

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1003

[Docket No. CFPB–2019-0021]

RIN 3170-AA76

Home Mortgage Disclosure (Regulation C); Judicial Vacatur of Coverage Threshold for Closed-End Mortgage Loans

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Technical amendment.

SUMMARY: In April 2020, the Consumer Financial Protection Bureau (Bureau or CFPB) issued a final rule (2020 HMDA Rule) to amend Regulation C to increase the threshold for reporting data about closed-end mortgage loans. The 2020 HMDA Rule increased the closed-end mortgage loan reporting threshold from 25 loans to 100 loans in each of the two preceding calendar years, effective July 1, 2020. On September 23, 2022, the United States District Court for the District of Columbia vacated the 2020 HMDA Rule as to the increased loan-volume reporting threshold for closed-end mortgage loans. As a result of the September 23, 2022 order, the threshold for reporting data about closed-end mortgage loans is 25, the threshold established by the 2015 HMDA Rule. Accordingly, this technical amendment updates the *Code of Federal Regulations* to reflect the closed-end mortgage loan reporting threshold of 25 mortgage loans in each of the two preceding calendar years.

DATES: This technical amendment is effective [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

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SUPPLEMENTARY INFORMATION:

I. Background

The Home Mortgage Disclosure Act (HMDA) requires certain banks, savings associations, credit unions, and for-profit nondepository institutions to collect, report, and disclose data about originations and purchases of mortgage loans, as well as mortgage loan applications that do not result in originations (for example, applications that are denied or withdrawn).¹ The Bureau's Regulation C, 12 CFR part 1003, implements HMDA, 12 U.S.C. 2801 through 2810.

In October 2015, the Bureau issued a final rule (2015 HMDA Rule) that, among other things, established institutional and transactional loan-volume coverage thresholds in Regulation C that determine whether financial institutions are required to report certain HMDA data on closed-end mortgage loans or open-end lines of credit.² These thresholds apply uniformly to covered depository and nondepository institutions; they took effect for depository institutions on January 1, 2017, and for nondepository institutions on January 1, 2018. The loan-volume thresholds in the 2015 HMDA Rule required an institution that originated at least 25 closed-end mortgage loans or at least 100 open-end lines of credit in each of the two preceding calendar

¹ HMDA requires financial institutions to collect, record, and report data. The Bureau generally refers herein to the obligation to report data instead of listing all of these obligations in each instance.

² Home Mortgage Disclosure (Regulation C), 80 FR 66128 (Oct. 28, 2015). The reporting thresholds for closed-end mortgage loans and open-end lines of credit operate independently. Thus, an institution that meets the threshold for closed-end mortgage loans but not the threshold for open-end lines of credit is a covered institution and required to report HMDA data about its closed-end loans, provided it meets the other criteria for institutional coverage. Conversely, an institution that meets the threshold for open-end lines of credit but not the threshold for closed-end loans is a covered institution and required to report HMDA data about its open-end lines of credit, provided it meets the other criteria for institutional coverage.

years to report HMDA data, provided that the institution meets all other criteria for institutional coverage.

In April 2020, the Bureau issued a final rule (2020 HMDA Rule) to amend Regulation C to increase the thresholds for reporting data about both closed-end mortgage loans and open-end lines of credit.³ In particular, the 2020 HMDA Rule set the closed-end mortgage loan reporting threshold at 100 in each of the two preceding calendar years, effective July 1, 2020, and the open-end line of credit reporting threshold at 200 in each of the two preceding calendar years, effective January 1, 2022.

On July 30, 2020, five nonprofit organizations and the City of Toledo, Ohio, initiated a lawsuit challenging the 2020 HMDA Rule.⁴ On September 23, 2022, the United States District Court for the District of Columbia concluded that the 2020 HMDA Rule's increased reporting threshold for closed-end mortgage loans was arbitrary and capricious. The Court issued an order vacating and remanding the loan-volume reporting threshold for closed-end mortgage loans under the 2020 HMDA Rule. Accordingly, the threshold for reporting data about closed-end mortgage loans is 25 in each of the two preceding calendar years, which is the threshold set by the 2015 HMDA Rule. This technical amendment reflects the vacatur in the *Code of Federal Regulations* by replacing the closed-end reporting threshold numbers in §§ 1003.2(g)(1)(v)(A) and (2)(ii)(A), and 1003.3(c)(11), and comments 2(g)–5 and 3(c)(11)–2 with those in effect on June 30, 2020; and replacing in their entirety, comments 2(g)–1 and 3(c)(11)–1 with the versions in effect on June 30, 2020.

³ Home Mortgage Disclosure (Regulation C), 85 FR 28364 (May 12, 2020), *vacated in part by Nat'l Cmty. Reinvestment Coal., et al., v. Consumer Fin. Prot. Bureau*, No. 20-cv-2074, 2022 WL 4447293 (D.D.C. Sept. 23, 2022).

⁴ The five nonprofit organizations are the National Community Reinvestment Coalition, Montana Fair Housing, the Texas Low Income Housing Information Service, Empire Justice Center, and the Association for Neighborhood & Housing Development.

II. Regulatory Requirements

This action is not a rule under the Administrative Procedure Act (APA), because the Bureau is not interpreting, implementing, or prescribing law or policy.⁵ Instead, the Bureau is updating the published *Code of Federal Regulations* so that it accurately reflects the court's vacatur of part of the underlying 2020 HMDA Rule. In the alternative, if this action were a rule, the Bureau finds that notice and comment would be unnecessary under the APA, because there is no basis for disagreement that the court's ruling vacates the relevant portion of the 2020 HMDA Rule.⁶

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 in the preamble, the CFPB 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. Section 1003.2 is amended by revising paragraphs (g)(1)(v)(A) and (g)(2)(ii)(A) to read as follows:

§ 1003.2 Definitions.

* * * * *

(g) * * *

⁵ 5 U.S.C. 551(4).

⁶ 5 U.S.C. 553(b)(B).

(1) * * *

(v) * * *

(A) In each of the two preceding calendar years, originated at least 25 closed-end mortgage loans that are not excluded from this part pursuant to § 1003.3(c)(1) through (10) or (c)(13); or

* * * * *

(2) * * *

(ii) * * *

(A) In each of the two preceding calendar years, originated at least 25 closed-end mortgage loans that are not excluded from this part pursuant to § 1003.3(c)(1) through (10) or (c)(13); or

* * * * *

3. Section 1003.3 is amended by revising paragraph (c)(11) to read as follows:

§ 1003.3 Exempt institutions and excluded and partially exempt transactions.

* * * * *

(c) * * *

(11) A closed-end mortgage loan, if the financial institution originated fewer than 25 closed-end mortgage loans 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 closed-end mortgage loan as though it were a covered loan, provided that the financial institution complies with such requirements for all applications for closed-end mortgage loans that it receives, closed-end mortgage loans that it originates, and closed-end

mortgage loans that it purchases that otherwise would have been covered loans during the calendar year during which final action is taken on the excluded closed-end mortgage loan;

* * * * *

4. Supplement I to part 1003 is amended as follows:

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

b. Under *Section 1003.3—Exempt Institutions and Excluded and Partially Exempt Transactions*, under 3(c) *Excluded Transactions*, revise *Paragraph 3(c)(11)*.

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. Adjustment of exemption threshold for banks, savings associations, and credit unions.

For data collection in 2022, the asset-size exemption threshold is \$50 million. Banks, savings associations, and credit unions with assets at or below \$50 million as of December 31, 2021, are exempt from collecting data for 2022.

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 200 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 200 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).

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Section 1003.3—Exempt Institutions and Excluded and Partially Exempt Transactions

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3(c) Excluded Transactions

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Paragraph 3(c)(11)

1. *General.* Section 1003.3(c)(11) provides that a closed-end mortgage loan is an excluded transaction if a financial institution originated fewer than 25 closed-end mortgage loans in either of the two preceding calendar years. For example, assume that a bank is a financial institution in 2018 under § 1003.2(g) because it originated 600 open-end lines of credit in 2016, 650 open-end lines of credit in 2017, and met all of the other requirements under § 1003.2(g)(1). Also assume that the bank originated 10 and 20 closed-end mortgage loans in 2016 and 2017, respectively. The open-end lines of credit that the bank originated or purchased, or for which it received applications, during 2018 are covered loans and must be reported, unless they otherwise are excluded transactions under § 1003.3(c). However, the closed-end mortgage loans that the bank originated or purchased, or for which it received applications, during 2018 are excluded transactions under § 1003.3(c)(11) 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 closed-end mortgage loans that are excluded transactions because the financial institution originated fewer than 25 closed-end mortgage loans 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 closed-end mortgage loans must report all such applications for closed-end mortgage loans that it receives, closed-end mortgage loans that it originates, and closed-end mortgage loans 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.

/s/ Rohit Chopra

Rohit Chopra,

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