transactions that are partially exempt under proposed § 1003.3(d). The Bureau received no comments on the proposed amendment and is finalizing comment 4(a)(25)-5 as proposed.

4(a)(26)

Section 1003.4(a)(26) generally requires financial institutions to report the number of months, or proposed number of months in the case of an application, from the closing or account opening until the first date the interest rate may change. To implement the EGRRCPA's partial exemptions, the Bureau proposed to amend comment 4(a)(26)-1 to clarify that the requirement to report the number of months, or proposed number of months in the case of an application, from closing or account opening until the first date the interest rate may change does not apply to transactions that are partially exempt under proposed § 1003.3(d). The Bureau received no comments on the proposed amendment and is finalizing comment 4(a)(26)-1 as proposed.

4(a)(27)

Section 1003.4(a)(27) generally requires financial institutions to report contractual features that would allow payments other than fully amortizing payments. To implement the EGRRCPA's partial exemptions, the Bureau proposed to amend comment 4(a)(27)-1 to clarify that the requirement to report contractual features that would allow payments other than fully amortizing payments does not apply to transactions that are partially exempt under proposed § 1003.3(d). The Bureau received no comments on the proposed amendment and is finalizing comment 4(a)(27)-1 as proposed.

4(a)(28)

Section 1003.4(a)(28) generally requires 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. To implement the EGRRCPA's partial exemptions, the Bureau proposed to amend comment 4(a)(28)-1 to clarify that the requirement to report the property value relied on in making the credit decision does not apply to transactions that are partially exempt under proposed § 1003.3(d). The Bureau received no comments on the proposed amendment and is finalizing comment 4(a)(28)-1 as proposed.

4(a)(29)

Section 1003.4(a)(29) generally requires financial institutions to report whether a covered loan or application is or would have been secured by a manufactured home and land or by a manufactured home and not land. To implement the EGRRCPA's partial exemptions, the Bureau proposed to amend comment 4(a)(29)-4 to clarify that the requirement to report whether a covered loan or application is or would have been secured by a manufactured home and land or by a manufactured home and not land does not apply to transactions that are partially exempt under proposed § 1003.3(d). The Bureau received no comments on the proposed amendment and is finalizing comment 4(a)(29)-4 as proposed.

4(a)(30)

Section 1003.4(a)(30) generally requires financial institutions to report 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 interest. To implement the EGRRCPA's partial exemptions, the Bureau proposed to amend comment 4(a)(30)-6 to clarify that the requirement to report ownership or leasing information on the manufactured home land property interest does not apply to transactions that are partially exempt under proposed § 1003.3(d). The Bureau received no comments on the proposed amendment and is finalizing comment 4(a)(30)-6 as proposed.

4(a)(32)

Section 1003.4(a)(32) generally requires financial institutions to 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. To implement the EGRRCPA's partial exemptions, the Bureau proposed to amend comment 4(a)(32)-6 to clarify that the requirement to 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 does not apply to transactions that are partially exempt under proposed § 1003.3(d). The Bureau received no comments on the proposed amendment and is finalizing comment 4(a)(32)-6 as proposed.

4(a)(33)

Section 1003.4(a)(33) generally requires financial institutions to report 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. To implement the EGRRCPA's partial exemptions, the Bureau proposed to amend comments 4(a)(33)(i)-1 and (33)(ii)-1 to clarify that the requirement for financial institutions to report 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, does not apply to transactions that are partially exempt under proposed § 1003.3(d). The Bureau received no comments on the proposed amendments and is finalizing comments 4(a)(33)(i)-1 and (33)(ii)-1 as proposed.

4(a)(34)

Section 1003.4(a)(34) generally requires financial institutions to report the unique identifier assigned by the Nationwide Mortgage Licensing System and Registry (NMLSR ID) for the mortgage loan originator. To implement the EGRRCPA's partial exemptions, the Bureau proposed to amend comment 4(a)(34)-1 to clarify that the requirement for financial institutions to report the NMLSR ID does not apply to transactions that are partially exempt under proposed § 1003.3(d). The Bureau received no comments on the proposed amendment and is finalizing comment 4(a)(34)-1 as proposed.

4(a)(35)

Section 1003.4(a)(35) generally requires financial institutions to report the name of the automated underwriting system (AUS) used by the financial institution to evaluate the application and the result generated by that AUS. To implement the EGRRCPA's partial exemptions, the Bureau proposed to amend comment 4(a)(35)-1 to clarify that the requirement for financial institutions to report the name of the AUS used to evaluate the application and the result generated by that AUS does not apply to transactions that are partially exempt under proposed § 1003.3(d). The Bureau received no comments on the proposed amendment and is finalizing comment 4(a)(35)-1 as proposed.

4(a)(37)

Section 1003.4(a)(37) requires financial institutions to identify whether the covered loan or the application is for an open-end line of credit. To implement the EGRRCPA's partial exemptions, the Bureau proposed to amend comment 4(a)(37)-1 to clarify that the requirement for financial institutions to identify whether the covered loan or the application is for an open-end line of credit does not apply to transactions that are partially exempt under proposed § 1003.3(d). The Bureau received no comments on the proposed amendment and is finalizing comment 4(a)(37)-1 as proposed.

4(a)(38)

Section 1003.4(a)(38) requires financial institutions to identify whether the covered loan is, or the application is for a covered loan that will be, made primarily for a business or commercial purpose. To implement the EGRRCPA's partial exemptions, the Bureau proposed to amend comment 4(a)(38)-1 to clarify that the requirement for financial institutions to identify whether the covered loan is, or the application is for a covered loan that will be, made primarily for a business or commercial purpose does not apply to transactions that are partially exempt under proposed § 1003.3(d). The Bureau received no comments on the proposed amendment and is finalizing comment 4(a)(38)-1 as proposed.

4(e) Data Reporting for Banks and Savings Associations that Are Required to Report Data on Small Business, Small Farm, and Community Development Lending under CRA

Section 1003.4(e) provides that 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 shall also collect the information required by § 1003.4(a)(9) for property located outside MSAs and Metropolitan Divisions (MDs) in which the institution has a home or branch office, or outside any MSA. Section 1003.4(e) requires collection only of the information required by § 1003.4(a)(9)(ii) regarding the location of the property by State, county, and census tract because § 1003.4(a)(9)(i) itself requires collection of property address regardless of whether the property is located in an MSA or MD.[127] The Bureau proposed to amend § 1003.4(e) by changing the cross-reference from § 1003.4(a)(9) to § 1003.4(a)(9)(ii) to clarify that § 1003.4(e) only relates to the information required by § 1003.4(a)(9)(ii) without making any substantive changes. The Bureau received no comments on the proposed amendment and is finalizing § 1003.4(e) as proposed. The Bureau believes that this clarification will assist financial institutions and other stakeholders by making it clear that § 1003.4(e) does not require reporting of property address information required by § 1003.4(a)(9)(i) when a partial exemption applies.

VI. Effective Dates

The Bureau proposed that amendments to incorporate the interpretations and procedures from the 2018 HMDA Rule into Regulation C and further implement section 104(a) of the EGRRCPA would take effect on January 1, 2020. The Bureau explained in the May 2019

[127] When the Board added § 1003.4(e) to Regulation C, the property address information that is now specified in § 1003.4(a)(9)(i) was not yet required. *See* 80 FR 66128, 66186 (Oct. 28, 2015) (noting that § 1003.4(e) predates the 2015 HMDA Rule, which added the property address requirement now in § 1003.4(a)(9)(i)).

Proposal that this would allow stakeholders to benefit without significant delay from the additional certainty and clarity that the Regulation C amendments will provide regarding the EGRRCPA partial exemptions that are already in effect.[128] Regarding the proposed amendments to incorporate the EGRRCPA amendments into Regulation C, one State trade association expressed support for the clarifications regarding the effective date of the partial exemptions.

The Bureau proposed that the temporary threshold of 500 open-end lines of credit for institutional and transactional coverage would take effect on January 1, 2020. This effective date corresponds to the date when the initial temporary open-end coverage threshold established in the 2017 HMDA Rule is otherwise set to expire. The Bureau did not receive any comments on the proposed effective date for the temporary threshold of 500 open-end lines of credit. The Bureau is finalizing these effective dates as proposed.

VII. Dodd-Frank Act Section 1022(b) Analysis

The Bureau has considered the potential benefits, costs, and impacts of the final rule.[129] In developing the final rule, the Bureau has consulted with or offered to consult with the prudential regulators (the Board, the FDIC, the NCUA, and the OCC), the Department of Agriculture, the Department of Housing and Urban Development (HUD), the Department of Justice, the Department of the Treasury, the Department of Veterans Affairs, the Federal Housing Finance Agency, the Federal Trade Commission, and the Securities and Exchange

[128] As noted, many of the amendments merely incorporate into Regulation C provisions of the EGRRCPA and the 2018 HMDA Rule that are already in effect. Compliance with such amendments prior to January 1, 2020 does not violate Regulation C.

[129] 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.

Commission regarding, among 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 incorporating into Regulation C, which implements HMDA, the interpretations and procedures from the 2018 HMDA Rule and implementing further section 104(a) of the EGRRCPA. The Bureau is also amending Regulation C, effective January 1, 2020, to extend for a period of two additional years the current data reporting threshold of 500 open-end lines of credit.

A. Provisions To Be Analyzed

The final rule contains regulatory or commentary language (provisions). The discussion below considers the benefits, costs, and impacts of the following major provisions of the final rule to:

1. Incorporate the interpretations and procedures from the 2018 HMDA Rule into Regulation C and further implement section 104(a) of the EGRRCPA, which grants eligible financial institutions partial exemptions from HMDA's requirements for certain transactions; and

2. Extend for a period of two years, specifically calendar years 2020 and 2021, the current data reporting threshold of 500 open-end lines of credit in each of the two preceding calendar years.

With respect to each major provision, the discussion considers the benefits, costs, and impacts to consumers and covered persons. The discussion also addresses comments the Bureau received on the proposed Dodd-Frank Act section 1022(b) analysis, as well as certain other comments on the benefits or costs of the relevant provisions of the May 2019 Proposal that the Bureau is finalizing in this rule, when doing so is helpful to understanding the Dodd-Frank Act section 1022(b) analysis. Some comments that mentioned the benefits or costs of a provision of the May 2019 Proposal in the context of commenting on the merits of that provision are addressed in the relevant section-by-section analysis, above. In this respect, the Bureau's discussion under Dodd-Frank Act section 1022(b) is not limited to this discussion in part VII of the final notice.

B. Baselines for Consideration of Costs and Benefits

The Bureau has discretion in any rulemaking to choose an appropriate scope of analysis with respect to potential benefits, costs, and impacts and an appropriate baseline. The two sets of provisions included in this final rule are distinct from one another and hence the Bureau has chosen a different baseline for each of the provisions: 1) to avoid double-counting the impacts assessed for each set of provisions, and 2) to provide the clearest exposition of the effects of the Bureau's actions in this final rule and in implementing the EGRRCPA in the 2018 HMDA Rule. However, summed together, the impact estimates for the two sets of provisions as analyzed in this part form the total estimated impact for the final rule corresponding to a baseline where the 2015 HMDA Rule and the 2017 HMDA Rule were in effect prior to the EGRRCPA.

For purposes of this analysis, we refer to the first set of provisions in the final rule as those that incorporate the interpretations and procedures from the 2018 HMDA Rule into Regulation C and further implement section 104(a) of the EGRRCPA, which grants eligible financial institutions partial exemptions from HMDA's requirements for certain transactions. In the analysis under section 1022(b) of the Dodd-Frank Act for the 2018 HMDA Rule, the Bureau adopted a post-statute baseline to assess the impact of the 2018 HMDA Rule because that rule merely interprets and provides guidance regarding what Congress required in section 104(a) of the EGRRCPA and provides procedures related to applying those requirements.[130] By contrast, the Bureau is using its legislative rulemaking authority to amend Regulation C to implement the statutory provisions in this rulemaking. For the consideration of benefits and costs of the first set of provisions in this final rule, the Bureau is therefore using a pre-statute baseline, i.e., evaluating the benefits, costs, and impacts of the provisions implementing the EGRRCPA as compared to the state of the world prior to when the EGRRCPA took effect. The Bureau believes such a pre-statute baseline provides the public and the Bureau a more complete picture of the impacts of the EGRRCPA changes that were implemented by the Bureau's 2018 HMDA Rule and further implemented by the relevant provisions in this final rule.

For the purposes of this analysis, we refer to the second set of provisions in this final rule as those that extend for two years, until January 1, 2022, the current temporary open-end coverage threshold of 500 open-end lines of credit in each of the two preceding calendar years. In the 2017 HMDA Rule, the Bureau granted two-year temporary relief (specifically, for 2018 and 2019) for financial institutions that did not originate at least 500 open-end lines of credit in each of the two preceding calendar years. The 2017 HMDA Rule provides that, absent any future rulemaking, the open-end coverage threshold will revert to 100 open-end lines of credit, as in the 2015 HMDA Rule, starting in 2020. This final rule extends the current temporary coverage threshold of 500 open-end lines of credit in each of the two preceding calendar years for two more years (specifically, 2020 and 2021).

[130] The Bureau has discretion in any rulemaking to choose an appropriate scope of analysis with respect to potential benefits, costs, and impacts and an appropriate baseline. In the 2018 HMDA Rule, the Bureau noted that it anticipated an upcoming notice-and-comment rulemaking and expected that the accompanying analysis under Dodd-Frank Act section 1022(b) would assess the benefits, costs, and impacts of the statute as well as the implementing regulation. 83 FR 45325, 45332 n.57 (Sept. 7, 2018).

Meanwhile, the EGRRCPA's partial exemption for open-end lines of credit of eligible insured depository institutions and insured credit unions took effect on May 24, 2018. The temporary increase in the open-end coverage threshold adopted in the 2017 HMDA Rule would automatically expire without this current or other rulemaking effort and some insured depository institutions and insured credit unions are now eligible for a partial exemption for open-end lines of credit. Therefore, for the consideration of benefits and costs of this provision the Bureau is adopting a baseline in which the open-end coverage threshold starting in year 2020 is reset at 100 open-end lines of credit in each of the two preceding calendar years with some depository institutions and credit unions partially exempt under the EGRRCPA.

C. Coverage of the Final Rule

Both sets of provisions apply to certain financial institutions and relieve these financial institutions from HMDA's requirements for either all or certain data points regarding closed-end mortgage loans or open-end lines of credit that they originate or purchase, or for which they receive applications, as described further in each section below. In short, the implementation of the EGRRCPA would affect certain insured depository institutions and insured credit unions with origination volumes below certain thresholds, while the rest of the final rule would affect all financial institutions below certain thresholds and not just insured depository institutions and insured credit unions.

D. 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 Bureau's ability to fully quantify the potential costs, benefits, and impacts of this final rule is limited in some instances by a scarcity of necessary data.

1. Benefits to Covered Persons

This final rule relates to the financial institutions, transactions, and data points that are exempted or excluded from HMDA's reporting requirements. Both sets of provisions in this final rule are designed to reduce the regulatory burdens on covered persons while minimizing the impact on the ability of HMDA data to serve the statute's purposes. Therefore, the benefits of these provisions to covered persons are mainly the reduction of the costs to covered persons relative to the compliance costs the covered persons would have to incur under each baseline scenario.

The Bureau's 2015 HMDA Rule, as well as the 2014 proposed rule for the 2015 HMDA Rule and the material provided to the Small Business Review Panel leading to the 2015 HMDA Rule, presented a basic framework of analyzing compliance costs for HMDA reporting, including ongoing costs and one-time costs for financial institutions. Based on the Bureau's study of the HMDA compliance process and costs, with the help of additional information gathered and verified through the Small Business Review Panel process, the Bureau classified the operational activities that financial institutions use for HMDA data collection and reporting into 18 discrete compliance "tasks" which can be grouped into four "primary tasks."[131] Recognizing that the cost per loan of complying with HMDA's requirements differs by financial institution, the Bureau further identified seven key dimensions of compliance operations that were significant drivers of compliance costs, including the reporting system used, the degree of system integration, the degree of system automation, the compliance program, and the tools for

[131] These tasks include: 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 modified loan/application register, distributing modified loan/application register, distributing disclosure statement, and using vendor HMS software; 3) Compliance and internal audits: training, internal audits, and external audits; and 4) HMDA-related exams: examination preparation and examination assistance.

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 tended to use less automation and less complex tools for geocoding. Financial institutions generally did not 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 convened under the Small Business Regulatory Enforcement Fairness Act.[132]

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. To consider costs in a practical and meaningful way, in the 2015 HMDA Rule the Bureau adopted an approach that focused on three representative tiers of financial institutions. In particular, to capture the relationships between operational complexity and compliance cost, the Bureau used these seven dimensions to define three broadly representative financial institutions 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.

[132] *See* Bureau of Consumer Fin. Prot., "Final Report of the Small Business Review Panel on the CFPB's Proposals Under Consideration for the Home Mortgage Disclosure Act (HMDA) Rulemaking" 22, 37 (Apr. 24, 2014), http://files.consumerfinance.gov/f/201407_cfpb_report_hmda_sbrefa.pdf.

Table 1 below provides an overview of all three representative tiers across the seven dimensions of compliance operations[133]:

Table 1

Types of HMDA Reporters[1]

	Tier 3 FIs tend to …	Tier 2 FIs tend to …	Tier 1 FIs tend to …
Systems	Enter data in Excel loan/application register Formatting Tool	Use LOS and HMS; Submit data via the HMDA Platform	Use multiple LOS, central SoR, HMS; Submit data via the HMDA Platform
Integration	(None)	Have forward integration (LOS to HMS)	Have backward and forward integration; Integration with public HMDA APIs
Automation	Manually enter data into loan/application register Formatting Tool; review and verify edits in the HMDA Platform	loan/application register file produced by HMS; review edits in HMS and HMDA platform; verify edits via HMDA Platform	loan/application register file produced by HMS; high automation compiling file and reviewing edits; verify edits via the HMDA platform
Geocoding	Use FFIEC tool (manual)	Use batch processing	Use batch processing with multiple sources
Completeness Checks	Check in HMDA Platform 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"; LOS is "Loan Origination System"; HMS is "HMDA Data Management Software"; SoR is "System of Record."

For a representative institution in each tier, in the 2015 HMDA Rule, the Bureau produced a series of estimates of the costs of compliance, including the ongoing costs that financial institutions incurred prior to the implementation of the 2015 HMDA Rule, and the

[133] The Bureau notes this description has taken into account the operational improvements the Bureau has implemented regarding HMDA reporting since issuing the 2015 HMDA Rule and differs slightly from the original taxonomy in the 2015 HMDA Rule that reflected the technology at the time of the study.

changes to the ongoing costs due to the 2015 HMDA Rule. The Bureau further provided the breakdown of the changes to the ongoing costs due to each major provision in the 2015 HMDA Rule, which includes the changes to the scope of the institutional coverage, the change to the scope of the transactional coverage, the revisions to the existing data points (as before the 2015 HMDA Rule) and the addition of new data points by the 2015 HMDA Rule.

For the impact analysis in this final rule, the Bureau is utilizing the cost estimates provided in the 2015 HMDA Rule for the representative financial institution in each of the three tiers, with some updates, mainly to reflect the inflation rate, and in the case of the set of provisions implementing the partial exemptions under the EGRRCPA, to align the partially exempt data points (and data fields used to report these data points) with the cost impact analyses discussed in the impact analyses for the 2015 HMDA Rule. The Bureau's analyses below also take into account the operational improvements that have been implemented by the Bureau regarding HMDA reporting since the issuance of the 2015 HMDA Rule. The details of such analyses are contained in the following sections addressing the two sets of provisions of this final rule.

The Bureau received a number of comments relating to the benefits to covered persons of the May 2019 Proposal, which it has considered in finalizing this rule. Many industry commenters reported that they expend substantial resources on HMDA compliance that could instead be used for other purposes or that they have structured their lines of business to ensure they are not required to report under HMDA. Some cited, for example, the burden of establishing procedures, purchasing reporting software, and training staff to comply with HMDA, and noted that compliance can be particularly difficult for smaller institutions with limited staff. A trade association commented that the Bureau's estimates do not account for the reduction in examination burdens and the resources diverted to HMDA compliance from other more productive activities. It also asserted that the Bureau's burden analysis did not properly address data security costs associated with HMDA collection and reporting. Another trade association suggested that the three-tiered approach to estimating costs does not seem to account for the unique challenges of adapting business and multifamily lending to HMDA regulations and HMDA reporting infrastructure designed with single-family consumer mortgage lending in mind.

In their comments, consumer groups, civil rights groups, and other nonprofit organizations stated that Federal agency fair lending and CRA exams will become more burdensome for Federal agencies and the HMDA-exempt lenders since the agencies will now have to ask for internal data from the lenders instead of being able to use the HMDA data. They also noted that smaller-volume lenders already benefit from the EGRRCPA's partial exemptions and stated that almost all of the data that such institutions must report under HMDA would already need to be collected to comply with other statutes like the Truth in Lending Act, to sell loans to Fannie Mae or Freddie Mac, or to acquire FHA insurance for loans. A nonprofit organization that does HMDA-related research commented that it is hard to imagine that a bank would not keep an electronic record of its lending, even if it were not subject to HMDA reporting.

The Bureau has considered these comments and concludes that they do not undermine the Bureau's approach or cost parameters used in part VI of the May 2019 Proposal. For example, the activities that many industry commenters described as burdensome in their comments—including scrubbing data, training personnel, and preparing for HMDA-related examinations—are consistent with and captured by the 18 discrete compliance "tasks" that the Bureau identified through its study of the HMDA compliance process and costs in the 2015 HMDA rulemaking. As part of its analysis, the Bureau also recognized that costs vary by institution due to many factors, such as size, operational structure, and product complexity, and adopted a tiered framework to capture the relationships between operational complexity and compliance cost. While some products are more costly than others to report, the three-tiered framework uses representative institutions to capture this type of variability and estimate overall costs of HMDA reporting. In estimating compliance costs associated with HMDA reporting through this framework, the Bureau also recognized that much of the information required for HMDA reporting is information that financial institutions would need to collect, retain, and secure as part of their lending process, even if they were not subject to HMDA reporting. The Bureau therefore does not believe that the comments received provide a basis for departing from the approach for analyzing costs and benefits for covered persons used in part VI of the May 2019 Proposal.

The next step of the Bureau's consideration of the reduction of costs for covered persons involved aggregating the institution-level estimates of the cost reduction under each set of provisions up to the market-level. This aggregation required estimates of the total number of potentially impacted financial institutions and their total number of loan/application register records. The Bureau used a wide range of data in conducting this task, including recent HMDA data,[134] Call Reports, and Consumer Credit Panel data. These analyses were challenging, because no single data source provided complete coverage of all the financial institutions that could be impacted and because there is varying data quality among the different sources.

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[134] The majority of the analyses in the 1022 section of the May 2019 Proposal were conducted prior to the official submission deadline of the 2018 HMDA data on March 1, 2019, and 2017 was the most recent year of HMDA data the Bureau used for the analyses presented in the May 2019 Proposal. For this part of the final rule, the Bureau has supplemented the analyses with the 2018 HMDA data as released to the public on August 30, 2019. The Bureau notes the market may fluctuate from year to year, and the Bureau's rulemaking is not geared towards such transitory changes on an annual basis but is instead based on larger trends.

To perform the aggregation, the Bureau mapped the potentially impacted financial institutions to the three tiers described above. For each of the provisions analyzed, the Bureau assumed none of the changes would affect the high-complexity tier 1 reporters. The Bureau then assigned the potentially impacted financial institutions to either tier 2 or tier 3. In doing so, the Bureau relied on two constraints: 1) the estimated number of impacted institutions in tiers 2 and 3, combined, must equal the estimated number of impacted institutions for the applicable provision, and 2) the number of loan/application register records submitted annually by the impacted financial institutions in tiers 2 and 3, combined, must equal the estimated number of loan/application register records for the applicable provision. As in the 2015 HMDA Rule, the Bureau assumed for closed-end reporting that a representative low-complexity, tier 3 financial institution has 50 closed-end mortgage loan HMDA loan/application register records per year and a representative tier 2 financial institution has 1,000 closed-end mortgage loan HMDA loan/application register records per year. Similarly, the Bureau assumed for open-end reporting that a representative low-complexity, tier 3 financial institution has 150 open-end HMDA loan/application register records per year and a representative tier 2 financial institution has 1,000 open-end HMDA loan/application register records per year. Constraining the total number of impacted institutions and the number of impacted loan/application register records across tier 2 and tier 3 to the aggregate estimates thus enables the Bureau to calculate the approximate numbers of impacted institutions in tiers 2 and 3 for each set of provisions.[135]

Multiplying the impact estimates for representative financial institutions in each tier by the estimated number of impacted institutions, the Bureau arrived at the market-level estimates.

2. Costs to Covered Persons

[135] *See supra* note 60.

In general, and as discussed in part VII.D.1 above, both sets of provisions in this final rule will reduce the ongoing operational costs associated with HMDA reporting for the affected covered persons. In the interim, it is possible that to adapt to the rule, covered persons may incur certain one-time costs. Such one-time costs are mostly related to training and system changes in covered persons' HMDA reporting/loan origination systems. Based on the Bureau's outreach to industry, however, the Bureau believes that such one-time costs are fairly small. Commenters did not indicate that there would be significant costs to covered persons associated with the temporary extension of the open-end coverage threshold or the manner in which the Bureau proposed to implement the EGRRCPA provisions.[136]

3. Benefits to Consumers

Having generated estimates of the changes in ongoing costs and one-time costs to covered financial institutions, the Bureau then can attempt to estimate the potential pass-through of such cost reduction from these institutions to consumers, which could benefit 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 savings per application or origination, and absorb the one-time and increased fixed costs of complying with the rule. The Bureau estimated in the 2015 HMDA Rule the impacts on the variable costs of the representative financial institutions in each tier due to various provisions of that rule. Similarly, the estimates of the pass-through effect from covered persons to consumers due to the provisions under this rule are based on the relevant estimates of

[136] On the other hand, the set of provisions extending the temporary open-end threshold of 500 for two years will delay for two additional years the one-time costs that excluded institutions would otherwise incur if the 500 open-end coverage threshold were restored to 100 open-end lines of credit in 2020 absent this final rule. Because (absent any future rulemaking adjusting the permanent threshold) this represents merely a delay and not permanent avoidance of one-time costs of starting to report open-end lines of credit, the Bureau does not analyze separately this delaying of one-time costs.

the changes to the variable costs in the 2015 HMDA Rule with some updates. The Bureau notes that the market structure in the consumer mortgage lending markets may differ from that of a perfectly competitive market (for instance due to information asymmetry between lenders and borrowers) in which case the pass-through to the consumers would most likely be smaller than the pass-through under the perfect competition assumption.[137]

The Bureau requested additional comments on the potential pass-through from financial institutions to consumers due to the reduction in reporting costs. A trade association commented that it believed that the proposed higher thresholds will move mortgage markets to more perfect competition. It suggested that institutions that currently manage their origination volumes to stay below HMDA reporting thresholds will be incentivized to increase operations and that, by being able to offer savings on fees and pricing, and by being more competitive due to lower productions costs, smaller banks will be able to enter the mortgage market at more profitable levels. However, this comment did not provide specific estimates that the Bureau can utilize in refining the analyses.

4. Cost to Consumers

HMDA is a sunshine statute. The purposes of HMDA are to provide the public with loan data that can be used: (i) to help determine whether financial institutions are serving the housing needs of their communities; (ii) to assist public officials in distributing public-sector investment so as to attract private investment to areas where it is needed; and (iii) to assist in identifying possible discriminatory lending patterns and enforcing antidiscrimination statutes.[138] The provisions in this final rule, as adopted, would lessen the reporting requirements for eligible financial institutions by either completely relieving them of the obligation to report all data

[137] The further the market moves away from a perfectly competitive market, the smaller the pass-through would be.
[138] 12 CFR 1003.1(b).

points related to open-end lines of credit for two additional years or by implementing the partial exemptions from reporting certain data points for certain transactions for some covered persons as provided by the EGRRCPA. As a sunshine statute regarding data reporting and disclosure, most of the benefits of HMDA are realized indirectly. With less data required to be collected and reported under HMDA, the HMDA data available to serve HMDA's statutory purposes would decline.[139] However, to quantify the reduction of such benefits to consumers presents substantial challenges. The Bureau sought comment on the magnitude of the loss of HMDA benefits from these changes to the available data and/or methodologies for measuring these effects in the May 2019 Proposal.

The Bureau has received a number of comments emphasizing the loss of the HMDA benefits from decreased information lenders would report under HMDA due to the May 2019 Proposal. For example, a group of 148 local and national organizations stated that raising reporting thresholds will lead to another round of abusive and discriminatory lending similar to abuses that occurred in the years before the financial crisis. These commenters also stated that the general public, researchers, and Federal agencies will have an incomplete picture of lending trends in thousands of census tracts and neighborhoods if affected institutions no longer report HMDA data. Additionally, a State attorney general stated that the May 2019 Proposal failed to fully account for the harms that would be imposed by the proposal, including the costs to States

[139] The changes in this final rule generally either relieve financial institutions from their reporting requirements under Regulation C with respect to open-end lines of credit or implement the reduction in the data fields required to be reported for certain transactions of certain financial institutions as provided by the EGRRCPA. The data fields covered by the EGRRCPA include information about the type of loans and the types of borrowers applying for and being granted credit, which can help determine whether financial institutions are serving the housing needs of their communities and assist in identifying possible discriminatory lending patterns and enforcing antidiscrimination statutes. Similarly, extending for two years the temporary 500 open-end coverage threshold so that fewer institutions report data on open-end lines of credit would reduce the public information regarding whether financial institutions are serving the needs of their communities. To the extent that these data are used for other purposes, the loss of data could result in other costs.

in losing access to helpful data. However, none of these commenters provided specific quantifiable estimates of the loss of benefits from decreased information lenders would report under HMDA.

Because quantifying and monetizing benefits of HMDA to consumers 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 mostly presented qualitative analyses regarding HMDA benefits in the 2015 HMDA Rule. For instance, quantification would require measuring the impact of increased transparency on financial institution behavior, the need for public and private investment, the housing needs of communities, the number of financial institutions 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. Similarly, for the impact analyses of this final rule, the Bureau is unable to readily quantify the loss of some of the HMDA benefits to consumers with precision, both because the Bureau does not have the data to quantify all HMDA benefits and because the Bureau is not able to assess completely how this final rule will reduce those benefits.

In light of these data limitations, the discussion below generally provides a qualitative (not quantitative) consideration of the costs, i.e., the potential loss of HMDA benefits to consumers from the rule.

E. Potential Benefits and Costs to Consumers and Covered Persons

1. Overall Summary

In this section, the Bureau presents a concise, high-level table summarizing the benefits and costs considered in the remainder of the discussion. This table 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. Instead, it provides an overview of the major benefits and costs of the final rule, including the provisions to be analyzed, the baseline chosen for each set of provisions, the sub-provisions to be analyzed, the implementation dates of the sub-provisions, the annual savings on the operational costs of covered persons due to the sub-provision, the changes to the one-time costs of covered persons due to the sub-provision, and generally how the provisions in the final rule affect HMDA's benefits.

Table 2

Provisions to Be Analyzed	Baseline	Sub-Provision	Implementation Date	Savings on Annual Operational Costs	Changes on One Time Costs	Loss of Data Coverage
Implementation of EGRRCPA	2015 and 2017 HMDA Rules	Partial Exemption for Closed-end Mortgages	Effective May 24, 2018	$8.4 M to $13.9 M	Negligible	Partial reporting of approximately 3,300 reporters with about 531,000 closed-end loans.
		Partial Exemption for Open-end Lines of Credit	Effective, May 24, 2018 but has no impact while temporary coverage threshold of 500 is in place	$7.4 M	Negligible	Partial reporting of approximately 600 reporters with about 131,000 open-end lines of credit.
Increasing Open-end Loan Coverage Threshold	2015 and 2017 HMDA Rules, EGRRPCA	Increase to 500 for 2020 and 2021	January, 2020	$9.4 M	Negligible	Approximately 680 reporters with 177,000 open-end lines of credit excluded for 2020 and 2021.

2. Provisions to Implement the EGRRCPA

Scope of the Provisions

The final rule incorporates the 2018 HMDA Rule into Regulation C and further implements the EGRRCPA provision that adds partial exemptions from HMDA's requirements for certain insured depository institutions and insured credit unions.[140] With respect to closed-end mortgage loans, HMDA section 304(i)(1) as amended by the EGRRCPA provides that, if an insured depository institution or insured credit union[141] originated fewer than 500 closed-end mortgage loans in each of the two preceding calendar years, the insured depository institution or insured credit union is generally exempt from reporting certain data points on the closed-end mortgage loans that it would have otherwise reported under HMDA. Similarly, with respect to open-end lines of credit, HMDA section 304(i)(1) as amended by the EGRRCPA provides that, if an insured depository institution or insured credit union originated fewer than 500 open-end lines of credit in each of the two preceding calendar years, the insured depository institution or insured credit union is generally exempt from reporting certain data points on the open-end lines of credit that it would have otherwise reported under HMDA.[142]

In part VI of the May 2019 Proposal, the Bureau estimated that, under section 104(a) of the EGRRCPA, as implemented by the 2018 HMDA Rule and further implemented by the May 2019 Proposal, approximately 3,300 insured depository institutions and insured credit unions[143]

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[140] The Bureau also considered as an alternative not incorporating the interpretations and procedures from the 2018 HMDA Rule into Regulation C and not implementing further section 104(a) of the EGRRCPA. The Bureau believes that this alternative approach would result in increased costs to covered persons due to a lack of clarity regarding the relevant statutory and regulatory requirements and how they interrelate. The Bureau does not believe that the alternative approach would provide any significant benefits for covered persons or consumers.

[141] For purposes of HMDA section 104, the EGRRCPA provides that the term "insured credit union" has the meaning given the term in section 101 of the Federal Credit Union Act, 12 U.S.C. 1752, and the term "insured depository institution" has the meaning given the term in section 3 of the Federal Deposit Insurance Act, 12 U.S.C. 1813.

[142] Notwithstanding the new partial exemptions, new HMDA section 304(i)(3) provides that an insured depository institution must comply with HMDA section 304(b)(5) and (6) if it has received a rating of "needs to improve record of meeting community credit needs" during each of its two most recent examinations or a rating of "substantial noncompliance in meeting community credit needs" on its most recent examination under section 807(b)(2) of the CRA.

[143] To generate this estimate, the Bureau first identified all depository institutions (including credit unions) that met all reporting requirements and reported 2017 HMDA data in 2018. From this set of depository institutions, the Bureau then excluded all depository institutions that do not have to report 2018 HMDA data in 2019 because they originated fewer than 25 closed-end mortgage loans in either 2016 or 2017. Of the remaining depository institutions, approximately 3,300 originated fewer than 500 closed-end mortgage loans in both 2016 and 2017. For purposes of this estimate, the Bureau assumed that these institutions are insured, did not have a less than satisfactory CRA examination history, and thus were partially exempt.

are eligible for a partial exemption for their covered closed-end loans and applications, and the total number of closed-end mortgage loans originated by these partially exempt institutions is about 531,000 per year, consisting of about 56 percent of all reporting institutions, and 63 percent of all depository institutions and credit unions that reported HMDA data for 2017.

The majority of the analyses in part VI of the May 2019 Proposal were conducted prior to the official submission deadline of the 2018 HMDA data on March 1, 2019, and 2017 was the most recent year of HMDA data the Bureau used for the analyses in the May 2019 Proposal. For this final rule, the Bureau supplemented the analyses with the 2018 HMDA data, which was released to the public on August 30, 2019. The 2018 HMDA data reflects that about 2,200 reporters used a partial exemption for closed-end mortgage loans or open-end lines of credit and about 425,000 loan/application register records, including 298,000 originations, have one or more data points reported as exempt. It is possible that some of reporters, even though eligible for a partial exemption under the EGRRCPA, chose to report in full the data points that are exempt under the EGRRCPA. This may particularly be the case because the EGRRCPA partial exemptions only went into effect in May 2018, and uncertainty or administrative burden around midyear implementation may have reduced participation in the optional partial exemption. At any rate, the Bureau continues to believe that its initial estimates provided in part VI of the May 2019 Proposal were and are reasonable. Nevertheless, out of an abundance of caution, the Bureau is providing in this analysis two separate sets of estimates of the savings on ongoing costs due to the partial exemptions under the EGRRCPA for closed-end reporting: one set based on the estimate of the impacted institutions in the May 2019 Proposal and the other set based on the actual number of financial institutions that used a partial exemption as reflected in the 2018 HMDA data.[144]

For the open-end lines of credit, the 2017 HMDA Rule grants a complete exclusion for two years (specifically, 2018 and 2019) for reporting open-end lines of credit for all institutions that originated fewer than 500 open-end lines of credit in either of the two preceding calendar years. As such, insured depository institutions or insured credit unions that originated fewer than 500 open-end lines of credit in each of the two preceding calendar years and are partially exempt under the EGRRCPA are already completely excluded from HMDA's requirements for open-end lines of credit during 2018 and 2019 under the 2017 HMDA Rule. In other words, for the years 2018 and 2019, the partial exemption for open-end lines of credit under the EGRRCPA has no immediate effect given the temporary 500 open-end coverage threshold established by the 2017 HMDA Rule.

The 2017 HMDA Rule provides that, absent any future rulemaking, the open-end coverage threshold will revert to 100 open-end lines of credit as established in the 2015 HMDA Rule, starting in 2020. Therefore, with the 2017 HMDA Rule and pre-EGRRCPA as the baseline, the effects of the EGRRCPA on open-end reporting would manifest starting in 2020. In part VI of the May 2019 Proposal, the Bureau estimated that, by 2020, absent other rulemakings, about 595 insured depository institutions or credit unions would be required to

[144] The Bureau believes, however, that in cases where options are available to financial institutions under a rule (in this case, eligible institutions are no longer required to report certain data points, but they have the option to report such data points in full), in general, the impact analysis of such a rule should be based on a projection of the impacted institutions eligible for the options, and not on the number of institutions that actually use or decline to use the options, if the number of such institutions using the options could not be known ex ante. The Bureau believes that, given that collection of 2018 data was already underway when the EGRRCPA partial exemptions took effect and that system changes implementing the new partial exemptions may take time to complete, the number of institutions that used a partial exemption for 2018 data is likely less than the number of eligible institutions. However, because no information was available about the open-end origination volumes of the financial institutions in year 2017 and 2016, other than the Bureau's estimates, it is not feasible to verify this affirmatively.

report open-end lines of credit at the 100 open-end coverage threshold and eligible for a partial exemption under the EGRRCPA.

Importantly, because the open-end lines of credit flag is one of the exempt data points under the EGRRCPA partial exemptions, it is not possible for the Bureau to identify which 2018 HMDA loan/application register records that reflect an EGRRCPA partial exemption for this data point are closed-end transactions and which are open-end transactions.[145] In other words, it is not possible to identify whether a loan/application register record with the open-end lines of credit flag reported as "exempt" in the 2018 HMDA data is exempt because it is a closed-end transaction and the reporter is eligible for the partial exemption for closed-end transactions, or it is an open-end transaction and the reporter is eligible for the partial exemption for open-end transactions.

Nevertheless, the Bureau continues to believe that its original estimate provided in the May 2019 Proposal of the number of open-end reporters that would be eligible for a partial exemption with respect to open-end lines of credit if the open-end reporting threshold were to revert to 100 was and is reasonable. Hence, the Bureau is estimating in this final rule that in 2020 and 2021, relative to the baseline discussed above, i.e., pre-EGRRCPA and post-2017 HMDA Rule, but absent other rulemakings (including the extension of the temporary 500 open-end threshold under this final rule, which is discussed separately below), about 600[146] insured

[145] All other data points that could theoretically help distinguish open-end transactions from closed-end transactions based on loan characteristics and reporting requirements that are different for closed-end transactions than for open-end transactions (such as total loan costs, which are required for most closed-end single-family originated loans excluding reverse mortgages and loans primarily for commercial or business transactions, but not required for open-end transactions), are also exempt data points under the EGRRCPA and not required to be reported by eligible institutions.

[146] In part VI of the May 2019 Proposal, the Bureau estimated that, by 2020, absent other rulemakings, about 595 insured depository institutions and insured credit unions would be required to report open-end lines of credit at the 100 open-end coverage threshold and eligible for a partial exemption under the EGRRCPA. The Bureau notes that in this final rule, this estimation of 595 impacted institutions was rounded to about 600 impacted institutions to avoid the potentially misleading appearance of precision in light of the uncertainty.

depository institutions and insured credit unions would be impacted as such institutions would otherwise be required to report open-end lines of credit at the 100 open-end coverage threshold and be eligible for the partial exemption each year for two years.

Benefits to Covered Persons

Partial Exemption for Closed-End Mortgage Loans

The partial exemption for closed-end mortgage loans in the EGRRCPA that this final rule implements conveys a direct benefit to the covered persons who are eligible for such exemption by reducing the ongoing costs of having to report certain data points that were previously required.

The Bureau's 2015 HMDA Rule and 2017 HMDA Rule, which define the rules under the baseline for the analyses of this set of provisions, require financial institutions to report a total of 48 data points beginning with the data collected in 2018 and reported in 2019. These data points contain 110 data fields.[147] The EGRRCPA grants partial exemptions for certain transactions of eligible financial institutions from reporting 26 of the 48 data points, which consist of 54 of the 110 data fields. Because this final rule requires insured depository institutions and insured credit unions to provide a NULI if they opt not to report a ULI for a partially exempt transaction, the actual reduction in the number of data fields that financial institutions need to report for partially exempt transactions would be 53. In addition, even though property address is an exempt data point, financial institutions must still report the State in which the property that secures the covered loan (or, in the case of an application, is proposed to secure the loan) is located for partially exempt transactions, because State is an individual data point that is not exempt under the EGRRCPA but it is also a data field associated with property address, which is exempt under

[147] *See* FFIEC, "Filing Instructions Guide for HMDA Data Collected in 2019," at 13–65 (Oct. 2018), *https://s3.amazonaws.com/cfpb-hmda-public/prod/help/2019-hmda-fig.pdf*.

the EGRRCPA. Therefore, the total number of data fields that the eligible covered person must report for a partially exempt transaction would be reduced by 52.

With the exception of denial reasons (which were previously optionally reported prior to the 2015 HMDA Rule, except that certain financial institutions supervised by the OCC and the FDIC were required to report denial reasons) and rate spread, all of the data points (and data fields) that are partially exempt under the EGRRCPA as implemented by the 2018 HMDA Rule and this final rule correspond to data points (and data fields) that the Bureau added to the HMDA reporting as mandated by the Dodd-Frank Act or pursuant to the Bureau's discretionary authority granted under the Dodd-Frank Act.[148]

The analysis under section 1022(b) of the Dodd-Frank Act in the 2015 HMDA Rule noted that the Bureau was adding 50 new data fields with new data points that previously did not exist under Regulation C. To estimate the costs that financial institutions would incur in collecting and reporting these data, the Bureau used a cost-accounting, case-study methodology which involved an extensive set of interviews with financial institutions and their vendors through which the Bureau identified 18 component tasks involved in collecting and reporting HMDA data and estimated the number of person-hours required and the costs of each task for institutions of various levels of complexity. The Bureau augmented this information through the Small Business Review Panel process and through notice and comment on its proposed cost estimates, as well as through a review of academic literature and public data. Based on the information gathered in this process, the Bureau estimated that the impact of the additional 50 data fields on annual operational costs of covered person for closed-end reporting would be

[148] On the other hand, as explained in the section-by-section analysis of § 1003(d)(1)(i) in part V above, age and number of units are not partially exempt under the EGRRCPA even though they were added to Regulation C in the 2015 HMDA Rule.

approximately $2,100, $10,900, and $31,000 per year for representative tier 3, tier 2, and tier 1 financial institutions, respectively, after accounting for the operational improvements that the Bureau was planning to implement regarding how the Bureau receives and processes submitted data.[149] Since issuing the 2015 HMDA Rule, the Bureau has modernized the HMDA submission system, improved its regulatory HMDA help functions, and made other operational changes that were initially discussed in the impact analyses of the 2015 HMDA Rule. The Bureau has not obtained new information with respect to the component tasks or costs set forth in the 2015 HMDA Rule. Therefore, it is reasonable to adopt these cost estimates, which reflect the operational improvements described in the 2015 HMDA Rule, with certain adjustments that reflect this final rule. To do so, the Bureau takes the 2015 estimates on the annual ongoing costs associated with the new additional data points added in the 2015 HMDA Rule, prorates the amount to account for the reduced number of data fields required due to the EGRRCPA partial exemptions, adjusts those for inflation, and arrives at a set of estimates for the savings on the operational costs due to the partial exemptions for representative firms in each of the three tiers.[150] Specifically, the Bureau estimates that the savings on annual operational costs from not reporting the 52 data fields for closed-end mortgage loans that are exempt under the EGRRCPA and this final rule would be approximately $2,300, $11,900, and $33,900 per year for

[149] For example, the Bureau planned to create a web-based submission tool with automated edit checks and to otherwise streamline the submission and editing process to make it more efficient for filers. In addition, the Bureau planned to consolidate the outlets for assistance, provide implementation support, and improve points of contact processes for help inquiries. These changes were implemented in 2018 for the 2017 filing year. The Bureau has received feedback from reporting entities on the new systems, which generally indicate substantial costs savings.

[150] The Bureau used a wage rate of $33 per hour in its 2015 HMDA Rule impact analyses, which is the national average wage for compliance officers based on the Occupational Employment Statistics from the Bureau of Labor Statistics in May 2014. The May 2018 National Compensation Survey reported an average wage rate for compliance officers of $34.86 and their median wage was $33.10 (available at https://www.bls.gov/oes/current/oes131041.htm). The Bureau has used a wage rate of $34 for the impact analyses for this final rule.

representative tier 3, tier 2, and tier 1 financial institutions that are eligible for the partial exemption.

In part VI of the May 2019 Proposal, the Bureau specifically requested information relating to the costs financial institutions incurred in collecting and reporting 2018 data in compliance with the 2015 HMDA Rule that may be valuable in estimating costs in the Dodd-Frank Act section 1022(b) analysis issued with the final rule. The Bureau received a number of comments regarding the costs of collecting and reporting data in compliance with the 2015 HMDA Rule. Although most comments did not provide specific cost estimates of compliance, one small financial institution commented that it was expending approximately $12,000 in employee expenses alone to generate its loan/application register or approximately $68-100 per loan/application register record. Based on the information provided by this commenter, the Bureau estimates the annual loan/application register size for this commenter is between 175 and 200 records, which is close to the Bureau's assumption for a representative low-complexity, tier 3 financial institution in the estimates provided in the 2015 HMDA Final Rule. Specifically, the Bureau estimated that for a representative low-complexity, tier 3 financial institution with 50 HMDA loan/application register records, the total ongoing costs with operational improvements the Bureau has implemented since issuing the 2015 HMDA Rule would be about $4,400, or about $88 per loan/application register record. Therefore, the Bureau believes the cost estimates that the commenter provided confirms the Bureau's cost-estimates in the 2015 HMDA Rule were and are reasonable, and therefore can serve as the basis of the cost estimates for this final rule.

Additionally, in the 2015 HMDA Rule, the Bureau assumed a representative medium-complexity, tier 2 financial institution had 1,000 HMDA loan/application register records per year while a high-complexity, tier 1 financial institution had 50,000 HMDA loan/application register records per year. The partial exemption for closed-end mortgage loans granted under the EGRRCPA and that this final rule implements applies only to insured depository institutions and insured credit unions that originated less than 500 closed-end mortgage loans in each of the two preceding calendar years prior to the HMDA collection year. Given that and the Bureau's characterization of representative financial institutions in the three tiers, the Bureau believes that none of the tier 1 institutions are partially exempt for closed-end reporting.

As explained in the May 2019 Proposal, some of the estimated partially exempt covered persons would be low-complexity/tier 3 institutions, while some would belong to tier 2. Under the estimates provided in the May 2019 Proposal, which the Bureau continues to believe are reasonable, the Bureau estimates that of the 3,300 institutions expected to be impacted, approximately 2,640 institutions eligible for the partial exemption from closed-end reporting are similar to the representative tier 3 financial institutions and approximately 660 eligible institutions belong to tier 2. Based on these counts, the Bureau estimates that the aggregate savings in ongoing operational costs for covered persons due to the EGRRCPA's partial exemption from closed-end reporting would be approximately $13.9 million annually.

Alternatively, if the Bureau were to assume that the number of impacted institutions remains at 2,200, which was the actual number of reporters that used the partial exemption in the 2018 HMDA data, approximately 1,850 institutions eligible for the partial exemption from closed-end reporting are similar to the representative tier 3 financial institutions and approximately 350 eligible institutions belong to tier 2. Based on these alternative counts, the Bureau estimates that the aggregate savings in ongoing costs for covered persons due to the EGRRCPA's partial exemption from closed-end reporting would be approximately $8.4 million annually.

Combining these two sets of estimates, the Bureau estimates that the aggregate savings in ongoing costs for covered persons due to the EGRRCPA's partial exemption from closed-end reporting would be between approximately $8.4 million and $13.9 million annually.

Partial Exemption for Open-End Lines of Credit

Starting in 2020,[151] absent the temporary extension of the open-end coverage threshold at 500 for two additional years in this final rule, which is analyzed separately below in part VII.E.3, the partial exemption for open-end lines of credit in the EGRRCPA that this final rule implements would convey a direct benefit to covered persons who are eligible for such exemption by reducing the ongoing costs of having to report certain data points that were previously required.

In the impact analysis of the 2015 HMDA Rule, the Bureau estimated that, accounting for the Bureau's planned operational improvements, the estimated impact of the 2015 HMDA Rule on ongoing operational costs on open-end reporters would be approximately $8,600, $43,400, and $273,000 per year, for representative low-, moderate-, and high-complexity financial institutions, respectively. The Bureau takes such 2015 estimates on the annual ongoing costs associated with open-end reporting, prorates the amount to account for the reduced number of data fields required due to the EGRRCPA partial exemption, adjusts those for inflation, and arrives at a set of estimates for the savings on the operational costs of reporting information on open-end lines of credit due to the partial exemption for representative firms in each of the three tiers. Specifically, the Bureau estimates that the impact on the savings on annual operational costs from not reporting the 52 data fields for open-end mortgage loans that are exempt under the

[151] As noted above, for the years 2018 and 2019, the partial exemption regarding open-end lines of credit would have no immediate effects given the temporary coverage threshold of 500 open-end lines of credit established in the 2017 HMDA Rule.

EGRRCPA would be approximately $4,500, $22,800, and $144,000 per year for representative tier 3, tier 2, and tier 1 open-end reporting financial institutions that are eligible for the partial exemption.

The Bureau estimates that, absent the temporary extension of the open-end coverage threshold at 500 for two additional years in this final rule, about 600[152] financial institutions would be partially exempt from reporting certain data points on open-end lines of credit under the EGRRCPA.

On the other hand, because the numbers of open-end line of credit applications and purchased loans were not available in any data sources prior to the 2018 HMDA data, the Bureau relied on the projected number of open-end originations as a proxy for the projected number of open-end line of credit loan/application register records (comprising originations, applications not originated, and purchased loans)[153] for the analyses in part VI of the May 2019 Proposal.[154] With the benefit of the 2018 HMDA data, the Bureau now can evaluate the impact of the final rule using a more accurate estimate of the number of open-end line of credit loan/application register records. Because most of the data points under HMDA are required for all loan/application register records and not just originated loans and lines of credit, the Bureau

[152] In part VI of the May 2019 Proposal, the Bureau estimated that, by 2020, absent other rulemakings, about 595 insured depository institutions or credit unions would be required to report open-end lines of credit at the 100 open-end coverage threshold and eligible for a partial exemption under the EGRRCPA. The Bureau notes that in this final rule, this estimation of 595 impacted institutions was rounded to about 600 impacted institutions to avoid the potentially misleading appearance of precision in light of the uncertainty.

[153] As reflected in the 2018 HMDA data, very few open-end lines of credit are reported as "purchased." Therefore the number of open-end loan/application register records is very close to the number of open-end line of credit applications and originations.

[154] In other words, because of the lack of information on the number of open-end line of credit applications relative to the number of open-end line of credit originations, the Bureau used the number of open-end line of credit originations to estimate the total number of open-end line of credit loan/application register records in developing the estimates for the May 2019 Proposal before the 2018 HMDA data became available.

believes it is appropriate to update its estimates of cost and cost savings based on the number of open-end line of credit loan/application register records instead of originations. About 2.3 million open-end line of credit loan/application register records were reported in the 2018 HMDA data, with about 1.14 million of those records being open-end line of credit originations.[155] Therefore, the Bureau has supplemented its analyses regarding costs and cost savings by incorporating this new information in the paragraphs below.

According to the Bureau's estimates in the May 2019 Proposal, about 545 of those 595 partially exempt open-end reporters are low-complexity tier 3 open-end reporters, about 50 are moderate-complexity tier 2 open-end reporters, and none are high-complexity tier 1 reporters. According to the Bureau's updated estimates, about 350 of those approximately 600 partially exempt open-end reporters are low-complexity tier 3 open-end reporters, about 250 are moderate-complexity tier 2 open-end reporters, and none are high-complexity tier 1 reporters.[156] Using these estimates, the Bureau estimates that by granting a partial exemption to most insured depository institutions and insured credit unions that originate fewer than 500 open-end lines of credit in each of two preceding years, absent the temporary extension of the open-end coverage threshold of 500 open-end lines of credit in this final rule for two additional years starting in 2020, the EGRRCPA would provide an aggregate reduction in ongoing operational costs associated with open-end lines of credit for eligible financial institutions of about $7.4 million per year. This is higher than the Bureau's initial estimate in the May 2019 Proposal of about $3.6 million in annual savings on operational costs due to the partial exemption on open-end

[155] By comparison, in the May 2019 Proposal the Bureau estimated approximately 1.23 million open-end line of credit originations.

[156] The increase in the number of tier 2 reporters in the Bureau's updated estimates, compared to estimates in the May 2019 proposal, is due to the fact that the overall volume of open-end loan/application records, which includes previously-unavailable data on non-originated open-end applications, is nearly double the volume of open-end originations. Using the total number of open-end loan/application register records thus shifted more small reporters from the tier 3 category to the tier 2 category based on the Bureau's methodology, as explained above.

reporting. This higher estimate for the reduction in annual operational costs is based on the Bureau's updated analysis that uses the projected number of loan/application register records supplemented by the 2018 HMDA data, which is approximately twice the number of projected open-end originations the Bureau relied on in the May 2019 Proposal. Although the estimated total cost reduction is higher than it was in the proposal based on the additional 2018 HMDA data, the overall analysis is consistent with the Bureau's methodology and conclusions from the May 2019 Proposal.

Costs to Covered Persons

It is possible that, like any new regulation or revision to the existing regulations, financial institutions would incur certain one-time costs adapting to the changes of the final rule. Based on the Bureau's early outreach to stakeholders, the Bureau understands that most such one-time costs would result from interpreting and implementing the regulatory changes, but not from purchasing software upgrades or turning off the existing reporting functionality that the eligible institutions already built or purchased prior to the EGRRCPA taking effect.

The Bureau did not receive comments on any costs to eligible financial institutions associated with the May 2019 Proposal relating to the incorporation of the EGRRCPA into Regulation C.

Benefits to Consumers

Having generated estimates of the reduction in ongoing costs for closed-end mortgage loans on financial institutions due to the EGRRCPA partial exemption for closed-end mortgage loans implemented by this final rule, the Bureau can estimate the potential pass-through of such cost reduction from these institutions to consumers,[157] which could benefit 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 savings per application or origination, and absorb the one-time and increased fixed costs of complying with the rule.

The Bureau estimated in the 2015 HMDA Rule that the 50 data fields of the new data points required under the 2015 HMDA Rule would add variable costs per application for closed-end mortgage loans of approximately $22 for a representative tier 3 financial institution, $0.62 for a representative tier 2 financial institution, and $0.05 for a representative tier 1 financial institution.[158] As explained above, the partial exemption in the EGRRCPA and this final rule will reduce the number of data fields that have to be reported by 52 and almost all those partially exempt data fields correspond to data fields for new data points added by the 2015 HMDA Rule. Adjusting these figures to account for the difference in the number of the data fields that are partially exempt under the EGRRCPA and the number of data fields of new data points added by the 2015 HMDA Rule, and adjusting for inflation, the Bureau estimates that the partial exemption under the EGRRCPA and this final rule would reduce the variable cost per closed-end mortgage loan application for a representative tier 3 financial institution by about $24 and for a representative tier 2 financial institution by about $0.68. This potential reduction in the expense facing consumers when applying for a closed-end mortgage will be amortized over the life of the loan and represents a very small decrease in the cost of a mortgage loan. Therefore, the Bureau

[157] Note that throughout this cost-benefit analysis, the Bureau discusses such pass-through in order to present a complete picture of the benefits that are the result of the May 2019 Proposal. However, such pass-through from the financial institution to consumers as a result of the May 2019 Proposal is a direct flow from the savings to the financial institutions, and should not be interpreted as a gain in addition to the savings to the financial institutions from a general equilibrium perspective for the calculation of total social benefit.

[158] 80 FR 66128, 66291 (Oct. 28, 2015).

does not anticipate any material effect on credit access in the long or short term if financial institutions pass on these cost savings to consumers.

Similarly, having generated estimates of the reduction in ongoing costs for open-end mortgage loans on financial institutions due to the EGRRCPA partial exemption for open-end lines of credit implemented in this final rule, the Bureau can estimate the potential pass-through of such cost reduction from these institutions to consumers, which could benefit consumers.

The Bureau estimated in the 2015 HMDA Rule that the rule would increase variable costs by $41.50 per open-end line of credit application for representative low-complexity institutions and $6.20 per open-end line of credit application for representative moderate-complexity institutions. Accounting for the difference in the number of the data fields that are partially exempt under the EGRRCPA and the total number of data fields that comprise all data points under the 2015 HMDA Rule, and adjusting for inflation, the Bureau estimates that the partial exemption under the EGRRCPA and this final rule would reduce the variable cost per open-end line of credit application for a representative tier 3 financial institution by about $22 and for a representative tier 2 financial institution by about $3. These savings on the variable costs by the partially exempt open-end reporters could potentially be passed through to consumers, under the assumption of a perfectly competitive market with profit maximizing firms. These expenses will be amortized over the life of a loan and represent a very small amount relative to the cost of a mortgage loan. The Bureau notes that the market structure in the consumer mortgage lending market may differ from that of a perfectly competitive market (for instance due to information asymmetry between lenders and borrowers) in which case the pass-through to the consumers would most likely be smaller than the pass-through under the perfect competition assumption.[159]

[159] The further the market moves away from a perfectly competitive market, the smaller the pass-through would be.

Therefore, the Bureau does not anticipate any material effect on credit access in the long or short term even if financial institutions pass on these reduced costs to consumers.

Costs to Consumers

The partial exemptions under the EGRRCPA and further implemented through this final rule remove the reporting requirements for 26 data points for certain transactions of eligible insured depository institutions and insured credit unions. As a result, regulators, public officials, and members of the public will lose information about the credit offered by these partially exempt institutions and overall credit in the communities they serve. The decreased information about partially exempt financial institutions may lead to adverse outcomes for some consumers. For instance, some of the exempt data points could have helped the regulators and public officials better understand the type of funds that are flowing from lenders to consumers and the needs of consumers for mortgage credit. Additionally, some exempt data points could improve the processes used to identify possible discriminatory lending patterns and enforce antidiscrimination statutes. In addition, without the exempt data regarding, for example, underwriting and pricing, some lenders with low fair lending risk may be initially misidentified as high risk, potentially increasing their associated compliance burden. Finally, to the extent that some covered persons may use the information reported by other financial institutions for market research purposes, the partial exemptions may potentially lead to less vigorous competition from these institutions. The Bureau has no quantitative data that can sufficiently measure the magnitude of this impact.

3. Provisions to Temporarily Extend the Open-End Coverage Threshold of 500 Open-End Lines of Credit

Scope of the Provisions

The final rule extends the temporary open-end coverage threshold of 500 open-end lines of credit for two additional years (2020 and 2021).

The 2015 HMDA Rule generally requires financial institutions that originated at least 100 open-end lines of credit in each of the two preceding years to report data about their open-end lines of credit and applications. The 2017 HMDA Rule temporarily increased the open-end coverage threshold to 500 for two years, meaning only financial institutions that originated at least 500 open-end lines of credit in each of the two preceding years are subject to HMDA's requirements for their open-end lines of credit for 2018 and 2019. The EGRRCPA generally provides a partial exemption for insured depository institutions and insured credit unions that originated less than 500 open-end lines of credit in each of the two preceding years. However, for 2018 and 2019, all insured depository institutions and insured credit unions that are granted a partial exemption for open-end lines of credit by the EGRRCPA are fully excluded from HMDA's requirements for their open-end lines of credit by the 2017 HMDA Rule. Absent any further changes via a rulemaking process, according to the 2015 HMDA Rule and the 2017 HMDA Rule, starting in 2020 the open-end coverage threshold will adjust to 100, and institutions that exceed the coverage threshold of 100 open-end lines of credit will be able to use the EGRRCPA's open-end partial exemption if they originated less than 500 open-end lines of credit in each of the two preceding years. Thus, the appropriate baseline for the consideration of benefits and costs of the two-year extension of the temporary threshold of 500 open-end lines of credit in the final rule is a situation in which the open-end coverage threshold is set at 100 for each of two preceding years for HMDA data collection in 2020 and 2021, and the partial exemption with a threshold of 500 open-end lines of credit applies.

The Bureau has used multiple data sources, including credit union Call Reports, Call Reports for banks and thrifts, HMDA data, and Consumer Credit Panel data, to develop estimates about open-end originations for lenders that offer open-end lines of credit and assess the impact of various thresholds on the numbers of reporters and market coverage under various scenarios.[160]

In part VI of the May 2019 Proposal, the Bureau estimated that there were about 1.59 million open-end lines of credit originated in 2017 by about 6,615 lenders, and under the temporary 500 open-end line of credit coverage threshold set in the 2017 HMDA Rule, about 333 financial institutions would be required to report open-end lines of credit, accounting for about 1.23 million open-end lines of credit. In comparison, if the open-end coverage threshold were set at 100, the Bureau estimated that the number of reporters would be about 1,014, who in total originated about 1.41 million open-end lines of credit. In other words, if the coverage threshold is increased to 500 for another two years (2020 and 2021), in comparison to the default baseline where the threshold is set at 100 in 2020, the Bureau estimated that the number of institutions affected would be about 681, who in total originated about 177,000 open-end lines of credit. Among those 681 institutions, the Bureau estimated that about 618 already qualify for a partial exemption for their open-end lines of credit under the EGRRCPA and in total they originate about 136,000 open-end lines of credit.

The majority of the analyses in part VI of the May 2019 Proposal rule was conducted prior to the official submission deadline of the 2018 HMDA data on March 1, 2019, and 2017 was the most recent year of HMDA data the Bureau used for the analyses in the May 2019

[160] In general, credit union Call Reports provide the number of originations of open-end lines of credit secured by real estate but exclude lines of credit in the first-lien status. Call Reports for banks and thrifts report only the balance of the home-equity lines of credit at the end of the reporting period but not the number of originations in the period.

Proposal. For this part of the final rule, the Bureau has supplemented the analyses with the 2018 HMDA data now available and released to the public on August 30, 2019. In the 2018 HMDA data about 957 reporters actually reported any open-end line of credit transactions. In total, these institutions reported about 1.15 million open-end originations, which is close to what the Bureau projected in its estimate of 1.23 million originations to be reported in the May 2019 Proposal. Even though the number of open-end reporters in the 2018 HMDA data (957) is greater than the number the Bureau forecasted would be required to report (333) in the May 2019 Proposal, only 307 of them that reported open-end transactions in the 2018 HMDA data actually reported greater than 500 open-end originations, which is close to the Bureau's projection that there would be 333 required open-end reporters. The Bureau's projection in the May 2019 Proposal was based on the projected number of open-end reporters whose open-end origination volumes were greater than 500 in each of the preceding two years (which is how the HMDA reporting requirements are structured), and not on the volume from the current HMDA activity year; in addition, that projection cannot account for the number of reporters who would report voluntarily even though they are not required to do so. Given this, it is possible that some lenders with open-end line of credit origination volumes exceeding 500 in both 2016 and 2017 originated fewer than 500 open-end lines of credit in 2018, but were nevertheless required to report their 2018 data under the HMDA reporting requirements. On the other hand, it is also possible that some reporters opted to report their open-end lending activities in the 2018 HMDA data even though they were not required to report. Regardless, these 2018 open-end reporters with reported origination volume less than 500 in 2018 will not be required to collect data on their open-end activity in 2020 when the two-year temporary extension of the 500 open-end threshold of this final rule takes effect, based on the two-year lookback period of the reporting requirements. Therefore, for the purpose of the consideration of costs and benefits of the final rule, it is reasonable to exclude these 2018 open-end reporters with open-end origination volumes below 500 from the Bureau's projections of impacted institutions. Hence, the Bureau believes that its estimate of the number of impacted institutions due to the two-year temporary extension provided in the May 2019 Proposal was and is reasonable and consistent with the actual number of open-end reporters in the 2018 HMDA data.

On the other hand, because the number of open-end applications was not available in any data sources prior to the 2018 HMDA data, in past HMDA rulemakings related to open-end reporting, the Bureau relied on the projected number of originations as a proxy of the number of loan/application register records for the analyses. With the 2018 HMDA data reported, the Bureau now can evaluate the impact of the final rule using the projected loan/application register records instead of projected originations for the first time. Because most of the data points under HMDA are required for all loan/application register records, not just originated loans, the Bureau has updated the estimates of cost and cost savings for open-end lines of credit based on the number of loan/application register records instead of originations. The Bureau's coverage estimates, however, continue to be based on originations because the thresholds are based on origination volume, and thus, as noted immediately above, the estimates previously provided continue to be reasonable. The analyses below have been supplemented to reflect the new 2018 data that includes applications, originations, and purchased loans.

Table 3 below shows the estimated number of open-end lines of credit reporters, their estimated origination volume, and the market share under 100 and 500 open-end coverage thresholds.

Table 3

Open-end Lines of Credit	Universe	Reporting Threshold	
		100	500
# of Loans (in 1000's)			
All	1,590	1,410	1,233
Market Coverage		88.7%	77.6%
Type			
Banks & Thrifts	880	814	753
Credit Unions	653	545	437
Non-DIs	57	51	44
Agency			
OCC	34	22	10
Fed	34	24	9
FDIC	96	59	29
NCUA	563	484	378
HUD	57	51	44
CFPB	766	766	761
# of Institutions			
All	6,615	1,014	333
Type			
Banks & Thrifts	3,819	391	113
Credit Unions	2,578	581	205
Non-DIs	218	42	15
Agency			
OCC	624	65	12
Fed	433	72	9
FDIC	1,842	173	29
NCUA	1,650	561	197
HUD	218	42	15
CFPB	99	86	68

Benefits to Covered Persons

The extension of the temporary open-end coverage threshold of 500 for two additional years, as compared to the alternative of having the threshold adjust to 100, conveys a direct benefit to covered persons that originated fewer than 500 open-end lines of credit in either of the two preceding years but originated no less than 100 open-end lines of credit in each of the two preceding years in reducing the ongoing costs associated with open-end lines of credit during 2020 and 2021.

In the impact analysis of the 2015 HMDA Rule, the Bureau estimated that, accounting for the Bureau's planned operational improvements, the ongoing operational costs on open-end reporters for all data points required under the 2015 HMDA Rule would be approximately $8,600, $43,400, and $273,000 per year, for representative low-, moderate-, and high-complexity financial institutions, respectively. Adjusting for inflation, this is equivalent to approximately $8,800, $44,700, and $281,100 per year currently. On the other hand, accounting for the reduced number of required data points and inflation, the Bureau now estimates that the ongoing costs of open-end reporting would be about $4,300, $21,900, and $138,000 per year, for representative low-, moderate-, and high-complexity financial institutions, respectively, that are eligible for a partial exemption for open-end lines of credit under the EGRRCPA.

The Bureau estimates that, with the coverage threshold increased to 500 as compared to reverting to 100 for 2020 and 2021, about 680 financial institutions will be excluded from reporting open-end lines of credit during the two years.[161] About 600 of those approximately 680 financial institutions are eligible for the partial exemption for open-end lines of credit under the EGRRCPA and further implemented by the 2018 HMDA Rule and this final rule, and about 80 of them are not eligible for the partial exemption for open-end lines of credit because in one of the preceding two years their open-end origination volume was at least 500. In the May 2019 Proposal, the Bureau estimated that 618 reporters would be eligible for the partial exemption, of

[161] The Bureau estimated in the May 2019 Proposal that about 681 financial institutions would be excluded from reporting open-end lines of credit during the two years. This number is rounded to about 680 in this updated analysis to avoid the potentially misleading appearance of precision in light of the uncertainty.

which about 567 are low-complexity tier 3 open-end reporters, about 51 are moderate-complexity tier 2 open-end reporters, and none are high-complexity tier 1 reporters. Supplementing the analysis with the 2018 data, the Bureau estimates that, of the 600 institutions that are already eligible for a partial exemption under the EGRRCPA but will be fully excluded for two additional years from open-end reporting by this final rule, about 350 are low-complexity tier 3 open-end reporters, about 250 are moderate-complexity tier 2 open-end reporters, and none are high-complexity tier 1 reporters.

In addition, in the May 2019 Proposal, the Bureau estimated that of the 63 institutions that are not eligible for the partial exemption under the EGRRCPA but would be fully excluded for two additional years from open-end reporting by the May 2019 Proposal, about 26 are low-complexity tier 3 open-end reporters, about 37 are moderate-complexity tier 2 open-end reporters, and none are high-complexity tier 1 reporters. Supplementing the analysis with the 2018 data, the Bureau now estimates that of the 80 institutions that are not eligible for the partial exemption under the EGRRCPA but will be fully excluded for two additional years from open-end reporting by this rule, about 30 are low-complexity tier 3 open-end reporters, about 50 are moderate-complexity tier 2 open-end reporters, and none are high-complexity tier 1 reporters. The shift to more tier 2 reporters in the Bureau's updated estimates is mostly due to the fact that in the 2018 HMDA data the overall volume of open-end loan/application records, including applications that are not originated, is nearly double, which shifts more small reporters to the tier 2 category based on the Bureau's methodology as explained previously. Using the estimates of savings on ongoing costs for open-end lines of credit for representative financial institutions, grouped by whether the lender is already eligible for the partial exemption under the EGRRCPA, as described above, the Bureau estimates that by extending the temporary 500 open-end coverage threshold for two years, the eligible financial institutions that are already partially exempt under the EGRRCPA will receive an aggregate reduction in operational cost associated with open-end lines of credit of about $7.0 million per year in the years 2020 and 2021. The eligible financial institutions that are not already partially exempt under the EGRRCPA will receive an aggregate reduction in operational cost associated with open-end lines of credit of about $2.4 million per year in the years 2020 and 2021. In total, extending the 500 open-end line of credit threshold for two additional years will result in operational cost savings of about $9.4 million per year in the years 2020 and 2021.

In the May 2019 Proposal, the Bureau estimated that the annual savings on operational costs would be about $5.6 million due to the two-year extension of the temporary open-end threshold of 500 open-end lines of credit. The higher estimate presented above for the final rule is mainly due to the fact that the Bureau now is able to supplement new information from the 2018 HMDA data, which allows the Bureau to conduct the estimates based on the number of open-end loan/application register records rather than the number of originations. Although the estimated total cost reduction is higher than it was in the proposal based on the additional 2018 HMDA data, the overall analysis is consistent with the Bureau's methodology and conclusions from the May 2019 Proposal.

It is the Bureau's understanding that most of the financial institutions that were temporarily excluded for 2018 and 2019 under the 2017 HMDA Rule have not fully prepared for open-end reporting because they have been waiting for the Bureau to decide on the open-end reporting threshold that will apply after the temporary threshold of 500 loans expires in 2020. Under the baseline in this impact analysis, absent this final rule, those financial institutions would have to start reporting their open-end lines of credit starting in 2020, and hence incur one-time costs to create processes and systems for open-end lines of credit. The extension of the 500 open-end coverage threshold for 2020 and 2021 in this final rule will delay incurrence of such one-time costs for two more years.

Costs to Covered Persons

It is possible that, like any new regulation or revision to the existing regulations, financial institutions may incur certain one-time costs adapting to the changes to the regulation. Based on the Bureau's early outreach to stakeholders, the Bureau understands that most of such one-time costs will result from interpreting and implementing the regulatory changes, but not from purchasing software upgrades or turning off the existing reporting functionality that the eligible institutions already built or purchased prior to the new changes taking effect.

Benefits to Consumers

Having generated estimates of the reduction in ongoing costs on covered financial institutions due to the temporary increase in the open-end coverage threshold, the Bureau then attempts to estimate the potential pass-through of such cost reduction from the lenders to consumers, which could benefit 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 savings per application or origination, and absorb the one-time and increased fixed costs of complying with the rule.

The Bureau estimated in the 2015 HMDA Rule that the rule would increase variable costs by $41.50 per open-end line of credit application for representative low-complexity institutions and $6.20 per open-end line of credit application for representative moderate-complexity institutions. These savings on variable costs by the excluded open-end reporters could potentially be passed through to the consumers, if the market is perfectly competitive. These expenses will be amortized over the life of a loan and represent a negligible reduction in the cost of a mortgage loan. The Bureau notes that the market structure in the consumer mortgage lending market may differ from that of a perfectly competitive market (for instance due to information asymmetry between lenders and borrowers) in which case the pass-through to the consumers would most likely be smaller than the pass-through under the perfect competition assumption.[162] Therefore, the Bureau does not anticipate any material effect on credit access in the long or short term even if financial institutions pass on these reduced costs to consumers.

Costs to Consumers

The extension of the temporary coverage threshold of 500 for open-end lines of credit for 2020 and 2021 will reduce the open-end data submitted under HMDA. As a result, HMDA data on these institutions' open-end loans and applications will no longer be available to regulators, public officials, and members of the public. The decreased data from affected financial institutions may lead to adverse outcomes for some consumers. For instance, reporting data on open-end line of credit applications and originations and on certain demographic characteristics of applicants and borrowers could help the regulators and public officials better understand the type of funds that are flowing from lenders to consumers and consumers' need for mortgage credit. Open-end line of credit data that may be relevant to underwriting decisions may also help improve the processes used to identify possible discriminatory lending patterns and enforce antidiscrimination statutes. The Bureau has no quantitative data that can sufficiently measure the magnitude of this impact.

F. Potential Specific Impacts of the Final Rule

[162] The further the market moves away from a perfectly competitive market, the smaller the pass-through would be.

1. Depository Institutions and Credit Unions with $10 Billion or Less in Total Assets, as Described in Section 1026

As discussed above, the final rule incorporates the interpretations and procedures from the 2018 HMDA Rule into Regulation C and further implements section 104(a) of the EGRRCPA, which grants eligible financial institutions partial exemptions from HMDA's requirements for certain transactions and extends for a period of two years the current temporary threshold for reporting data about open-end lines of credit of 500 open-end lines of credit.

Both sets of provisions in the final rule focus on burden reduction for smaller institutions. Therefore, the Bureau believes that the benefits of this rule 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.

Specifically, the Bureau estimates that the reduction in annual operational costs from the partial exemption for closed-end reporting under the EGRRCPA and further implemented by the 2018 HMDA Rule and this final rule will be approximately $2,300, $11,900, and $33,900 per year for representative tier 3, tier 2, and tier 1 depository institutions and credit unions with $10 billion or less in total assets that are eligible for the partial exemptions of closed-end reporting. The Bureau estimates that all but about eight of the approximately 3,300 institutions that are eligible for the partial exemption from closed-end reporting are small depository institutions or credit unions with assets at or below $10 billion. About 2,672 of the partially exempt closed-end reporting small depository institutions or credit unions are low-complexity tier 3 closed-end reporters, with the rest being moderate-complexity tier 2 closed-end reporters, and none are high-complexity tier 1 reporters. Based on these calculations, the Bureau estimates that the aggregate savings on ongoing costs for these institutions will be approximately $13.5 million annually.

The Bureau estimates that the reduction in annual operational costs starting in calendar year 2020 from the partial exemption from open-end reporting under the EGRRCPA, absent the temporary open-end threshold extension, would be approximately $4,500, $22,800, and $144,000 per year for representative tier 3, tier 2, and tier 1 depository institutions and credit unions with $10 billion or less in total assets that are eligible for the partial exemptions of open-end reporting. For purposes of this final rule, the Bureau estimates that about 580 out of the approximately 600 financial institutions that are partially exempt from reporting certain data points on open-end lines of credit under the EGRRCPA are small depository institutions or credit unions with assets at or below $10 billion. According to the Bureau's updated estimates, which incorporate the number of applications instead of originations, about 380 of those 580 partially exempt small depository institutions or credit unions are low-complexity tier 3 open-end reporters, about 200 are moderate-complexity tier 2 open-end reporters, and none are high-complexity tier 1 reporters.[163] Based on these counts, the Bureau estimates that the aggregate savings on ongoing costs for these small depository institutions or credit unions due to the partial exemption from open-end reporting will be approximately $6 million annually, starting in calendar year 2020.

For the temporary two-year extension of the open-end coverage threshold of 500 originations in the final rule, the Bureau estimates that for depository institutions and credit unions with $10 billion in assets or less that will not have to report open-end lines of credit under

[163] In comparison, in the May 2019 Proposal, the Bureau estimated that about 578 out of the 595 financial institutions that would be partially exempt from reporting certain data points on open-end lines of credit under the EGRRCPA are small depository institutions or credit unions with assets at or below $10 billion, and that about 531 of those 578 partially exempt small depository institutions or credit unions are low-complexity tier 3 open-end reporters, about 47 are moderate-complexity tier 2 open-end reporters, and none are high-complexity tier 1 reporters. The shift to more tier 2 reporters in the Bureau's updated estimates is mostly due to the fact that in the 2018 HMDA data the overall volume of open-end loan/application records, including applications that are not originated, is nearly double, which shifts more small reporters to the tier 2 category based on the Bureau's methodology as explained previously.

the final rule, the reduction in annual ongoing operational costs for the excluded institutions not eligible for the partial exemption for open-end lines of credit under the EGRRCPA will be approximately $8,800, $44,700, and $28,100 per year, for representative low-, moderate-, and high-complexity financial institutions, respectively, and the reduction in annual ongoing operational costs for excluded institutions already partially exempt for open-end lines of credit under the EGRRCPA will be approximately $4,300, $21,900, and $138,000 annually, for representative low-, moderate-, and high-complexity financial institutions, respectively. The Bureau estimates that about 633 of the approximately 680 institutions that will be temporarily excluded from open-end reporting in 2020 and 2021 under this rule are small depository institutions or credit unions with assets at or below $10 billion, and about 580 of them are already partially exempt under the EGRRCPA. Combined, the Bureau estimates that the annual saving on operational costs for depository institutions and credit unions with $10 billion or less in assets receiving the temporary exclusion for open-end reporting for two additional years under the final rule will be about $7.6 million per year in the years 2020 and 2021.[164]

2. Impact of the Provisions on Consumers in Rural Areas

The final provisions will not directly impact consumers in rural areas. However, as with all consumers, consumers in rural areas may be impacted indirectly. This would occur if

[164] In comparison, in the May 2019 Proposal, the Bureau estimated that about 633 of the approximately 681 institutions that would be temporarily excluded from open-end reporting in 2020 and 2021 under the May 2019 Proposal are small depository institutions or credit unions with assets at or below $10 billion, and about 578 of them are already partially exempt under the EGRRCPA. Combined, the Bureau estimated that the annual saving on operational costs for depository institutions and credit unions with $10 billion or less in assets receiving the temporary exclusion for open-end reporting for two additional years under the May 2019 Proposal would be about $5 million per year in the years 2020 and 2021. The shift to more tier 2 reporters in the Bureau's updated estimates is mostly due to the fact that in the 2018 HMDA data the overall volume of open-end loan/application records, including applications that are not originated, is nearly double, which shifts more small reporters to the tier 2 category based on the Bureau's methodology as explained previously.

financial institutions serving rural areas are HMDA reporters (in which case the final rule will lead to decreased information in rural areas) and if these institutions pass on some or all of the cost reduction to consumers (in which case, some consumers could benefit).

Recent research suggests that financial institutions that primarily serve rural areas are generally not HMDA reporters.[165] The Housing Assistance Council (HAC) suggests that the current asset and geographic coverage criteria already in place 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. Some research also suggests that HMDA's coverage of rural areas is limited, especially areas further from MSAs.[166] If a large portion of the rural housing market is serviced by financial institutions that are already not HMDA reporters, any indirect impact of the changes on consumers in rural areas would be limited, as the 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 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 changes to Regulation C. For

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[165] *See, e.g.*, Keith Wiley, "What Are We Missing? HMDA Asset-Excluded Filers," Hous. Assistance Council (2011), *http://ruralhome.org/storage/documents/smallbanklending.pdf*; Lance George & Keith Wiley, "Improving HMDA: A Need to Better Understand Rural Mortgage Markets," Hous. Assistance Council (2010), *http://www.ruralhome.org/storage/documents/notehmdasm.pdf*.

[166] *See* Robert B. Avery et al., "Opportunities and Issues in Using HMDA Data," 29 J. of Real Est. Res. 352 (2007).

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 2017, 5,207 HMDA reporters reported applications or purchased loans for property located in geographic areas outside of an MSA. In total, these 5,207 financial institutions reported 1,794,248 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 changes. In general, individual financial institutions report small numbers of covered loans from non-MSAs, as approximately 72 percent reported fewer than 100 covered loans from non-MSAs.

Following microeconomic principles, the Bureau believes that financial institutions will pass on reduced 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.[167] 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 final rule on these operational steps is a reduction in time spent per task. Overall, the Bureau estimates that the impact of the final rule on variable costs per application is to reduce variable costs by no more than $42 for a representative tier 3 financial institution, $6 for a representative tier 2 financial institution, and $3 for a representative tier 1 financial institution.[168] The 5,507 financial

[167] 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.
[168] These cost estimates represent the highest estimates among the estimates presented in previous sections and form the upper bound of possible savings.

institutions that serviced rural areas could attempt to pass these reduced variable costs on to all future mortgage customers, including the estimated 1.8 million consumers from rural areas. Amortized over the life of the loan, this expense would represent a negligible reduction in the cost of a mortgage loan. The Bureau notes that the market structure in the consumer mortgage lending market may differ from that of a perfectly competitive market (for instance due to information asymmetry between lenders and borrowers) in which case the pass-through to the consumers would most likely be smaller than the pass-through under the perfect competition assumption.[169] 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 reduced costs to consumers.

The rural market may differ from non-rural markets in terms of market structure, demand, supply, and competition level. For instance some rural markets may be more likely to be served by local or community banks than a large number of national lenders. Therefore, consumers in rural areas may experience benefits and costs from the final rule that are different than those experienced by consumers in general. To the extent that the impacts of the final rule on creditors differ by type of creditor, this may affect the costs and benefits of the May 2019 Proposal on consumers in rural areas.

VIII. Final Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act[170] as amended by the Small Business Regulatory Enforcement Fairness Act of 1996[171] (RFA) requires each agency to consider the potential

[169] The further the market moves away from a perfectly competitive market, the smaller the pass-through would be.
[170] Public Law 96-354, 94 Stat. 1164 (1980).
[171] Public Law 104-21, section 241, 110 Stat. 847, 864-65 (1996).

impact of its regulations on small entities, including small businesses, small governmental units, and small not-for-profit organizations.[172] The RFA defines a "small business" as a business that meets the size standard developed by the Small Business Administration pursuant to the Small Business Act.[173]

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 will not have a significant economic impact on a substantial number of small entities.[174] 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.[175]

As discussed above, this final rule incorporates the interpretations and procedures from the 2018 HMDA Rule into Regulation C and further implements section 104(a) of the EGRRCPA, which grants eligible financial institutions partial exemptions from HMDA's requirements for certain transactions; and it extends the temporary threshold of 500 open-end lines of credit for reporting data about open-end lines of credit for two years. The section 1022(b)(2) analysis above describes how this final rule reduces the costs and burdens on covered persons, including small entities. Additionally, as described in the analysis above, a small entity that is in compliance with the law at such time when this final rule takes effect does not need to

[172] 5 U.S.C. 601–612. 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).

[173] 5 U.S.C. 601(3). The Bureau may establish an alternative definition after consulting with the Small Business Administration and providing an opportunity for public comment. *Id.*

[174] 5 U.S.C. 601–612.

[175] 5 U.S.C. 609.

take any additional action to remain in compliance other than choosing to switch off all or parts of reporting systems and functions. Based on these considerations, the final rule does not have a significant economic impact on any small entities.

Accordingly, the undersigned hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities. Thus, neither an FRFA nor a small business review panel is required for this final rule.

IX. 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 approval from the Office of Management and Budget (OMB) for information collection requirements prior to implementation. 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 final rule amends 12 CFR part 1003 (Regulation C), which implements HMDA. The Bureau's OMB control number for Regulation C is 3170-0008. This final rule revises the information collection requirements contained in Regulation C that are currently approved by OMB under that OMB control number as follows: 1) extends for two years Regulation C's current temporary threshold of 500 open-end lines of credit for open-end institutional and transactional coverage, and 2) implements the new, separate EGRRCPA partial exemptions that apply to some HMDA reporting requirements.

As of [*INSERT DATE OF PUBLICATION IN FEDERAL REGISTER*]: These revised collections of information have been submitted to OMB for review under section 3507(d) of the PRA. A complete description of the information collection requirements, including the burden estimate methods, is provided in the information collection request (ICR) that the Bureau has submitted to OMB under the requirements of the PRA. The ICR submitted to OMB requesting approval under the PRA for the information collection requirements contained herein is available at *www.regulations.gov* as well as OMB's public-facing docket at *www.reginfo.gov.*

Title of Collection: Home Mortgage Disclosure Act (Regulation C)

OMB Control Number: 3170-0008

Type of Review: Revision of a currently approved information collection

Affected Public: Private Sector

Estimated Number of Respondents: 135

Estimated Total Annual Burden Hours: 1,500,000

Pursuant to 44 U.S.C. 3507, the Bureau will publish a separate notice in the Federal Register announcing OMB's action on these submissions, including the OMB control number and expiration date.

The Bureau has a continuing interest in the public's opinion of its collections of information. At any time, comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, may be sent to the Consumer Financial Protection Bureau (Attention: PRA Office), 1700 G Street NW., Washington, DC 20552, or by email to *PRA_Comments@cfpb.gov*.

X. Congressional Review Act

Pursuant to the Congressional Review Act,[176] the Bureau will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to the rule's published effective date. The

[176] 5 U.S.C. 801 *et seq*.

Office of Information and Regulatory Affairs has designated this rule as not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects in 12 CFR Part 1003

Banks, Banking, Credit unions, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations.

Authority and Issuance

For the reasons set forth above, the Bureau amends 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. Effective January 1, 2020, § 1003.2, as amended at 82 FR 43088, is further amended 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. Effective January 1, 2020, § 1003.3, as amended at 82 FR 43088, is further amended by revising the section heading and paragraph (c)(12) and adding paragraph (d) to read as follows:

§ 1003.3 Exempt institutions and excluded and partially exempt 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; a financial institution may collect, record, report, and disclose information, as described in §§ 1003.4 and 1003.5, for such an excluded open-end line of credit as though it were a covered loan, provided that the financial institution complies with such requirements for all applications for open-end lines of credit that it receives, open-end lines of credit that it originates, and open-end lines of credit that it purchases that otherwise would have been covered loans during the calendar year during which final action is taken on the excluded open-end line of credit; or

* * * * *

(d) *Partially exempt transactions*. (1) For purposes of this paragraph (d), the following definitions apply:

(i) *Insured credit union* means an insured credit union as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752).

(ii) *Insured depository institution* means an insured depository institution as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(iii) *Optional data* means the data identified in § 1003.4(a)(1)(i), (a)(9)(i), and (a)(12), (15) through (30), and (32) through (38).

(iv) *Partially exempt transaction* means a covered loan or application that is partially exempt under paragraph (d)(2) or (3) of this section.

(2) Except as provided in paragraph (d)(6) of this section, an insured depository institution or insured credit union that, in each of the two preceding calendar years, originated fewer than 500 closed-end mortgage loans that are not excluded from this part pursuant to paragraphs (c)(1) through (10) or paragraph (c)(13) of this section is not required to collect, record, or report optional data as defined in paragraph (d)(1)(iii) of this section for applications for closed-end mortgage loans that it receives, closed-end mortgage loans that it originates, and closed-end mortgage loans that it purchases.

(3) Except as provided in paragraph (d)(6) of this section, an insured depository institution or insured credit union that, in each of the two preceding calendar years, originated fewer than 500 open-end lines of credit that are not excluded from this part pursuant to paragraphs (c)(1) through (10) of this section is not required to collect, record, or report optional data as defined in paragraph (d)(1)(iii) of this section for applications for open-end lines of credit that it receives, open-end lines of credit that it originates, and open-end lines of credit that it purchases.

(4) A financial institution eligible for a partial exemption under paragraph (d)(2) or (3) of this section may collect, record, and report optional data as defined in paragraph (d)(1)(iii) of this

section for a partially exempt transaction as though the institution were required to do so, provided that:

(i) If the institution reports the street address, city name, or Zip Code for the property securing a covered loan, or in the case of an application, proposed to secure a covered loan pursuant to § 1003.4(a)(9)(i), it reports all data that would be required by § 1003.4(a)(9)(i) if the transaction were not partially exempt;

(ii) If the institution reports any data for the transaction pursuant to § 1003.4(a)(15), (16), (17), (27), (33), or (35), it reports all data that would be required by § 1003.4(a)(15), (16), (17), (27), (33), or (35), respectively, if the transaction were not partially exempt.

(5) If, pursuant to paragraph (d)(2) or (3) of this section, a financial institution does not report a universal loan identifier (ULI) pursuant to § 1003.4(a)(1)(i) for an application for a covered loan that it receives, a covered loan that it originates, or a covered loan that it purchases, the financial institution shall assign and report a non-universal loan identifier (NULI). The NULI must be composed of up to 22 characters to identify the covered loan or application, which:

(i) May be letters, numerals, or a combination of letters and numerals;

(ii) Must be unique within the annual loan/application register in which the covered loan or application is included; and

(iii) Must not include any information that could be used to directly identify the applicant or borrower.

(6) Paragraphs (d)(2) and (3) of this section do not apply to an insured depository institution that, as of the preceding December 31, had received a rating of "needs to improve record of meeting community credit needs" during each of its two most recent examinations or a

rating of “substantial noncompliance in meeting community credit needs” on its most recent examination under section 807(b)(2) of the Community Reinvestment Act of 1977 (12 U.S.C. 2906(b)(2)).

4. Effective January 1, 2020, § 1003.4 is amended by revising paragraphs (a) introductory text, (a)(1)(i) introductory text, and (e) 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 that it receives, covered loans that it originates, and covered loans that 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. Except as provided in § 1003.3(d), the data collected shall include the following items:

(1)(i) A universal loan identifier (ULI) or, for a partially exempt transaction under § 1003.3(d), either a ULI or a non-universal loan identifier (NULI) as described in § 1003.3(d)(5) for the covered loan or application that can be used to identify and retrieve the covered loan or application file. Except for a purchased covered loan or application described in paragraphs (a)(1)(i)(D) and (E) of this section or a partially exempt transaction for which a NULI is assigned and reported under § 1003.3(d), the financial institution shall assign and report a ULI that:

* * * * *

(e) *Data reporting for banks and savings associations that are required to report data on small business, small farm, and community development lending under CRA.* Banks and savings associations that are required to report data on small business, small farm, and community development lending under regulations that implement the Community Reinvestment Act of 1977 (12 U.S.C. 2901 *et seq*.) shall also collect the information required by paragraph (a)(9)(ii) of this section for property located outside MSAs and MDs in which the institution has a home or branch office, or outside any MSA.

*   *   *   *   *

5. Effective January 1, 2020, supplement I to part 1003, as amended at 82 FR 43088, is further amended as follows:

a. Under *Section 1003.2—Definitions*, revise *2(g) Financial Institution*.

b. Revise the heading to *Section 1003.3*.

c. Under *Section 1003.3*:

i. Revise *Paragraph 3(c)(12)*.

iii. Add *3(d) Partially exempt transactions* after *Paragraph 3(c)(13).*

d. Under *Section 1003.4—Compilation of Reportable Data*, revise *4(a) Data Format and Itemization*.

The revisions and addition read as follows:

Supplement I to Part 1003—Official Interpretations

*   *   *   *   *

Section 1003.2—Definitions

*   *   *   *   *

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 2019, the preceding calendar year is 2018 and the preceding December 31 is December 31, 2018. Accordingly, in 2019, Financial Institution A satisfies the asset-size threshold described in § 1003.2(g)(1)(i) if its assets exceeded the threshold specified in comment 2(g)-2 on December 31, 2018. Likewise, in 2020, Financial Institution A does not meet the loan-volume test described in § 1003.2(g)(1)(v)(A) if it originated fewer than 25 closed-end mortgage loans during either 2018 or 2019.

2. [Reserved]

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.

4. *Merger or acquisition—coverage for calendar year of merger or acquisition*. The scenarios described below illustrate a financial institution's responsibilities for the calendar year of a merger or acquisition. For 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 either an institution that is not a financial institution, as defined in § 1003.2(g), or an institution that is exempt from reporting under § 1003.3(a).

i. Two institutions that are not covered merge. The surviving or newly formed institution 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 covered loans and applications handled in the offices of the merged institution that was previously covered and is optional for covered loans and applications handled in offices of the merged 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 handled in offices of the previously covered institution that took place prior to the merger. After the merger date, data collection is optional for covered loans and applications handled in the offices of the institution that was previously covered. When an institution remains not covered after acquiring a branch office of a covered institution, data collection is required for transactions of the acquired branch office that take place prior to the acquisition. Data collection by the acquired branch office is optional for transactions taking place in the remainder of the calendar year after the acquisition.

iv. Two covered institutions merge. The surviving or newly formed institution is a covered institution. Data collection is required for the entire calendar year of the merger. The surviving or newly formed 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 calendar year of the merger. Data for the acquired branch office may be submitted by either institution.

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).

6. *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).

7. *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).

* * * * *

Section 1003.3—Exempt Institutions and Excluded and Partially Exempt 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 2020 under § 1003.2(g) because it originated 50 closed-end mortgage loans in 2018, 75 closed-end mortgage loans in 2019, 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 2018 and 2019, respectively. The closed-end mortgage loans that the bank originated or purchased, or for which it received applications, during 2020 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 purchased, or for which it received applications, during 2020 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. *Optional reporting.* A financial institution may report applications for, originations of, or purchases of 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. However, a financial institution that chooses to report such excluded applications for, originations of, or purchases of open-end lines of credit must report all such applications for open-end lines of credit which it receives, open-end lines of credit that it originates, and open-end lines of credit that it purchases that otherwise would be covered loans for a given calendar year. Note that applications which remain pending at the end of a calendar year are not reported, as described in comment 4(a)(8)(i)-14.

*   *   *   *   *

3(d) Partially Exempt Transactions

1. *Merger or acquisition—application of partial exemption thresholds to surviving or newly formed institution.* After a merger or acquisition, the surviving or newly formed institution falls below the loan threshold described in § 1003.3(d)(2) or (3) if it, considering the combined lending activity of the surviving or newly formed institution and the merged or acquired institutions or acquired branches, falls below the loan threshold described in § 1003.3(d)(2) or (3). For example, A and B merge. The surviving or newly formed institution falls below the loan threshold described in § 1003.3(d)(2) if the surviving or newly formed institution, A, and B originated a combined total of fewer than 500 closed-end mortgage loans that are not excluded from this part pursuant to § 1003.3(c)(1) through (10) or (c)(13) in each of the two preceding calendar years. Comment 3(d)-3 discusses eligibility for partial exemptions during the calendar year of a merger.

2. *Merger or acquisition—Community Reinvestment Act examination history.* After a merger or acquisition, the surviving or newly formed institution is deemed to be ineligible for the partial exemptions pursuant to § 1003.3(d)(6) if either it or any of the merged or acquired institutions received a rating of "needs to improve record of meeting community credit needs" during each of its two most recent examinations or a rating of "substantial noncompliance in meeting community credit needs" on its most recent examination under section 807(b)(2) of the Community Reinvestment Act of 1977 (12 U.S.C. 2906(b)(2)). Comment 3(d)-3.iii discusses eligibility for partial exemptions during the calendar year of a merger when an institution that is eligible for a partial exemption merges with an institution that is ineligible for the partial exemption (including, for example, an institution that is ineligible for the partial exemptions pursuant to § 1003.3(d)(6)) and the surviving or newly formed institution is ineligible for the partial exemption.

3. *Merger or acquisition—applicability of partial exemptions during calendar year of merger or acquisition.* The scenarios described below illustrate the applicability of partial exemptions under § 1003.3(d) during the calendar year of a merger or acquisition. For purposes of these illustrations, "institution" means a financial institution, as defined in § 1003.2(g), that is not exempt from reporting under § 1003.3(a). Although the scenarios below refer to the partial exemption for closed-end mortgage loans under § 1003.3(d)(2), the same principles apply with respect to the partial exemption for open-end lines of credit under § 1003.3(d)(3).

i. Assume two institutions that are eligible for the partial exemption for closed-end mortgage loans merge and the surviving or newly formed institution meets all of the requirements for the partial exemption. The partial exemption for closed-end mortgage loans applies for the calendar year of the merger.

ii. Assume two institutions that are eligible for the partial exemption for closed-end mortgage loans merge and the surviving or newly formed institution does not meet the requirements for the partial exemption. Collection of optional data for closed-end mortgage loans is permitted but not required for the calendar year of the merger (even though the merger creates an institution that does not meet the requirements for the partial exemption for closed-end mortgage loans). When a branch office of an institution that is eligible for the partial exemption is acquired by another institution that is eligible for the partial exemption, and the acquisition results in an institution that is not eligible for the partial exemption, data collection for closed-end mortgage loans is permitted but not required for the calendar year of the acquisition.

iii. Assume an institution that is eligible for the partial exemption for closed-end mortgage loans merges with an institution that is ineligible for the partial exemption and the surviving or newly formed institution is ineligible for the partial exemption. For the calendar year of the merger, collection of optional data as defined in § 1003.3(d)(1)(iii) for closed-end mortgage loans is required for covered loans and applications handled in the offices of the merged institution that was previously ineligible for the partial exemption. For the calendar year of the merger, collection of optional data for closed-end mortgage loans is permitted but not required for covered loans and applications handled in the offices of the merged institution that was previously eligible for the partial exemption. When an institution that is ineligible for the partial exemption for closed-end mortgage loans acquires a branch office of an institution that is eligible for the partial exemption, collection of optional data for closed-end mortgage loans is permitted but not required for covered loans and applications handled by the acquired branch office for the calendar year of the acquisition.

iv. Assume an institution that is eligible for the partial exemption for closed-end mortgage loans merges with an institution that is ineligible for the partial exemption and the surviving or newly formed institution is eligible for the partial exemption. For the calendar year of the merger, collection of optional data for closed-end mortgage loans is required for covered loans and applications handled in the offices of the previously ineligible institution that took place prior to the merger. After the merger date, collection of optional data for closed-end mortgage loans is permitted but not required for covered loans and applications handled in the offices of the institution that was previously ineligible for the partial exemption. When an institution remains eligible for the partial exemption for closed-end mortgage loans after acquiring a branch office of an institution that is ineligible for the partial exemption, collection of optional data for closed-end mortgage loans is required for transactions of the acquired branch office that take place prior to the acquisition. Collection of optional data for closed-end mortgage loans by the acquired branch office is permitted but not required for transactions taking place in the remainder of the calendar year after the acquisition.

4. *Originations*. Whether applications for covered loans that an insured depository institution or insured credit union receives, covered loans that it originates, or covered loans that it purchases are partially exempt transactions under § 1003.3(d) depends, in part, on whether the institution originated fewer than 500 closed-end mortgage loans that are not excluded from this part pursuant to § 1003.3(c)(1) through (10) or (c)(13) in each of the two preceding calendar years or fewer than 500 open-end lines of credit that are not excluded from this part pursuant to § 1003.3(c)(1) through (10) in each of the two preceding calendar years. See comments 4(a)-2 through -4 for guidance about the activities that constitute an origination for purposes of § 1003.3(d).

5. *Affiliates*. A financial institution that is not itself an insured credit union or an insured depository institution as defined in § 1003.3(d)(1)(i) and (ii) is not eligible for the partial exemptions under § 1003.3(d)(1) through (3), even if it is owned by or affiliated with an insured credit union or an insured depository institution. For example, an institution that is a subsidiary of an insured credit union or insured depository institution may not claim a partial exemption under § 1003.3(d) for its closed-end mortgage loans unless the subsidiary institution itself:

i. Is an insured credit union or insured depository institution,

ii. In each of the two preceding calendar years originated fewer than 500 closed-end mortgage loans that are not excluded from this part pursuant to § 1003.3(c)(1) through (10) or (c)(13), and

iii. If the subsidiary is an insured depository institution, had not received as of the preceding December 31 a rating of “needs to improve record of meeting community credit needs” during each of its two most recent examinations or a rating of “substantial noncompliance in meeting community credit needs” on its most recent examination under section 807(b)(2) of the Community Reinvestment Act of 1977 (12 U.S.C. 2906(b)(2)).

Paragraph 3(d)(1)(iii)

1. *Optional data.* The definition of optional data in § 1003.3(d)(1)(iii) identifies the data that are covered by the partial exemptions for certain transactions of insured depository institutions and insured credit unions under § 1003.3(d). If a transaction is not partially exempt under § 1003.3(d)(2) or (3), a financial institution must collect, record, and report optional data as otherwise required under this part.

Paragraph 3(d)(2)

1. *General*. Section 1003.3(d)(2) provides that, except as provided in § 1003.3(d)(6), an

insured depository institution or insured credit union that, in each of the two preceding calendar years, originated fewer than 500 closed-end mortgage loans that are not excluded from this part pursuant to § 1003.3(c)(1) through (10) or (c)(13) is not required to collect, record, or report optional data as defined in § 1003.3(d)(1)(iii) for applications for closed-end mortgage loans that it receives, closed-end mortgage loans that it originates, and closed-end mortgage loans that it purchases. For example, assume that an insured credit union is a financial institution in 2020 under § 1003.2(g) and originated, in 2018 and 2019 respectively, 100 and 200 closed-end mortgage loans that are not excluded from this part pursuant to § 1003.3(c)(1) through (10) or (c)(13). The closed-end mortgage loans that the insured credit union originated or purchased, or for which it received applications, during 2020 are not excluded transactions under § 1003.3(c)(11). However, due to the partial exemption in § 1003.3(d)(2), the insured credit union is not required to collect, record, or report optional data as defined in § 1003.3(d)(1)(iii) for the closed-end mortgage loans that it originated or purchased, or for which it received applications, for which final action is taken during 2020. See comments 4(a)-2 through -4 for guidance about the activities that constitute an origination.

Paragraph 3(d)(3)

1. *General*. Section 1003.3(d)(3) provides that, except as provided in § 1003.3(d)(6), an insured depository institution or insured credit union that, in each of the two preceding calendar years, originated fewer than 500 open-end lines of credit that are not excluded from this part pursuant to § 1003.3(c)(1) through (10) is not required to collect, record, or report optional data as defined in § 1003.3(d)(1)(iii) for applications for open-end lines of credit that it receives, open-end lines of credit that it originates, and open-end lines of credit that it purchases. See § 1003.3(c)(12) and comments 3(c)(12)-1 and -2, which provide an exclusion for certain open-

end lines of credit from this part and permit voluntary reporting of such transactions under certain circumstances. See also comments 4(a)-2 through -4 for guidance about the activities that constitute an origination.

Paragraph 3(d)(4)

1. *General.* Section 1003.3(d)(4) provides that an insured depository institution or insured credit union may collect, record, and report optional data as defined in § 1003.3(d)(1)(iii) for a partially exempt transaction as though the institution were required to do so, provided that, if an institution voluntarily reports any data pursuant to any of the seven paragraphs identified in § 1003.3(d)(4)(i) and (ii) (§ 1003.4(a)(9)(i) and (a)(15), (16), (17), (27), (33), and (35)), it also must report all other data for the covered loan or application that would be required by that applicable paragraph if the transaction were not partially exempt. For example, an insured depository institution or insured credit union may voluntarily report the existence of a balloon payment for a partially exempt transaction pursuant to § 1003.4(a)(27), but, if it does so, it must also report all other data for the transaction that would be required by § 1003.4(a)(27) if the transaction were not partially exempt (*i.e.*, whether the transaction has interest-only payments, negative amortization, or other non-amortizing features).

2. *Partially exempt transactions within the same loan/application register.* A financial institution may collect, record, and report optional data for some partially exempt transactions under § 1003.3(d) in the manner specified in § 1003.3(d)(4), even if it does not collect, record, and report optional data for other partially exempt transactions under § 1003.3(d).

3. *Exempt or not applicable.* i. If a financial institution would otherwise report that a transaction is partially exempt pursuant to § 1003.3(d) and a particular requirement to report optional data is not applicable to the transaction, the insured depository institution or insured

credit union complies with the particular requirement by reporting either that the transaction is exempt from the requirement or that the requirement is not applicable. For example, assume that an insured depository institution or insured credit union originates a partially exempt reverse mortgage. The requirement to report lender credits is not applicable to reverse mortgages, as comment 4(a)(20)-1 explains. Accordingly, the institution could report either exempt or not applicable for lender credits for the reverse mortgage transaction.

ii. An institution is considered as reporting data in a data field for purposes of § 1003.3(d)(4)(i) and (ii) when it reports not applicable for that data field for a partially exempt transaction. For example, assume an insured depository institution or insured credit union originates a covered loan that is eligible for a partial exemption and is made primarily for business or commercial purposes. The requirement to report total loan costs or total points and fees is not applicable to loans made primarily for business or commercial purposes, as comments 4(a)(17)(i)-1 and (ii)-1 explain. The institution can report not applicable for both total loan costs and total points and fees, or it can report exempt for both total loan costs and total points and fees for the loan. Pursuant to § 1003.3(d)(4)(ii), the institution is not permitted to report not applicable for total loan costs and report exempt for total points and fees for the business or commercial purpose loan.

Paragraph 3(d)(4)(i)

1. *State.* Section 1003.3(d)(4)(i) provides that if an institution eligible for a partial exemption under § 1003.3(d)(2) or (3) reports the street address, city name, or Zip Code for a partially exempt transaction pursuant to § 1003.4(a)(9)(i), it reports all data that would be required by § 1003.4(a)(9)(i) if the transaction were not partially exempt, including the State. An insured depository institution or insured credit union that reports the State pursuant to

§ 1003.4(a)(9)(ii) or comment 4(a)(9)(ii)-1 for a partially exempt transaction without reporting any other data required by § 1003.4(a)(9)(i) is not required to report the street address, city name, or Zip Code pursuant to § 1003.4(a)(9)(i).

Paragraph 3(d)(5)

1. *NULI—uniqueness.* For a partially exempt transaction under § 1003.3(d), a financial institution may report a ULI or a NULI. Section 1003.3(d)(5)(ii) requires an insured depository institution or insured credit union that assigns a NULI to a covered loan or application to ensure that the character sequence it assigns is unique within the institution's annual loan/application register in which it appears. A financial institution should assign only one NULI to any particular covered loan or application within each annual loan/application register, and each NULI should correspond to a single application and ensuing loan within the annual loan/application register in which the NULI appears in the case that the application is approved and a loan is originated. A financial institution may use a NULI more than once within an annual loan/application register only if the NULI refers to the same loan or application or a loan that ensues from an application referred to elsewhere in the annual loan/application register. Refinancings or applications for refinancing that are included in same annual loan/application register as the loan that is being refinanced should be assigned a different NULI than the loan that is being refinanced. An insured depository institution or insured credit union with multiple branches must ensure that its branches do not use the same NULI to refer to multiple covered loans or applications within the institution's same annual loan/application register.

2. *NULI—privacy.* Section 1003.3(d)(5)(iii) prohibits an insured depository institution or insured credit union from including information in the NULI that could be used to directly identify 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 3(d)(6)

1. *Preceding calendar year.* Section 1003.3(d)(6) refers to the preceding December 31, which means the December 31 preceding the current calendar year. For example, in 2020, the preceding December 31 is December 31, 2019. Assume that, as of December 31, 2019, an insured depository institution received ratings of "needs to improve record of meeting community credit needs" during its two most recent examinations under section 807(b)(2) of the Community Reinvestment Act (12 U.S.C. 2906(b)(2)) in 2018 and 2014. Accordingly, in 2020, the insured depository institution's transactions are not partially exempt pursuant to § 1003.3(d).

Section 1003.4—Compilation of Reportable Data

4(a) Data Format and Itemization

1. *General.* Except as otherwise provided in § 1003.3, § 1003.4(a) describes a financial institution's obligation to collect data on applications it received, on covered loans that it originated, and on covered loans that it purchased during the calendar year covered by 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 actions were taken–for example, an application that the institution denied, that it approved but that was not accepted, that it closed for incompleteness, or that the applicant withdrew during the calendar year covered by the loan/application 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. 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.

iv. 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.

2. *Originations and applications involving more than one institution*. Section 1003.4(a) requires a financial institution to collect certain information regarding applications for covered loans that it receives and regarding covered loans that it originates. The following provides guidance on how to report originations and applications involving more than one institution. The discussion below assumes that all of the parties are financial institutions as defined by § 1003.2(g). The same principles apply if any of the parties is not a financial institution. Comment 4(a)-3 provides examples of transactions involving more than one institution, and comment 4(a)-4 discusses how to report actions taken by agents.

i. Only one financial institution reports each originated covered loan as an origination. If more than one institution was involved in the origination of a covered loan, the financial institution that made the credit decision approving the application before closing or account opening reports the loan as an origination. It is not relevant whether the loan closed or, in the case of an application, would have closed in the institution's name. If more than one institution approved an application prior to closing or account opening and one of those institutions purchased the loan after closing, the institution that purchased the loan after closing reports the loan as an origination. If a financial institution reports a transaction as an origination, it reports all of the information required for originations, even if the covered loan was not initially payable to the financial institution that is reporting the covered loan as an origination.

ii. In the case of an application for a covered loan that did not result in an origination, a financial institution reports the action it took on that application if it made a credit decision on the application or was reviewing the application when the application was withdrawn or closed for incompleteness. It is not relevant whether the financial institution received the application from the applicant or from another institution, such as a broker, or whether another financial institution also reviewed and reported an action taken on the same application.

3. *Examples—originations and applications involving more than one institution.* The following scenarios illustrate how an institution reports a particular application or covered loan. The illustrations assume that all of the parties are financial institutions as defined by § 1003.2(g). However, the same principles apply if any of the parties is not a financial institution.

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 Financial Institution B denied the application. Financial Institution B was not acting as Financial Institution A's agent. Since Financial Institution B made the credit decision, Financial Institution B reports the application as a denial. Financial Institution A does not report the application. If, under the same facts, the application was withdrawn before Financial Institution B made a credit decision, Financial Institution B would report the application as withdrawn and Financial Institution A would not report the application.

iii. Financial Institution A received an application for a covered loan from an applicant and approved the application before closing the loan in its name. Financial Institution A was not acting as Financial Institution B's agent. Financial Institution B purchased the covered loan from Financial Institution A. Financial Institution B did not review the application 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 for a covered loan 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 an application and made the credit decision to approve a covered loan using the underwriting criteria provided by a third party (*e.g.*, another financial institution, Fannie Mae, or Freddie Mac). The third party did not review the application and did not make a credit decision prior to closing. Financial Institution A was not acting as the third party's agent. Financial Institution A reports the application or origination. If the third party purchased the loan and is subject to Regulation C, the third party reports the loan as a purchase whether or not the third party reviewed the loan after closing. Assume the same facts, except that Financial Institution A approved the application, and the applicant chose not to accept the loan from Financial Institution A. Financial Institution A reports the application as approved but not accepted and the third party, assuming the third party is subject to Regulation C, does not report the application.

vi. Financial Institution A reviewed and made the credit decision on an application based on the criteria of a third-party insurer or guarantor (for example, a government or private insurer or guarantor). Financial Institution A reports the action taken on the application.

vii. Financial Institution A received an application for a covered loan and forwarded it to Financial Institutions B and C. Financial Institution A made a credit decision, acting as Financial Institution D's agent, and approved the application. The applicant did not accept the loan from Financial Institution D. Financial Institution D reports the application as approved but not accepted. Financial Institution A does not report the application. Financial Institution B made a credit decision, approving the application, the applicant accepted the offer of credit from Financial Institution B, and credit was extended. Financial Institution B reports the origination. Financial Institution C made a credit decision and denied the application. Financial Institution C reports the application as denied.

4. *Agents*. If a financial institution made the 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.

5. *Purchased loans*. i. A financial institution is required to collect data regarding covered loans it purchases. For purposes of § 1003.4(a), a purchase includes a repurchase of a covered loan, regardless of whether the institution chose to repurchase the covered loan or was required to repurchase the covered loan because of a contractual obligation and regardless of whether the repurchase occurs within the same calendar year that the covered loan was originated or in a different calendar year. For example, assume that Financial Institution A originates or purchases a covered loan and then sells it to Financial Institution B, who later requires Financial Institution A to repurchase the covered loan pursuant to the relevant contractual obligations. Financial Institution B reports the purchase from Financial Institution A, assuming it is a financial institution as defined under § 1003.2(g). Financial Institution A reports the repurchase from Financial Institution B as a purchase.

ii. In contrast, for purposes of § 1003.4(a), a purchase does not include a temporary transfer of a covered loan to an interim funder or warehouse creditor as part of an interim funding agreement under which the originating financial institution is obligated to repurchase the covered loan for sale to a subsequent investor. Such agreements, often referred to as "repurchase agreements," are sometimes employed as functional equivalents of warehouse lines of credit. Under these agreements, the interim funder or warehouse creditor acquires legal title to the covered loan, subject to an obligation of the originating institution to repurchase at a future date, rather than taking a security interest in the covered loan as under the terms of a more conventional warehouse line of credit. To illustrate, assume Financial Institution A has an interim funding agreement with Financial Institution B to enable Financial Institution B to originate loans. Assume further that Financial Institution B originates a covered loan and that, pursuant to this agreement, Financial Institution A takes a temporary transfer of the covered loan until Financial Institution B arranges for the sale of the covered loan to a subsequent investor and that Financial Institution B repurchases the covered loan to enable it to complete the sale to the subsequent investor (alternatively, Financial Institution A may transfer the covered loan directly to the subsequent investor at Financial Institution B's direction, pursuant to the interim funding agreement). The subsequent investor could be, for example, a financial institution or other entity that intends to hold the loan in portfolio, a GSE or other securitizer, or a financial institution or other entity that intends to package and sell multiple loans to a GSE or other securitizer. In this example, the temporary transfer of the covered loan from Financial Institution B to Financial Institution A is not a purchase, and any subsequent transfer back to Financial Institution B for delivery to the subsequent investor is not a purchase, for purposes of § 1003.4(a). Financial Institution B reports the origination of the covered loan as well as its sale to the subsequent investor. If the subsequent investor is a financial institution under § 1003.2(g), it reports a purchase of the covered loan pursuant to § 1003.4(a), regardless of whether it acquired the covered loan from Financial Institution B or directly from Financial Institution A.

Paragraph 4(a)(1)(i)

1. *ULI—uniqueness.* Section 1003.4(a)(1)(i)(B)(*2*) requires a financial institution that assigns a universal loan identifier (ULI) to each covered loan or application (except as provided in § 1003.4(a)(1)(i)(D) and (E)) to ensure that the character sequence it assigns is unique within

the institution and used only for the covered loan or application. A financial institution should assign only one ULI to any particular covered loan or application, 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 may 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. A financial institution may not report an application for a covered loan in 2030 using the same 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 the same 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.

3. *ULI—purchased covered loan.* If a financial institution has previously assigned a covered loan with a ULI or reported a covered loan with a ULI under this part, a financial institution that purchases that covered loan must report the same ULI that was previously assigned or reported unless the purchase of the covered loan is a partially exempt transaction under § 1003.3(d). For example, if a financial institution that submits an annual loan/application

register pursuant to § 1003.5(a)(1)(i) originates a covered loan that is purchased by a financial institution that also submits an annual loan/application register pursuant to § 1003.5(a)(1)(i), the financial institution that purchases the covered loan must report the purchase of the covered loan using the same ULI that was reported by the originating financial institution if the purchase is not a partially exempt transaction. If a financial institution that originates a covered loan has previously assigned the covered loan with a ULI under this part but has not yet reported the covered loan, a financial institution that purchases that covered loan must report the same ULI that was previously assigned if the purchase is not a partially exempt transaction. For example, if a financial institution that submits an annual loan/application register pursuant to § 1003.5(a)(1)(i) (Institution A) originates a covered loan that is purchased by a financial institution that submits a quarterly loan/application register pursuant to § 1003.5(a)(1)(ii) (Institution B) and Institution A assigned a ULI to the loan, then unless the purchase is a partially exempt transaction Institution B must report the ULI that was assigned by Institution A on Institution B's quarterly loan/application register pursuant to § 1003.5(a)(1)(ii), even though Institution A has not yet submitted its annual loan/application register pursuant to § 1003.5(a)(1)(i). A financial institution that purchases a covered loan and is ineligible for a partial exemption with respect to the purchased covered loan must assign it a ULI pursuant to § 1003.4(a)(1)(i) and report it pursuant to § 1003.5(a)(1)(i) or (ii), whichever is applicable, if the covered loan was not assigned a ULI by the financial institution that originated the loan because, for example, the loan was originated prior to January 1, 2018, the loan was originated by an institution not required to report under this part, or the loan was assigned a non-universal loan identifier (NULI) under § 1003.3(d)(5) rather than a ULI by the loan originator.

4. *ULI—reinstated or reconsidered application*. A financial institution may, at its option, report a ULI previously reported under this part if, during the same calendar year, an applicant asks the institution to reinstate a counteroffer that the applicant previously did not accept or asks the financial institution to reconsider an application that was previously denied, withdrawn, or closed for incompleteness. For example, if a financial institution reports a denied application in its second-quarter 2020 data submission, pursuant to § 1003.5(a)(1)(ii), but then reconsiders the application, resulting in an origination in the third quarter of 2020, the financial institution may report the origination in its third-quarter 2020 data submission using the same ULI that was reported for the denied application in its second-quarter 2020 data submission, so long as the financial institution treats the origination as the same transaction for reporting. However, a financial institution may not use a ULI previously reported if it reinstates or reconsiders an application that was reported in a prior calendar year. For example, if a financial institution reports a denied application that is not partially exempt in its fourth-quarter 2020 data submission, pursuant to § 1003.5(a)(1)(ii), but then reconsiders the application, resulting in an origination that is not partially exempt in the first quarter of 2021, the financial institution reports a denied application under the original ULI in its fourth-quarter 2020 data submission and an origination with a different ULI in its first-quarter 2021 data submission, pursuant to § 1003.5(a)(1)(ii).

5. *ULI—check digit.* Section 1003.4(a)(1)(i)(C) requires that the two right-most characters in the ULI represent the check digit. Appendix C prescribes the requirements for generating a check digit and validating a ULI.

6. *NULI.* For a partially exempt transaction under § 1003.3(d), a financial institution may report a ULI or a NULI. See § 1003.3(d)(5) and comments 3(d)(5)-1 and -2 for guidance on the

NULI.

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, as defined under § 1003.2(b), 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). If the financial institution chooses to report the date shown on the application form and the institution retains multiple versions of the application form, the institution reports the date shown on the first application form satisfying the application definition provided under § 1003.2(b).

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 that initially received the application, the date the application was received by the institution, or the date shown on the application form. 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 using the same ULI or NULI or as a new transaction with a new ULI or NULI. 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. If the institution does not treat the request for reinstatement or reconsideration as a new transaction, it reports the original application date.

Paragraph 4(a)(2)

1. *Loan type—general*. If a covered loan is not, or in the case of an application would not have been, insured by the Federal Housing Administration, guaranteed by the Department of Veterans Affairs, or guaranteed by the Rural Housing Service or the Farm Service Agency, an institution complies with § 1003.4(a)(2) by reporting the covered loan as not insured or guaranteed by the Federal Housing Administration, Department of Veterans Affairs, Rural Housing Service, or Farm Service Agency.

Paragraph 4(a)(3)

1. *Purpose—statement of applicant.* A financial institution may rely on the oral or written statement of an applicant regarding the proposed use of covered loan proceeds. For example, a lender could use a check-box or a purpose line on a loan application to determine whether the applicant intends to use covered loan proceeds for home improvement purposes. If an applicant provides no statement as to the proposed use of covered loan proceeds and the covered loan is not a home purchase loan, cash-out refinancing, or refinancing, a financial institution reports the covered loan as for a purpose other than home purchase, home improvement, refinancing, or cash-out refinancing for purposes of § 1003.4(a)(3).

2. *Purpose—refinancing and cash-out refinancing.* Section 1003.4(a)(3) requires a financial institution to report whether a covered loan is, or an application is for, a refinancing or a cash-out refinancing. A financial institution reports a covered loan or an application as a cash-out refinancing if it is a refinancing as defined by § 1003.2(p) and the institution considered it to

be a cash-out refinancing in processing the application or setting the terms (such as the interest rate or origination charges) under its guidelines or an investor's guidelines. For example:

i. Assume a financial institution considers an application for a loan product to be a cash-out refinancing under an investor's guidelines because of the amount of cash received by the borrower at closing or account opening. Assume also that under the investor's guidelines, the applicant qualifies for the loan product and the financial institution approves the application, originates the covered loan, and sets the terms of the covered loan consistent with the loan product. In this example, the financial institution would report the covered loan as a cash-out refinancing for purposes of § 1003.4(a)(3).

ii. Assume a financial institution does not consider an application for a covered loan to be a cash-out refinancing under its own guidelines because the amount of cash received by the borrower does not exceed a certain threshold. Assume also that the institution approves the application, originates the covered loan, and sets the terms of the covered loan consistent with its own guidelines applicable to refinancings other than cash-out refinancings. In this example, the financial institution would report the covered loan as a refinancing for purposes of § 1003.4(a)(3).

iii. Assume a financial institution does not distinguish between a cash-out refinancing and a refinancing under its own guidelines, and sets the terms of all refinancings without regard to the amount of cash received by the borrower at closing or account opening, and does not offer loan products under investor guidelines. In this example, the financial institution reports all covered loans and applications for covered loans that are defined by § 1003.2(p) as refinancings for purposes of § 1003.4(a)(3).

3. *Purpose—multiple-purpose loan.* Section 1003.4(a)(3) requires a financial institution to report the purpose of a covered loan or application. If a covered loan is a home purchase loan as well as a home improvement loan, a refinancing, or a cash-out refinancing, an institution complies with § 1003.4(a)(3) by reporting the loan as a home purchase loan. If a covered loan is a home improvement loan as well as a refinancing or cash-out refinancing, but the covered loan is not a home purchase loan, an institution complies with § 1003.4(a)(3) by reporting the covered loan as a refinancing or a cash-out refinancing, as appropriate. If a covered loan is a refinancing or cash-out 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, an institution complies with § 1003.4(a)(3) by reporting the covered loan as a refinancing or a cash-out refinancing, as appropriate. *See* comment 4(a)(3)-2. If a covered loan is a home improvement loan as well as for another purpose, but the covered loan is not a home purchase loan, a refinancing, or cash-out refinancing, an institution complies with § 1003.4(a)(3) by reporting the covered loan as a home improvement loan. *See* comment 2(i)-1.

4. *Purpose—other.* If a covered loan is not, or an application is not for, a home purchase loan, a home improvement loan, a refinancing, or a cash-out refinancing, a financial institution complies with § 1003.4(a)(3) by reporting the covered loan or application as for a purpose other than home purchase, home improvement, refinancing, or cash-out 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, refinancing, or cash-out refinancing. Section 1003.4(a)(3) also requires an institution to report a covered loan or application as for a purpose other than home purchase, home improvement, refinancing, or cash-out refinancing if it is a refinancing but, under the terms

of the agreement, the financial institution was unconditionally obligated to refinance the obligation subject to conditions within the borrower's control.

5. *Purpose—business or commercial purpose loans*. If a covered loan primarily is for a business or commercial purpose as described in § 1003.3(c)(10) and comment 3(c)(10)-2 and is a home purchase loan, home improvement loan, or a refinancing, § 1003.4(a)(3) requires the financial institution to report the applicable loan purpose. If a loan primarily is for a business or commercial purpose but is not a home purchase loan, home improvement loan, or a refinancing, the loan is an excluded transaction under § 1003.3(c)(10).

6. *Purpose—purchased loans*. For purchased covered loans where origination took place prior to January 1, 2018, a financial institution complies with § 1003.4(a)(3) by reporting that the requirement is not applicable.

Paragraph 4(a)(4)

1. *Request under a preapproval program.* Section 1003.4(a)(4) requires a financial institution to report whether an application or covered loan involved a request for a preapproval of a home purchase loan under a preapproval program as defined by § 1003.2(b)(2). If an application or covered loan did not involve a request for a preapproval of a home purchase loan under a preapproval program as defined by § 1003.2(b)(2), a financial institution complies with § 1003.4(a)(4) by reporting that the application or covered loan did not involve such a request, regardless of whether the institution has such a program and the applicant did not apply through that program or the institution does not have a preapproval program as defined by § 1003.2(b)(2).

2. *Scope of requirement.* A financial institution reports that the application or covered loan did not involve a preapproval request for a purchased covered loan; an application or

covered loan for any purpose other than a home purchase loan; an application for a home purchase loan or a covered loan that is a home purchase loan secured by a multifamily dwelling; an application or covered loan that is an open-end line of credit or a reverse mortgage; or an application that is denied, withdrawn by the applicant, or closed for incompleteness.

Paragraph 4(a)(5)

1. *Modular homes and prefabricated components.* 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. Dwellings built using prefabricated components assembled at the dwelling's permanent site should also be reported with a construction method of site-built.

2. *Multifamily dwelling.* For a covered loan or an application for a covered loan related to a multifamily dwelling, the financial institution should report the construction method as site-built unless the multifamily dwelling is a manufactured home community, in which case the financial institution should report the construction method as manufactured home.

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)(6)

1. *Multiple properties.* See comment 4(a)(9)-2 regarding transactions involving multiple properties with more than one property taken as security.

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 a second residence of an applicant or borrower 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 borrower does not, or the applicant will 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, 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 borrower or applicant does not or will not occupy the property, even if the borrower or applicant 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, but that is for the long-term residential 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. If the property is for transitory use by employees, the property would not be considered a dwelling under § 1003.2(f). *See* comment 2(f)-3.

5. *Purchased covered loans*. For purchased covered loans, a financial institution may report principal residence unless the loan documents or application indicate that the property will not be occupied as a principal residence.

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 approved but not accepted or preapproval request approved but not accepted*. A financial institution reports the covered loan amount that was approved.

3. *Covered loan amount—preapproval request denied, application denied, closed for incompleteness or withdrawn*. For a preapproval request that was denied, and for an application that was denied, closed for incompleteness, or withdrawn, a financial institution reports the amount for which the applicant applied.

4. *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, home improvement, or refinancing.

5. *Covered loan amount—closed-end mortgage loan*. For a closed-end mortgage loan, other than a purchased loan, an assumption, or a reverse mortgage, a financial institution reports 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, a financial institution reports the unpaid principal balance at the time of purchase or assumption.

6. *Covered loan amount—open-end line of credit.* For an open-end line of credit, a financial institution reports the entire amount of credit available to the borrower under the terms of the open-end plan, including a purchased open-end line of credit and an assumption of an open-end line of credit, but not for a reverse mortgage open-end line of credit.

7. *Covered loan amount—refinancing*. For a refinancing, a financial institution reports the amount of credit extended under the terms of the new debt obligation.

8. *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.

9. *Covered loan amount—non-federally insured reverse mortgage.* A financial institution reports the initial principal limit of a non-federally insured reverse mortgage as set forth in § 1003.4(a)(7)(iii).

Paragraph 4(a)(8)(i)

1. *Action taken—covered loan originated.* A financial institution reports that the covered loan was originated if the financial institution made a credit decision approving the application before closing or account opening and that credit decision results in an extension of credit. The same is true for an application that began as a request for a preapproval that subsequently results in a covered loan being originated. *See* comments 4(a)-2 through -4 for guidance on transactions in which more than one institution is involved.

2. *Action taken—covered loan purchased.* A financial institution reports that the covered loan was purchased if the covered loan was purchased by the financial institution after closing or account opening and the financial institution did not make a credit decision on the application prior to closing or account opening, or if the financial institution did make a credit decision on

the application prior to closing or account opening, but is repurchasing the loan from another entity that the loan was sold to. *See* comment 4(a)-5. *See* comments 4(a)-2 through -4 for guidance on transactions in which more than one financial institution is involved.

3. *Action taken—application approved but not accepted.* A financial institution reports application approved but not accepted if the financial institution made a credit decision approving the application before closing or account opening, subject solely to outstanding conditions that are customary commitment or closing conditions, but the applicant or the party that initially received the application fails to respond to the financial institution's approval within the specified time, or the closed-end mortgage loan was not otherwise consummated or the account was not otherwise opened. *See* comment 4(a)(8)(i)-13.

4. *Action taken—application denied.* A financial institution reports that the application was denied if it made a credit decision denying the application before an applicant withdraws the application or the file is closed for incompleteness. *See* comments 4(a)-2 through -4 for guidance on transactions in which more than one institution is involved.

5. *Action taken—application withdrawn.* A financial institution reports that the application was withdrawn when the application is expressly withdrawn by the applicant before the financial institution makes a credit decision denying the application, before the financial institution makes a credit decision approving the application, or before the file is closed for incompleteness. A financial institution also reports application withdrawn if the financial institution provides a conditional approval specifying underwriting or creditworthiness conditions, pursuant to comment 4(a)(8)(i)-13, and the application is expressly withdrawn by the applicant before the applicant satisfies all specified underwriting or creditworthiness conditions. A preapproval request that is withdrawn is not reportable under HMDA. *See* § 1003.4(a).

6. *Action taken—file closed for incompleteness.* A financial institution reports that the file was closed for incompleteness if the financial institution sent a written notice of incompleteness under Regulation B, 12 CFR 1002.9(c)(2), and the applicant did not respond to the request for additional information within the period of time specified in the notice before the applicant satisfies all underwriting or creditworthiness conditions. *See* comment 4(a)(8)(i)–13. If a financial institution then provides a notification of adverse action on the basis of incompleteness under Regulation B, 12 CFR 1002.9(c)(1)(i), the financial institution may report the action taken as either file closed for incompleteness or application denied. A preapproval request that is closed for incompleteness is not reportable under HMDA. *See* § 1003.4(a) and comment 4(a)–1.ii.

7. *Action taken—preapproval request denied.* A financial institution reports that the preapproval request was denied if the application was a request for a preapproval under a preapproval program as defined in § 1003.2(b)(2) and the institution made a credit decision denying the preapproval request.

8. *Action taken—preapproval request approved but not accepted.* A financial institution reports that the preapproval request was approved but not accepted if the application was a request for a preapproval under a preapproval program as defined in § 1003.2(b)(2) and the institution made a credit decision approving the preapproval request but the application did not result in a covered loan originated by the financial institution.

9. *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, with a different interest rate, or in a different amount) and the applicant declines to proceed with the counteroffer or fails to respond, the institution reports the action taken as a denial on the original

terms requested by the applicant. If the applicant agrees to proceed with consideration of the financial institution's counteroffer, the financial institution reports the action taken as the disposition of the application based on the terms of the counteroffer. For example, assume a financial institution makes a counteroffer, the applicant agrees to proceed with the terms of the counteroffer, and the financial institution then makes a credit decision approving the application conditional on satisfying underwriting or creditworthiness conditions, and 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 financial institution reports the action taken as application withdrawn in accordance with comment 4(a)(8)(i)–13.i. Similarly, assume a financial institution makes a counteroffer, the applicant agrees to proceed with consideration of the counteroffer, and the financial institution provides a conditional approval stating the conditions to be met to originate the counteroffer. The financial institution reports the action taken on the application in accordance with comment 4(a)(8)(i)–13 regarding conditional approvals.

10. *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.

11. *Action taken—purchased covered loans.* An institution reports the covered loans that it purchased during the calendar year. An institution does not report the covered loans that it declined to purchase, unless, as discussed in comments 4(a)-2 through -4, the institution reviewed the application prior to closing, in which case it reports the application or covered loan according to comments 4(a)-2 through -4.

12. *Action taken—repurchased covered loans.* See comment 4(a)-5 regarding reporting requirements when a covered loan is repurchased by the originating financial institution.

13. *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 underwriting or 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. *See* comment 4(a)(8)(i)-6. 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 outstanding 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, a 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.

14. *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)(8)(ii)

1. *Action taken date—general.* A financial institution reports the date of the action taken.

2. *Action taken date—applications denied and files closed for incompleteness.* For applications, including requests for a preapproval, that are denied or for files closed for

incompleteness, the financial institution reports either the date the action was taken or the date the notice was sent to the applicant.

3. *Action taken date—application withdrawn.* For applications withdrawn, the financial institution may report the date the express withdrawal was received or the date shown on the notification form in the case of a written withdrawal.

4. *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).

5. *Action taken date—originations.* For covered loan originations, including a preapproval request that leads to an origination by the financial institution, an institution generally reports the closing or account opening date. For covered loan originations that an institution acquires from a party that initially received the application, the institution reports either the closing or account opening 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 closing or account opening date, the institution may use the date of initial disbursement. For a construction/permanent covered loan, the institution reports either the closing or account opening 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 or account opening 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 or the account is opened.

6. *Action taken date—loan purchased.* For covered loans purchased, a financial institution reports the date of purchase.

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 security (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 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 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 (or to refinance home purchase or home improvement loans related to) 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 reports the covered loan or application in a single entry on its loan/application register and provides the information required by § 1003.4(a)(9) for one of the properties taken as security that contains a dwelling. A financial institution does not report information about the other properties taken as security. If an institution is required to report specific information about the property identified in § 1003.4(a)(9), the institution reports the

information that relates to the property identified in § 1003.4(a)(9) (or, if the transaction is partially exempt under § 1003.3(d) and no data are reported pursuant to § 1003.4(a)(9), the property that the institution would have identified in § 1003.4(a)(9) if the transaction were not partially exempt). For example, Financial Institution A originated a covered loan that is secured by both property A and property B, each of which contains a dwelling. Financial Institution A reports 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. If Financial Institution A elects to report the information required by § 1003.4(a)(9) about property A, Financial Institution A also reports the information required by § 1003.4(a)(5), (6), (14), (29), and (30) related to property A. For aspects of the entries that do not refer 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), and (31) through (38)), Financial Institution A reports the information applicable to the covered loan or application and not information that relates only to the property identified in § 1003.4(a)(9).

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.

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 purchased covered loans.

5. *Manufactured home.* If the site of a manufactured home has not been identified, a financial institution complies by reporting that the information required by § 1003.4(a)(9) is not applicable.

Paragraph 4(a)(9)(i)

1. *General*. Except for partially exempt transactions under § 1003.3(d), § 1003.4(a)(9)(i) requires a financial institution to report the property address of the location of the property securing a covered loan or, in the case of an application, proposed to secure a covered loan. The address should 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 should correspond to the location of the property proposed to secure the loan as identified by the applicant. For example, assume a loan is secured by a property located at 123 Main Street, and the applicant's or borrower's mailing address is a post office box. The financial institution should not report the post office box, and should report 123 Main Street.

2. *Property address—format*. A financial institution complies with the requirements in § 1003.4(a)(9)(i) by reporting the following information about the physical location of the property securing the loan.

i. *Street address.* When reporting the street address of the property, a financial institution complies by including, as applicable, the primary address number, the predirectional, the street name, street prefixes and/or suffixes, the postdirectional, the secondary address identifier, and the secondary address, as applicable. For example, 100 N Main ST Apt 1.

ii. *City name*. A financial institution complies by reporting the name of the city in which the property is located.

iii. *State name*. A financial institution complies by reporting the two letter State code for the State in which the property is located, using the U.S. Postal Service official State abbreviations.

iv. *Zip Code*. A financial institution complies by reporting the five or nine digit Zip Code in which the property is located.

3. *Property address—not applicable*. A financial institution complies with § 1003.4(a)(9)(i) by reporting that the requirement is not applicable if the property address of the property securing the covered loan is not known. For example, if the property did not have a property address at closing or if the applicant did not provide the property address of the property to the financial institution before the application was denied, withdrawn, or closed for incompleteness, the financial institution complies with § 1003.4(a)(9)(i) by reporting that the requirement is not applicable.

Paragraph 4(a)(9)(ii)

1. *Optional reporting*. Section 1003.4(a)(9)(ii) requires a financial institution to report the State, county, and census tract of the property securing the covered loan or, in the case of an application, proposed to secure the covered loan if the property is located in an MSA or MD in which the financial institution has a home or branch office or if the institution is subject to § 1003.4(e). Section 1003.4(a)(9)(ii)(C) further limits the requirement to report census tract to covered loans secured by or applications proposed to be secured by properties located in counties with a population of more than 30,000 according to the most recent decennial census conducted by the U.S. Census Bureau. For transactions for which State, county, or census tract reporting is not required under § 1003.4(a)(9)(ii) or (e), financial institutions may report that the requirement is not applicable, or they may voluntarily report the State, county, or census tract information.

Paragraph 4(a)(9)(ii)(A)

1. *Applications—State not provided*. When reporting an application, a financial institution complies with § 1003.4(a)(9)(ii)(A) by reporting that the requirement is not applicable if the State in which the property is located was not known before the application was denied, withdrawn, or closed for incompleteness.

Paragraph 4(a)(9)(ii)(B)

1. *General*. A financial institution complies by reporting the five-digit Federal Information Processing Standards (FIPS) numerical county code.

2. *Applications—county not provided*. When reporting an application, a financial institution complies with § 1003.4(a)(9)(ii)(B) by reporting that the requirement is not applicable if the county in which the property is located was not known before the application was denied, withdrawn, or closed for incompleteness.

Paragraph 4(a)(9)(ii)(C)

1. *General*. Census tract numbers are defined by the U.S. Census Bureau. A financial institution complies with § 1003.4(a)(9)(ii)(C) if it uses the boundaries and codes in effect on January 1 of the calendar year covered by the loan/application register that it is reporting.

2. *Applications—census tract not provided*. When reporting an application, a financial institution complies with § 1003.4(a)(9)(ii)(C) by reporting that the requirement is not applicable if the census tract in which the property is located was not known before the application was denied, withdrawn, or closed for incompleteness.

Paragraph 4(a)(10)(i)

1. *Applicant data—general*. Refer to appendix B to this part for instructions on collection of an applicant's ethnicity, race, and sex.

2. *Transition rule for applicant data collected prior to January 1, 2018*. If a financial institution receives an application prior to January 1, 2018, but final action is taken on or after January 1, 2018, the financial institution complies with § 1003.4(a)(10)(i) and (b) if it collects the information in accordance with the requirements in effect at the time the information was collected. For example, if a financial institution receives an application on November 15, 2017, collects the applicant's ethnicity, race, and sex in accordance with the instructions in effect on that date, and takes final action on the application on January 5, 2018, the financial institution has complied with the requirements of § 1003.4(a)(10)(i) and (b), even though those instructions changed after the information was collected but before the date of final action. However, if, in this example, the financial institution collected the applicant's ethnicity, race, and sex on or after January 1, 2018, § 1003.4(a)(10)(i) and (b) requires the financial institution to collect the information in accordance with the amended instructions.

Paragraph 4(a)(10)(ii)

1. *Applicant data—completion by financial institution.* A financial institution complies with § 1003.4(a)(10)(ii) by reporting the applicant's age, as of the application date under § 1003.4(a)(1)(ii), as the number of whole years derived from the date of birth as shown on the application form. For example, if an applicant provides a date of birth of 01/15/1970 on the application form that the financial institution receives on 01/14/2015, the institution reports 44 as the applicant's age.

2. *Applicant data—co-applicant.* If there are no co-applicants, the financial institution reports that there is no co-applicant. If there is more than one co-applicant, the financial institution reports the age only for the first co-applicant listed on the application form. A co-applicant may provide an absent co-applicant's age on behalf of the absent co-applicant.

3. *Applicant data—purchased loan*. A financial institution complies with § 1003.4(a)(10)(ii) by reporting that the requirement is not applicable when reporting a purchased loan for which the institution chooses not to report the age.

4. *Applicant data—non-natural person.* A financial institution complies with § 1003.4(a)(10)(ii) by reporting that the requirement is not applicable if the applicant or co-applicant is not a natural person (for example, a corporation, partnership, or trust). For example, for a transaction involving a trust, a financial institution reports that the requirement to report the applicant's age is not applicable if the trust is the applicant. On the other hand, if the applicant is a natural person, and is the beneficiary of a trust, a financial institution reports the applicant's age.

5. *Applicant data—guarantor*. For purposes of § 1003.4(a)(10)(ii), if a covered loan or application includes a guarantor, a financial institution does not report the guarantor's age.

Paragraph 4(a)(10)(iii)

1. *Income data—income relied on.* When a financial 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. If an institution relies on only a portion of an applicant's income in its determination, it does not report that portion of income not relied on. For example, if an 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, the institution does not include the applicant's commission income in the income reported. Likewise, if an institution relies on the verified gross income of the applicant in making the

credit decision, then the institution reports the verified gross income. Similarly, if an institution relies on the income of a cosigner to evaluate creditworthiness, the institution includes the cosigner's income to the extent relied upon. An institution, however, 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 financial institution relies on the income of only one applicant in evaluating creditworthiness, the institution reports only the income relied on.

3. *Income data—loan to employee.* A financial institution complies with § 1003.4(a)(10)(iii) by reporting that the requirement is not applicable for a covered loan to, or an application from, its employee to protect the employee's privacy, even though the institution relied on the employee's income in making the credit decision.

4. *Income data—assets.* A financial 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 underwriting calculations of the potential annuitization or depletion of an applicant's remaining assets. Actual distributions from retirement accounts or other assets that are relied on by the financial institution as income should be reported as income. The interpretation of income in this paragraph does not affect § 1003.4(a)(23), which requires, except for purchased covered loans, the collection of the ratio of the applicant's or borrower's total monthly debt to the total monthly income relied on in making the credit decision.

5. *Income data—credit decision not made.* Section 1003.4(a)(10)(iii) requires a financial institution to report the gross annual income relied on in processing the application if a credit decision was not made. For example, assume an institution received an application that included an applicant's self-reported income, but the application was withdrawn before a credit decision

that would have considered income was made. The financial institution reports the income information relied on in processing the application at the time that the application was withdrawn or the file was closed for incompleteness.

6. *Income data—credit decision not requiring consideration of income.* A financial institution complies with § 1003.4(a)(10)(iii) by reporting that the requirement is not applicable if the application did not or would not have required a credit decision that considered income under the financial institution's policies and procedures. For example, if the financial institution's policies and procedures do not consider income for a streamlined refinance program, the institution reports that the requirement is not applicable, even if the institution received income information from the applicant.

7. *Income data—non-natural person*. A financial institution reports that the requirement is not applicable when the applicant or co-applicant is not a natural person (*e.g.*, a corporation, partnership, or trust). For example, for a transaction involving a trust, a financial institution reports that the requirement to report income data is not applicable if the trust is the applicant. On the other hand, if the applicant is a natural person, and is the beneficiary of a trust, a financial institution is required to report the information described in § 1003.4(a)(10)(iii).

8. *Income data—multifamily properties.* A financial institution complies with § 1003.4(a)(10)(iii) by reporting that the requirement is not applicable when the covered loan is secured by, or application is proposed to be secured by, a multifamily dwelling.

9. *Income data—purchased loans.* A financial institution complies with § 1003.4(a)(10)(iii) by reporting that the requirement is not applicable when reporting a purchased covered loan for which the institution chooses not to report the income.

10. *Income data—rounding*. A financial institution complies by reporting the dollar amount of the income in thousands, rounded to the nearest thousand ($500 rounds up to the next $1,000). For example, $35,500 is reported as 36.

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 some interest or interests in 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 entity receiving the covered loans that are swapped.

3. *Type of purchaser—affiliate institution.* For purposes of complying with § 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 entity purchasing the covered loan, other than by one of the government-sponsored enterprises, reports the purchasing entity type as a private securitizer 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 company, finance company, affiliate institution, or other type of purchaser.

5. *Type of purchaser—mortgage company.* For purposes of complying with § 1003.4(a)(11), a mortgage company means a nondepository institution that purchases covered loans and typically originates such loans. A mortgage company might be an affiliate or a subsidiary of a bank holding company or thrift holding company, or it might be an independent mortgage company. Regardless, a financial institution reports the purchasing entity type as a mortgage company, unless the mortgage company 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, should report the covered loan as purchased by a life insurance company. A financial institution that sells a covered loan to its subsidiary that is a credit union, mortgage company, or finance company, should report the covered loan as purchased by a credit union, mortgage company, 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 company, 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)-5 regarding reporting requirements when a covered loan is repurchased by the originating financial institution.

9. *Type of purchaser—quarterly recording*. For purposes of recording the type of purchaser within 30 calendar days after the end of the calendar quarter pursuant to § 1003.4(f), a financial institution records that the requirement is not applicable 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 financial institution records the type of purchaser on its loan/application register for the quarter in which the covered loan was sold. If a financial institution sells the covered loan in a succeeding year, the financial institution should not record the sale.

10. *Type of purchaser—not applicable*. A financial institution reports that the requirement is not applicable for applications that were denied, withdrawn, closed for incompleteness or approved but not accepted by the applicant; and for preapproval requests that were denied or approved but not accepted by the applicant. A financial institution also reports

that the requirement is not applicable if the institution originated or purchased a covered loan and did not sell it during that same calendar year.

Paragraph 4(a)(12)

1. *Average prime offer rate*. Average prime offer rates are annual percentage rates derived from average interest rates and other loan pricing terms offered to borrowers by a set of creditors for mortgage loans that have low-risk pricing characteristics. Other loan pricing terms may include commonly used indices, margins, and initial fixed-rate periods for variable-rate transactions. Relevant pricing characteristics may include a consumer's credit history and transaction characteristics such as the loan-to-value ratio, owner-occupant status, and purpose of the transaction. To obtain average prime offer rates, the Bureau uses creditor data by transaction type.

2. *Bureau tables*. The Bureau publishes tables of current and historic average prime offer rates by transaction type on the FFIEC's Web site (*http://www.ffiec.gov/hmda*) and the Bureau's Web site (*https://www.consumerfinance.gov*). The Bureau calculates an annual percentage rate, consistent with Regulation Z (*see* 12 CFR 1026.22 and 12 CFR part 1026, appendix J), for each transaction type for which pricing terms are available from the creditor data described in comment 4(a)(12)–1. The Bureau uses loan pricing terms available in the creditor data and other information to estimate annual percentage rates for other types of transactions for which the creditor data are limited or not available. The Bureau publishes on the FFIEC's Web site and the Bureau's Web site 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 determine average prime offer rates itself by employing the methodology published on the FFIEC's Web site and the Bureau's Web site. 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. For closed-end mortgage loans, 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 or 1026.38. For open-end lines of credit, 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 1026.6. If multiple annual percentage rates are calculated and disclosed pursuant to Regulation Z, 12 CFR 1026.6, a financial institution relies on the annual percentage rate in effect at the time of account opening. If an open-end line of credit has a variable-rate feature and a fixed-rate and -term payment option during the draw period, a financial institution relies on the annual percentage rate in effect at the time of account opening under the variable-rate feature, which would be a discounted initial rate if one is offered under the variable-rate feature. See comment 4(a)(12)–8 for guidance regarding the annual percentage rate a financial institution relies on in the case of an application or preapproval request that was approved but not accepted.

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 covered loans that are open-end lines of credit, § 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 closed-end mortgage loan contract or open-end line of 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 Web site 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 Web site entitled "Average Prime Offer Rates-Variable" when identifying a comparable variable-rate transaction. If an open-end line of credit 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 interest rate was set by the financial institution for the final time before final action is taken (*i.e.*, the application was approved but not accepted or the covered loan was originated).

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 final action is taken.

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 final action is taken.

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 five-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 an application for a covered loan that it received from a broker, as discussed in comment 4(a)–2 (*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.

7. *Rate spread—scope of requirement.* If the covered loan is an assumption, reverse mortgage, a purchased loan, or is not subject to Regulation Z, 12 CFR part 1026, a financial institution complies with § 1003.4(a)(12) by reporting that the requirement is not applicable. If the application did not result in an origination for a reason other than the application was approved but not accepted by the applicant, a financial institution complies with § 1003.4(a)(12) by reporting that the requirement is not applicable. For partially exempt transactions under § 1003.3(d), an insured depository institution or insured credit union is not required to report the rate spread. *See* § 1003.3(d) and related commentary.

8. *Application or preapproval request approved but not accepted.* In the case of an application or preapproval request that was approved but not accepted, § 1003.4(a)(12) requires a financial institution to report the applicable rate spread. In such cases, the financial institution

would provide early disclosures under Regulation Z, 12 CFR 1026.18 or 1026.37 (for closed-end mortgage loans), or 1026.40 (for open-end lines of credit), but might never provide any subsequent disclosures. In such cases where no subsequent disclosures are provided, a financial institution complies with § 1003.4(a)(12)(i) by relying on the annual percentage rate for the application or preapproval request, as calculated and disclosed pursuant to Regulation Z, 12 CFR 1026.18 or 1026.37 (for closed-end mortgage loans), or 1026.40 (for open-end lines of credit), as applicable. For transactions subject to Regulation C for which no disclosures under Regulation Z are required, a financial institution complies with § 1003.4(a)(12)(i) by reporting that the requirement is not applicable.

9. *Corrected disclosures*. In the case of a covered loan or an application that was approved but not accepted, if the annual percentage rate changes because a financial institution provides a corrected version of the disclosures required under Regulation Z, 12 CFR 1026.19(a), pursuant to 12 CFR 1026.19(a)(2), under 12 CFR 1026.19(f), pursuant to 12 CFR 1026.19(f)(2), or under 12 CFR 1026.6(a), the financial institution complies with § 1003.4(a)(12)(i) by comparing the corrected and disclosed annual percentage rate to the most recently available average prime offer rate that was in effect for a comparable transaction as of the rate-set date, provided that the corrected disclosure was provided to the borrower prior to the end of the reporting period in which final action is taken. For purposes of § 1003.4(a)(12), the date the corrected disclosure was provided to the borrower is the date the disclosure was mailed or delivered to the borrower in person; the financial institution's method of delivery does not affect the date provided. For example, where a financial institution provides a corrected version of the disclosures required under 12 CFR 1026.19(f), pursuant to 12 CFR 1026.19(f)(2), the date provided is the date disclosed pursuant to Regulation Z, 12 CFR 1026.38(a)(3)(i). The provision

of a corrected disclosure does not affect how a financial institution determines the rate-set date. *See* comment 4(a)(12)–5. For example:

i. In the case of a financial institution's annual loan/application register submission made pursuant to § 1003.5(a)(1)(i), if the financial institution provides a corrected disclosure pursuant to Regulation Z, 12 CFR 1026.19(f)(2)(v), that reflects a corrected annual percentage rate, the financial institution reports the difference between the corrected annual percentage rate and the most recently available average prime offer rate that was in effect for a comparable transaction as of the rate-set date only if the corrected disclosure was provided to the borrower prior to the end of the calendar year in which final action is taken.

ii. In the case of a financial institution's quarterly submission made pursuant to § 1003.5(a)(1)(ii), if the financial institution provides a corrected disclosure pursuant to Regulation Z, 12 CFR 1026.19(f)(2)(v), that reflects a corrected annual percentage rate, the financial institution reports the difference between the corrected annual percentage rate and the most recently available average prime offer rate that was in effect for a comparable transaction as of the rate-set date only if the corrected disclosure was provided to the borrower prior to the end of the quarter in which final action is taken. The financial institution does not report the difference between the corrected annual percentage rate and the most recently available average prime offer rate that was in effect for a comparable transaction as of the rate-set date if the corrected disclosure was provided to the borrower after the end of the quarter in which final action is taken, even if the corrected disclosure was provided to the borrower prior to the deadline for timely submission of the financial institution's quarterly data. However, the financial institution reports the difference between the corrected annual percentage rate and the most recently available average prime offer rate that was in effect for a comparable transaction as of the rate-set date on its annual loan/application register, provided that the corrected disclosure was provided to the borrower prior to the end of the calendar year in which final action is taken.

Paragraph 4(a)(13)

1. *HOEPA status—not applicable.* If the covered loan is not subject to the Home Ownership and Equity Protection Act of 1994, as implemented in Regulation Z, 12 CFR 1026.32, a financial institution complies with § 1003.4(a)(13) by reporting that the requirement is not applicable. If an application did not result in an origination, a financial institution complies with § 1003.4(a)(13) by reporting that the requirement is not applicable.

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 (preapproval requests that are approved but not accepted, preapproval requests that are denied, applications that are approved but not accepted, denied, withdrawn, or closed for incompleteness). 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. For example, where the applicant indicates on the application that there is a mortgage on the property or where the applicant's credit report shows that the applicant has a mortgage—and that mortgage will not be paid off as part of the transaction—the financial institution may assume that the loan it originates is secured by a subordinate lien. If the same application did not result in an origination—for example, because the application was denied or withdrawn—the financial institution would report the application as an application for a subordinate-lien loan.

ii. Financial institutions may also consider their established procedures when determining lien status for applications that do not result in originations. For example, assume an applicant applies to a financial institution to refinance a $100,000 first mortgage; the applicant also has an open-end 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 lien securing the open-end 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 and partially exempt transactions under § 1003.3(d), § 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 uses more than one credit scoring model and combines the scores into a composite credit score that it relies on, the financial institution reports that score and reports that more than one credit scoring model was 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 applicant or borrower 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 whom the financial institution obtains or creates a single credit score and relies on that credit score in making the credit decision for the transaction, the institution complies with § 1003.4(a)(15) by reporting that credit score for the applicant and reporting that the requirement is not applicable for the first co-applicant or, at the financial institution's discretion, by reporting that credit score for the first co-applicant and reporting that the requirement is not applicable for the applicant. Otherwise, a financial institution complies with § 1003.4(a)(15) by reporting a credit score for the applicant that it relied on in making the credit decision, if any, and a credit score for the first co-applicant 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 a single credit score that is 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 for the applicant and reporting that the requirement is not applicable for the first co-applicant or, at the financial institution's discretion, by reporting the data for the first co-applicant and reporting that the requirement is not applicable for the applicant. 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. *Transactions for which no credit decision was made.* 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 that the requirement is not applicable, even if the financial institution had obtained or created a credit score for the applicant or co-applicant. For example, if a file is closed for incompleteness and is so reported in accordance with § 1003.4(a)(8), the financial institution complies with § 1003.4(a)(15) by reporting that the requirement is not applicable, even if the financial institution had obtained or created a credit score for the applicant or co-applicant. Similarly, if an application was withdrawn by the applicant before a credit decision was made and is so reported in accordance with § 1003.4(a)(8), the financial institution complies with § 1003.4(a)(15) by reporting that the requirement is not applicable, even if the financial institution had obtained or created a credit score for the applicant or co-applicant.

5. *Transactions for which no credit score was relied on*. 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 that the requirement is not applicable.

6. *Purchased covered loan*. A financial institution complies with § 1003.4(a)(15) by reporting that the requirement is not applicable when the covered loan is a purchased covered loan.

7. *Non-natural person*. When the applicant and co-applicant, if applicable, are not natural persons, a financial institution complies with § 1003.4(a)(15) by reporting that the requirement is not applicable.

Paragraph 4(a)(16)

1. *Reason for denial—general.* A financial institution complies with § 1003.4(a)(16) by reporting the principal reason or reasons it denied the application, indicating up to four reasons. The financial institution should report only the principal reason or reasons it denied the application, even if there are fewer than four reasons. For example, if a financial institution denies the application because of the applicant's credit history and debt-to-income ratio, the financial institution need only report these two principal reasons. The reasons reported must be specific and accurately describe the principal reason or reasons the financial institution denied the application.

2. *Reason for denial—preapproval request denied*. Section 1003.4(a)(16) requires a financial institution to report the principal reason or reasons it denied the application. A request for a preapproval under a preapproval program as defined by § 1003.2(b)(2) is an application. If a financial institution denies a preapproval request, the financial institution complies with § 1003.4(a)(16) by reporting the reason or reasons it denied the preapproval request.

3. *Reason for denial—adverse action model form or similar form*. If a financial institution chooses to provide the applicant the reason or reasons 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, § 1003.4(a)(16) requires the financial institution to report the reason or reasons that were specified on the form by the financial institution, which includes reporting the "Other" reason or reasons that were specified on the form by the financial institution, if applicable. 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 or reasons 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 or reasons it denied the application.

4. *Reason for denial—scope of requirement.* A financial institution complies with § 1003.4(a)(16) by reporting that the requirement is not applicable if the action taken on the application, pursuant to § 1003.4(a)(8), is not a denial. For example, a financial institution complies with § 1003.4(a)(16) by reporting that the requirement is not applicable if the loan is originated or purchased by the financial institution, or the application or preapproval request was approved but not accepted, or the application was withdrawn before a credit decision was made, or the file was closed for incompleteness. For partially exempt transactions under § 1003.3(d), an insured depository institution or insured credit union is not required to report the principal reason or reasons it denied an application. *See* § 1003.3(d) and related commentary.

Paragraph 4(a)(17)(i)

1. *Total loan costs—scope of requirement.* Section 1003.4(a)(17)(i) does not require financial institutions to report the total loan costs for applications, or for transactions not subject to Regulation Z, 12 CFR 1026.43(c), and 12 CFR 1026.19(f), such as open-end lines of credit, reverse mortgages, or loans or lines of credit made primarily for business or commercial purposes. In these cases, a financial institution complies with § 1003.4(a)(17)(i) by reporting that the requirement is not applicable to the transaction. For partially exempt transactions under § 1003.3(d), an insured depository institution or insured credit union is not required to report the total loan costs. *See* § 1003.3(d) and related commentary.

2. *Purchased loans—applications received prior to the integrated disclosure effective date.* For purchased covered loans subject to this reporting requirement for which applications

were received by the selling entity prior to the effective date of Regulation Z, 12 CFR 1026.19(f), a financial institution complies with § 1003.4(a)(17)(i) by reporting that the requirement is not applicable to the transaction.

3. *Corrected disclosures.* If the amount of total loan costs changes because a financial institution provides a corrected version of the disclosures required under Regulation Z, 12 CFR 1026.19(f), pursuant to 12 CFR 1026.19(f)(2), the financial institution complies with § 1003.4(a)(17)(i) by reporting the corrected amount, provided that the corrected disclosure was provided to the borrower prior to the end of the reporting period in which closing occurs. For purposes of § 1003.4(a)(17)(i), the date the corrected disclosure was provided to the borrower is the date disclosed pursuant to Regulation Z, 12 CFR 1026.38(a)(3)(i). For example:

i. In the case of a financial institution's annual loan/application register submission made pursuant to § 1003.5(a)(1)(i), if the financial institution provides a corrected disclosure to the borrower to reflect a refund made pursuant to Regulation Z, 12 CFR 1026.19(f)(2)(v), the financial institution reports the corrected amount of total loan costs only if the corrected disclosure was provided to the borrower prior to the end of the calendar year in which closing occurs.

ii. In the case of a financial institution's quarterly submission made pursuant to § 1003.5(a)(1)(ii), if the financial institution provides a corrected disclosure to the borrower to reflect a refund made pursuant to Regulation Z, 12 CFR 1026.19(f)(2)(v), the financial institution reports the corrected amount of total loan costs only if the corrected disclosure was provided to the borrower prior to the end of the quarter in which closing occurs. The financial institution does not report the corrected amount of total loan costs in its quarterly submission if the corrected disclosure was provided to the borrower after the end of the quarter in which closing occurs, even if the corrected disclosure was provided to the borrower prior to the deadline for timely submission of the financial institution's quarterly data. However, the financial institution reports the corrected amount of total loan costs on its annual loan/application register, provided that the corrected disclosure was provided to the borrower prior to the end of the calendar year in which closing occurs.

Paragraph 4(a)(17)(ii)

1. *Total points and fees—scope of requirement.* Section 1003.4(a)(17)(ii) does not require financial institutions to report the total points and fees for transactions not subject to Regulation Z, 12 CFR 1026.43(c), such as open-end lines of credit, reverse mortgages, or loans or lines of credit made primarily for business or commercial purposes, or for applications or purchased covered loans. In these cases, a financial institution complies with § 1003.4(a)(17)(ii) by reporting that the requirement is not applicable to the transaction. For partially exempt transactions under § 1003.3(d), an insured depository institution or insured credit union is not required to report the total points and fees. *See* § 1003.3(d) and related commentary.

2. *Total points and fees cure mechanism*. For covered loans subject to this reporting requirement, if a financial institution determines that the transaction's total points and fees exceeded the applicable limit and cures the overage pursuant to Regulation Z, 12 CFR 1026.43(e)(3)(iii) and (iv), a financial institution complies with § 1003.4(a)(17)(ii) by reporting the correct amount of total points and fees, provided that the cure was effected during the same reporting period in which closing occurred. For example, in the case of a financial institution's quarterly submission, the financial institution reports the revised amount of total points and fees only if it cured the overage prior to the end of the quarter in which closing occurred. The financial institution does not report the revised amount of total points and fees in

its quarterly submission if it cured the overage after the end of the quarter, even if the cure was effected prior to the deadline for timely submission of the financial institution's quarterly data. However, the financial institution reports the revised amount of total points and fees on its annual loan/application register.

Paragraph 4(a)(18)

1. *Origination charges—scope of requirement*. Section 1003.4(a)(18) does not require financial institutions to report the total borrower-paid origination charges for applications, or for transactions not subject to Regulation Z, 12 CFR 1026.19(f), such as open-end lines of credit, reverse mortgages, or loans or lines of credit made primarily for business or commercial purposes. In these cases, a financial institution complies with § 1003.4(a)(18) by reporting that the requirement is not applicable to the transaction. For partially exempt transactions under § 1003.3(d), an insured depository institution or insured credit union is not required to report the total borrower-paid origination charges. *See* § 1003.3(d) and related commentary.

2. *Purchased loans—applications received prior to the integrated disclosure effective date*. For purchased covered loans subject to this reporting requirement for which applications were received by the selling entity prior to the effective date of Regulation Z, 12 CFR 1026.19(f), a financial institution complies with § 1003.4(a)(18) by reporting that the requirement is not applicable to the transaction.

3. *Corrected disclosures*. If the total amount of borrower-paid origination charges changes because a financial institution provides a corrected version of the disclosures required under Regulation Z, 12 CFR 1026.19(f), pursuant to 12 CFR 1026.19(f)(2), the financial institution complies with § 1003.4(a)(18) by reporting the corrected amount, provided that the corrected disclosure was provided to the borrower prior to the end of the reporting period in

which closing occurs. For purposes of § 1003.4(a)(18), the date the corrected disclosure was provided to the borrower is the date disclosed pursuant to Regulation Z, 12 CFR 1026.38(a)(3)(i). For example:

i. In the case of a financial institution's annual loan/application register submission made pursuant to § 1003.5(a)(1)(i), if the financial institution provides a corrected disclosure to the borrower to reflect a refund made pursuant to Regulation Z, 12 CFR 1026.19(f)(2)(v), the financial institution reports the corrected amount of borrower-paid origination charges only if the corrected disclosure was provided to the borrower prior to the end of the calendar year in which closing occurs.

ii. In the case of a financial institution's quarterly submission made pursuant to § 1003.5(a)(1)(ii), if the financial institution provides a corrected disclosure to the borrower to reflect a refund made pursuant to Regulation Z, 12 CFR 1026.19(f)(2)(v), the financial institution reports the corrected amount of borrower-paid origination charges only if the corrected disclosure was provided to the borrower prior to the end of the quarter in which closing occurs. The financial institution does not report the corrected amount of borrower-paid origination charges in its quarterly submission if the corrected disclosure was provided to the borrower after the end of the quarter in which closing occurs, even if the corrected disclosure was provided to the borrower prior to the deadline for timely submission of the financial institution's quarterly data. However, the financial institution reports the corrected amount of borrower-paid origination charges on its annual loan/application register, provided that the corrected disclosure was provided to the borrower prior to the end of the calendar year in which closing occurs.

Paragraph 4(a)(19)

1. *Discount points—scope of requirement.* Section 1003.4(a)(19) does not require financial institutions to report the discount points for applications, or for transactions not subject to Regulation Z, 12 CFR 1026.19(f), such as open-end lines of credit, reverse mortgages, or loans or lines of credit made primarily for business or commercial purposes. In these cases, a financial institution complies with § 1003.4(a)(19) by reporting that the requirement is not applicable to the transaction. For partially exempt transactions under § 1003.3(d), an insured depository institution or insured credit union is not required to report the discount points. *See* § 1003.3(d) and related commentary.

2. *Purchased loans—applications received prior to the integrated disclosure effective date*. For purchased covered loans subject to this reporting requirement for which applications were received by the selling entity prior to the effective date of Regulation Z, 12 CFR 1026.19(f), a financial institution complies with § 1003.4(a)(19) by reporting that the requirement is not applicable to the transaction.

3. *Corrected disclosures.* If the amount of discount points changes because a financial institution provides a corrected version of the disclosures required under Regulation Z, 12 CFR 1026.19(f), pursuant to 12 CFR 1026.19(f)(2), the financial institution complies with § 1003.4(a)(19) by reporting the corrected amount, provided that the corrected disclosure was provided to the borrower prior to the end of the reporting period in which closing occurs. For purposes of § 1003.4(a)(19), the date the corrected disclosure was provided to the borrower is the date disclosed pursuant to Regulation Z, 12 CFR 1026.38(a)(3)(i). For example:

i. In the case of a financial institution's annual loan/application register submission made pursuant to § 1003.5(a)(1)(i), if the financial institution provides a corrected disclosure to the borrower to reflect a refund made pursuant to Regulation Z, 12 CFR 1026.19(f)(2)(v), the financial institution reports the corrected amount of discount points only if the corrected disclosure was provided to the borrower prior to the end of the calendar year in which closing occurred.

ii. In the case of a financial institution's quarterly submission made pursuant to § 1003.5(a)(1)(ii), if the financial institution provides a corrected disclosure to the borrower to reflect a refund made pursuant to Regulation Z, 12 CFR 1026.19(f)(2)(v), the financial institution reports the corrected amount of discount points only if the corrected disclosure was provided to the borrower prior to the end of the quarter in which closing occurred. The financial institution does not report the corrected amount of discount points in its quarterly submission if the corrected disclosure was provided to the borrower after the end of the quarter in which closing occurred, even if the corrected disclosure was provided to the borrower prior to the deadline for timely submission of the financial institution's quarterly data. However, the financial institution reports the corrected amount of discount points on its annual loan/application register, provided that the corrected disclosure was provided to the borrower prior to the end of the calendar year in which closing occurred.

Paragraph 4(a)(20)

1. *Lender credits—scope of requirement.* Section 1003.4(a)(20) does not require financial institutions to report lender credits for applications, or for transactions not subject to Regulation Z, 12 CFR 1026.19(f), such as open-end lines of credit, reverse mortgages, or loans or lines of credit made primarily for business or commercial purposes. In these cases, a financial institution complies with § 1003.4(a)(20) by reporting that the requirement is not applicable to the transaction. For partially exempt transactions under § 1003.3(d), an insured depository

institution or insured credit union is not required to report lender credits. *See* § 1003.3(d) and related commentary.

2. *Purchased loans—applications received prior to the integrated disclosure effective date*. For purchased covered loans subject to this reporting requirement for which applications were received by the selling entity prior to the effective date of Regulation Z, 12 CFR 1026.19(f), a financial institution complies with § 1003.4(a)(20) by reporting that the requirement is not applicable to the transaction.

3. *Corrected disclosures*. If the amount of lender credits changes because a financial institution provides a corrected version of the disclosures required under Regulation Z, 12 CFR 1026.19(f), pursuant to 12 CFR 1026.19(f)(2), the financial institution complies with § 1003.4(a)(20) by reporting the corrected amount, provided that the corrected disclosure was provided to the borrower prior to the end of the reporting period in which closing occurred. For purposes of § 1003.4(a)(20), the date the corrected disclosure was provided to the borrower is the date disclosed pursuant to Regulation Z, 12 CFR 1026.38(a)(3)(i). For example:

i. In the case of a financial institution's annual loan/application register submission made pursuant to § 1003.5(a)(1)(i), if the financial institution provides a corrected disclosure to the borrower to reflect a refund made pursuant to Regulation Z, 12 CFR 1026.19(f)(2)(v), the financial institution reports the corrected amount of lender credits only if the corrected disclosure was provided to the borrower prior to the end of the calendar year in which closing occurred.

ii. In the case of a financial institution's quarterly submission made pursuant to § 1003.5(a)(1)(ii), if the financial institution provides a corrected disclosure to the borrower to reflect a refund made pursuant to Regulation Z, 12 CFR 1026.19(f)(2)(v), the financial institution reports the corrected amount of lender credits only if the corrected disclosure was provided to the borrower prior to the end of the quarter in which closing occurred. The financial institution does not report the corrected amount of lender credits in its quarterly submission if the corrected disclosure was provided to the borrower after the end of the quarter in which closing occurred, even if the corrected disclosure was provided to the borrower prior to the deadline for timely submission of the financial institution's quarterly data. However, the financial institution reports the corrected amount of lender credits on its annual loan/application register, provided that the corrected disclosure was provided to the borrower prior to the end of the calendar year in which closing occurred.

Paragraph 4(a)(21)

1. *Interest rate—disclosures.* Except for partially exempt transactions under § 1003.3(d), § 1003.4(a)(21) requires a financial institution to identify the interest rate applicable to the approved application, or to the covered loan at closing or account opening. For covered loans or applications subject to the integrated mortgage disclosure requirements of Regulation Z, 12 CFR 1026.19(e) and (f), a financial institution complies with § 1003.4(a)(21) by reporting the interest rate disclosed on the applicable disclosure. For covered loans or approved applications for which disclosures were provided pursuant to both the early and the final disclosure requirements in Regulation Z, 12 CFR 1026.19(e) and (f), a financial institution reports the interest rate disclosed pursuant to 12 CFR 1026.19(f). A financial institution may rely on the definitions and commentary to the sections of Regulation Z relevant to the disclosure of the interest rate pursuant to 12 CFR 1026.19(e) or (f). If a financial institution provides a revised or corrected version of the disclosures required under Regulation Z, 12 CFR 1026.19(e) or (f), pursuant to 12 CFR 1026.19(e)(3)(iv) or (f)(2), as applicable, the financial institution complies with § 1003.4(a)(21) by reporting the interest rate on the revised or corrected disclosure, provided that

the revised or corrected disclosure was provided to the borrower prior to the end of the reporting period in which final action is taken. For purposes of § 1003.4(a)(21), the date the revised or corrected disclosure was provided to the borrower is the date disclosed pursuant to Regulation Z, 12 CFR 1026.37(a)(4) or 1026.38(a)(3)(i), as applicable.

2. *Applications*. In the case of an application, § 1003.4(a)(21) requires a financial institution to report the applicable interest rate only if the application has been approved by the financial institution but not accepted by the borrower. In such cases, a financial institution reports the interest rate applicable at the time that the application was approved by the financial institution. A financial institution may report the interest rate appearing on the disclosure provided pursuant to 12 CFR 1026.19(e) or (f) if such disclosure accurately reflects the interest rate at the time the application was approved. For applications that have been denied or withdrawn, or files closed for incompleteness, a financial institution reports that no interest rate was applicable to the application.

3. *Adjustable rate—interest rate unknown*. Except as provided in comment 4(a)(21)-1, for adjustable-rate covered loans or applications, if the interest rate is unknown at the time that the application was approved, or at closing or account opening, a financial institution reports the fully-indexed rate based on the index applicable to the covered loan or application. For purposes of § 1003.4(a)(21), the fully-indexed rate is the index value and margin at the time that the application was approved, or, for covered loans, at closing or account opening.

Paragraph 4(a)(22)

1. *Prepayment penalty term—scope of requirement.* Section 1003.4(a)(22) does not require financial institutions to report the term of any prepayment penalty for transactions not subject to Regulation Z, 12 CFR part 1026, such as loans or lines of credit made primarily for

business or commercial purposes, or for reverse mortgages or purchased covered loans. In these cases, a financial institution complies with § 1003.4(a)(22) by reporting that the requirement is not applicable to the transaction. For partially exempt transactions under § 1003.3(d), an insured depository institution or insured credit union is not required to report the term of any prepayment penalty. *See* § 1003.3(d) and related commentary.

2. *Transactions for which no prepayment penalty exists*. For covered loans or applications that have no prepayment penalty, a financial institution complies with § 1003.4(a)(22) by reporting that the requirement is not applicable to the transaction. A financial institution may rely on the definitions and commentary to Regulation Z, 12 CFR 1026.32(b)(6)(i) or (ii) in determining whether the terms of a transaction contain a prepayment penalty.

Paragraph 4(a)(23)

1. *General.* For covered loans that are not purchased covered loans and that are not partially exempt under § 1003.3(d), § 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 (debt-to-income ratio) relied on in making the credit decision. For example, if a financial institution calculated the applicant's or borrower's debt-to-income 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 debt-to-income 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 was one of multiple factors.* A financial institution relies on the ratio of the applicant's or borrower's total monthly debt to total monthly

income (debt-to-income ratio) in making the credit decision if the debt-to-income ratio was a factor in the credit decision even if it was not a dispositive factor. For example, if the debt-to-income ratio was one of multiple factors in a financial institution's credit decision, the financial institution has relied on the debt-to-income ratio and complies with § 1003.4(a)(23) by reporting the debt-to-income ratio, even if the financial institution denied the application because one or more underwriting requirements other than the debt-to-income ratio were not satisfied.

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 the requirement is not applicable, even if the financial institution had calculated the ratio of the applicant's total monthly debt to total monthly income (debt-to-income ratio). For example, if a file was closed for incompleteness and was so reported in accordance with § 1003.4(a)(8), the financial institution complies with § 1003.4(a)(23) by reporting that the requirement is not applicable, even if the financial institution had calculated the applicant's debt-to-income 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 the requirement is not applicable, even if the financial institution had calculated the applicant's debt-to-income ratio.

4. *Transactions for which no debt-to-income ratio was 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 (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. If a financial institution made 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 the requirement is not applicable since no debt-to-income ratio was relied on in connection with the credit decision.

5. *Non-natural person*. A financial institution complies with § 1003.4(a)(23) by reporting that the requirement is not applicable when the applicant and co-applicant, if applicable, are not natural persons.

6. *Multifamily dwellings*. A financial institution complies with § 1003.4(a)(23) by reporting that the requirement is not applicable for a covered loan secured by, or an application proposed to be secured by, a multifamily dwelling.

7. *Purchased covered loans*. A financial institution complies with § 1003.4(a)(23) by reporting that the requirement is not applicable when reporting a purchased covered loan.

Paragraph 4(a)(24)

1. *General.* Except for purchased covered loans and partially exempt transactions under § 1003.3(d), § 1003.4(a)(24) requires a financial institution to report the ratio of the total amount of debt secured by the property to the value of the property (combined loan-to-value ratio) relied on in making the credit decision. For example, if a financial institution calculated a combined loan-to-value 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 combined loan-to-value ratio calculated according to the secondary market investor's requirements in making the credit decision, § 1003.4(a)(24) requires the financial institution to report the combined loan-to-value ratio calculated according to the requirements of the secondary market investor.

2. *Transactions for which a combined loan-to-value ratio was one of multiple factors*. A financial institution relies on the ratio of the total amount of debt secured by the property to the

value of the property (combined loan-to-value ratio) in making the credit decision if the combined loan-to-value ratio was a factor in the credit decision, even if it was not a dispositive factor. For example, if the combined loan-to-value ratio is one of multiple factors in a financial institution's credit decision, the financial institution has relied on the combined loan-to-value ratio and complies with § 1003.4(a)(24) by reporting the combined loan-to-value ratio, even if the financial institution denies the application because one or more underwriting requirements other than the combined loan-to-value ratio are not satisfied.

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)(24) by reporting that the requirement is not applicable, even if the financial institution had calculated the ratio of the total amount of debt secured by the property to the value of the property (combined loan-to-value ratio). For example, if a file is closed for incompleteness and is so reported in accordance with § 1003.4(a)(8), the financial institution complies with § 1003.4(a)(24) by reporting that the requirement is not applicable, even if the financial institution had calculated a combined loan-to-value ratio. Similarly, if an application was withdrawn by the applicant before a credit decision was made and is so reported in accordance with § 1003.4(a)(8), the financial institution complies with § 1003.4(a)(24) by reporting that the requirement is not applicable, even if the financial institution had calculated a combined loan-to-value ratio.

4. *Transactions for which no combined loan-to-value ratio was relied on.* Section 1003.4(a)(24) does not require a financial institution to calculate the ratio of the total amount of debt secured by the property to the value of the property (combined loan-to-value ratio), nor does it require a financial institution to rely on a combined loan-to-value ratio in making a credit

decision. If a financial institution makes a credit decision without relying on a combined loan-to-value ratio, the financial institution complies with § 1003.4(a)(24) by reporting that the requirement is not applicable since no combined loan-to-value ratio was relied on in making the credit decision.

5. *Purchased covered loan*. A financial institution complies with § 1003.4(a)(24) by reporting that the requirement is not applicable when the covered loan is a purchased covered loan.

6. *Property*. A financial institution reports the combined loan-to-value ratio relied on in making the credit decision, regardless of which property or properties it used in the combined loan-to-value ratio calculation. The property used in the combined loan-to-value ratio calculation does not need to be the property identified in § 1003.4(a)(9) and may include more than one property and non-real property. For example, if a financial institution originated a covered loan for the purchase of a multifamily dwelling, the loan was secured by the multifamily dwelling and by non-real property, such as securities, and the financial institution used the multifamily dwelling and the non-real property to calculate the combined loan-to-value ratio that it relied on in making the credit decision, § 1003.4(a)(24) requires the financial institution to report the relied upon ratio. Section 1003.4(a)(24) does not require a financial institution to use a particular combined loan-to-value ratio calculation method but instead requires financial institutions to report the combined loan-to-value ratio relied on in making the credit decision.

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.

3. *Purchased loans.* For a covered loan that was purchased, a financial institution reports the number of months after which the legal obligation matures as measured from the covered loan's origination.

4. *Open-end line of credit.* For an open-end line of credit with a definite term, a financial institution reports the number of months from origination until the account termination date, including both the draw and repayment period.

5. *Loan term—scope of requirement.* For a covered loan or application without a definite term, such as a reverse mortgage, a financial institution complies with § 1003.4(a)(25) by reporting that the requirement is not applicable. For partially exempt transactions under § 1003.3(d), an insured depository institution or insured credit union is not required to report the loan term. *See* § 1003.3(d) and related commentary.

Paragraph 4(a)(26)

1. *Types of introductory rates.* Except for partially exempt transactions under § 1003.3(d), § 1003.4(a)(26) requires a financial institution to report the number of months, or

proposed number of months in the case of an application, from closing or account opening until the first date the interest rate may change. For example, assume an open-end 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 at that time and even if the rates that will apply, or the periods for which they will apply, are not known at closing or account opening. For example, if a closed-end mortgage loan with a 30-year term has an adjustable-rate product with an introductory interest rate for the first 60 months, after which the interest rate is permitted, 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 require 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 certain defined date. Preferred rates include terms of the legal obligation that provide that the initial underlying rate is fixed but that it may increase or decrease 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. In these cases,

because it is not known at the time of closing or account opening whether the future event will occur, and if so, when it will occur, § 1003.4(a)(26) does not require reporting of an introductory interest rate period.

3. *Loan or application with a fixed rate.* A financial institution complies with § 1003.4(a)(26) by reporting that the requirement is not applicable for a covered loan with a fixed rate or an application for a covered loan with a fixed rate.

4. *Purchased loan.* A financial institution complies with § 1003.4(a)(26) by reporting that requirement is not applicable when the covered loan is a purchased covered loan with a fixed rate.

5. *Non-monthly introductory periods*. If a covered loan or application includes an introductory interest rate period measured in a unit of time other than months, the financial institution complies with § 1003.4(a)(26) by reporting the introductory interest rate period for the covered loan or application using an equivalent number of whole months without regard for any remainder. For example, assume an open-end line of credit contains an introductory interest rate for 50 days 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 "1." The financial institution must report one month for any introductory interest rate period that totals less than one whole month.

Paragraph 4(a)(27)

1. *General.* Except for partially exempt transactions under § 1003.3(d), § 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 consumer credit, as defined

in § 1026.2(a)(12), is extended by a creditor, as defined in § 1026.2(a)(17), or is extended to a consumer, as defined in § 1026.2(a)(11), and without regard to whether the property is a dwelling as defined in § 1026.2(a)(19). For example, assume that a financial institution originates a business-purpose transaction that is exempt from Regulation Z pursuant to 12 CFR 1026.3(a)(1), to finance the purchase of a multifamily dwelling, and that there is a balloon payment, as defined by Regulation Z, 12 CFR 1026.18(s)(5)(i), at the end of the loan term. The multifamily dwelling is a dwelling under § 1003.2(f), but not under Regulation Z, 12 CFR 1026.2(a)(19). 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 in determining whether the contractual feature should be reported.

Paragraph 4(a)(28)

1. *General.* Except for partially exempt transactions under § 1003.3(d), § 1003.4(a)(28) requires a financial institution to report 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 an appraisal, an automated valuation model report,

and a broker price opinion with different values for the property, it reports the value relied on in making the credit decision. Section § 1003.4(a)(28) does not require a financial institution to use a particular property valuation method, but instead requires a financial institution to report the valuation relied on in making the credit decision.

3. *Transactions for which no credit decision was made.* 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)(28) by reporting that the requirement is not applicable, even if the financial institution had obtained a property value. For example, if a file is closed for incompleteness and is so reported in accordance with § 1003.4(a)(8), the financial institution complies with § 1003.4(a)(28) by reporting that the requirement is not applicable, even if the financial institution had obtained a property value. Similarly, if an application was withdrawn by the applicant before a credit decision was made and is so reported in accordance with § 1003.4(a)(8), the financial institution complies with § 1003.4(a)(28) by reporting that the requirement is not applicable, even if the financial institution had obtained a property value.

4. *Transactions for which no property value was relied on.* Section 1003.4(a)(28) does not require a financial institution to obtain a property valuation, nor does it require a financial institution to rely on a property value in making a credit decision. If a financial institution makes a credit decision without relying on a property value, the financial institution complies with § 1003.4(a)(28) by reporting that the requirement is not applicable since no property value was relied on in making the credit decision.

Paragraph 4(a)(29)

1. *Classification under State law.* A financial institution should report a covered loan that is or would have been secured only by a manufactured home but not the land on which it is sited

as secured by a manufactured home and not land, even if the manufactured home is considered real property under applicable State law.

2. *Manufactured home community.* A manufactured home community that is a multifamily dwelling is not considered a manufactured home for purposes of § 1003.4(a)(29).

3. *Multiple properties.* See comment 4(a)(9)-2 regarding transactions involving multiple properties with more than one property taken as security.

4. *Scope of requirement.* A financial institution reports that the requirement is not applicable for a covered loan where the dwelling related to the property identified in § 1003.4(a)(9) is not a manufactured home. For partially exempt transactions under § 1003.3(d), an insured depository institution or insured credit union is not required to report the information specified in § 1003.4(a)(29). *See* § 1003.3(d) and related commentary.

Paragraph 4(a)(30)

1. *Indirect land ownership.* Indirect land ownership can occur when the applicant or borrower 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 or borrower may still have a lease and pay rent for the lot on which his or her manufactured home is or will be located, 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 community. 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 community, 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.

4. *Manufactured home community.* A manufactured home community that is a multifamily dwelling is not considered a manufactured home for purposes of § 1003.4(a)(30).

5. *Direct ownership.* An applicant or borrower has a direct ownership interest in the land on which the dwelling is or is to be located when it has a more than possessory real property ownership interest in the land such as fee simple ownership.

6. *Scope of requirement.* A financial institution reports that the requirement is not applicable for a covered loan where the dwelling related to the property identified in § 1003.4(a)(9) is not a manufactured home. For partially exempt transactions under § 1003.3(d), an insured depository institution or insured credit union is not required to report the information specified in § 1003.4(a)(30). *See* § 1003.3(d) and related commentary.

Paragraph 4(a)(31)

1. *Multiple properties.* See comment 4(a)(9)-2 regarding transactions involving multiple properties with more than one property taken as security.

2. *Manufactured home community.* For an application or covered loan secured by a manufactured home community, the financial institution should include in the number of individual dwelling units the total number of manufactured home sites that secure the loan and are available for occupancy, regardless of whether the sites are currently occupied or have manufactured homes currently attached. A financial institution may include in the number of individual dwelling units other units such as recreational vehicle pads, manager apartments, rental apartments, site-built homes or other rentable space that are ancillary to the operation of the secured property if it considers such units under its underwriting guidelines or the guidelines of an investor, or if it tracks the number of such units for its own internal purposes. For a loan secured by a single manufactured home that is or will be located in a manufactured home community, the financial institution should report one individual dwelling unit.

3. *Condominium and cooperative projects.* For a covered loan secured by a condominium or cooperative property, the financial institution reports the total number of individual dwelling units securing the covered loan or proposed to secure the covered loan in the case of an application. For example:

i. Assume that a loan is secured by the entirety of a cooperative property. The financial institution would report the number of individual dwelling units in the cooperative property.

ii. Assume that a covered loan is secured by 30 individual dwelling units in a condominium property that contains 100 individual dwelling units and that the loan is not exempt from Regulation C under § 1003.3(c)(3). The financial institution reports 30 individual dwelling units.

4. *Best information available.* A financial institution may rely on the best information readily available to the financial institution at the time final action is taken and on the financial

institution's own procedures in reporting the information required by § 1003.4(a)(31). Information readily available could include, for example, information provided by an applicant that the financial institution reasonably believes, information contained in a property valuation or inspection, or information obtained from public records.

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 pursuant to restrictive covenants encumbering the property. 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. Such restrictions are frequently evidenced by a use agreement, regulatory agreement, land use restriction agreement, housing assistance payments contract, or similar agreement. 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.* See comment 4(a)(9)-2 regarding transactions involving multiple properties with more than one property taken as security.

5. *Best information available.* A financial institution may rely on the best information readily available to the financial institution at the time final action is taken and on the financial institution's own procedures in reporting the information required by § 1003.4(a)(32). Information readily available could include, for example, information provided by an applicant

that the financial institution reasonably believes, information contained in a property valuation or inspection, or information obtained from public records.

6. *Scope of requirement.* A financial institution reports that the requirement is not applicable if the property securing the covered loan or, in the case of an application, proposed to secure the covered loan is not a multifamily dwelling. For partially exempt transactions under § 1003.3(d), an insured depository institution or insured credit union is not required to report the information specified in § 1003.4(a)(32). *See* § 1003.3(d) and related commentary.

Paragraph 4(a)(33)

1. *Agents.* If a financial institution is reporting actions taken by its agent consistent with comment 4(a)-4, 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 the obligation arising from a covered loan was initially payable to Financial Institution A. 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)(33)(i)

1. *General*. Except for partially exempt transactions under § 1003.3(d), § 1003.4(a)(33)(i) requires a financial institution to indicate whether the applicant or borrower submitted the application directly to the financial institution that is reporting the covered loan or application. The following scenarios demonstrate whether an application was submitted directly to the financial institution that is reporting the covered loan or application.

i. The application was submitted directly to the financial institution if the mortgage loan originator identified pursuant to § 1003.4(a)(34) was an employee of the reporting financial institution when the originator performed the origination activities for the covered loan or application that is being reported.

ii. The application was also submitted directly to the financial institution reporting the covered loan or application if the reporting financial institution directed the applicant to a third-party agent (*e.g.*, a credit union service organization) that performed loan origination activities on behalf of the financial institution and did not assist the applicant with applying for covered loans with other institutions.

iii. If an applicant contacted and completed an application with a broker or correspondent that forwarded the application to a financial institution for approval, an application was not submitted to the financial institution.

Paragraph 4(a)(33)(ii)

1. *General*. Except for partially exempt transactions under § 1003.3(d), § 1003.4(a)(33)(ii) 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 the obligation is initially payable either on the face of the note or contract to the financial institution that is reporting the covered loan or application. For example, if a financial institution reported an origination of a covered loan that it approved prior to closing, that closed in the name of a third-party, such as a correspondent lender, and that the financial institution purchased after closing, the covered loan was not initially payable to the financial institution.

2. *Applications*. A financial institution complies with § 1003.4(a)(33)(ii) by reporting that the requirement is not applicable if the institution had not determined whether the covered loan would have been initially payable to the institution reporting the application when the application was withdrawn, denied, or closed for incompleteness.

Paragraph 4(a)(34)

1. *NMLSR ID*. Except for partially exempt transactions under § 1003.3(d), § 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 that the requirement is not applicable.

3. *Multiple mortgage loan originators*. If more than one individual associated with a covered loan or application meets the definition of a mortgage loan originator, as defined in Regulation G, 12 CFR 1007.102, or Regulation H, 12 CFR 1008.23, 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 as of the date of action taken pursuant to § 1003.4(a)(8)(ii). 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 as of the date of action taken complies with § 1003.4(a)(34).

4. *Purchased loans.* If a financial institution purchases a covered loan that satisfies the coverage criteria of Regulation Z, 12 CFR 1026.36(g), and that was originated prior to January 10, 2014, the financial institution complies with § 1003.4(a)(34) by reporting that the requirement is not applicable. In addition, if a financial institution purchases a covered loan that does not satisfy the coverage criteria of Regulation Z, 12 CFR 1026.36(g), and that was originated prior to January 1, 2018, the financial institution complies with § 1003.4(a)(34) by reporting that the requirement is not applicable. Purchasers of both such types of covered loans may report the NMLSR ID.

Paragraph 4(a)(35)

1. *Automated underwriting system data—general*. Except for purchased covered loans and partially exempt transactions under § 1003.3(d), § 1003.4(a)(35) requires a financial

institution to report the name of the automated underwriting system (AUS) used by the financial institution to evaluate the application and the result generated by that AUS. The following scenarios illustrate when a financial institution reports the name of the AUS used by the financial institution to evaluate the application and the result generated by that AUS.

i. A financial institution that uses an AUS, as defined in § 1003.4(a)(35)(ii), to evaluate an application, must report the name of the AUS used by the financial institution to evaluate the application and the result generated by that system, regardless of whether the AUS was used in its underwriting process. For example, if a financial institution uses an AUS to evaluate an application prior to submitting the application through its underwriting process, the financial institution complies with § 1003.4(a)(35) by reporting the name of the AUS it used to evaluate the application and the result generated by that system.

ii. A financial institution that uses an AUS, as defined in § 1003.4(a)(35)(ii), to evaluate an application, must report the name of the AUS it used to evaluate the application and the result generated by that system, regardless of whether the financial institution intends to hold the covered loan in its portfolio or sell the covered loan. For example, if a financial institution uses an AUS developed by a securitizer to evaluate an application and intends to sell the covered loan to that securitizer but ultimately does not sell the covered loan and instead holds the covered loan in its portfolio, the financial institution complies with § 1003.4(a)(35) by reporting the name of the securitizer's AUS that the institution used to evaluate the application and the result generated by that system. Similarly, if a financial institution uses an AUS developed by a securitizer to evaluate an application to determine whether to originate the covered loan but does not intend to sell the covered loan to that securitizer and instead holds the covered loan in its portfolio, the financial institution complies with § 1003.4(a)(35) by reporting the name of the securitizer's AUS that the institution used to evaluate the application and the result generated by that system.

iii. A financial institution that uses an AUS, as defined in § 1003.4(a)(35)(ii), that is developed by a securitizer to evaluate an application, must report the name of the AUS it used to evaluate the application and the result generated by that system, regardless of whether the securitizer intends to hold the covered loan it purchased from the financial institution in its portfolio or securitize the covered loan. For example, if a financial institution uses an AUS developed by a securitizer to evaluate an application and the financial institution sells the covered loan to that securitizer but the securitizer holds the covered loan it purchased in its portfolio, the financial institution complies with § 1003.4(a)(35) by reporting the name of the securitizer's AUS that the institution used to evaluate the application and the result generated by that system.

iv. A financial institution, which is also a securitizer, that uses its own AUS, as defined in § 1003.4(a)(35)(ii), to evaluate an application, must report the name of the AUS it used to evaluate the application and the result generated by that system, regardless of whether the financial institution intends to hold the covered loan it originates in its portfolio, purchase the covered loan, or securitize the covered loan. For example, if a financial institution, which is also a securitizer, has developed its own AUS and uses that AUS to evaluate an application that it intends to originate and hold in its portfolio and not purchase or securitize the covered loan, the financial institution complies with § 1003.4(a)(35) by reporting the name of its AUS that it used to evaluate the application and the result generated by that system.

2. *Definition of automated underwriting system*. A financial institution must report the information required by § 1003.4(a)(35)(i) if the financial institution uses an automated

underwriting system (AUS), as defined in § 1003.4(a)(35)(ii), to evaluate an application. To be covered by the definition in § 1003.4(a)(35)(ii), a system must be an electronic tool that has been developed by a securitizer, Federal government insurer, or a Federal government guarantor of closed-end mortgage loans or open-end lines of credit. A person is a securitizer, Federal government insurer, or Federal government guarantor of closed-end mortgage loans or open-end lines of credit, respectively, if it has securitized, provided Federal government insurance, or provided a Federal government guarantee for a closed-end mortgage loan or open-end line of credit at any point in time. A person may be a securitizer, Federal government insurer, or Federal government guarantor of closed-end mortgage loans or open-end lines of credit, respectively, for purposes of § 1003.4(a)(35) even if it is not actively securitizing, insuring, or guaranteeing closed-end mortgage loans or open-end lines of credit at the time a financial institution uses the AUS to evaluate an application. Where the person that developed the electronic tool has never been a securitizer, Federal government insurer, or Federal government guarantor of closed-end mortgage loans or open-end lines of credit, respectively, at the time a financial institution uses the tool to evaluate an application, the financial institution complies with § 1003.4(a)(35) by reporting that the requirement is not applicable because an AUS was not used to evaluate the application. If a financial institution has developed its own proprietary system that it uses to evaluate an application and the financial institution is also a securitizer, then the financial institution complies with § 1003.4(a)(35) by reporting the name of that system and the result generated by that system. On the other hand, if a financial institution has developed its own proprietary system that it uses to evaluate an application and the financial institution is not a securitizer, then the financial institution is not required by § 1003.4(a)(35) to report the use of that system and the result generated by that system. In addition, for an AUS to be covered by the definition in § 1003.4(a)(35)(ii), the system must provide a result regarding both the credit risk of the applicant and the eligibility of the covered loan to be originated, purchased, insured, or guaranteed by the securitizer, Federal government insurer, or Federal government guarantor that developed the system being used to evaluate the application. For example, if a system is an electronic tool that provides a determination of the eligibility of the covered loan to be originated, purchased, insured, or guaranteed by the securitizer, Federal government insurer, or Federal government guarantor that developed the system being used by a financial institution to evaluate the application, but the system does not also provide an assessment of the creditworthiness of the applicant—such as an evaluation of the applicant's income, debt, and credit history—then that system does not qualify as an AUS, as defined in § 1003.4(a)(35)(ii). A financial institution that uses a system that is not an AUS, as defined in § 1003.4(a)(35)(ii), to evaluate an application does not report the information required by § 1003.4(a)(35)(i).

3. *Reporting automated underwriting system data—multiple results*. When a financial institution uses one or more automated underwriting systems (AUS) to evaluate the application and the system or systems generate two or more results, the financial institution complies with § 1003.4(a)(35) by reporting, except for purchased covered loans, the name of the AUS used by the financial institution to evaluate the application and the result generated by that AUS as determined by the following principles. To determine what AUS (or AUSs) and result (or results) to report under § 1003.4(a)(35), a financial institution follows each of the principles that is applicable to the application in question, in the order in which they are set forth below.

i. If a financial institution obtains two or more AUS results and the AUS generating one of those results corresponds to the loan type reported pursuant to § 1003.4(a)(2), the financial institution complies with § 1003.4(a)(35) by reporting that AUS name and result. For example, if a financial institution evaluates an application using the Federal Housing Administration's (FHA) Technology Open to Approved Lenders (TOTAL) Scorecard and subsequently evaluates the application with an AUS used to determine eligibility for a non-FHA loan, but ultimately originates an FHA loan, the financial institution complies with § 1003.4(a)(35) by reporting TOTAL Scorecard and the result generated by that system. If a financial institution obtains two or more AUS results and more than one of those AUS results is generated by a system that corresponds to the loan type reported pursuant to § 1003.4(a)(2), the financial institution identifies which AUS result should be reported by following the principle set forth below in comment 4(a)(35)-3.ii.

ii. If a financial institution obtains two or more AUS results and the AUS generating one of those results corresponds to the purchaser, insurer, or guarantor, if any, the financial institution complies with § 1003.4(a)(35) by reporting that AUS name and result. For example, if a financial institution evaluates an application with the AUS of Securitizer A and subsequently evaluates the application with the AUS of Securitizer B, but the financial institution ultimately originates a covered loan that it sells within the same calendar year to Securitizer A, the financial institution complies with § 1003.4(a)(35) by reporting the name of Securitizer A's AUS and the result generated by that system. If a financial institution obtains two or more AUS results and more than one of those AUS results is generated by a system that corresponds to the purchaser, insurer, or guarantor, if any, the financial institution identifies which AUS result should be reported by following the principle set forth below in comment 4(a)(35)-3.iii.

iii. If a financial institution obtains two or more AUS results and none of the systems generating those results correspond to the purchaser, insurer, or guarantor, if any, or the financial institution is following this principle because more than one AUS result is generated by a system that corresponds to either the loan type or the purchaser, insurer, or guarantor, the financial institution complies with § 1003.4(a)(35) by reporting the AUS result generated closest in time to the credit decision and the name of the AUS that generated that result. For example, if a financial institution evaluates an application with the AUS of Securitizer A, subsequently again evaluates the application with Securitizer A's AUS, the financial institution complies with § 1003.4(a)(35) by reporting the name of Securitizer A's AUS and the second AUS result. Similarly, if a financial institution obtains a result from an AUS that requires the financial institution to underwrite the loan manually, but the financial institution subsequently processes the application through a different AUS that also generates a result, the financial institution complies with § 1003.4(a)(35) by reporting the name of the second AUS that it used to evaluate the application and the AUS result generated by that system.

iv. If a financial institution obtains two or more AUS results at the same time and the principles in comment 4(a)(35)-3.i through .iii do not apply, the financial institution complies with § 1003.4(a)(35) by reporting the name of all of the AUSs used by the financial institution to evaluate the application and the results generated by each of those systems. For example, if a financial institution simultaneously evaluates an application with the AUS of Securitizer A and the AUS of Securitizer B, the financial institution complies with § 1003.4(a)(35) by reporting the name of both Securitizer A's AUS and Securitizer B's AUS and the results generated by each of those systems. In any event, however, the financial institution does not report more than five AUSs and five results. If more than five AUSs and five results meet the criteria in this principle, the financial institution complies with § 1003.4(a)(35) by choosing any five among them to report.

4. *Transactions for which an automated underwriting system was not used to evaluate the application.* Section 1003.4(a)(35) does not require a financial institution to evaluate an application using an automated underwriting system (AUS), as defined in § 1003.4(a)(35)(ii). For example, if a financial institution only manually underwrites an application and does not use an AUS to evaluate the application, the financial institution complies with § 1003.4(a)(35) by reporting that the requirement is not applicable since an AUS was not used to evaluate the application.

5. *Purchased covered loan*. A financial institution complies with § 1003.4(a)(35) by reporting that the requirement is not applicable when the covered loan is a purchased covered loan.

6. *Non-natural person*. When the applicant and co-applicant, if applicable, are not natural persons, a financial institution complies with § 1003.4(a)(35) by reporting that the requirement is not applicable.

7. *Determination of securitizer, Federal government insurer, or Federal government guarantor*. Section 1003.4(a)(35)(ii) provides that an "automated underwriting system" means an electronic tool developed by a securitizer, Federal government insurer, or Federal government guarantor of closed-end mortgage loans or open-end lines of credit that provides a result regarding the credit risk of the applicant and whether the covered loan is eligible to be originated, purchased, insured, or guaranteed by that securitizer, Federal government insurer, or Federal government guarantor. A person is a securitizer, Federal government insurer, or Federal government guarantor of closed-end mortgage loans or open-end lines of credit, respectively, if it has ever securitized, insured, or guaranteed a closed-end mortgage loan or open-end line of credit. If a financial institution knows or reasonably believes that the system it is using to

evaluate an application is an electronic tool that has been developed by a securitizer, Federal government insurer, or Federal government guarantor of closed-end mortgage loans or open-end lines of credit, then the financial institution complies with § 1003.4(a)(35) by reporting the name of that system and the result generated by that system. Knowledge or reasonable belief could, for example, be based on a sales agreement or other related documents, the financial institution's previous transactions or relationship with the developer of the electronic tool, or representations made by the developer of the electronic tool demonstrating that the developer of the electronic tool is a securitizer, Federal government insurer, or Federal government guarantor of closed-end mortgage loans or open-end lines of credit. If a financial institution does not know or reasonably believe that the system it is using to evaluate an application is an electronic tool that has been developed by a securitizer, Federal government insurer, or Federal government guarantor of closed-end mortgage loans or open-end lines of credit, the financial institution complies with § 1003.4(a)(35) by reporting that the requirement is not applicable, provided that the financial institution maintains procedures reasonably adapted to determine whether the electronic tool it is using to evaluate an application meets the definition in § 1003.4(a)(35)(ii). Reasonably adapted procedures include attempting to determine with reasonable frequency, such as annually, whether the developer of the electronic tool is a securitizer, Federal government insurer, or Federal government guarantor of closed-end mortgage loans or open-end lines of credit. For example:

i. In the course of renewing an annual sales agreement the developer of the electronic tool represents to the financial institution that it has never been a securitizer, Federal government insurer, or Federal government guarantor of closed-end mortgage loans or open-end lines of credit. On this basis, the financial institution does not know or reasonably believe that the system it is using to evaluate an application is an electronic tool that has been developed by a securitizer, Federal government insurer, or Federal government guarantor of closed-end mortgage loans or open-end lines of credit and complies with § 1003.4(a)(35) by reporting that the requirement is not applicable.

ii. Based on their previous transactions a financial institution is aware that the developer of the electronic tool it is using to evaluate an application has securitized a closed-end mortgage loan or open-end line of credit in the past. On this basis, the financial institution knows or reasonably believes that the developer of the electronic tool is a securitizer and complies with § 1003.4(a)(35) by reporting the name of that system and the result generated by that system.

Paragraph 4(a)(37)

1. *Open-end line of credit.* Except for partially exempt transactions under § 1003.3(d), § 1003.4(a)(37) requires a financial institution to identify whether the covered loan or the application is for an open-end line of credit. See comments 2(o)-1 and -2 for a discussion of open-end line of credit and extension of credit.

Paragraph 4(a)(38)

1. *Primary purpose.* Except for partially exempt transactions under § 1003.3(d), § 1003.4(a)(38) requires a financial institution to identify whether the covered loan is, or the application is for a covered loan that will be, made primarily for a business or commercial purpose. See comment 3(c)(10)-2 for a discussion of how to determine the primary purpose of the transaction and the standard applicable to a financial institution's determination of the primary purpose of the transaction. See comments 3(c)(10)-3 and -4 for examples of excluded and reportable business- or commercial-purpose transactions.

* * * * *

6. Effective January 1, 2022, § 1003.2, as amended at 82 FR 43088, is further amended 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).

* * * * *

7. Effective January 1, 2022, § 1003.3, as amended at 82 FR 43088, is further amended by revising paragraph (c)(12) to read as follows:

§ 1003.3 Exempt institutions and excluded and partially exempt 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; a financial institution may collect, record, report, and disclose information, as described in §§ 1003.4 and 1003.5, for such an excluded open-end line of credit as though it were a covered loan, provided that the financial

institution complies with such requirements for all applications for open-end lines of credit that it receives, open-end lines of credit that it originates, and open-end lines of credit that it purchases that otherwise would have been covered loans during the calendar year during which final action is taken on the excluded open-end line of credit; or

*   *   *   *   *

8. Effective January 1, 2022, supplement I to part 1003, as amended at 82 FR 43088, is further amended as follows:

a. Under *Section 1003.2—Definitions*, revise *2(g) Financial Institution*; and

b. Under *Section 1003.3—Exempt Institutions and Excluded and Partially Exempt Transactions*, under *3(c) Excluded Transactions*, revise *Paragraph 3(c)(12)*.

The revisions read as follows:

Supplement I to Part 1003—Official Interpretations

*   *   *   *   *

Section 1003.2—Definitions

*   *   *   *   *

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 2019, the preceding calendar year is 2018 and the preceding December 31 is December 31, 2018. Accordingly, in 2019, Financial Institution A satisfies the asset-size threshold described in § 1003.2(g)(1)(i) if its assets exceeded the threshold specified in comment 2(g)-2 on December 31, 2018. Likewise, in 2020, Financial Institution A does not meet the loan-

volume test described in § 1003.2(g)(1)(v)(A) if it originated fewer than 25 closed-end mortgage loans during either 2018 or 2019.

2. [Reserved]

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.

4. *Merger or acquisition—coverage for calendar year of merger or acquisition*. The scenarios described below illustrate a financial institution's responsibilities for the calendar year of a merger or acquisition. For 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 either an institution that is not a financial institution, as defined in § 1003.2(g), or an institution that is exempt from reporting under § 1003.3(a).

i. Two institutions that are not covered merge. The surviving or newly formed institution 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 covered loans and applications handled in the offices of the merged institution that was previously covered and is optional for covered loans and applications handled in offices of the merged 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 handled in offices of the previously covered institution that took place prior to the merger. After the merger date, data collection is optional for covered loans and applications handled in the offices of the institution that was previously covered. When an institution remains not covered after acquiring a branch office of a covered institution, data collection is required for transactions of the acquired branch office that take place prior to the acquisition. Data collection by the acquired branch office is optional for transactions taking place in the remainder of the calendar year after the acquisition.

iv. Two covered institutions merge. The surviving or newly formed institution is a covered institution. Data collection is required for the entire calendar year of the merger. The surviving or newly formed 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 calendar year of the merger. Data for the acquired branch office may be submitted by either institution.

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).

6. *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).

7. *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).

* * * * *

Section 1003.3—Exempt Institutions and Excluded and Partially Exempt 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 purchased, 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 purchased, 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. *Optional reporting.* A financial institution may report applications for, originations of, or purchases of 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. However, a financial institution that chooses to report such excluded

applications for, originations of, or purchases of open-end lines of credit must report all such applications for open-end lines of credit which it receives, open-end lines of credit that it originates, and open-end lines of credit that it purchases that otherwise would be covered loans for a given calendar year. Note that applications which remain pending at the end of a calendar year are not reported, as described in comment 4(a)(8)(i) –14.

*   *   *   *   *

[THIS SIGNATURE PAGE PERTAINS TO THE DOCUMENT TITLED "HOME MORTGAGE DISCLOSURE (REGULATION C)"]

Dated: October 09, 2019.

Kathleen L. Kraninger,

Director, Bureau of Consumer Financial Protection.