BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1003

[Docket No. CFPB–2017–0010]

RIN 3170–AA64

Technical Corrections and Clarifying Amendments to the Home Mortgage Disclosure (Regulation C) October 2015 Final Rule

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Proposed rule with request for public comment.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) proposes amendments to Regulation C to make technical corrections to and to clarify certain requirements adopted by the Bureau's Home Mortgage Disclosure (Regulation C) final rule (2015 HMDA Final Rule or the Final Rule), which was published in the **Federal Register** on October 28, 2015. The Bureau also proposes a new reporting exclusion.

DATES: Comments must be received on or before May 25, 2017.

ADDRESSES: You may submit comments, identified by Docket No. CFPB–2017–0010 or RIN 3170–AA64, by any of the following methods:

Email: FederalRegisterComments@cfpb.gov. Include CFPB–2017–0010 or RIN 3170–AA64 in the subject line of the email.

Electronic: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552.

Hand Delivery/Courier: Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1275 First Street NE., Washington, DC 20002.

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

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

FOR FURTHER INFORMATION CONTACT: Joseph Devlin, Kathryn Lazarev, or Alexandra W. Reimelt, Counsels; or Terry J. Randall, Senior Counsel, Office of Regulations, at (202) 435–7700.

SUPPLEMENTARY INFORMATION:

I. Summary of the Proposed Rule

Regulation C implements the Home Mortgage Disclosure Act (HMDA), 12 U.S.C. 2801 through 2810. For over four decades, HMDA has provided the public and public officials with information about mortgage lending activity within communities by requiring financial institutions to collect, report, and disclose certain data about their mortgage activities. The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) amended HMDA, transferring rulewriting authority to the Bureau and expanding the scope of information that must be collected, reported, and disclosed under HMDA, among other changes.[1] In October 2015, the Bureau issued the 2015 HMDA Final Rule implementing the Dodd-Frank Act amendments to HMDA.[2] The Final Rule modified the types of institutions and transactions subject to Regulation C, the types of data that institutions are required to collect, and the processes for reporting and disclosing the required data.[3] Most of these amendments take effect on January 1, 2018.

Through outreach, the Bureau has identified a number of areas in which implementation of the 2015 HMDA Final Rule could be facilitated through clarifications, technical corrections, or minor changes and the Bureau proposes certain amendments to Regulation C to address those areas. The proposal would establish transition rules for two data points, loan purpose and the unique identifier for the loan originator. The transition rules would permit financial institutions to report not applicable for these data points when reporting certain loans that they purchased that were originated before certain regulatory requirements took effect. The proposal also would make additional amendments to clarify certain key terms, such as temporary financing and automated underwriting system, and create a new reporting exception for certain transactions associated with New York State consolidation, extension, and modification agreements.

In addition, the proposal would facilitate reporting the census tract of the property securing, or, in the case of an application, proposed to secure, the covered loan required by Regulation C. The Bureau plans to make available on its Web site a geocoding tool (the Bureau's geocoding tool) that financial institutions may use to identify the census tract in which a property is located. The proposal would establish that a financial institution would not violate Regulation C by reporting an incorrect census tract for a particular property if the financial institution obtained the incorrect census tract number from the Bureau's geocoding tool, provided that the financial institution entered an accurate property address into the tool and the tool returned a census tract for the address entered. The proposal also would make certain technical corrections.

II. Background

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). As originally adopted, Congress stated the purposes of HMDA as providing the public and public officials with information to help determine whether financial institutions are serving the housing needs of the communities in which they are located and to assist public officials in their determination of the distribution of public sector investments in a manner designed to improve the private investment environment.[4] Congress later expanded HMDA to require, among other things, financial institutions to report racial characteristics, gender, and income information on applicants and borrowers.[5] In light of these amendments, the Board of Governors of the Federal Reserve System (Board)

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

[2] Home Mortgage Disclosure (Regulation C); 80 FR 66128 (Oct. 28, 2015) (October 2015 HMDA Final Rule).

[3] October 2015 HMDA Final Rule, 80 FR 66128, 29.

[4] Home Mortgage Disclosure (Regulation C), 76 FR 78465 section 302(b) (Dec 19. 2012), 12 U.S.C. 2801(b); *see also* 12 CFR 1003.1(b)(1)(i) and (ii).

[5] Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Public Law 101–73, section 1211 (''Fair lending oversight and enforcement'' section), 103 Stat. 183, 524–26 (1989).

subsequently recognized a third HMDA purpose of identifying possible discriminatory lending patterns and enforcing antidiscrimination statutes, which now is codified with HMDA's other purposes in Regulation C.[6]

In 2010, Congress enacted the Dodd-Frank Act, which amended HMDA and also transferred HMDA rulemaking authority and other functions from the Board to the Bureau.[7] Among other changes, the Dodd-Frank Act expands the scope of information relating to mortgage applications and loans that must be collected, reported, and disclosed under HMDA. New data points specified in the Dodd-Frank Act include the age of loan applicants and mortgagors, information relating to the points and fees payable at origination, the difference between the annual percentage rate (APR) associated with the loan and a benchmark rate or rates for additional loans, the term of any prepayment penalty, the value of real property to be pledged as collateral, the term of the loan and of any introductory interest rate for the loan, the presence of contract terms allowing nonamortizing payments, the origination channel, and the credit scores of applicants and mortgagors.[8] The Dodd-Frank Act also authorizes the Bureau to require, ''as [it] may determine to be appropriate,'' a unique identifier that identifies the loan originator, a universal loan identifier, and the parcel number that corresponds to the real property pledged or proposed to be pledged as collateral for the mortgage loan.[9] The Dodd-Frank Act also provides the Bureau with the authority to require ''such other information as the Bureau may require.'' [10] The Dodd-Frank Act mandated that ''the Bureau, in consultation with other appropriate agencies . . . and, after notice and comment, shall develop regulations that—

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

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

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

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

(E) modify or require modification of itemized information, for the purpose of protecting the privacy interests of the mortgage applicants or mortgagors, that is or will be available to the public.'' [11]

In October 2015, the Bureau issued the 2015 HMDA Final Rule which implemented the Dodd-Frank Act amendments to HMDA.[12] The Final Rule modifies the types of institutions and transactions subject to Regulation C, the types of data that institutions are required to collect, and the processes for reporting and disclosing the required data.

Since issuing the Final Rule, the Bureau has conducted outreach with stakeholders, through participation in conferences concerning the Final Rule, communications with HMDA vendors, and informal inquiries submitted by financial institutions. As part of these efforts and through its own analysis of the 2015 HMDA Final Rule, the Bureau has identified certain technical errors in the Final Rule, potential ways to ease burden of reporting certain data requirements, and clarification of key terms that will facilitate compliance with the Final Rule. This proposal addresses these issues.

III. Legal Authority

The Bureau is issuing this proposal pursuant to its authority under the Dodd-Frank Act and HMDA. This proposed rule consists of amendments and corrections to the 2015 HMDA Final Rule.[13] Section 1061 of the Dodd-Frank Act transferred to the Bureau the ''consumer financial protection functions'' previously vested in certain other Federal agencies, including the Board.[14] 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.'' [15] 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.'' [16] Both HMDA and title X of the Dodd-Frank Act are Federal consumer financial laws.[17] Accordingly, the Bureau has authority to issue regulations to administer HMDA.

HMDA section 305(a) broadly authorizes the Bureau to prescribe such regulations as may be necessary to carry out HMDA's purposes.[18] 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.'' [19]

A number of HMDA provisions specify that covered institutions must compile and make their HMDA data publicly available ''in accordance with regulations of the Bureau'' and ''in such formats as the Bureau may require.'' [20] HMDA section 304(j)(1) authorizes the Bureau to issue regulations to define the loan application register information that HMDA reporters must make available to the public upon request and to specify the form required for such disclosures.[21] HMDA section 304(j)(2)(B) provides that ''[t]he Bureau shall require, by regulation, such deletions as the Bureau may determine to be appropriate to protect—(i) any privacy interest of any applicant . . . and (ii) a depository institution from liability under any Federal or State

[6] 54 FR 51356, 51357 (Dec. 15, 1989), *codified at* 12 CFR 1003.1(b)(1).

[7] Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376, sections 1980, 2035–38, and 2097–101 (2010). Also, in 2010, the Board conducted public hearings on potential revisions to Regulation C.

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

[9] *Id.*

[10] *Id.*

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

[12] October 2015 HMDA Final Rule, 80 FR 66128.

[13] October 2015 HMDA Final Rule, 80 FR 66128, 66136–37.

[14] 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.*

[15] 12 U.S.C. 5581(a)(1)(A).

[16] 12 U.S.C. 5512(b)(1).

[17] 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).

[18] 12 U.S.C. 2804(a).

[19] *Id.*

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

[21] 12 U.S.C. 2803(j)(1).

privacy law.'' [22] HMDA subsection 304(j)(7) also directs the Bureau to make every effort in prescribing regulations under the subsection to minimize the costs incurred by a depository institution in complying with such regulations.[23]

HMDA section 304(e) directs the Bureau to prescribe a standard format for HMDA disclosures required under HMDA section 304.[24] As amended by the Dodd-Frank Act, HMDA section 304(h)(1) requires HMDA data to be submitted to the Bureau or to the appropriate agency for the reporting financial institution ''in accordance with rules prescribed by the Bureau.'' [25] HMDA section 304(h)(1) also directs the Bureau, in consultation with other appropriate agencies, to develop regulations after notice and comment that:

> prescribe the format for such disclosures, the method for submission of the data to the appropriate agency, and the procedures for disclosing the information to the public; require the collection of data required to be disclosed under [HMDA section 304(b)] with respect to loans sold by each institution reporting under this title; require disclosure of the class of the purchaser of such loans; permit any reporting institution to submit in writing to the Bureau or to the appropriate agency such additional data or explanations as it deems relevant to the decision to originate or purchase mortgage loans; and modify or require modification of itemized information, for the purpose of protecting the privacy interests of the mortgage applicants or mortgagors, that is or will be available to the public.[26]

HMDA also authorizes the Bureau to issue regulations relating to the timing of HMDA disclosures.[27]

As amended by the Dodd-Frank Act, HMDA section 304 requires itemization of specified categories of information and ''such other information as the Bureau may require.'' [28] Specifically, HMDA section 304(b)(5)(D) requires reporting of ''such other information as the Bureau may require'' for mortgage loans, and section 304(b)(6)(J) requires reporting of ''such other information as the Bureau may require'' for mortgage loans and applications. HMDA section 304 also identifies certain data points that are to be included in the itemization ''as the Bureau may determine to be appropriate.'' [29] It provides that age and other categories of data shall be modified prior to release ''as the Bureau determines to be necessary'' to satisfy the statutory purpose of protecting the privacy interests of the mortgage applicants or mortgagors.[30]

The Dodd-Frank Act amendments to HMDA also authorize the Bureau's Director to develop or assist in the improvement of methods of matching addresses and census tracts to facilitate HMDA compliance by depository institutions in as economical a manner as possible.[31] The Bureau, in consultation with the Secretary of HUD, may also exempt for-profit mortgage-lending institutions that are comparable within their respective industries to a bank, savings association, or credit union that has total assets of $10,000,000 or less.[32]

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

IV. Effective Date

For the reasons discussed below, the Bureau proposes that the amendments included in this proposal take effect when the related amendments to Regulation C adopted by the 2015 HMDA Final Rule take effect. As discussed more fully below, the proposed amendments to Regulation C would make technical corrections to and address certain areas to facilitate implementation of the 2015 HMDA Final Rule. For the proposed amendments to have the intended effect, the proposed amendments' effective dates should be synchronized with the related effective dates in the HMDA Final Rule.

The HMDA Final Rule takes effect in stages between January 1, 2017 and January 1, 2020, with most of the amendments included in the Final Rule taking effect on January 1, 2018. Accordingly, the Bureau proposes, as provided in the proposed amendatory instructions included below, that most of the proposed amendments take effect on January 1, 2018. The Bureau proposes that some proposed amendments take effect on January 1, 2019 or January 1, 2020, respectively, to correspond to related effective dates for amendments included in the Final Rule. The proposed amendments that would take effect on January 1, 2019 or January 1, 2020, respectively, are noted in the applicable section-by-section discussion in part V below and proposed amendatory instructions included below. The proposed amendatory instructions are organized sequentially by effective date, starting with all proposed amendments that would take effect on January 1, 2018. The Bureau solicits comment on the proposed effective dates.

V. Section-by-Section Analysis

The discussion below uses the following shorthand to refer to the individual provisions in Regulation C: ''Current § 1003.X'' refers to the provision currently in effect, as of the date of this proposal; ''Revised § 1003.X'' refers to the provision as revised by the Final Rule; ''§ 1003.X, as adopted by the Final Rule;'' refers to a provision newly adopted by the Final Rule; and, ''Proposed § 1003.X'' refers to the proposed amendments to the provision.

Section 1003.2 Definitions

2(d) Closed-End Mortgage Loan

In the Final Rule, the Bureau adopted § 1003.2(d) to provide that a ''closed-end mortgage loan'' is a dwelling-secured ''extension of credit'' that is not an open-end line of credit. Comment 2(d)–2, as adopted by the Final Rule, provides guidance on ''extension of credit,'' including an example of a transaction that would not be viewed as a closed-end mortgage loan because no credit is extended. Comment 2(d)–2 also explains that, for purposes of Regulation C, an ''extension of credit'' refers to the granting of credit pursuant to a new debt obligation. The comment provides that if a transaction modifies, renews, extends, or amends the terms of an

[22] 12 U.S.C. 2803(j)(2)(B).

[23] 12 U.S.C. 2803(j)(7).

[24] 12 U.S.C. 2803(e).

[25] 12 U.S.C. 2803(h)(1); *see also* HMDA section 304(n), 12 U.S.C. 2803(n) (discussing submission to the Bureau or the appropriate agency ''in accordance with regulations prescribed by the Bureau''). For purposes of HMDA section 304(h), HMDA section 304(h)(2) defines the appropriate agencies for different categories of financial institutions. The agencies are the Federal banking agencies, the FDIC, the NCUA, and the Secretary of HUD. 12 U.S.C. 2803(h)(2).

[26] 12 U.S.C. 2803(h)(1). The Dodd-Frank Act also added new HMDA section 304(h)(3), which directs the Bureau to prescribe standards for any modification pursuant to HMDA section 304(h)(1)(E), to effectuate HMDA's purposes, in light of the privacy interests of mortgage applicants or mortgagors. 12 U.S.C. 2803(h)(1)(E), 2803(h)(3).

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

[28] HMDA section 304(b)(5)(D), (b)(6)(J), 12 U.S.C. 2803(b)(5)(D), (b)(6)(J).

[29] HMDA section 304(b)(6)(F), (G), (H), 12 U.S.C. 2803(b)(6)(F), (G), (H).

[30] HMDA section 304(h)(3)(A)(ii), 12 U.S.C. 2803(h)(3)(A)(ii).

[31] HMDA section 307(a), 12 U.S.C. 2806(a) (authorizing the Bureau's Director to utilize, contract with, act through, or compensate any person or agency to carry out this subsection).

[32] HMDA section 309(a), 12 U.S.C. 2808(a).

existing debt obligation without satisfying and replacing the original debt obligation with a new debt obligation, the transaction generally is not an extension of credit under Regulation C. For the reasons discussed below, the Bureau proposes certain clarifying amendments to comment 2(d)–2.

The example in comment 2(d)–2, as adopted by the Final Rule, illustrating a transaction in which there is no extension of credit, discusses installment land sales contracts. The Bureau believes that the specific example included in the Final Rule is not helpful for illustrating a transaction in which there is no extension of credit because whether installment land sales contracts are extensions of credit is a fact-specific inquiry that depends on the particular installment contract's terms and other facts and circumstances. Therefore, the Bureau proposes to remove the specific example from comment 2(d)–2, while also providing more generally that installment land sales contracts, depending on the facts and circumstances, may or may not involve extensions of credit rendering the transactions closed-end mortgage loans. The Bureau solicits comment on this change.

Comment 2(d)–2.ii as adopted by the Final Rule provides a narrow exception to revised Regulation C's general rule that an ''extension of credit'' occurs only when a new debt obligation is created.[33] The exception covers transactions completed pursuant to a New York State consolidation, extension, and modification agreement and classified as a supplemental mortgage under New York Tax Law section 255, such that the borrower owes reduced or no mortgage recording taxes (New York CEMAs). As explained in the Final Rule[34] and discussed more fully below in relation to § 1003.3(c)(13), the Bureau believes that transactions completed pursuant to New York CEMAs represent situations where a new debt obligation is created in substance, if not in form, and that the benefits of requiring such transactions to be reported justify the burdens. The Bureau proposes no changes to the ''extension of credit'' exception that requires reporting of New York CEMAs but proposes a complementary exclusion from reporting, in § 1003.3(c)(13), for any preliminary transaction providing new funds prior to consolidation as part of the CEMA, as discussed below. The Bureau proposes to include in comment 2(d)–2.ii a clarifying reference to the new § 1003.3(c)(13) exclusion. The Bureau solicits comment on this clarifying reference.

2(f) Dwelling

In revised § 1003.2(f) and comment 2(f)–2, the Final Rule revised and clarified the definition of ''dwelling'' in Regulation C to provide, among other things, that multifamily residential structures include housing complexes and manufactured home communities and that such communities are dwellings. The Bureau believed that providing comment 2(f)–2 relating to multifamily residential structures would facilitate compliance by providing guidance on when loans related to multifamily dwellings would be considered loans secured by a dwelling for purposes of Regulation C. In revised § 1003.2(n), the Bureau provides that a ''multifamily dwelling'' is a dwelling that contains five or more individual dwelling units. Revised § 1003.4(a) excludes many data points for covered loans secured by multifamily dwellings because such data may not be easily available, relevant, or useful for multifamily transactions. For example, except for purchased covered loans, revised § 1003.4(a)(23) requires reporting 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. However, comment 4(a)(23)–6 makes clear that 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.

During implementation of the Final Rule, the Bureau was asked whether loans that are secured by five or more separate dwellings that each contain fewer than five individual dwelling units in more than one location are loans secured by multifamily dwellings. For example, a landlord might use a covered loan to improve five or more single-family dwellings in different locations, with those properties securing the loan. Because such a loan would not be secured by a housing complex or manufactured home community, it is not clear under § 1003.2(f) as adopted by the Final Rule how it should be reported. The Bureau believes that such a loan should be reported as secured by a multifamily dwelling. As with loans that are secured by multifamily dwellings in one location, the information that would be excluded from reporting under revised § 1003.4(a), such as the debt-to-income ratio discussed above, might also not be easily available, relevant, or useful for loans secured by five or more separate non-multifamily dwellings in more than one location. Consequently, to facilitate implementation and ensure the relevance and usefulness of the data collected, the Bureau proposes to add language to comment 2(f)–2 making clear that a loan secured by five or more separate dwellings in more than one location is a loan secured by a multifamily dwelling and providing an example. The Bureau solicits comment on this added language.

In addition, the Bureau proposes a technical correction to comment 2(f)–2. The Bureau proposes to change the term ''complexes'' to ''housing complexes,'' for clarity. No change in meaning is intended. The Bureau requests comment on this technical correction.

2(g) Financial Institution

As discussed below, the Bureau proposes an exclusion from reporting, in proposed § 1003.3(c)(13), for any preliminary transaction providing new funds prior to consolidation as part of a New York CEMA. In addition, the Bureau proposes a conforming change to §§ 1003.2(g)(1)(v)(A) and (2)(ii)(A) as adopted by the Final Rule in the definition of ''financial institution,'' adding the new exclusion to a list of exclusions referenced in that definition. Although the definition of financial institution includes thresholds for non-excluded closed-end mortgage loans and non-excluded open-end lines of credit, this conforming change is limited to the portions of § 1003.2(g) listing exclusions for closed-end mortgage loans because the Bureau does not believe that open-end lines of credit are used to provide new funds prior to consolidation as part of a New York CEMA. The Bureau requests comment on this conforming change, including whether open-end lines of credit may be used in this way.

2(i) Home Improvement Loan

HMDA section 303(2) defines a ''mortgage loan'' as a loan that is secured by residential real property or a home improvement loan. Regulation C currently defines ''home improvement loan'' and provides guidance in commentary about mixed-use property. Pursuant to the Bureau's authority under HMDA section 305(a), the Bureau revised the current definition of home improvement loan in § 1003.2(i) as adopted by the Final Rule and revised the accompanying commentary regarding mixed-use property. For the reasons set forth below, the Bureau

[33] Comment 2(d)–2.i provides a second exception, for assumptions, which Regulation C historically has covered. The Bureau is not proposing any change to the assumptions exception.

[34] 80 FR 66128, 66142–66143 (Oct. 28, 2015).

proposes to amend the commentary to § 1003.2(i) to clarify further the reporting requirements for home improvement loans secured by mixed-use property, that is, a dwelling used for both residential and commercial purposes.

The Bureau understands there may be uncertainty regarding the reporting requirements for mixed-use property under § 1003.2(i), as adopted by the Final Rule, in light of § 1003.3(c)(10), which the Bureau adopted by the Final Rule to exclude certain loans and lines of credit made primarily for a commercial or business purpose from coverage. Comment 2(i)–4 explains, in relevant part, that a closed-end mortgage loan or an open-end line of credit to improve a dwelling used for residential and commercial purposes (for example, a building containing apartment units and retail space) or the real property on which such a dwelling is located, is a home improvement loan if the loan's proceeds are used either to improve the entire property (for example, to replace the heating system) or if the proceeds are used primarily to improve the residential portion of the property. Section 1003.3(c)(10) excludes loans and lines of credit made primarily for a commercial or business purpose unless they are for the purpose of home purchase under § 1003.2(j), home improvement under § 1003.2(i), or refinancing under § 1003.2(p). Comment 3(c)(10)–3 provides illustrative examples of business- or commercial-purpose loans and lines of credit that are covered loans under the Final Rule. Comment 3(c)(10)–3.ii explains that a closed-end mortgage loan or an open-end line of credit to improve an office, for example, a doctor's office, that is located in a dwelling, would be a covered loan.

The Bureau is concerned that comments 2(i)–4 and 3(c)(10)–3.ii, as adopted by the Final Rule, could be interpreted as providing inconsistent guidance regarding when a closed-end mortgage loan or open-end line of credit to improve property used for both residential and commercial purposes would be considered a home improvement loan under § 1003.2(i). Comment 2(i)–4 explains that a closed-end mortgage loan or open-end line of credit is a reportable home improvement loan under § 1003.2(i) if the proceeds are used to improve the entire property or primarily the residential portion of the property. However, comment 3(c)(10)–3.ii provides an example indicating that a closed-end mortgage loan or open-end line of credit to improve an office in a dwelling would be a reportable home improvement loan under § 1003.2(i), even though its primary purpose is to improve the commercial portion of the property.

To resolve this apparent tension, the Bureau proposes to amend comment 2(i)–4 to clarify that the comment applies only to multifamily dwellings.[35] The proposed amendment would clarify that the Bureau intends comment 2(i)–4 to apply to multifamily dwellings of the type referenced in the comment (for example, a building containing five or more apartment units and retail space), and not to non-multifamily dwellings that have both residential and commercial purposes (for example, a single-family dwelling with a doctor's office). The Bureau believes that loans or lines of credit to improve primarily the commercial portion of a multifamily dwelling should not be reportable home improvement loans because such loans or lines of credit involve relatively small housing components and large commercial components of the dwelling in comparison to loans or lines of credit to improve primarily the commercial portion of a dwelling other than a multifamily family dwelling. The Bureau also believes that loans or lines of credit to improve primarily the commercial portion of a multifamily dwelling would provide limited information to help determine whether financial institutions are serving the housing needs of the communities in which they are located. Accordingly, the proposed amendments to comments 2(i)–4 and 3(c)(10)–3.ii together would clarify that a loan to improve commercial space in a multifamily dwelling would not be a home improvement loan, but a loan to improve commercial space in a dwelling other than a multifamily dwelling would be a home improvement loan. The Bureau believes its proposal to clarify the applicability of comment 2(i)–4 to multifamily dwellings, taken together with the proposed amendment to comment 3(c)(10)–3.ii, would resolve potential uncertainty over the reporting requirements for loans used to improve various types of mixed-use property. The Bureau solicits comment on the proposed clarification.

2(j) Home Purchase Loan

Currently, § 1003.2 provides a definition of ''home purchase loan'' and provides guidance in commentary. The Final Rule revised the current definition of home purchase loan in § 1003.2(j) and revised the current home purchase loan commentary to conform to revised § 1003.2(j) and to provide additional clarifications. The Final Rule renumbered current comment 2(Home purchase loan)–5 as comment 2(j)–3, with minor changes for clarity. Revised comment 2(j)–3 explains that a home purchase loan includes both a combined construction/permanent loan and the permanent financing that replaces a construction-only loan. It further explains that a home purchase loan does not include a construction-only loan that is designed to be replaced by permanent financing at a later time, which is excluded from Regulation C as temporary financing under § 1003.3(c)(3), and includes a cross-reference to comment 3(c)(3)–1. For the reasons discussed below, the Bureau proposes to amend comment 2(j)–3.

As discussed in more detail in the section-by-section analysis of § 1003.3(c)(3) regarding temporary financing, the Bureau proposes to amend the commentary to § 1003.3(c)(3) to clarify that a loan or line of credit is considered temporary financing and excluded under § 1003.3(c)(3) if the loan or line of credit is designed to be replaced by separate permanent financing extended to the same borrower at a later time. The Bureau also proposes to amend the commentary to § 1003.3(c)(3) to provide guidance that a construction-only loan or line of credit is considered temporary financing and is excluded from reporting if the loan or line of credit is extended to a person exclusively to construct a dwelling for sale. Such loans are not currently reported under Regulation C, and the Bureau did not intend § 1003.3(c)(3), as adopted by the Final Rule, to expand coverage to include them.

The Bureau proposes conforming changes to comment 2(j)–3 to reflect the proposed revisions to the § 1003.3(c)(3) commentary. The Bureau also proposes to refer to both a loan or line of credit in comment 2(j)–3, consistent with the § 1003.3(c)(3) commentary. Accordingly, the Bureau proposes to amend comment 2(j)–3 to explain that a home purchase loan includes both a combined construction/permanent loan or line of credit, and the separate permanent financing that replaces a construction-only loan or line of credit for the same borrower at a later time. Proposed comment 2(j)–3 would also clarify that a home purchase loan does not include a construction-only loan or line of credit that is designed to be replaced by separate permanent financing extended to the same borrower at a later time or that is extended to a person exclusively

[35] As discussed in more detail in the section-by-section analysis of § 1003.3(c)(10), the Bureau proposes to revise the example in comment 3(c)(10)–3.ii to clarify that it applies to dwellings other than multifamily dwellings.

to construct a dwelling for sale, and include a cross-reference to proposed new comment 3(c)(3)–2. As noted above, the Bureau proposes to exclude such loans or lines of credit from Regulation C as temporary financing under § 1003.3(c)(3). The Bureau solicits comment on the proposed amendments.

Section 1003.3 Exempt Institutions and Excluded Transactions

3(c) Excluded Transactions

3(c)(3)

Currently, Regulation C provides an exclusion for temporary financing in § 1003.4(d)(3). The Final Rule revised the exclusion for temporary financing in § 1003.3(c)(3) and adopted comment 3(c)(3)–1 to clarify the scope of the exclusion and to incorporate existing guidance in a FFIEC FAQ. Comment 3(c)(3)–1, as adopted by the Final Rule, provides that temporary financing is excluded from coverage and explains that a loan or line of credit is temporary financing if it is designed to be replaced by permanent financing at a later time. The comment provides several illustrative examples to clarify whether a loan or line of credit is designed to be replaced by permanent financing. For the reasons discussed below, the Bureau proposes to clarify further the meaning of comment 3(c)(3)–1 and to add new comment 3(c)(3)–2 to clarify the treatment of certain construction-only loans or lines of credit as temporary financing.

The Bureau understands that there may be uncertainty regarding the guidance set forth in comment 3(c)(3)–1 as adopted by the Final Rule. Specifically, the comment does not explain whether a loan or line of credit must be designed to be replaced by permanent financing extended to the same borrower at a later time in order for that loan or line of credit to be considered temporary financing. The illustrative examples in comment 3(c)(3)–1.i through .v suggest that the temporary financing exclusion applies when the loan or line of credit is designed to be replaced by permanent financing to the same borrower at a later time, but do not state this expressly.[36] Additionally, the Bureau believes it may be helpful to explain that, for a loan or line of credit to be considered temporary financing, it must be a separate transaction from the permanent financing designed to replace it. Accordingly, to clarify further the meaning of comment 3(c)(3)–1, the Bureau proposes to amend the comment to specify that a loan or line of credit is considered temporary financing and excluded under § 1003.3(c)(3) if it is designed to be replaced by separate permanent financing extended to the same borrower at a later time. The Bureau proposes amendments to the illustrative examples in comment 3(c)(3)–1.ii through .v to reflect these proposed clarifications. To improve consistency, the Bureau also proposes to substitute the word ''obtained'' for the word ''made'' in comment 3(c)(3)–1.iii. Additionally, the Bureau proposes to amend comment 3(c)(3)–1 to reflect the proposed addition of proposed comment 3(c)(3)–2, as discussed in more detail below.

The Bureau is also concerned that comment 3(c)(3)–1 may be read as expanding Regulation C reporting requirements to certain transactions that the Bureau believes should be considered temporary financing and excluded from reporting because their unique characteristics provide limited data to support HMDA's purposes. Comment 3(c)(3)–1 does not specifically address a construction-only loan or line of credit to a person exclusively to construct a dwelling for sale. Construction-only loans or lines of credit to construct a dwelling for sale are not currently reported under Regulation C, and the Bureau did not intend in the Final Rule to expand Regulation C's coverage to include them. However, comment 3(c)(3)–1 suggests that such loans or lines of credit would not be excluded as temporary financing under § 1003.3(c)(3) if they are not designed to be replaced by permanent financing at a later time. Additionally, as noted above, the Bureau proposes to clarify in comment 3(c)(3)–1 that for the temporary financing exclusion to apply, the separate permanent financing must be extended to the same borrower that obtained the loan or line of credit it is designed to replace. A loan or line of credit to a person to finance the construction of a dwelling for sale is an interim transaction paid off with proceeds from the sale of the dwelling when its construction is completed, and as such, the construction loan or line of credit is not designed to be replaced by permanent financing to the same borrower. Instead, the buyer of the newly-constructed dwelling generally obtains a HMDA-reportable home purchase loan to finance the purchase of the dwelling, and this permanent financing obtained by the buyer functions to pay off the construction loan or line of credit.

The Bureau believes that expanding Regulation C's transactional coverage to require reporting of loans or lines of credit for the sole purpose of constructing a dwelling for sale, which are often extended to builders, would yield limited data to support HMDA's purposes because of the distinct pricing terms, underwriting standards, and loan features generally present in these transactions. For example, the Bureau believes that a construction-only loan or line of credit to a person exclusively to construct a dwelling for sale would provide relatively limited information to help determine whether financial institutions are serving the housing needs of their communities or assist in decisions regarding the distribution of public sector investments. Thus, the Bureau believes that construction-only loans or lines of credit to a person exclusively to construct a dwelling for sale should continue to be excluded as temporary financing in light of their unique characteristics and limited value in furthering HMDA's purposes. Moreover, such loans or lines of credit will often be replaced by a buyer's permanent financing that would be reported under HMDA and provide information about the property securing the longer-term loan, such as construction method and property value.

The Bureau believes that construction-only loans or lines of credit extended to a person exclusively to construct a dwelling for sale are distinguishable from short-term transactions that provide valuable HMDA data and are not excluded as temporary financing under § 1003.3(c)(3). The Bureau recognizes that in the Final Rule, it explained that the temporary financing exclusion does not depend on the loan purpose, but rather turns on whether the loan is or is not designed to be replaced by longer-term financing at a later time.[37] The Bureau did not intend to expand Regulation C's transactional coverage to include construction-only loans or lines of credit to a person exclusively to construct a dwelling for sale, and

[36] For example, comment 3(c)(3)–1.ii explains that the initial construction loan is excluded as temporary financing under § 1003.3(c)(3) and provides an example where Lender A extends credit to finance construction of a dwelling, and a new extension of credit for permanent financing for the dwelling will be obtained, either from Lender A or from another lender, and either through a refinancing of the initial construction loan or a separate loan. Comment 3(c)(3)–1.v explains, in relevant part, that under § 1003.3(c)(3), the loan is not designed to be replaced by permanent financing and the temporary financing exclusion does not apply in an example where Lender A originates a loan with a nine-month term to enable an investor to purchase a home, renovate it, and re-sell it before the term expires.

[37] 80 FR 66168.

expressly stated in the Final Rule that the commentary to § 1003.3(c)(3) ''will help to ensure reporting of short-term transactions that function as permanent financing (*e.g.,* a loan with a nine-month term to enable an investor to purchase a home, renovate, and re-sell it before the term expires).'' [38] The Bureau also explained in the Final Rule that it is important for HMDA purposes to know how often and under what circumstances financing is granted to investors to purchase a dwelling and sell it for occupancy before the term of the loan expires.[39]

In contrast to construction-only loans or lines of credit to construct a dwelling for sale, the Bureau believes these short-term home improvement or home purchase loans may pose particular risks to communities and to consumers. The Bureau believes that reporting such loans will provide information to help public officials and public interest organizations identify risks to consumers and to local markets and enable them to target programs to assist vulnerable consumers. For example, with the information reported from these loans, public officials may identify the property value relied on for a loan to an investor to purchase a home, renovate it, and re-sell it as compared to the property value relied on for a buyer's permanent financing obtained to purchase that home. The Bureau believes such information would provide significant value for HMDA's purposes. Accordingly, the Bureau continues to believe that the guidance provided in comment 3(c)(3)–1, taken together with the proposed clarifications, will effectively serve HMDA's purposes. At the same time, for the reasons explained above, the Bureau believes it is appropriate to clarify its intent to classify construction-only loans or lines of credit to a person exclusively to construct a dwelling for sale as temporary financing, even where such loans or lines of credit are not designed to be replaced by separate permanent financing to the same borrower.

The Bureau proposes to add new comment 3(c)(3)–2 to clarify that a construction-only loan or line of credit is considered temporary financing and excluded under § 1003.3(c)(3) if the loan or line of credit is extended to a person exclusively to construct a dwelling for sale. Proposed comment 3(c)(3)–2 would include a cross-reference to comment 3(c)(3)–1.ii through .iv for examples of the reporting requirement for construction loans that are not extended to a person exclusively to construct a dwelling for sale. The Bureau solicits comment on the proposed clarifications.

3(c)(10)

Regulation C currently covers closed-end, commercial-purpose loans made to purchase, refinance, or improve a dwelling. The Final Rule adopted § 1003.3(c)(10) to provide that loans and lines of credit made primarily for a commercial or business purpose are excluded transactions unless they are for the purpose of home purchase under § 1003.2(j), home improvement under § 1003.2(i), or refinancing under § 1003.2(p). The commentary to § 1003.3(c)(10) explains the general rule, clarifies that § 1003.3(c)(10) does not exclude all dwelling-secured business- or commercial-purpose loans or lines of credit from coverage, explains how financial institutions should determine whether a transaction primarily is for a commercial or business purpose, and provides illustrative examples. As discussed in the section-by-section analysis of § 1003.2(i) above, the Bureau is concerned that there may be uncertainty regarding when a closed-end mortgage loan or open-end line of credit made primarily for a business or commercial purpose is a reportable home improvement loan under § 1003.2(i) and, thus, not excluded from reporting under § 1003.3(c)(10). For the reasons set forth in the section-by-section analysis of § 1003.2(i), the Bureau proposes to amend the example in comment 3(c)(10)–3.ii to clarify that its guidance applies in the case of a dwelling other than a multifamily dwelling and to provide an additional illustration.

Proposed comment 3(c)(10)–3.ii would illustrate that a closed-end mortgage loan or an open-end line of credit to improve a doctor's office or a daycare center that is located in a dwelling other than a multifamily dwelling is not excluded from reporting under § 1003.3(c)(10). A closed-end mortgage loan or open-end line of credit to improve a dwelling other than a multifamily dwelling, even if primarily for a business or commercial purpose, would be a home improvement loan under § 1003.2(i) and would not be excluded under § 1003.3(c)(10). The Bureau believes the proposed amendment to comment 3(c)(10)–3.ii would clarify that non-multifamily dwellings are not ''mixed-use property'' as described in comment 2(i)–4, even if they contain an office or other commercial space. To improve clarity, the Bureau also proposes minor changes to comment 3(c)(10)–3 to add the word ''although'' and remove the word ''but.'' The Bureau solicits comment on the proposed clarifications.

3(c)(11)

HMDA extends reporting responsibilities to banks, savings associations, credit unions and other lending institutions (defined as any person engaged for profit in the business of mortgage lending other than a bank, savings association, or credit union) that satisfy certain requirements concerning location, asset size, and lending activity.[40] Current Regulation C requires institutions that meet the definition of financial institution to collect and report HMDA data. HMDA and current Regulation C establish different coverage criteria for depository institutions than for nondepository institutions.[41] For several reasons,[42] the 2015 HMDA Final Rule made changes to Regulation C's institutional coverage and adopted uniform loan-volume thresholds for depository and nondepository institutions.

Section 1003.2(g) as adopted by the Final Rule provides loan-volume thresholds, for closed-end mortgage loans and open-end lines of credit, for Regulation C's coverage of financial institutions. The threshold for closed-end mortgage loans is 25 loans originated in each of the two preceding calendar years. Section 1003.3(c)(11) as adopted by the Final Rule provides a complementary exclusion for loans below the threshold, providing that a closed-end mortgage loan is an excluded transaction if a financial institution originated fewer than 25 closed-end mortgage loans in each of the two preceding calendar years. The use of the word ''each'' in § 1003.3(c)(11) is a drafting error.

If the exclusion is to mirror the loan-volume threshold for financial institutions in § 1003.2(g) and exclude transactions when that threshold is not met, § 1003.3(c)(11) should provide 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

[38] *Id.*

[39] *Id.*

[40] *See generally* 12 U.S.C. 2802(3) (defining depository institution, which includes other lending institutions), 2803(a) (establishing location test), 2808 (defining asset-size test).

[41] *Id.;* Regulation C § 1003.2 (definition of financial institution).

[42] *See* 80 FR 66128, 66146 (Oct. 28, 2015).

the two preceding calendar years.[43] Therefore, the Bureau proposes to amend § 1003.3(c)(11) and comment 3(c)(11)–1. The Bureau proposes to replace the word ''each'' with ''either'' to clarify how a financial institution applies the exclusion. The Bureau requests comment on this amendment.

The Bureau is also making a technical clarification to the example in comment 3(c)(11)–1 to better describe the reporting requirements for financial institutions whose origination totals for the prior two years are above the threshold. The clarification makes clear that the financial institution must report purchased loans, as well as originated loans and applications, as required by § 1003.4(a) and § 1003.5(a). The Bureau requests comment on this clarification.

Although the Final Rule did not specifically state that voluntary reporting of the loans excluded by § 1003.3(c)(11) is allowed, comment 3(c)(11)–1 states that a financial institution that is below the 25-mortgage loan threshold ''need not'' report such loans, suggesting that it might choose to report them. The Bureau proposes to clarify further that it interprets the exclusion in § 1003.3(c)(11), providing that the requirements of part 1003 do not apply to 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, to permit a financial institution to report closed-end mortgage loans and applications for closed-end mortgage loans voluntarily. The Bureau also believes the inclusion of these loans in the HMDA data would be appropriate if an institution chooses to do so voluntarily because the loans would be required to be reported if the institution originated more of this type of loan. As discussed further below, the Bureau proposes to interpret § 1003.3(c)(12) similarly.

The Bureau believes that the exclusion in § 1003.3(c)(11) (and, as discussed below, in § 1003.3(c)(12)), differs from the exclusions in § 1003.3(c)(1)–(10) and the new (13) because the applicability of the (c)(11) exclusion is not intrinsic to the loan. Whether the loan is excluded can be determined only by reference to the financial institution's origination activity over two years. The Bureau believes that financial institutions that choose to report voluntarily, particularly when the institution's total of closed-end mortgage loans may fluctuate above or below the threshold, may reduce their regulatory burden. The Bureau proposes to clarify in proposed comment 3(c)(11)–2 that a financial institution voluntarily may report closed-end mortgage loans and applications for 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. The Bureau solicits comment on the proposed comment. The Bureau also solicits comment on whether it should instead clarify that a financial institution voluntarily may report closed-end mortgage loans and applications for 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 in the regulation text instead of the commentary. In addition, the Bureau solicits comment on adding specific language stating that financial institutions that choose to report such transactions voluntarily must report all such transactions.

3(c)(12)

As explained above in the discussion of § 1003.3(c)(11), § 1003.2(g) as adopted by the Final Rule provides loan-volume thresholds, for closed-end mortgage loans and open-end lines of credit, for Regulation C's institutional coverage. The threshold for open-end lines of credit is 100 loans originated in each of the two preceding calendar years. Section 1003.3(c)(12) as adopted by the Final Rule provides a complementary exclusion for loans below the threshold, providing 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 each of the two preceding calendar years. The use of the word ''each'' in § 1003.3(c)(12) is a drafting error.

For the same reason as described above in the discussion of § 1003.3(c)(11), the Bureau proposes to amend § 1003.3(c)(12) and comment 3(c)(12)–1 as adopted by the Final Rule. If the exclusion is to mirror the loan-volume threshold for financial institutions in § 1003.2(g) and exclude transactions when that threshold is not met, § 1003.3(c)(12) should provide that an open-end line of credit is an excluded transaction if a financial institution originated fewer than 100 open-end lines of credit in ''either'' of the two preceding calendar years.[44] The Bureau proposes to replace the word ''each'' with ''either'' to clarify how the exclusion applies. The Bureau requests comment on this amendment.

The Bureau is also making a technical clarification to the example in comment 3(c)(12)–1 as adopted by the Final Rule to better describe the reporting requirements for financial institutions whose origination totals for the prior two years exceed the threshold. The clarification makes clear that the financial institution must report purchased loans, as well as originated loans and applications, as required by §§ 1003.4(a) and 1003.5(a). The Bureau requests comment on this clarification.

Although the Final Rule did not state specifically that voluntary reporting of the loans excluded by § 1003.3(c)(12) is allowed, comment 3(c)(12)–1 states that a financial institution that is below the 100 open-end line of credit threshold ''need not'' report such loans, suggesting that it might choose to report them. The Bureau proposes to clarify further that it interprets the exclusion in § 1003.3(c)(12), providing that the requirements of part 1003 do not apply to 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, to permit a financial institution to report open-end lines of credit and applications for open-end lines of credit. The Bureau also believes the inclusion of these loans in the HMDA data would be appropriate if an institution chooses to do so voluntarily because the loans would be required to be reported if the institution originated more of this type of loan. As explained above, the Bureau proposes to interpret § 1003.3(c)(11) similarly.

As with the exclusion in § 1003.3(c)(11), the Bureau believes that the exclusion in § 1003.3(c)(12) differs from the exclusions in § 1003.3(c)(1)–(10) and the new (13) because the applicability of the (c)(12) exclusion is not intrinsic to the loan. Whether the loan is excluded can be determined only by reference to the financial institution's origination activity over two years. The Bureau believes that financial institutions that choose to report voluntarily, particularly when the institution's total of open-end lines of credit may fluctuate above or below the threshold, may reduce their regulatory burden. The Bureau proposes to clarify in proposed comment 3(c)(12)–2 that a

[43] The preamble to the Final Rule reflected this intent: ''The institutional and transactional coverage thresholds are designed to operate in tandem. Under these thresholds, a financial institution will report closed-end mortgage loans only if it satisfies the closed-end mortgage threshold and will report open-end lines of credit only if it satisfies the separate open-end credit threshold.'' Home Mortgage Disclosure (Regulation C), 80 FR 66128, 66149 (Oct. 15, 2015).

[44] The preamble to the 2015 rule reflected this intent: ''The institutional and transactional coverage thresholds are designed to operate in tandem. Under these thresholds, a financial institution will report closed-end mortgage loans only if it satisfies the closed-end mortgage threshold and will report open-end lines of credit only if it satisfies the separate open-end credit threshold.'' Home Mortgage Disclosure (Regulation C), 80 FR 66128, 66149 (Oct. 15, 2015).

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

The Bureau solicits comment on the proposed comment. The Bureau also solicits comment on whether it should instead clarify that a financial institution voluntarily may report open-end lines of credit and applications for open-end lines of credit that are excluded transactions because the financial institution originated fewer than 100 open-end lines of credit in either of the two preceding calendar years in the regulation text instead of the commentary. In addition, the Bureau solicits comment on adding specific language stating that financial institutions that voluntarily choose to report such transactions must report all such transactions.

3(c)(13)

Comment 2(d)–2.ii as adopted by the Final Rule provided a narrow exception to Regulation C's general rule that an ''extension of credit'' occurs only when a new debt obligation is created.[45] The exception covers transactions completed pursuant to a New York State consolidation, extension, and modification agreement and classified as a supplemental mortgage under New York Tax Law section 255, such that the borrower owes reduced or no mortgage recording taxes (New York CEMAs). New York CEMAs are loans secured by dwellings located in New York. They generally are used in place of traditional refinancings, either to amend a transaction's interest rate or loan term, or to permit a borrower to take cash out. However, unlike a traditional refinancing, the existing debt obligation is not ''satisfied and replaced.'' Instead, the existing obligation or obligations are consolidated into a new loan, either by the same or a different lender, and either with or without new funds being added to the existing loan balance through a preliminary credit transaction that becomes part of the consolidation. Under New York State law, if no new money is added in a preliminary transaction before the consolidation, there is no ''new'' mortgage, and the borrower avoids paying the mortgage recording taxes that would have been imposed if a traditional refinancing had been used and the original obligation had been satisfied and replaced. If new money is added through a preliminary transaction and becomes part of the consolidated loan, the borrower pays mortgage recording taxes only on the new money.[46] While generally used in place of traditional refinancings, New York CEMAs also can be used for home purchases (*i.e.,* to complete an assumption), where the seller and buyer agree that the buyer will assume the seller's outstanding principal balance, and that balance is consolidated with a new loan to the borrower for the remainder of the purchase price.

In treating New York CEMAs as extensions of credit, the Final Rule departed from prior guidance from the Board that CEMAs, which modify and consolidate existing debt while generally extending the loan term, were not covered transactions because they did not meet the definition of a refinancing.[47] Comment 2(d)–2.ii, as adopted by the Final Rule, explains that a financial institution must report New York CEMAs if they are otherwise covered transactions. To facilitate the reporting of New York CEMAs, the Bureau proposes an exclusion from reporting for preliminary transactions that provide new funds that are then consolidated into New York CEMAs, as explained above. HMDA section 305(a) authorizes the Bureau to prescribe such regulations as may be necessary to carry out HMDA's purposes.[48] 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.'' [49] As described below, the new exception would effectuate the purposes of HMDA and facilitate compliance by eliminating double reporting in these transactions.

The Bureau explained in the Final Rule preamble that New York CEMAs are to be reported because the Bureau believed that they present a situation where a new debt obligation is created in substance, if not in form, and that the benefits of requiring such transactions to be reported justify the burdens.[50] Such transactions are relatively common in New York, and the Bureau believed that reporting of New York CEMAs would provide useful information about this segment of the market. The provision interpreting ''extension of credit'' to include New York CEMAs in comment 2(d)–2.ii as adopted by the Final Rule was meant to clarify the reporting requirements regarding New York CEMAs.

The Bureau has become aware of the need to further clarify reporting requirements regarding transactions associated with New York CEMAs. As explained above, a borrower may enter into a CEMA that consolidates both the prior debt and new funds. The new funds are added through a preliminary credit transaction in which the borrower obtains an extension of credit providing only the new funds. Then, the CEMA consolidates the new-funds transaction with the original mortgage loan into a single loan. Because the initial transaction is an extension of credit, it is reportable under revised Regulation C if it is otherwise a covered loan. In regard to New York CEMAs, this could lead to double reporting of the new funds, once through reporting of the preliminary transaction, and again through reporting of the full New York CEMA, which includes the new funds. The Bureau believes that such an outcome would elevate the form of the transaction over the substance of the resulting consumer indebtedness and could present challenges in interpreting the reported data. Therefore, the Bureau believes it is appropriate to require that only the New York CEMA, *i.e.,* the single, consolidated loan that results after both sequential transactions are completed, be reported. Insofar as a New York CEMA is the functional equivalent of a refinancing achieved by other means purely for tax reasons, a New York CEMA that consolidates a preliminary extension of new funds is generally the functional equivalent of a refinancing with new funds extended, *i.e.,* a ''cash-out'' refinancing, which is clearly a single transaction and thus is reported as such.

To achieve this outcome, the Bureau proposes, in § 1003.3(c)(13), that any transaction providing or, in the case of an application, proposing to provide new funds in advance of a consolidation as part of a New York CEMA be an

[45] In the Final Rule, the Bureau adopted § 1003.2(d) to provide that a ''closed-end mortgage loan'' is a dwelling-secured ''extension of credit'' that is not an open-end line of credit. Comment 2(d)–2 explains that, for purposes of Regulation C, an ''extension of credit'' refers to the granting of credit pursuant to a new debt obligation. If a transaction modifies, renews, extends, or amends the terms of an existing debt obligation without satisfying and replacing the original debt obligation with a new debt obligation, the transaction generally is not an extension of credit under revised Regulation C. In addition, comment 2(d)–2.i provided another exception, for assumptions, which Regulation C historically has covered. The Bureau is not proposing any change to the assumptions exception.

[46] *See* N.Y. Tax Law 255 (Consol. 2015).

[47] *See* 80 FR 66128, 66142 (Oct. 28, 2015).

[48] 12 U.S.C. 2804(a).

[49] *Id.*

[50] 80 FR 66128, 66143 (Oct. 28, 2015).

excluded transaction. The exception further provides that the transaction is excluded only if final action on the consolidation was taken in the same calendar year as final action on the new funds. The Bureau believes that this exclusion would clarify and simplify reporting of New York CEMAs, eliminating double reporting and facilitating compliance for financial institutions that provide New York CEMAs. The proposal does not change the exception in comment 2(d)–2.ii that requires New York CEMAs to be reported as extensions of credit.

The Bureau also proposes new comment 3(c)(13)–1 explaining use of the new § 1003.3(c)(13) exclusion. Following the language in the regulation, proposed comment 3(c)(13)–1 would clarify that the exclusion does not apply to a transaction that is consolidated in a New York CEMA if the final action on the consolidation has not been completed prior to the end of the calendar year in which final action on the preliminary transaction occurred. The consolidation into the CEMA is what qualifies the prior transaction to be an excluded transaction, thus final action on that consolidation must occur within the relevant final reporting period.

Consolidation transactions similar to New York CEMAs occur in States other than New York, although the Bureau believes they are far less common.[51] Non-New York CEMAs may be called CEMAs or MECAs (modification, extension and consolidation agreements). In the Final Rule, the Bureau limited the reporting requirement in comment 2(d)–2.ii to New York CEMAs. As with New York CEMAs, similar transactions in other States may involve preliminary transactions the proceeds of which become part of the consolidation. In addition to the interpretation discussed above, proposed comment 3(c)(13)–1 would explain that the exclusion for preliminary transactions consolidated into New York CEMAs would not apply to similar preliminary transactions that are consolidated pursuant to the law of States other than New York, providing an example. The comment would also explain that if such a preliminary transaction providing new funds is a covered loan, it must be reported. In addition, the comment would also state that if the associated consolidation and modification agreement is carried out pursuant to the law of a state other than New York and is not an extension of credit under Regulation C, it may not be reported.

The Bureau requests comment on the proposed exclusion and comment, including whether clarification of the exclusion in relation to quarterly reporting would be helpful.

Section 1003.4 Compilation of Reportable Data

4(a) Data Format and Itemization

4(a)(1)

4(a)(1)(i)

HMDA section 304(b)(6)(G), as amended by Dodd-Frank Act section 1094(3)(A)(iv), authorizes the Bureau to require a universal loan identifier, as it may determine to be appropriate.[52] Currently, § 1003.4(a)(1) requires financial institutions to report an identifying number for each covered loan or application reported. As adopted by the Final Rule, § 1003.4(a)(1)(i) requires financial institutions to provide a universal loan identifier (ULI) for each covered loan or application reported. Section 1003.4(a)(1)(i) and its associated commentary also address ULI requirements for purchased covered loans and applications that are reconsidered or reinstated during the same calendar year. In addition, the Final Rule requires a check digit as part of the ULI.[53] The check digit is meant to enable financial institutions to identify and correct errors in the ULI, which would ensure a valid ULI, and therefore enhance data quality. As part of the Final Rule, the Bureau published new appendix C that includes the methodology for generating a check digit and instructions on how to validate a ULI using the check digit. As described below, the Bureau proposes certain amendments to appendix C and to the commentary to § 1003.4(a)(1)(i) to make certain non-substantive changes.

The Bureau has become aware of a typographical error that occurs twice in appendix C and makes one method of computation of the check digit inaccurate. The Bureau proposes to correct the typographical error. Step 3 of the method for computing the check digit has two alternatives. Appendix C mistakenly provides that the second of the alternatives requires multiplication by .97 when the needed operation requires multiplication by 97 for the result to be accurate. The same typographical error occurs in Step 3 of the example based on this alternative method. The computation result presented in the example, 59.946, can be reached only by multiplying by 97, not .97. The Bureau proposes to revise appendix C by substituting 97 for .97 from the relevant instructions in appendix C.

In addition, the Bureau proposes certain amendments to the commentary to § 1003.4(a)(1)(i) adopted by the Final Rule to reflect the different effective dates for data reporting requirements adopted by the Final Rule and to make certain non-substantive clarifications. Comments 4(a)(1)(i)–3 and –4, effective January 1, 2018, provide guidance for the reporting of the ULI for purchased covered loans and reinstated or reconsidered applications, respectively. Comment 4(a)(1)(i)–3 includes an illustrative example that references § 1003.5(a)(1)(i) and (ii). Comment 4(a)(1)(i)–3 also includes, in relevant part, a statement regarding a financial institution's submission of its loan/application register pursuant to § 1003.5(a)(1)(i) or (ii), whichever is applicable. Comment 4(a)(1)(i)–4 includes two illustrative examples that reference § 1003.5(a)(1)(ii) and provide guidance regarding how a financial institution complies with the ULI reporting requirement with regard to its quarterly data submission. However, § 1003.5(a)(1)(i), adopted by the Final Rule to set forth revised requirements for a financial institution's submission of its annual loan/application register, has an effective date of January 1, 2019. Additionally, § 1003.5(a)(1)(ii), adopted by the Final Rule to set forth new requirements for certain financial institutions to submit a quarterly loan/application register, has an effective date of January 1, 2020.

Because § 1003.5(a)(1)(i) and (ii) will not yet be effective on January 1, 2018, when § 1003.4(a)(1)(i) and its commentary take effect, the Bureau proposes to amend comments 4(a)(1)(i)–3 and –4 to remove the references to these paragraphs. Specifically, the Bureau proposes to amend comment 4(a)(1)(i)–3 to remove the illustrative example that discusses § 1003.5(a)(1)(i) and (ii), and to replace the statement regarding § 1003.5(a)(1)(i) or (ii), whichever is applicable, with a reference to current § 1003.5(a)(1). The Bureau also proposes minor clarifications to the first sentence of comment 4(a)(1)(i)–3 to explain that if a financial institution previously has assigned a covered loan with a ULI or reported a covered loan with a ULI under Regulation C, a financial institution that purchases that covered loan must report the same ULI that previously was assigned or reported. Additionally, the Bureau proposes to add language to comment 4(a)(1)(i)–3 to illustrate a situation where a covered

[51] 80 FR 66128, 66143 (Oct. 28, 2015), n. 113.

[52] 12 U.S.C. 2803(b)(6)(G).

[53] 12 CFR 1003.4(a)(1)(i)(C).

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 or that financial institution was not required to report under Regulation C.

Similarly, the Bureau proposes to amend comment 4(a)(1)(i)–4 to remove the references to § 1003.5(a)(1)(ii) in the comment's illustrative examples and to discuss in the examples a financial institution's annual data submission under current § 1003.5(a)(1) rather than its quarterly submission under § 1003.5(a)(1)(ii). The Bureau proposes to remove the first sentence of comment 4(a)(1)(i)–4 regarding a financial institution using a ULI previously reported during the same calendar year, as such a situation would arise only where a financial institution makes a quarterly submission. The Bureau also proposes to amend comment 4(a)(1)(i)–4 to refer to an ''origination'' rather than an ''approved application,'' and make other minor, non-substantive changes to improve clarity and remove unnecessary language.

Additionally, the Bureau proposes to amend comments 4(a)(1)(i)–3 and –4 effective January 1, 2020, to re-incorporate the language of these comments as originally adopted, for the most part, in the Final Rule. As discussed above, § 1003.5(a)(1)(i) and (ii) will be effective on January 1, 2019, and January 1, 2020, respectively. The Bureau believes it would be appropriate for comments 4(a)(1)(i)–3 and –4 to reference these paragraphs once they become effective. Therefore, effective January 1, 2020, proposed comments 4(a)(1)(i)–3 and –4 would include the references and explanations regarding a financial institution's annual submission pursuant to § 1003.5(a)(1)(i) and a financial institution's quarterly submission pursuant to § 1003.5(a)(1)(ii), as adopted by the Final Rule. The proposal would generally retain the clarifications to comments 4(a)(1)(i)–3 and –4 that the Bureau proposes to adopt effective January 1, 2018, but would remove the proposed reference to the annual loan/application register submitted pursuant to current § 1003.5(a)(1). Additionally, the proposal would include certain additional non-substantive clarifications to the illustrative examples in comment 4(a)(1)(i)–3.

The Bureau solicits comment on the proposed amendments to appendix C and to the commentary.

4(a)(2)

HMDA section 304(b)(1) requires financial institutions to report ''the number and dollar amount of mortgage loans which are insured under Title II of the National Housing Act or under Title V of the Housing Act of 1949 or which are guaranteed under chapter 37 of Title 38.'' Current § 1003.4(a)(2) implements this requirement by requiring financial institutions to report the type of loan or application. In the Final Rule, the Bureau revised § 1003.4(a)(2) to require financial institutions to report whether the covered loan is, or in the case of an application would have been, insured by the Federal Housing Administration, guaranteed by the Veterans Administration, or guaranteed by the Rural Housing Service or the Farm Service Agency. The Bureau adopted new comment 4(a)(2)–1 to provide further guidance. In finalizing revisions to § 1003.4(a)(2), however, the Bureau included a legacy reference to the Veterans Administration rather than to the Department of Veterans Affairs, which is the government agency that guarantees mortgage loans under chapter 37 of Title 38. To correct this oversight, the Bureau proposes to substitute ''Department of Veterans Affairs'' for ''Veterans Administration'' in § 1003.4(a)(2) and comment 4(a)(2)–1. The Bureau seeks comment on this proposed amendment.

4(a)(3)

Current § 1003.4(a)(3) requires financial institutions to report the purpose of a covered loan or application using the categories home purchase, home improvement, or refinancing. The Bureau revised § 1003.4(a)(3) in the Final Rule to add an ''other'' category, a cash-out refinancing category, and to make changes to the commentary to implement these additional categories and provide instructions for reporting covered loans with multiple purposes. The Bureau proposes to add proposed comment 4(a)(3)–6 to clarify the reporting requirements under revised § 1003.4(a)(3) for purchased covered loans originated prior to January 1, 2018.

In light of the new loan purpose categories that differentiate cash-out refinancings from refinancings generally and the revised guidance on reporting covered loans with multiple purposes, the Bureau believes that, for purchased covered loans originated prior to January 1, 2018, the effective date of the revised reporting requirements in § 1003.4(a)(3), determining the reportable loan purpose as required under the Final Rule may present significant challenges. For example, the Bureau understands that under the Final Rule, the purchaser of such loans could need to conduct individual reviews of each loan file to determine whether a loan is a refinancing or a cash-out refinancing under revised § 1003.4(a)(3). The Bureau does not intend to impose such a burden on financial institutions that purchase loans originated prior to January 1, 2018. To facilitate compliance with the new reporting requirements in revised § 1003.4(a)(3), the Bureau proposes to add new comment 4(a)(3)–6 to provide that for purchased covered loans where the 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. The Bureau solicits comment on this proposed amendment.

4(a)(8)

4(a)(8)(i)

Revised § 1003.4(a)(8)(i) requires financial institutions to report the action taken on covered loans and applications. Current comment 4(a)(8)–1 explains how to report the action taken when a financial institution makes a counteroffer to lend on terms different from the applicant's initial request and the applicant does not accept the counteroffer or fails to respond, and comment 4(a)(8)(i)–9 as adopted by the Final Rule reiterates the explanation with no substantive change. Current comment 4(a)(8)–4 explains how to report the action taken when a financial institution provides a conditional approval on the application for a covered loan. Comment 4(a)(8)(i)–13 as adopted by the Final Rule expanded the guidance of current comment 4(a)(8)–4, addressing many more scenarios in which a conditional approval occurs. The Bureau proposes to clarify the guidance on reporting action taken for counteroffers and its relation to the guidance on reporting action taken on conditional approvals.

The Bureau recognizes that revised comments 4(a)(8)(i)–9 and 4(a)(8)(i)–13 may be read as in tension regarding how to report the action taken on an application for which a counteroffer is made, the applicant expresses interest in the new terms, and the financial institution provides a conditional approval to which the applicant does not respond or which otherwise does not result in an originated loan. Comment 4(a)(8)(i)–9 can be read to require the financial institution to report the action taken as a denial on the original loan terms applied for, while comment 4(a)(8)(i)–13 can be read to require the action taken to be reported as a denial, file closed for incompleteness, approved but not accepted, or application withdrawn, depending on the circumstances. In addition, limiting the reportable actions taken for counteroffers to only covered loan originated or application denied may lead to less complete and accurate reporting.

In addressing inquiries raising this concern, the Bureau has provided informal guidance that a financial institution should follow comment 4(a)(8)(i)–13 when an application for which a counteroffer is made is followed by a conditional approval that does not result in an originated loan. In accordance with this informal guidance, and to address the need to provide a full range of options in reporting the action taken on an application when there is a counteroffer, the Bureau proposes to amend the language of comment 4(a)(8)(i)–9 to broaden the possible actions taken that may be reported by clarifying that if the applicant agrees to proceed with consideration of the financial institution's counteroffer, the counteroffer takes the place of the prior application, and the financial institution reports the action taken on the application under the terms of the counteroffer. In addition, the Bureau proposes to illustrate this interpretation by providing an example in comment 4(a)(8)(i)–9. The example would clarify that if a financial institution makes a counteroffer and the applicant agrees to proceed with consideration of the counteroffer, and the financial institution sends a conditional approval letter stating the terms of the counteroffer, the financial institution reports the action taken on the application in accordance with comment 4(a)(8)(i)–13 regarding conditional approvals. The Bureau solicits comment on the amended language and new example.

In addition, the Bureau proposes a technical correction to comment 4(a)(8)(i)–6, as adopted by the Final Rule, correcting a citation that was intended to reference Regulation B, 12 CFR 1002.9(c)(1)(i). The citation reads, ''12 CFR 1002.9(c)(i).'' This proposal would correct the typographical error by inserting the ''(1)'' paragraph designation missing from the citation.

4(a)(9)

4(a)(9)(i)

Section 1003.4(a)(9)(i) as adopted by the Final Rule requires financial institutions to report the property address of the property securing the covered loan or, in the case of an application, proposed to secure the covered loan.[54] Comment 4(a)(9)(i)–3 as adopted by the Final Rule explains that this requirement is not applicable if the address of the property securing the covered loan is not known and provides an example. The Bureau proposes certain non-substantive amendments to comment 4(a)(9)(i)–3 to replace ''indicate'' with ''reports'' for consistency with other comments providing similar guidance and solicits comment on the proposed revisions.

4(a)(9)(ii)

Current § 1003.4(a)(9) and § 1003.4(a)(9)(ii), as adopted by the Final Rule, both require financial institutions to report certain information for certain transactions about the location of the property related to the covered loan or application, including the State, county, and census tract.[55] For the reasons set forth below, the Bureau proposes amendments to the commentary to § 1003.4(a)(9)(ii)(A) through (C) to provide guidance on what a financial institution should report if it has incomplete information about the location of the property when reporting an application.

A financial institution may have incomplete information about the location of a property when it takes final action on an application in certain situations. For example, an applicant may not identify a specific property or census tract, but may provide the financial institution with only the State and county where the applicant intends to purchase a home before the financial institution denies the application.

The Bureau proposes new comments 4(a)(9)(ii)(A)–1, 4(a)(9)(ii)(B)–2, and 4(a)(9)(ii)(C)–2 to clarify that the financial institution reports that the property-location requirement, as applicable, is not applicable when reporting an application if the State, county, or census tract, respectively, is not known before the application was denied, withdrawn, or closed for incompleteness. The Bureau solicits comment on these proposed new comments.

4(a)(10)

4(a)(10)(ii)

Section 1003.4(a)(10)(ii) as adopted by the Final Rule requires that a financial institution report the age of the applicant or borrower. Comment 4(a)(10)(ii)–3, as adopted by the Final Rule, contains a drafting error in providing guidance on treatment of purchased loans that refers to reporting income rather than age. The Bureau proposes to correct the drafting error in comment 4(a)(10)(ii)–3 by replacing the term ''income'' with ''age'' to make clear that 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 of the applicant or borrower. The Bureau solicits comment on this proposed correction.

4(a)(10)(iii)

HMDA section 304(b)(4) requires the reporting of income level for borrowers and applicants. Section 1003.4(a)(10) of the current rule requires a financial institution to report the gross annual income relied on in processing an application. The Final Rule amended that requirement, requiring in § 1003.4(a)(10)(iii) that a financial institution report the gross annual income relied on in making the credit decision or processing the application if a credit decision was not made.[56] Comment 4(a)(10)(iii)–4 adopted by the Final Rule explains that 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 annuitization or depletion of an applicant's remaining assets.

The Bureau has become aware of uncertainty among financial institutions regarding how to determine which amounts are derived from annuitization or depletion of an applicant's remaining assets. The use of the modifier ''remaining'' in regard to the assets referred to was meant to refer to assets that are not in actual distribution, but are remaining. In addition, the word ''derived'' was meant to refer to the underwriting method by which hypothetical (not actual) distributions are calculated from the amounts of the remaining assets.

[54] *See* HMDA section 304(b)(6)(H), 12 U.S.C. 2803(b)(6)(H).

[55] *See* § 1003.4(a)(9); 12 U.S.C. 2803(a)(2)(A). Section 1003.4(a)(9) requires reporting of property location information if the property securing the covered loan or in the case of an application proposed to secure the covered loan is located in a MSA or Metropolitan Division(MD) in which the financial institution has a home or branch office. In addition, § 1003.4(e) requires banks and savings associations that are required to report data on small business, small farm, and community development lending under regulations that implement the Community Reinvestment Act to collect the location of property located outside MSAs and MDs in which the institution has a home or branch office or outside of any MSA.

[56] Section 1003.4(a)(10)(iii) also excluded from the reporting of this data point covered loans and applications for which the credit decision did not consider or would not have considered income. See the commentary to § 1003.4(a)(10)(iii) for more information and descriptions of different situations in which the income reporting requirement is not applicable.

The Bureau proposes to clarify in comment 4(a)(10)(iii)–4 that 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. Because the determination of what to exclude depends on the underwriting method the financial institution applies in making the credit decision, the proposed clarification should facilitate implementation of the Final Rule.[57] In addition, to avoid confusion and facilitate compliance, the Bureau proposes to add language clarifying that the comment's interpretation of income does not apply to § 1003.4(a)(23) as adopted in the Final Rule, 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. The Bureau solicits comment on proposed revisions to the commentary.

4(a)(12)

HMDA section 304(b)(5)(B) requires financial institutions to report mortgage loan information, grouped according to measurements of ''the difference between the annual percentage rate associated with the loan and a benchmark rate or rates for all loans.''[58] Current § 1003.4(a)(12)(i) requires financial institutions to report, for originated loans subject to Regulation Z, 12 CFR part 1026, the difference between a loan's annual percentage rate (APR) and the average prime offer rate (APOR) for a comparable transaction, as of the date the interest rate is set, if the difference equals or exceeds 1.5 percentage points for first-lien loans, or 3.5 percentage points for subordinate-lien loans. Current § 1003.4(a)(12)(ii) explains that the APOR is an annual percentage rate that is derived from average interest rates, points, and other loan pricing terms currently offered to consumers by a representative sample of creditors for mortgage loans that have low-risk pricing characteristics. Section 1003.4(a)(12)(ii) further explains that the Bureau publishes APORs for a broad range of types of transactions in tables updated at least weekly, as well as the methodology the Bureau uses to derive these rates. As revised by the Final Rule, § 1003.4(a)(12)(i) requires financial institutions to report, for covered loans subject to Regulation Z, 12 CFR part 1026, other than assumptions, purchased covered loans, and reverse mortgages, the difference between the covered loan's APR and APOR for a comparable transaction as of the date the interest rate is set. In other words, the Final Rule requires that rate spread be reported for most covered loans subject to Regulation Z, 12 CFR part 1026, and not just certain loans that are considered higher-priced. For the reasons set forth below, the Bureau proposes certain amendments to § 1003.4(a)(12)(ii) and to the § 1003.4(a)(12) commentary adopted by the Final Rule and proposes new comment 4(a)(12)–9 to address reporting requirements when corrected disclosures are provided.

Average Prime Offer Rate (APOR)

The Bureau calculates APORs on a weekly basis according to a methodology statement that is available to the public and then posts the APORs on the FFIEC Web site. To calculate APORs, survey data on four mortgage products are used and posted on the FFIEC Web site weekly: 30-year fixed rate mortgage, 15-year fixed rate mortgage, five-year variable rate mortgage, and one-year variable rate mortgage. Currently, the FFIEC Web site provides both the methodology for calculating APORs and a description of the survey data used to calculate them. However, recent changes in the marketplace have altered several times the source of the survey data for the one-year variable rate mortgage product that the Bureau uses to calculate weekly APORs.[59] To streamline how the Bureau provides notice of the sources of survey data, the Bureau has announced that it will continue to post the survey data and the source of the data used to calculate APORs on the FFIEC Web site every week but will no longer revise the methodology statement each time it is necessary to change the source of survey data and has removed the references to the sources of survey data from the methodology statement.[60]

In light of the recent variability in the sources of survey data used to calculate APORs and the Bureau's resulting revisions to the methodology statement, the Bureau proposes certain amendments to § 1003.4(a)(12)(ii). The Bureau proposes to amend § 1003.4(a)(12)(ii) to remove the reference to ''points,'' as points are accounted for in ''other loan pricing terms'' and to explain that APOR is derived from a set of creditors rather than a representative sample of creditors. The Bureau also proposes to amend § 1003.4(a)(12)(ii) to explain that the Bureau publishes tables of APORs by transaction type at least weekly and also publishes the methodology it uses to derive these rates. The Bureau will still provide the public with its APOR calculation methodology statement, but believes that given the recent changes regarding the availability of survey data, providing additional flexibility in § 1003.4(a)(12)(ii) regarding the calculation is advisable.

The Bureau proposes amendments to revised comment 4(a)(12)–1 to conform to the proposed amendments to § 1003.4(a)(12)(ii). Proposed comment 4(a)(12)–1 would explain that APORs are APRs 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. It would also provide that other loan pricing terms may include commonly used indices, margins, and initial fixed-rate periods for variable-rate transactions. Proposed comment 4(a)(12)–1 would explain that 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, and that, to obtain APORs, the Bureau uses creditor data by transaction type. Given the recent variability in the APOR source data discussed above, the proposal would remove other requirements for the source data.

Additionally, the Bureau proposes amendments to revised comment 4(a)(12)–2. The Bureau proposes to amend comment 4(a)(12)–2 to explain that the Bureau publishes tables of current and historic APORs by transaction type and its methodology statement on its Web site (*http://www.consumerfinance.gov*) in addition to the FFIEC Web site. Given the Bureau's role as processor of the HMDA data starting with data collected in 2017, the Bureau believes it would be appropriate for the Bureau to publish tables of current and historic APOR rates by transaction type and its methodology statement on its Web site

[57] Intermittent actual withdrawals from the remaining assets should not be reported if the financial institution does not consider them as income in its underwriting.

[58] Section 1094(3)(A)(iv) of the Dodd-Frank Act amended HMDA by adding section 304(b)(5)(B), which expanded the rate spread reporting requirement beyond higher-priced mortgage loans.

[59] 81 FR 64142 (Sept. 19, 2016); 81 FR 52831 (Aug. 10, 2016).

[60] 81 FR 64142 (Sept. 19, 2016). The source of survey data used by the Bureau to calculate APORs is currently available, however, on the FFIEC Web site, *https://www.ffiec.gov/ratespread/mortgagerates.htm.*

in addition to the FFIEC Web site. The Bureau also proposes to substitute the term ''creditor data'' for ''survey data,'' consistent with the Bureau's proposed amendment to comment 4(a)(12)–1, and to clarify that the Bureau may use other sources of data to estimate APRs when data are limited or not available. The Bureau seeks comment on these proposed amendments.

Open-End Lines of Credit

The Final Rule revised comment 4(a)(12)–3 to clarify that the requirements of § 1003.4(a)(12)(i) refer to the covered loan's APR. Revised comment 4(a)(12)–3 further explains that a financial institution complies with § 1003.4(a)(12)(i) by relying on the APR for the covered loan, as calculated and disclosed pursuant to Regulation Z § 1026.18 or 1026.38 (for closed-end mortgage loans) or 1026.40 (for open-end lines of credit), as applicable. Thus, for closed-end mortgage loans, the Final Rule refers to the APR as calculated and disclosed pursuant to Regulation Z §§ 1026.18 and 1026.38, which set forth requirements for the contents of the disclosures that must be provided to consumers prior to consummation of certain closed-end mortgage loans.[61] However, for open-end lines of credit, the Final Rule refers to the APR as calculated and disclosed pursuant to Regulation Z § 1026.40, which sets forth requirements regarding the disclosures provided at the time an application is provided to the consumer. The Final Rule does not refer to Regulation Z § 1026.6, which sets forth the disclosure requirements for open-end lines of credit at account opening.

The Bureau believes that referring to the APR as calculated and disclosed at the time of account opening for open-end lines of credit, rather than at the time of application, would result in the reporting of more useful data under § 1003.4(a)(12)(i) and would improve consistency with the rate spread reporting requirements for closed-end mortgage loans. Accordingly, the Bureau proposes to amend revised comment 4(a)(12)–3 to remove the reference to Regulation Z § 1026.40 and to replace it with a reference to Regulation Z § 1026.6. The Bureau also proposes a technical correction to correct a typographical error and remove the unnecessary ''credit'' in the comment's parenthetical explanation regarding open-end lines of credit. The Bureau seeks comment on these proposed amendments.

Rate-Set Date

The Final Rule adopted new comment 4(a)(12)–5 to clarify that the relevant date to use to determine the APOR for a comparable transaction is the date on which the covered loan's interest rate was set by the financial institution for the final time before closing or account opening. Comment 4(a)(12)–5 includes several illustrative examples. Comment 4(a)(12)–5.iii explains that, 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)–4 (*e.g.,* because the financial institution makes a credit decision prior to closing or account opening), the rate-set date is the last date the financial institution set the rate with the broker, not the date the broker set the borrower's rate. In the Final Rule, the Bureau adopted proposed comment 4(a)–4, renumbered as comment 4(a)–2, to provide guidance on a financial institution's reporting responsibilities when a single transaction involves more than one institution. However, the Bureau did not update comment 4(a)(12)–5.iii in the Final Rule to reflect the renumbering of proposed comment 4(a)–4 as comment 4(a)–2. To correct this oversight, the Bureau proposes to amend comment 4(a)(12)–5.iii to replace the reference to comment 4(a)–4 with a reference to comment 4(a)–2. The Bureau solicits comment on this proposed amendment.

Application or Preapproval Request Approved but Not Accepted

As adopted by the Final Rule, comment 4(a)(12)–8 explains that, in the case of an application approved but not accepted or a preapproval request that was approved but not accepted, § 1003.4(a)(12) requires the financial institution to report the applicable rate spread. As discussed above, revised comment 4(a)(12)–3 clarifies that, for closed-end mortgage loans, a financial institution complies with § 1003.4(a)(12)(i) by relying on the APR for the covered loan as calculated and disclosed pursuant to Regulation Z § 1026.18 or § 1026.38. Additionally, the Bureau proposes to amend revised comment 4(a)(12)–3 to clarify that, for open-end lines of credit, a financial institution complies with § 1003.4(a)(12)(i) by relying on the APR as calculated and disclosed pursuant to Regulation Z § 1026.6. However, the Bureau is concerned that, in a situation where an application or a preapproval request is approved but not accepted, the guidance provided in revised comment 4(a)(12)–3 may not be applicable because the transaction will not be consummated or the account may not be opened, as applicable. In such cases, the financial institution would provide the early disclosures at the time of application required under Regulation Z § 1026.18 or § 1026.37 (for closed-end mortgage loans) or § 1026.40 (for open-end lines of credit) but could never provide subsequent disclosures prior to consummation or at the time of account opening.

Accordingly, the Bureau proposes to amend comment 4(a)(12)–8 to clarify reporting requirements where an application or a preapproval request is approved but not accepted and only the early disclosures required under Regulation Z §§ 1026.18, 1026.37, or 1026.40, as applicable, are provided. The Bureau proposes to add language to comment 4(a)(12)–8 recognizing that, where an application or a preapproval request is approved but not accepted, the financial institution would provide early disclosures under Regulation Z § 1026.18 or § 1026.37 (for closed-end mortgage loans) or § 1026.40 (for open-end lines of credit), but could never provide any subsequent disclosures. The Bureau proposes to clarify further that, in such cases where no subsequent disclosures are provided, a financial institution complies with § 1003.4(a)(12)(i) by relying on the APR for the covered loan as calculated and disclosed pursuant to Regulation Z § 1026.18 or § 1026.37 (for closed-end mortgage loans) or § 1026.40 (for open-end lines of credit), as applicable. The Bureau believes the proposal would clarify which APR a financial institution must rely on for purposes of complying with § 1003.4(a)(12)(i) when an application or a preapproval request is approved but not accepted and only the early Regulation Z disclosures are provided. In short, if disclosures were provided at consummation or account opening, the financial institution relies on those disclosures; if no such later disclosures were provided because the application or preapproval request was approved but not accepted, the financial institution relies on the earlier disclosures provided at the application stage. The Bureau seeks comment on this proposed clarification.

[61] Regulation Z § 1026.19(a)(1)(i) requires the creditor to deliver or place in the mail good faith estimates of the disclosures required by § 1026.18 not later than the third business day after the creditor receives the consumer's written application. Section 1026.19(a)(2)(i) requires the creditor to deliver or place in the mail the disclosures required by § 1026.19(a)(1)(i) not later than the seventh business day before consummation of the transaction. If the APR disclosed under § 1026.19(a)(1)(i) becomes inaccurate, as defined in § 1026.22, § 1026.19(a)(2)(ii) provides that the creditor shall provide corrected disclosures no later than three business days before consummation.

Corrected Disclosures

The Bureau proposes to add new comment 4(a)(12)–9 to provide guidance in situations where a financial institution provides a corrected disclosure under Regulation Z that reflects a corrected APR. The Final Rule does not explain how a financial institution complies with § 1003.4(a)(12)(i) in such cases. Specifically, the Final Rule does not clarify whether a financial institution relies on the APR for the covered loan or application approved but not accepted as initially calculated and disclosed, or whether a financial institution relies on the APR as calculated and disclosed pursuant to the corrected disclosure. However, as adopted by the Final Rule, §§ 1003.4(a)(17)(i) and 1003.4(a)(18) through (20), which require reporting of certain pricing data points as disclosed on the Closing Disclosure pursuant to Regulation Z § 1026.38, provide guidance regarding how a financial institution complies with its reporting requirements when a revised pricing data point is reflected on a revised Closing Disclosure. The commentary to §§ 1003.4(a)(17)(i) and 1003.4(a)(18) through (20) explains that, in general, if the amount of the applicable pricing data point changes because a financial institution provides a revised version of the disclosures required under Regulation Z § 1026.19(f), pursuant to § 1026.19(f)(2), the financial institution complies with the applicable reporting requirement by reporting the revised amount of the pricing data point, provided that the revised disclosure was provided to the borrower during the same reporting period in which closing occurred.

The Bureau believes similar commentary to § 1003.4(a)(12) would address potential uncertainty regarding the reporting requirements under § 1003.4(a)(12)(i) when a corrected disclosure under Regulation Z is provided. Specifically, the Bureau proposes to add new comment 4(a)(12)–9 to explain that, in the case of an application approved but not accepted or a preapproval request that was approved but not accepted, if the APR changes because a financial institution provides a corrected version of the disclosures required under Regulation Z § 1026.19(a), pursuant to § 1026.19(a)(2), under Regulation Z § 1026.19(f), pursuant to § 1026.19(f)(2), or under Regulation Z § 1026.6(a), the financial institution complies with § 1003.4(a)(12)(i) by comparing the corrected and disclosed APR to the most recently available APOR that was in effect for a comparable transaction as of the rate-set date. The comment would further clarify that this guidance applies so long as the corrected disclosure was provided to the borrower prior to the end of the reporting period in which final action is taken. It would explain that for purposes of § 1003.4(a)(12), the date the corrected disclosure was provided to the borrower is the date disclosed pursuant to Regulation Z § 1026.38(a)(3)(i). Proposed comment 4(a)(12)–9 would also explain that the corrected disclosure does not affect the rate-set date, and would include an example illustrating how its guidance applies in the case of a financial institution's annual loan/application register submission made pursuant to § 1003.5(a)(1).

Additionally the Bureau proposes to amend proposed new comment 4(a)(12)–9, effective January 1, 2020, to reflect the revised annual reporting requirements in § 1003.5(a)(1)(i) and the quarterly reporting requirements in § 1003.5(a)(1)(ii). The Bureau proposes to amend the illustrative example in proposed new comment 4(a)(12)–9, effective January 1, 2020, to remove the reference to current § 1003.5(a)(1). It would instead provide illustrative examples to demonstrate how a financial institution complies with § 1003.4(a)(12)(i) when a corrected APR is reflected on a corrected disclosure in the case of an annual loan/application register made pursuant to § 1003.5(a)(1)(i) and a quarterly loan/application register made pursuant to § 1003.5(a)(1)(ii). The Bureau solicits comment on the proposed amendments.

4(a)(15)

Section 1094(3)(A)(iv) of the Dodd-Frank Act amended section 304(b) of HMDA to require financial institutions to report the credit scores of borrowers and applicants, ''in such form as the Bureau may prescribe.'' [62] Excluding purchased covered loans, § 1003.4(a)(15), as adopted by the Final Rule, requires that a financial institution report the credit score or scores relied on in making the credit decision and the name and version of the scoring model used to generate each credit score. Comment 4(a)(15)–2, as adopted by the Final Rule, explains how to report the credit score and scoring model when there are multiple credit scores obtained or created by a financial institution. Comment 4(a)(15)–3, as adopted by the Final Rule, explains how to report credit scores when there are multiple applicants or borrowers.

The Bureau has become aware that comments 4(a)(15)–2 and –3 may not explain clearly how to report the scoring model for a composite credit score and how to report a single credit score when there are multiple applicants or borrowers. Consequently, the Bureau proposes to amend comment 4(a)(15)–2 to clarify that, when a financial institution uses more than one credit scoring model and combines the scores into a composite credit score, the financial institution should report that score and report that more than one credit scoring model was used. In addition, the Bureau proposes to amend comment 4(a)(15)–3 to clarify that, in a transaction involving two or more applicants or borrowers for which 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, alternatively, by reporting that credit score for the first co-applicant and reporting that the requirement is not applicable for the applicant.

The Bureau solicits comment on the proposed clarifications.

4(a)(17)

Section 304(b)(5)(A) of HMDA [63] provides for reporting of ''the total points and fees payable at origination in connection with the mortgage as determined by the Bureau, taking into account 15 U.S.C. 1602(aa)(4).'' [64] Section 1003.4(a)(17), as adopted by the Final Rule, implements this provision and provides that for covered loans subject to Regulation Z § 1026.43(c), a financial institution shall report the amount of total loan costs, as disclosed pursuant to Regulation Z § 1026.38(f)(4), 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

[62] 12 U.S.C. 2803(b)(6)(I).

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

[64] 15 U.S.C. 1602(aa)(4) is part of the Truth in Lending Act. Prior to amendments made by the Dodd-Frank Act, that section generally defined ''points and fees'' for the purpose of determining whether a transaction was a high-cost mortgage. *See* 15 U.S.C. 1602(aa)(4). Section 1100A of the Dodd-Frank Act redesignated subsection 1602(aa)(4) as subsection 1602(bb)(4), where it is currently codified. In light of that redesignation, the Bureau interprets HMDA section 304(b)(5)(A) as directing it to take into account 15 U.S.C. 1602(bb)(4) and its implementing regulations, as those provisions address ''points and fees'' and because current subsection 1602(aa)(4) is no longer relevant to a determination regarding points and fees.

loan, expressed in dollars and calculated pursuant to Regulation Z § 1026.32(b)(1), if the covered loan is not subject to the disclosure requirements in Regulation Z § 1026.19(f), and is not a purchased covered loan. Comment 4(a)(17)(i)–3, as adopted by the Final Rule, provides guidance in situations where a financial institution has provided a revised Closing Disclosure with a new amount of total loan costs. The Bureau proposes to amend comment 4(a)(17)(i)–3 to reflect the different effective dates for certain reporting requirements and to make other minor clarifications.

Comment 4(a)(17)(i)–3 explains that, if the amount of total loan costs changes because a financial institution provides a revised version of the disclosures required under Regulation Z § 1026.19(f), pursuant to § 1026.19(f)(2), the financial institution complies with § 1003.4(a)(17)(i) by reporting the revised amount, provided that the revised disclosure was provided to the borrower during the same reporting period in which closing occurred. The comment includes an illustrative example that discusses a financial institution's quarterly submission made pursuant to § 1003.5(a)(1)(ii) and an explanation regarding what a financial institution reports in its quarterly submission when the corrected disclosure is provided prior to the end of the quarter in which closing occurred or after the quarter in which closing occurred. However, § 1003.4(a)(17) and its associated commentary will be effective on January 1, 2018, while § 1003.5(a)(1)(ii) will be effective on January 1, 2020. The Bureau believes that comment 4(a)(17)(i)–3 should discuss only provisions of Regulation C that will be effective on or before January 1, 2018, and should not refer to provisions of the rule that become effective after the comment takes effect.

Accordingly, the Bureau proposes to amend comment 4(a)(17)(i)–3 so that its illustrative example refers to a financial institution's annual loan/application register submission made pursuant to current § 1003.5(a)(1) instead of to its quarterly submission made pursuant to § 1003.5(a)(1)(ii). The Bureau proposes to remove the language in comment 4(a)(17)(i)–3 regarding what a financial institution reports in its quarterly submission when the corrected disclosure is provided prior to the end of the quarter in which closing occurred or after the quarter in which closing occurred.

For additional clarity, the Bureau proposes to amend comment 4(a)(17)(i)–3 to explain that for purposes of compliance with § 1003.4(a)(17)(i), the date the corrected disclosure was provided to the borrower is the date disclosed pursuant to Regulation Z § 1026.38(a)(3)(i). The Bureau believes this amendment would facilitate compliance by clarifying the date on which the corrected disclosure is provided to the borrower for purposes of § 1003.4(a)(17)(i). The Bureau also proposes to amend the comment to substitute ''corrected'' for ''revised'' to reflect the language used in Regulation Z § 1026.19(f)(2), and to add additional clarifications that such corrected disclosures are provided ''to the borrower.'' Additionally, the Bureau proposes to amend comment 4(a)(17)(i)–3 to explain that a 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 final action is taken. The Bureau believes that replacing ''during the same reporting period'' with ''prior to the end of the reporting period'' would clarify the reporting requirement when final action is taken after the reporting period in which the corrected disclosure is provided to the borrower. The Bureau believes that referring to the reporting period in which final action is taken, rather than when closing occurred, would improve clarity and consistency with the language used in Regulation C.

Additionally, the Bureau proposes certain amendments to proposed comment 4(a)(17)(i)–3 effective January 1, 2020. Because § 1003.5(a)(1)(ii) takes effect January 1, 2020, the Bureau believes that, effective January 1, 2020, it would be appropriate to amend proposed comment 4(a)(17)(i)–3 to incorporate the guidance and illustrative example adopted by the Final Rule regarding a financial institution's quarterly submission under § 1003.5(a)(1)(ii). The proposal generally would retain the clarifications to comment 4(a)(17)(i)–3 that the Bureau proposes to adopt effective January 1, 2018, but would amend the illustrative example in proposed comment 4(a)(17)(i)–3 regarding the annual loan/application register to refer to § 1003.5(a)(1)(i), which takes effect on January 1, 2019. As discussed in the section-by-section analyses of §§ 1003.4(a)(18) through (20) below, the Bureau proposes parallel amendments to comments 4(a)(18)–3, 4(a)(19)–3, and (4)(a)(20)–3, respectively, to address the different effective dates for certain reporting requirements and to make minor clarifications. The Bureau solicits comment on the proposed amendments.

4(a)(18)

Pursuant to HMDA sections 305(a) and 304(b)(5)(D), in the Final Rule the Bureau adopted § 1003.4(a)(18) to require financial institutions to report, for covered loans subject to the disclosure requirements in Regulation Z § 1026.19(f), the total of all itemized amounts that are designated borrower-paid at or before closing, as disclosed pursuant to § 1026.38(f)(1). Comment 4(a)(18)–3, adopted by the Final Rule, provides guidance in situations where a financial institution has issued a revised Closing Disclosure with a new amount of total origination charges. For the same reasons set forth in the section-by-section analysis of § 1003.4(a)(17) above, the Bureau proposes amendments to comment 4(a)(18)–3 to reflect the different effective dates for certain reporting requirements and to make other minor clarifications. The Bureau solicits comment on the proposed amendments.

4(a)(19)

Pursuant to HMDA sections 305(a) and 304(b)(5)(D), in the Final Rule the Bureau adopted § 1003.4(a)(19) to require 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, expressed in dollars, as described in Regulation Z § 1026.37(f)(1)(i) and disclosed pursuant to § 1026.38(f)(1). Comment 4(a)(19)–3, adopted by the Final Rule, provides guidance in situations where a financial institution has issued a revised Closing Disclosure with a new amount of discount points. For the same reasons set forth in the section-by-section analysis of § 1003.4(a)(17) above, the Bureau proposes amendments to comment 4(a)(19)–3 to reflect the different effective dates for certain reporting requirements and to make other minor clarifications. The Bureau solicits comment on the proposed amendments.

4(a)(20)

Pursuant to HMDA sections 305(a) and 304(b)(5)(D), in the Final Rule the Bureau adopted § 1003.4(a)(20) to require financial institutions to report, for covered loans subject to the disclosure requirements in Regulation Z § 1026.19(f), the total amount of lender credits, as disclosed pursuant to § 1026.38(h)(3). Comment 4(a)(20)–3, adopted by the Final Rule, provides guidance in situations where a financial institution has issued a revised Closing Disclosure with a new amount of lender credits. For the same reasons set forth in the section-by-section analysis of § 1003.4(a)(17) above, the Bureau proposes amendments to comment 4(a)(20)–3 to reflect the different effective dates for certain reporting requirements and to make other minor clarifications. The Bureau solicits comment on the proposed amendments.

4(a)(21)

Pursuant to HMDA sections 305(a) and 304(b)(6)(J), the Bureau adopted § 1003.4(a)(21) in the Final Rule to require financial institutions to report the interest rate applicable to the approved application or to the covered loan at closing or account opening. Comment 4(a)(21)–1 clarifies the interest rate that financial institutions must report for covered loans or applications subject to the disclosure requirements of Regulation Z § 1026.19(e) or (f). For the reasons set forth below, the Bureau proposes certain amendments to comment 4(a)(21)–1.

Comment 4(a)(21)–1 explains that § 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. In relevant part, comment 4(a)(21)–1 also provides that, for covered loans or applications subject to the disclosure requirements of Regulation Z § 1026.19(e) or (f), a financial institution complies with § 1003.4(a)(21) by reporting the interest rate disclosed on the applicable disclosure. It explains that, for covered loans for which disclosures were provided pursuant to both § 1026.19(e) and (f), a financial institution reports the interest rate disclosed pursuant to § 1026.19(f). Comment 4(a)(21)–1 does not address the interest rate that a financial institution must report when a creditor provides a revised version of the disclosures required under Regulation Z § 1026.19(e) or (f), as applicable. However, as discussed in the section-by-section analyses of § 1003.4(a)(17) through (20) above, the Final Rule does provide guidance regarding the reporting requirements for certain other pricing data points when a revised disclosure under Regulation Z § 1026.19(f) is provided. The Bureau believes similar commentary to § 1003.4(a)(21) would clarify how a financial institution complies with § 1003.4(a)(21) when a revised disclosure is provided.

Accordingly, the Bureau proposes to amend comment 4(a)(21)–1 to add language explaining that, if a financial institution provides a revised or corrected version of the disclosures required under Regulation Z § 1026.19(e) or (f), pursuant to § 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. The comment would also explain that 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 § 1026.37(a)(4) or § 1026.38(a)(3)(i), as applicable. Additionally, because § 1003.4(a)(21) applies to covered loans and approved applications, the Bureau proposes to clarify in comment 4(a)(21)–1 that the guidance regarding the reporting requirements when disclosures are provided pursuant to both § 1026.19(e) and (f) applies to both covered loans and approved applications. To improve clarity, the Bureau also proposes to amend comment 4(a)(21)–1 to refer to the integrated mortgage disclosure requirements of Regulation Z § 1026.19(e) and (f), rather than the disclosure requirements of Regulation Z § 1026.19(e) or (f). The Bureau solicits comment on the proposed amendments.

4(a)(24)

Pursuant to its authority under sections 305(a) and 304(b)(6)(J) of HMDA, the Bureau adopted § 1003.4(a)(24) in the Final Rule to require, except for purchased covered loans, 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. 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 generally is referred to as the combined loan-to-value (CLTV) ratio. The Bureau proposes a technical correction to comment 4(a)(24)–2, adopted in the Final Rule, and to add new comment 4(a)(24)–6 to provide additional guidance on the requirement to report the CLTV ratio relied on in making the credit decision.

Comment 4(a)(24)–2 explains that a financial institution relies on the total amount of debt secured by the property to the value of the property in making the credit decision if the CLTV ratio was a factor in the credit decision even if it was not a dispositive factor, and it provides an illustrative example. Section 1003.4(a)(24) requires, except for purchased covered loans, that a financial institution 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. In the Final Rule, the Bureau inadvertently omitted language in comment 4(a)(24)–2 regarding ''the ratio of'' in the discussion of the CLTV ratio reporting requirement. To correct this omission, the Bureau proposes a technical correction to comment 4(a)(24)–2. The comment would explain that a financial institution relies on the ratio of the total amount of debt secured by the property to the value of the property in making the credit decision if the CLTV ratio was a factor in the credit decision even if it was not a dispositive factor.

Additionally, the Bureau understands that there may be uncertainty regarding the value of the property to be used in the CLTV ratio calculation. Section 1003.4(a)(24) requires reporting of 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. Section 1003.4(a)(24) does not require a specific method of calculating the CLTV ratio. In contrast to certain other data points adopted by the Final Rule,[65] the Bureau did not specify that the CLTV ratio relates to the value of the property securing the covered loan or to the property identified in § 1003.4(a)(9). The Bureau did not intend to require that a specific property or properties be used in the CLTV ratio calculation. Instead, a financial institution complies with § 1003.4(a)(24) by reporting the CLTV ratio relied on in making the credit decision, regardless of which property or properties it used in the CLTV ratio calculation.

To clarify further this intent, the Bureau proposes to add new comment 4(a)(24)–6 to explain that a financial institution reports the CLTV ratio relied on in making the credit decision, regardless of which property or properties it used in the CLTV ratio calculation. The proposed comment would explain that the property used in the CLTV 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, and it would provide an illustrative example. Proposed comment 4(a)(24)–6 would also explain that § 1003.4(a)(24) does not require a financial institution to use a particular CLTV ratio calculation method but

[65] For example, § 1003.4(a)(31) requires a financial institution to report the number of individual dwelling units related to the property securing the covered loan or, in the case of an application, proposed to secure the covered loan. Comments 4(a)(29)–4 and 4(a)(30)–6 provide that 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.

instead requires financial institutions to report the CLTV ratio relied on in making the credit decision. The Bureau solicits comment on the proposed technical correction and clarification.

4(a)(26)

HMDA section 304(b)(6)(B), as amended by the Dodd-Frank Act, requires the reporting of the actual or proposed term in months of any introductory period after which the rate of interest may change.[66] The Bureau implemented HMDA section 304(b)(6)(B) in the Final Rule by adopting § 1003.4(a)(26) to require that financial institutions collect and report data on the number of months, or proposed number of months in the case of an application, until the first date the interest rate may change after closing or account opening. For the reasons explained below, the Bureau proposes additional commentary to § 1003.4(a)(26) to clarify reporting requirements for non-monthly introductory interest rate periods.

The Bureau understands that there may be uncertainty regarding how a financial institution complies with § 1003.4(a)(26) when an introductory interest rate period is measured in a time other than months, for example, in days or weeks. The commentary to § 1003.4(a)(26) includes examples illustrating how a financial institution complies with the requirement to report introductory interest rate periods calculated in whole months. The Bureau intended that a financial institution report whole months under § 1003.4(a)(26). However, the Final Rule did not address how a financial institution complies with § 1003.4(a)(26) when a covered loan or application includes a non-monthly introductory interest rate period. In contrast, § 1003.4(a)(25), adopted by the Final Rule to require financial institutions to report the loan term, does include commentary clarifying the treatment of non-monthly repayment periods. Specifically, comment 4(a)(25)–2 clarifies that, when a covered loan or application includes a schedule with repayment periods measured in a unit of time other than months, the financial institution complies with § 1003.4(a)(25) by reporting the covered loan or application term using an equivalent number of whole months without regard for any remainder. The Bureau believes a similar explanation in the commentary to § 1003.4(a)(26) regarding non-monthly introductory interest rate periods would be helpful.

For the reasons explained above, the Bureau proposes to add new comment 4(a)(26)–5 to explain that, 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, and the proposed comment would provide an illustrative example. Proposed comment 4(a)(26)–5 would also explain that the financial institution must report one month for any introductory interest rate period that totals less than one whole month. The Bureau solicits comment on this proposed clarification.

4(a)(34)

HMDA section 304(b)(6)(F) requires the reporting of, ''as the Bureau may determine to be appropriate, a unique identifier that identifies the loan originator as set forth in'' the SAFE Act.[67] Section 1003.4(a)(34) as adopted by the Final Rule implements this provision by requiring the reporting of the unique identifier assigned to the loan originator by the National Mortgage Licensing System and Registry (NMLSR ID) for covered loans and applications, including purchased loans. Comment 4(a)(34)–2 as adopted by the Final Rule explains that 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.

The preamble to the Final Rule explains that the Bureau believed that reporting the NMLSR ID would impose little to no ongoing cost for financial institutions because the information is required to be provided on certain loan documents pursuant to Regulation Z's loan originator rules.[68] However, the Bureau has become aware that financial institutions reporting covered loans that they purchase may sometimes have difficulty reporting this information because the NMLSR ID may not be listed on the loan documents of purchased loans. Purchasers of covered loans have pointed out that they may purchase loans after the effective date of the Final Rule that were originated before Regulation Z's loan originator rules became effective on January 10, 2014. As a result, the loan documents may not include the NMLSR ID, even when the loan originator had been assigned one and it must be reported according to the interpretation in comment 4(a)(34)–2. In such a circumstance, it may impose considerable challenges to require purchasers to acquire this information. In addition, the Bureau believes that the number of reportable loans purchased after January 1, 2018, that were originated before January 10, 2014, will be relatively small and will diminish over time. Therefore, the Bureau proposes a transitional rule in new comment 4(a)(34)–4. The comment would explain that 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, the loan documents for purchased loans that are not covered by the loan originator rules under Regulation Z may not include the NMLSR ID either, even when the loan originator has been assigned an NMLSR ID and a later purchaser must report it according to the interpretation in comment 4(a)(34)–2, as adopted by the Final Rule, if it is a covered loan (*e.g.,* a commercial purpose home purchase loan). For this reason, originators of such covered loans will need to arrange to have the NMLSR ID available to preserve secondary market viability. The Bureau believes that it is appropriate to provide sufficient time for originators and purchasers to develop processes that will ensure compliance in this situation. Therefore, the Bureau proposes a second transitional rule in new comment 4(a)(34)–4. The comment would explain that 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.

Proposed comment 4(a)(34)–4 would also make clear that purchasers of the loans exempted by the transitional rules discussed above may, however, report the NMLSR ID voluntarily. The Bureau solicits comment on the proposed transitional rules.

[66] Dodd-Frank Act section 1094(3)(A)(iv); 12 U.S.C. 2803(b)(6)(B).

[67] Dodd-Frank Act section 1094(3)(A)(iv), 12 U.S.C. 2803(b)(6)(F).

[68] 80 FR 66128, 66231 (Oct. 28, 2015). *See* Regulation Z, § 1026.36(g).

4(a)(35)

In the Final Rule, pursuant to its authority under sections 305(a) and 304(b)(6)(J) of HMDA, the Bureau adopted § 1003.4(a)(35)(i) to require a financial institution to report, except for purchased covered loans, the name of the automated underwriting system (AUS) it used to evaluate the application and the result generated by that AUS. As adopted by the Final Rule, § 1003.4(a)(35)(ii) provides that an AUS means an electronic tool developed by a securitizer, Federal government insurer, or Federal government guarantor 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. For the reasons set forth below, the Bureau proposes to amend § 1003.4(a)(35)(ii) and comment 4(a)(35)–2, as adopted by the Final Rule, and to add comment 4(a)(35)–7.

The Bureau understands there may be uncertainty regarding the definition of AUS adopted by § 1003.4(a)(35)(ii). Specifically, § 1003.4(a)(35)(ii) does not explain what type of product a person must be securitizing, insuring, or guaranteeing to be considered a securitizer, Federal government insurer, or Federal government guarantor for purposes of the AUS definition. The Bureau recognizes that the Final Rule could be read broadly, such that, for example, a person securitizing only non-dwelling secured assets could be considered a securitizer for purposes of § 1003.4(a)(35)(ii). Additionally, § 1003.4(a)(35)(ii) does not specify the timeframe relevant to the determination of whether a person is considered a securitizer, Federal government insurer, or Federal government guarantor for purposes of the AUS definition. The Bureau has received questions regarding whether an electronic tool satisfies the AUS definition where it is developed by a securitizer, Federal government insurer, or Federal government guarantor and thus meets the definition of AUS, but the developer of the AUS is no longer an active securitizer, Federal government insurer, or Federal government guarantor at the time a financial institution uses the tool to evaluate an application. The Bureau is concerned that, without further clarification, the AUS reporting requirement could be interpreted as applying only when the developer of the AUS is an active securitizer, Federal government insurer, or Federal government guarantor at the time a financial institutions uses the AUS to evaluate an application.

To address these uncertainties, the Bureau proposes certain amendments to § 1003.4(a)(35)(ii). Proposed § 1003.4(a)(35)(ii) would explain that, for purposes of § 1003.4(a)(35), 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. The Bureau believes it may be appropriate to clarify that the definition of AUS is limited to 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 because information related to closed-end mortgage loans or open-end lines of credit is reportable under HMDA. The Bureau believes the results from the electronic tools developed by these persons may provide more useful AUS data to further HMDA's purposes than, for example, the results from an electronic tool developed by a securitizer of only non-dwelling secured assets.

Additionally, the Bureau proposes to amend § 1003.4(a)(35)(ii) to add an explanation that 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, provided Federal government insurance, or provided a Federal government guarantee for a closed-end mortgage loan or open-end line of credit. The Bureau believes this proposed language would clarify that a person's status as a securitizer, Federal government insurer, or Federal government guarantor of closed-end mortgage loans or open-end lines of credit for purposes of § 1003.4(a)(35)(ii) is not dependent on its status as an active securitizer, Federal government insurer, or Federal government guarantor of closed-end mortgage loans or open-end lines of credit at the time a financial institution uses the AUS to evaluate an application. Instead, if a person is or has been a securitizer, Federal government insurer, or Federal government guarantor of closed-end mortgage loans or open-end lines of credit at any time and it develops an electronic tool that meets the AUS definition under § 1003.4(a)(35)(ii), that electronic tool continues to be an AUS for purposes of Regulation C even if the person is no longer securitizing, insuring, or guaranteeing closed-end mortgage loans or open-end lines of credit at the time the AUS is used by a financial institution to evaluate an application. Given the value of AUS data in furthering HMDA's purposes, the Bureau believes this proposed clarification is important to ensuring the continued availability of reliable AUS data regardless of potential changes in the marketplace that may affect a person's status as an active securitizer, Federal government insurer, or Federal government guarantor of closed-end mortgage loans or open-end lines of credit.

The Bureau also believes it could be less challenging for a financial institution to make a one-time affirmative determination that the person that developed the electronic tool it is using to evaluate an application has ever been a securitizer, Federal government insurer, or Federal government guarantor of closed-end mortgage loans or open-end lines of credit, respectively, than to determine if the developer is an active securitizer, Federal government insurer, or Federal government guarantor at any given point in time. As discussed in more detail below, the Bureau proposes new comment 4(a)(35)–7 to provide guidance on a financial institution's determination of whether the developer of the electronic tool it is using to evaluate an application is a securitizer, Federal government insurer, or Federal government guarantor of closed-end mortgage loans or open-end lines of credit.

The Bureau proposes conforming amendments to comment 4(a)(35)–2 to reflect the proposed amendments to § 1003.4(a)(35)(ii). Comment 4(a)(35)–2 explains the definition of AUS and provides illustrative examples of the reporting requirement. The proposal would amend comment 4(a)(35)–2 to clarify that, to be covered by the AUS 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. The Bureau also proposes to explain in comment 4(a)(35)–2 that 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. The proposed comment would provide that 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 system in question. Additionally, proposed comment 4(a)(35)–2 would clarify that 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 since an AUS, as defined in proposed § 1003.4(a)(35)(ii), was not used to evaluate the application.

The Bureau proposes new comment 4(a)(35)–7 to add clarity regarding a financial institution's determination of whether the system it is using to evaluate an application is 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. Proposed comment 4(a)(35)–7 would set forth the definition of AUS under proposed § 1003.4(a)(35)(ii). It would clarify that 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. Proposed comment 4(a)(35)–7 would explain that 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.

Additionally, proposed comment 4(a)(35)–7 would provide that 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). The comment would explain that 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. Finally, the proposed comment would include illustrative examples demonstrating how a financial institution complies with § 1003.4(a)(35) depending on whether or not it 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. The Bureau believes that proposed comment 4(a)(35)–7 would provide clarity regarding how a financial institution determines its reporting requirement under § 1003.4(a)(35) and would facilitate HMDA compliance.

The Bureau solicits comment on these proposed amendments. The Bureau seeks specific comment on the burden associated with determining whether a person has ever securitized, provided Federal government insurance, or provided a Federal government guarantee for a closed-end mortgage loan or open-end line of credit such that it is, under proposed § 1003.4(a)(35)(ii), a securitizer, Federal government insurer, or Federal government guarantor of closed-end mortgage loans or open-end lines of credit, respectively.

Section 1003.5 Disclosure and Reporting

5(a)

5(a)(3)

Pursuant to HMDA section 305(a), in the Final Rule the Bureau adopted § 1003.5(a)(3), effective January 1, 2019, to require financial institutions to provide their Legal Entity Identifier (LEI) when reporting HMDA data and to set forth certain other requirements regarding the information a financial institution must include in its submission. Specifically, § 1003.5(a)(3)(ii) requires a financial institution to provide with its submission the calendar year the data submission covers pursuant to § 1003.5(a)(1)(i) or calendar quarter and year the data submission covers pursuant to § 1003.5(a)(1)(ii). The Bureau proposes to amend § 1003.5(a)(3)(ii) to reflect the different effective dates for annual reporting requirements in § 1003.5(a)(1)(i) and quarterly reporting requirements in § 1003.5(a)(1)(ii) adopted by the Final Rule.

The Bureau is concerned that § 1003.5(a)(3)(ii) references the new quarterly reporting requirements in § 1003.5(a)(1)(ii) that will not yet be in effect when § 1003.5(a)(3)(ii) takes effect on January 1, 2019. Although the revised annual reporting requirements adopted by § 1003.5(a)(1)(i) will be effective on January 1, 2019, the new requirements for certain financial institutions to submit a quarterly loan/application register under § 1003.5(a)(1)(ii) will not be effective until January 1, 2020. To address this misalignment, the Bureau proposes to amend § 1003.5(a)(3)(ii), effective January 1, 2019, to remove the language regarding the calendar quarter and the year the data submission covers pursuant to § 1003.5(a)(1)(ii). Proposed § 1003.5(a)(3)(ii) would instead require only that a financial institution provide with its submission the calendar year the data submission covers pursuant to § 1003.5(a)(1)(i).

Additionally, the Bureau proposes to amend § 1003.5(a)(3)(ii), effective January 1, 2020, to incorporate the language adopted by the Final Rule regarding the calendar quarter and the year the data submission covers pursuant to § 1003.5(a)(1)(ii). As discussed above, § 1003.5(a)(1)(ii) will be effective on January 1, 2020. Therefore, the Bureau proposes to amend § 1003.5(a)(3)(ii) as of that same date to require a financial institution to provide with its submission the calendar year the data submission covers pursuant to § 1003.5(a)(1)(i) or calendar quarter and year the data submission covers pursuant to § 1003.5(a)(1)(ii). The Bureau solicits comment on the proposed amendment.

Section 1003.6 Enforcement

6(b) Bona fide errors

Current § 1003.6(b) provides that ''bona fide errors'' are not violations of HMDA and Regulation C and provides guidance about what qualifies as a bona fide error. Current § 1003.6(b)(2) provides that an incorrect entry for a census tract number is deemed a bona fide error, and is not a violation of HMDA or Regulation C, if the financial institution maintains procedures reasonably adapted to avoid such errors. For the reasons set forth below, the Bureau proposes amendments to the commentary to current § 1003.6(b) to clarify that incorrect entries reporting the census tract number of a property are not a violation of the HMDA or Regulation C, if the financial institution properly uses a geocoding tool made available through the Bureau's Web site (the Bureau's geocoding tool), the financial institution enters an accurate property address, and the tool provides a census tract number for the property address entered.

Section 1003.4(a)(9)(ii)(C) requires financial institutions to report the census tract of the property securing or, in the case of an application, proposed to secure the covered loan if the property is located in a MSA or MD in which the institution has a home or branch office. In addition, § 1003.4(e) requires banks and savings associations that are required to report data on small business, small farm, and community development lending under regulations that implement the Community Reinvestment Act to report the census tract of properties located outside MSAs and MDs in which the institution has a home or branch office or outside of any MSA.

To ease the burden associated with reporting the census tract required by Regulation C, the Bureau plans to make available on its Web site a geocoding tool to provide the census tract based on property addresses entered by users. The Bureau proposes new comment 6(b)–2 to clarify that obtaining census tract information for covered loans and applications from the Bureau's geocoding tool is an example of a procedure reasonably adapted to avoid incorrect entries for a census tract number under current § 1003.6(b)(2). The proposed comment would state that a census tract error is not a violation of the HMDA or Regulation C if the financial institution obtained the census tract number from the Bureau's geocoding tool if the financial institution used the tool appropriately. The proposed comment would provide further that a financial institution's failure to provide the required census tract information for a covered loan or application on its loan/application register because the Bureau's geocoding tool did not provide a census tract for the property address entered by the financial institution is not excused as a bona fide error. The proposed comment would also explain that a census tract error caused by a financial institution entering an inaccurate property address into the Bureau's geocoding tool is not excused as a bona fide error. The Bureau also proposes to add in comment 6(b)–1 a cross reference to proposed comment 6(b)–2. The Bureau solicits comment on these proposed amendments to the commentary.

6(c) Quarterly Recording and Reporting

Currently, § 1003.6(b)(3) provides that errors and omissions in data that a financial institution records on its loan/application register on a quarterly basis as required under § 1003.4(a) are not violations of HMDA or Regulation C if the institution makes a good-faith effort to record all required data fully and accurately within thirty calendar days after the end of each calendar quarter and corrects or completes the data prior to reporting the data to its appropriate Federal agency. In the Final Rule, the Bureau moved the substance of current § 1003.6(b)(3) to new § 1003.6(c)(1) and added new § 1003.6(c)(2) to provide that a similar safe harbor applies to data reported on a quarterly basis pursuant to § 1003.5(a)(1)(ii). Pursuant to § 1003.6(c)(2), errors and omissions in the data submitted pursuant to § 1003.5(a)(1)(ii) will not be considered HMDA or Regulation C violations assuming the conditions that currently provide a safe harbor for errors and omissions in quarterly recorded data are satisfied. In the Final Rule the Bureau adopted an effective date of January 1, 2019 for § 1003.6, and an effective date of January 1, 2020 for the quarterly reporting requirements in § 1003.5(a)(1)(ii).

The Bureau proposes to amend § 1003.6(c)(2) so that its effective date aligns to the effective date for the quarterly reporting requirements in § 1003.5(a)(1)(ii), for which § 1003.6(c)(2) provides a safe harbor. Accordingly, the Bureau proposes to remove § 1003.6(c)(2) and to redesignate § 1003.6(c)(1) as § 1003.6(c) effective January 1, 2019. The Bureau proposes to add § 1003.6(c)(2), as adopted by the Final Rule, and to redesignate § 1003.6(c) as § 1003.6(c)(1) effective January 1, 2020. The Bureau solicits comment on this proposed amendment.

Appendix B to Part 1003—Form and Instructions for Data Collection of Ethnicity, Race, and Sex

HMDA and Regulation C currently require financial institutions to collect the ethnicity, race, and sex of an applicant or borrower for covered loans and applications.[69] Current appendix B to Regulation C provides data collection instructions and a sample data collection form for use in collecting an applicant's or borrower's information. In the Final Rule, the Bureau revised the ethnicity, race, and sex data collection requirements and instructions.[70] Among other changes, revised appendix B requires financial institutions to collect disaggregated ethnic and racial categories beginning January 1, 2018. For the reasons set forth below and to facilitate implementation, the Bureau proposes certain amendments to the instructions and sample data collection form contained in revised appendix B.

Ethnicity and Race Subcategories

Through outreach in support of implementing the Final Rule, the Bureau was asked whether an applicant must select Hispanic or Latino in order to select one of the four ethnicity subcategories and about potential inconsistencies between instructions 8 and 9.i in revised appendix B, as adopted by the Final Rule. Instruction 8 provides that financial institutions must report the ethnicity, race, and sex of an applicant as provided by the applicant. It provides the example that if an applicant selects the Mexican subcategory, the financial institution reports Mexican for the ethnicity of the applicant. Instruction 9.i similarly provides that a financial institution must report each ethnicity category and subcategory selected by the applicant. On the other hand, instruction 9.i also provides that, if an applicant selects Hispanic or Latino, the applicant may select up to four ethnicity subcategories.

To clarify the requirements, the Bureau proposes to amend instructions 8 and 9.i to provide that an applicant is not required to select an aggregate category as a precondition to selecting a subcategory. Specifically, the Bureau proposes to amend instruction 8 to provide that an applicant may select an ethnicity or race subcategory even if the applicant does not select an aggregate ethnicity or aggregate race category and to provide an example to facilitate compliance. The example also clarifies that a financial institution should not report an aggregate category if not selected by the applicant. The Bureau also proposes to amend instruction 9.i to remove language concerning the selection of Hispanic or Latino as a precondition to selecting the ethnicity subcategories.

[69] 12 U.S.C. 2803(b)(4); § 1003.4(a)(10).

[70] Section 1003.4(a)(10)(i); comment 4(a)(10)(i); appendix B to part 1003.

The Bureau believes the proposed revisions to instructions 8 and 9.i would add greater clarity and ensure that financial institutions report the ethnicity and race subcategories selected by the applicant (subject to the five-ethnicity and race maximums discussed below). Consistent with the requirement in instruction 8 that a financial institution report ethnicity and race as provided by the applicant, the Bureau believes that a financial institution should provide applicants an opportunity to select any of the ethnicity and race categories and subcategories set forth in revised appendix B. The Bureau solicits comment on these proposed clarifications to instructions 8 and 9.i.

Other Ethnicity and Other Race Subcategories

The Bureau is concerned that the conditional language in instructions 9.ii and 9.iv may be interpreted as requiring an applicant to select the Other ethnicity or Other race subcategories (*e.g.,* Other Hispanic or Latino or Other Asian) before the applicant is permitted to provide a particular ethnicity or race subcategory not listed in the standard subcategories. Instruction 9.ii provides that, if an applicant selects the Other Hispanic or Latino ethnicity subcategory, the applicant may also provide a particular Hispanic or Latino ethnicity not listed in the standard subcategories. Instruction 9.iv similarly provides that, if an applicant selects the Other Asian race subcategory or the Other Pacific Islander race subcategory, the applicant may also provide a particular Other Asian or Other Pacific Islander race not listed in the standard subcategories.

The Bureau proposes to amend instruction 9.ii to clarify that an applicant may provide a particular Hispanic or Latino ethnicity not listed in the standard subcategories, whether or not the applicant selects the Other Hispanic or Latino ethnicity subcategory. Specifically, the Bureau proposes to amend instruction 9.ii to provide that an applicant may select the Other Hispanic or Latino ethnicity subcategory, an applicant may provide a particular Hispanic or Latino ethnicity not listed in the standard subcategories, or an applicant may do both. The Bureau also proposes to amend instruction 9.ii to provide an example. Similarly, the Bureau proposes to amend instruction 9.iv to clarify that an applicant is not required to select the Other Asian or Other Pacific Islander subcategory in order to provide a particular Other Asian or Other Pacific Islander subcategory not listed in the standard subcategories. Rather, an applicant may select the Other Asian or Other Pacific Islander subcategory, provide a particular Other Asian or Other Pacific Islander subcategory, or do both. The Bureau also proposes to amend instruction 9.iv to provide an example.

The Bureau believes the proposed revisions would ensure that an applicant is given an opportunity to provide an Other ethnicity or Other race subcategory not listed in the standard subcategories without first having to select the Other ethnicity or Other race subcategory. The Bureau believes that restricting when an applicant may provide Other ethnicity or Other race subcategories is inconsistent with instruction 8. The Bureau solicits comment on these proposed revisions to instructions 9.ii an 9.iv.

Five-Ethnicity Maximum

Since issuing the Final Rule, the Bureau has received inquiries concerning how to report an applicant's ethnicity if an applicant selects or provides more than five ethnicity designations. Instruction 9 requires a financial institution to offer an applicant the option to select more than one ethnicity or race. Instruction 9.i sets forth two aggregate ethnicity categories and four ethnicity subcategories that may be selected by an applicant (for a total of six categories and subcategories). Instruction 9.i requires that a financial institution report each aggregate ethnicity category and each ethnicity subcategory selected by the applicant. As reflected in the filing instructions guide for HMDA data collected in 2018 (FIG), however, a financial institution may report up to only five ethnicity codes.[71] In the Final Rule, the Bureau set forth a five-race maximum and related instructions for reporting race categories and race subcategories combined. Although the Bureau does not believe there will be many instances in which an applicant will select all ethnicity categories and ethnicity subcategories, the absence of a similar five-ethnicity maximum and instructions in the Final Rule was an inadvertent oversight.

Accordingly, the Bureau proposes to amend instruction 9.i to provide instructions to financial institutions on how to report ethnicity if an applicant selects both aggregate ethnicity categories and all four ethnicity subcategories. The proposed revisions mirror the instructions for how to report more than five aggregate race categories or race subcategories in instructions 9.iii. Specifically, the Bureau proposes to revise instruction 9.i to provide that a financial institution must report every aggregate ethnicity category selected by the applicant. The revised instruction would provide that a financial institution must also report every ethnicity subcategory selected by the applicant, except that a financial institution must not report more than a total of five aggregate ethnicity categories and ethnicity subcategories combined.

The Bureau also proposes to make conforming amendments to instruction 9.ii. The Bureau proposes to amend instruction 9.ii to clarify that, if an applicant selects the Other Hispanic or Latino subcategory and provides a particular Hispanic or Latino subcategory not listed in the standard subcategories, the financial institution should count the information as one selection for the purposes of reporting the five-ethnicity maximum. The proposed revisions to instruction 9.ii mirror the instructions for reporting the Other race subcategories in instruction 9.iv.

The Bureau seeks comment on these proposed revisions to instructions 9.i and 9.ii.

Sample Data Collection Form

The Bureau also proposes to make several technical corrections to the sample data collection form contained in revised appendix B, which is used for the collection of ethnicity, race, and sex information about the applicant or borrower. The sample data collection form provides instructions to the applicant concerning how to complete the form. Among other instructions, the form directs that an applicant may select one or more Hispanic or Latino origins and one or more designations for race. The sample data collection form also includes directions for the applicant to ''[c]heck one or more'': The first direction to check one or more appears next to the Hispanic or Latino category, and the second direction to check one or more appears next to the ''Race'' heading of the form. Both instructions to check one or more appear on only the side of the form designated for collecting an applicant's information; those instructions do not appear on the side of the form designated for the collection of a co-applicant's information.

[71] Consumer Fin. Prot. Bureau, Filing Instructions Guide for HMDA data collected in 2018, at 55, *available at http://www.consumerfinance.gov/data-research/hmda/static/for-filers/2018/2018-HMDA-FIG.pdf.* The FIG is a compendium of resources created by the Bureau to help financial institutions file HMDA data collected in 2018 with the Bureau in 2019.

The Bureau proposes to amend the sample data collection form to clarify that an applicant may select one or more aggregate ethnicity categories and ethnicity subcategories. Specifically, the Bureau proposes to revise the instructions to provide that an applicant may select one or more designations for ''Ethnicity'' and one or more designations for ''Race.'' The Bureau also proposes to move the instruction to check one or more next to the ''Ethnicity'' heading, rather than next to the Hispanic or Latino category. The Bureau believes these proposed amendments clarify that an applicant may select multiple ethnicity categories, including both aggregate ethnicity categories. The Bureau believes the proposed amendment is consistent with instruction 9 in revised appendix B, which provides that the applicant must be offered the option of selecting more than one ethnicity or race.

Additionally, the Bureau proposes a technical correction to the sample data collection form to clarify that the same instructions apply to both an applicant and co-applicant. Specifically, the Bureau proposes to also include the ''check one or more'' instructions on the side of the form designated for the collection of a co-applicant's ethnicity and race information.

The Bureau solicits comment on these proposed technical corrections to the sample data collection form.

VI. Section 1022(b)(2) of the Dodd-Frank Act

HMDA provides the public and public officials with information to help determine whether financial institutions are serving the housing needs of the communities in which they are located. It assists public officials in their determination of the distribution of public sector investments in a manner designed to improve the private investment environment.[72] It also assists in identifying possible discriminatory lending patterns and enforcing antidiscrimination statutes, which now are codified with HMDA's other purposes in Regulation C.[73]

In 2010, Congress enacted the Dodd-Frank Act, which amended HMDA and also transferred HMDA rulemaking authority and other functions from the Board to the Bureau.[74] In October 2015, the Bureau issued the 2015 HMDA Final Rule which implemented the Dodd-Frank Act amendments to HMDA.[75] The Final Rule modifies the types of institutions and transactions subject to Regulation C, the types of data that institutions are required to collect, and the processes for reporting and disclosing the required data.

Since issuing the Final Rule, the Bureau has conducted outreach with stakeholders, through participation in conferences concerning the Final Rule, communications with HMDA vendors, and informal inquiries submitted by financial institutions. As part of these efforts and through its own analysis of the Final Rule, the Bureau has identified certain technical errors in the Final Rule, ways to ease the burden of reporting certain data requirements, and clarifications of key terms that will facilitate compliance with the Final Rule. This proposal addresses these issues.

In developing the proposed rule, the Bureau has considered its potential benefits, costs, and impacts.[76] The Bureau requests comment on the preliminary analysis presented below as well as submissions of additional data that could inform the Bureau's analysis of the benefits, costs, and impacts. The Bureau has consulted with, or offered to consult with, the prudential regulators, the Securities and Exchange Commission, the Department of Housing and Urban Development, the Federal Housing Finance Agency, the Federal Trade Commission, the Department of Veterans Affairs, the Department of Agriculture, the Department of Justice, and the Department of the Treasury.

This proposal would make amendments to Regulation C to make technical corrections and clarify certain requirements under the Final Rule amending Regulation C and implementing the Dodd-Frank Act amendments to HMDA, in October of 2015.

In the 2015 HMDA Final Rule, the Bureau conducted an in-depth Section 1022(b)(2) analysis of the costs and benefits of the Final Rule. The Bureau chose a baseline for that analysis that was the state of the world before the provisions of the Dodd-Frank Act that amended HMDA are implemented by an amended Regulation C. The baseline for the below analysis is the world that would exist if the 2015 HMDA Final Rule took effect absent the amendments in this proposed rule. In other words, the potential benefits and costs of the provisions contained in this proposed rule are evaluated relative to the state of the world defined by the 2015 HMDA Final Rule.[77]

The Bureau does not deem most of the proposed amendments as substantive changes to the 2015 HMDA Final Rule. The amendments are largely clarifications and technical corrections that do not change the compliance requirements of the Final Rule, but should reduce burden by avoiding confusion on how to comply. Those few amendments that do make minor substantive changes would all reduce burden on industry and have either a positive or neutral effect on consumers.

To ease the burden associated with obtaining certain information about purchased loans, the proposal would establish certain transitional rules for reporting purchased loans, allowing financial institutions to opt not to report the loan purpose if the financial institution is reporting a purchased covered loan that was originated prior to January 1, 2018, and providing financial institutions with the option not to report the unique identifier for the loan originator when reporting purchased loans that were originated prior to January 10th of 2014.[78]

The proposal also would make clear that financial institutions may voluntarily report open-end lines of credit or closed-end mortgage loans even if the institution may exclude those loans pursuant to the transactional thresholds included in § 1003.3(c)(11) or (12) under the Final Rule.

The proposal would provide assurances to financial institutions that obtain the census tract number from the forthcoming geocoding tool provided by the Bureau, provided that the tool returned a census tract number for the address entered and that the financial institution entered an accurate property address into the tool.

The proposal would clarify certain key terms, including temporary financing, automated underwriting system, multifamily dwelling, extension of credit, income, and mixed-use property. The proposal also would

[72] HMDA section 302(b), 12 U.S.C. 2801(b); *see also* 12 CFR 1003.1(b)(1)(i) and (ii).

[73] 54 FR 51356, 51357 (Dec. 15, 1989), *codified at* 12 CFR 1003.1(b)(1).

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

[75] October 2015 HMDA Final Rule, 80 FR 66128.

[76] 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.

[77] Because the analysis of the 2015 Final Rule reflected the Bureau's intended transactional thresholds, rather than those created by the drafting error in §§ 1003.3(c)(11), (12), the baseline incorporates this rulemaking's proposed correction of the error.

[78] There is a third transitional rule that eases NMLSR ID reporting requirements for purchases of commercial loans originated prior to January 1, 2018, but it is expected to apply to only a very small number of loans.

exclude preliminary transactions associated with New York CEMAs, which would reduce burden by avoiding double reporting.

The proposal would correct a drafting error and align the transactional thresholds included in § 1003.3(c)(11) and (12) under the Final Rule with the institutional coverage thresholds included in § 1003.2(g). The proposal addresses certain technical aspects of reporting, such as how the reporting requirements for certain data points relate to disclosures required by the Bureau's Regulation Z and how to collect and report certain information about an applicant's race and ethnicity.

The proposed rule also includes a variety of minor changes and technical corrections.

The Bureau seeks comment on data that would help to quantify costs and benefits and any associated burden with the proposed changes. Specifically, the Bureau is seeking information on the projected number of loans that would be originated prior to January 1, 2018 and then purchased by financial institutions after January 1, 2018, and which would be required to be reported according to the 2015 HMDA Final Rule by HMDA reporting years. Similarly, the Bureau is seeking information on the projected number of loans that would be originated prior to January 10, 2014 and then purchased by financial institutions after January 1, 2018, and which would be required to be reported according to the 2015 HMDA Final Rule by HMDA reporting years. The Bureau is also seeking information on the projected numbers and characteristics of financial institutions that would opt to report open-end lines of credit or closed-end loans under HMDA even though they would have fallen below the respective loan-volume threshold. The Bureau is requesting any other data that would assist in quantifying the costs and benefits of this proposal.

B. Potential Benefits and Costs to Consumers and Covered Persons

Transitional Rules on Purchased Loans

Under the proposal, financial institutions can opt not to report the loan purpose under § 1003.4(a)(3) if the financial institution is reporting a purchased covered loan that was originated prior to January 1, 2018, the effective date of the new data collection requirements included in the Final Rule. The proposed rule would also provide financial institutions with the option not to report the unique identifier for the loan originator when reporting purchased loans that were originated prior to January of 2014, when Regulation Z's requirement to include the loan originator's unique identifier on loan documents went into effect. Thirdly, there is a transitional rule that eases NMLSR ID reporting requirements for purchases of commercial loans originated prior to January 1, 2018, but it is expected to apply to only a very small number of loans.

The Bureau believes providing these options to financial institutions would not add costs to financial institutions, but rather would be burden reducing. Without such temporary relief, it would be burdensome for financial institutions to obtain the relevant information on the loan purpose and NMLSR ID of the loans originated during the respective transitional periods. Specifically, each of the proposed transitional rules would remove one data point that is required to be reported for purchased loans that were originated in a time period prior to the January 1, 2018, effective date for the reportable data points in the 2015 HMDA Final Rule.

The extent to which the proposed transition rules would reduce burden depends on the complexity of the financial institutions and the number of loans affected. In the 2015 HMDA Final Rule, the Bureau categorizes financial institutions into 3 tiers: Low-complexity, moderate-complexity, and high-complexity. For each tier, the Bureau produced a reasonable estimate of the cost of compliance given the limitations of the available data. The Bureau believes most of the financial institutions that purchase loans and are required to report under HMDA are in the high-complexity tier, some possibly could be in the moderate-complexity tier, but probably very few are in the low-complexity category.

The Bureau currently lacks data, given the uncertainty of the market environment, to project the volume of purchased loans that would be covered under the proposed transitional rules after the 2015 HMDA Final Rule is effective. The Bureau generally believes that the number of reportable loans purchased after January 1, 2018, that were originated before January 1, 2018, will be relatively large in the beginning of 2018 but will diminish over time. The Bureau further understands that typically there is some delay between loan origination by small creditors and loan purchase by larger financial institutions. Providing a transitional rule to exempt these purchased loans from loan purpose reporting would therefore reduce the burden on those financial institutions. This would be particularly true during the first year or first few years after January 1, 2018. Further, the Bureau generally believes that the number of reportable loans purchased after January 1, 2018, that were originated before January 10, 2014, will be relatively small and will diminish over time. Providing a transitional rule to exempt those eligible purchased loans from NMLSR ID reporting would reduce the ongoing reporting cost on those financial institutions where the proposed change is applicable.

Regarding benefits to consumers, the Bureau expects the effects of the transitional rules for purchased loans to be small or nonexistent. HMDA reporting by purchasers does not directly affect consumers. To the extent that the rules create cost reductions relative to the baseline established by the 2015 HMDA Final rule, those reductions may be indirectly passed on to consumers. Standard economic theory predicts that in a market where financial institutions are profit maximizers, the affected financial institutions would pass on to consumers the cost saving per application or origination (*i.e.,* the reduction in marginal cost) and would retain the one-time cost saving and saving on fixed costs of complying with the rule.

Allowing Voluntary Reporting for Financial Institutions When Below Loan-Volume Thresholds

The proposal would clarify that financial institutions may voluntarily report open-end lines of credit or closed-end mortgage loans even if the institution may exclude those loans pursuant to the transactional thresholds included in § 1003.3(c)(11) or (12) under the Final Rule.

This clarification recognizes that some financial institutions may prefer to report loans even if they fall under the transactional thresholds in certain years. Thus, the proposed rule provides certain financial institutions an option. Economic theory predicts that a firm will exercise an option when (and only when) the firm benefits from doing so. Thus, an option granted to a financial institution has no impact on those that choose not to exercise the option, *i.e.,* they are no better or worse off than if the option had not been granted. Financial institutions that choose to exercise the option may incur benefits and costs but must benefit on net.

Regarding the option to report loans voluntarily, the Bureau believes the financial institutions that are most likely to exercise such options would be low-volume, low-complexity institutions that have made a one-time investment in HMDA reporting and would like to utilize that reporting capacity, which is already in place. They would only do so if the defrayed one-time adjustment costs more than offset the ongoing costs of reporting. The Bureau believes such options granted are burden reducing to financial institutions. The Bureau seeks comments on the data related to the potential number and characteristics of financial institutions that may be interested in opting into either closed-end or open-end voluntary HMDA reporting, even if they are not required to report under the Final Rule.

Consumers may benefit from the voluntary reporting clarification, to the extent that low-volume, low-complexity institutions achieve cost reductions and pass them on to their customers. The Bureau believes that such consumer savings would likely be small. Consumers may also benefit if low-volume, low complexity institutions are more willing to originate loans because passing the thresholds will not cause increased burden due to the fact that the institutions are already reporting HMDA information.

Deem Census Tract Errors as Bona Fide Errors if the Bureau's Geocoding Tool Is Used

The proposal would establish that a census tract error is a bona fide error and not a violation of HMDA or Regulation C if the financial institution obtained the incorrect census tract number from the geocoding tool provided by the Bureau, provided the financial institution used the tool appropriately, the tool provided a census tract number for the property address entered, and the financial institution entered an accurate property address into the tool.

Geocoding is often regarded as a pain point for many financial institutions for HMDA reporting. In the impact analyses in the 2015 HMDA Final Rule, the Bureau discussed implementing several operational enhancements including working to improve the geocoding process to reduce the burden on financial institutions. The Bureau provided cost estimates on financial institutions with or without those operational enhancements respectively. Therefore, compared to the baseline established in the impact analyses in 2015 HMDA Final Rule, this proposal is aligned with the operational enhancement already discussed in the Final Rule and goes even further by allowing more burden reduction for financial institutions' geocoding efforts. In the impact analyses of the 2015 HMDA Final Rule, the Bureau breaks down the typical HMDA operational process of financial institutions into 18 operational tasks. Specifically, the Bureau believes this proposal would reduce the costs of financial institutions on the following tasks: Completion of geocoding data, standard annual edit and internal check, internal audit, external audit, exam preparation and exam assistance on the issues related to geocoding. It would do so by providing a safe harbor that would further encourage financial institutions to use the geocoding tool that the Bureau is developing and hence reducing the burden on the institutions. The Bureau also believes the financial institutions that would most likely benefit more from this proposal are low-complexity institutions that generally lack the resources to adopt commercially available geocoding tools.

The Bureau believes that the lower costs to using the Bureau's geocoding tool and potentially increased reliance on the Bureau's geocoding tool will have a small impact on consumers. Consumers would benefit indirectly from the geocoding safe harbor to the extent that low-complexity institutions pass on any cost savings.

Clarifying Certain Key Terms and Other Minor Changes/Corrections

The proposal would clarify certain key terms, including temporary financing, automated underwriting system, multifamily dwelling, extension of credit, income, and mixed-use property. The proposal also addresses certain technical aspects of reporting, such as how the reporting requirements for certain data points relate to disclosures required by the Bureau's Regulation Z and how to collect and report certain information about an applicant's race and ethnicity. The proposed rule also includes a variety of minor changes and technical corrections.

These are all minor or clarifying changes that follow the meaning of the Final Rule as issued, with the aim to clarify certain terms and make certain technical corrections, including correcting certain drafting errors. The Bureau believes none of these proposed clarifications and technical corrections could impose additional burdens on financial institutions. On the contrary, they have the potential to reduce reporting burdens on financial institutions, as these proposals would reduce potential confusion related to certain data points and transactions. In particular, the Bureau believes these proposals would help reduce the ongoing costs associated with the following operational tasks that were first discussed in the 2015 HMDA Final Rule: Researching questions and resolving question responses.

The Bureau believes that none of the proposed clarifications and minor changes in this proposal could add additional costs to financial institutions. Most changes would have the potential to reduce the ongoing operational costs of HMDA reporting on some financial institutions. The impact on consumers would also be small relative to the baseline established by the 2015 HMDA final rule. Consumers would benefit to the extent to which financial institutions pass on any cost savings to consumers.

C. Impact on Depository Institutions and Credit Unions With No More Than $10 Billion in Assets

The Bureau believes that some of the proposed changes could benefit depository institutions and credit unions with no more than $10 billion, as described in section 1026 of the Dodd-Frank Act, in assets relatively more than they benefit larger financial institutions. For instance, the proposed change allowing census tract errors to be bona fide errors if a financial institution chooses to use the Bureau's geocoding tool, as specified in the changes, would mostly benefit financial institutions with assets below $10 billion, because it would provide a safe harbor and further encourage smaller financial institutions to use the geocoding tool that the Bureau is developing. These institutions are more likely than larger financial institutions to use the Bureau's geocoding tools. Furthermore, the Bureau believes that the proposed clarification that financial institutions have the option to report open-end lines of credit or closed-end loans even if they fall under the transactional threshold(s) would mostly benefit financial institutions that have assets below $10 billion. Financial institutions that are most likely to exercise such options would be low-volume, low-complexity institutions that may have made a one-time investment in reporting infrastructure and would prefer to utilize it even though the volatility in their loan production volume may cause them to fall below the relevant mandatory reporting threshold in certain years. As explained above, the Bureau believes such options granted would have to be burden reducing to those small financial institutions in order for them to exercise the option(s). To the extent that the majority of such small financial institutions have $10 billion or less in assets, the proposed changes mentioned above would create a disproportional benefit for covered persons in that asset category.

The only proposals that could potentially benefit financial institutions with assets over $10 billion relatively more than financial institutions with assets below $10 billion are the transitional rules related to reporting certain data points for purchased loans. Financial institutions with assets below $10 billion that purchase loans would also benefit from the transitional rules. However, larger institutions will benefit relatively more because they are more likely to be purchasers of loans.

For the reasons discussed above, the Bureau believes that no provision in this proposed rule would add cost burdens to financial institutions with assets below $10 billion, and that any effects would be burden reducing.

D. Impact on Access to Credit

As discussed above, the Bureau believes that none of the proposed changes in this proposal could add additional costs to financial institutions. In addition, a reduction in ambiguity regarding compliance with the law as this proposal tries to achieve also reduces costs to financial institutions. Thus, all proposals would have potential to reduce the operational costs of HMDA reporting on certain financial institutions. Further, as discussed above, standard economic theory predicts that in a market where financial institutions are profit maximizers, the affected financial institutions would pass on to consumers the cost saving per application or origination (*i.e.,* the reduction in marginal cost) and would retain the one-time cost saving and saving on fixed costs of complying with the rule. Thus, the Bureau believes the impacts of the proposed changes on consumers' access to credit would be neutral or beneficial (*i.e.,* credit becomes more available or the cost of available credit falls). In no event would consumers experience reduced access to credit.

E. Impact on Consumers in Rural Areas

The Bureau believes that none of the proposed changes is likely to have an adverse impact on consumers in rural areas. The Bureau believes it is possible that smaller financial institutions that may opt to report HMDA information even though they may fall below transaction thresholds in certain years are relatively more likely to be located in rural areas. To the extent this conjecture is true, financial institutions and consumers in rural areas may benefit from the proposed clarification of options allowing lenders to voluntarily report, based on the economic rationale that a lender would only exercise the option(s) if the benefits of doing so outweigh the costs. The Bureau requests comment and data on the likelihood that smaller financial institutions that may opt to report HMDA information even though they may fall below transaction thresholds in certain years are relatively more likely to be located in rural areas.

The Bureau also believes that it is possible that rural consumers may benefit more than consumers in urban areas from the proposal to allow census tract errors be treated as bona fide errors if the lender/HMDA reporter chooses to use the CFPB geocoding tool, as specified in the proposal, because it is commonly believed that properties located in rural areas face more geocoding challenges and this proposal alleviates some of that burden. The Bureau requests comment and data on whether properties located in rural areas face more geocoding challenges and this proposal alleviates some of that burden. For the rest of the proposed changes, the Bureau believes in no event would financial institutions based in rural areas and consumers face higher burdens.

VII. Regulatory Flexibility Act

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

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. In the absence of such a certification, 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.

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

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

VIII. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*), Federal agencies are generally required to seek the Office of Management and Budget (OMB) approval for information collection requirements prior to implementation. 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 information collection requirements contained in Regulation C have been previously approved by OMB and assigned OMB control number 3170–0008. You may access this information collection on *www.reginfo.gov* by selecting ''Information Collection Review'' from the main menu, clicking on ''Search,'' and then entering the OMB control number.

The Bureau has determined that the proposed rule would not impose any new recordkeeping, reporting, or disclosure requirements on members of the public that would constitute collections of information requiring approval under the PRA.

The Bureau has a continuing interest in the public's opinions regarding this determination. At any time, comments regarding this determination may be sent to: The Consumer Financial Protection Bureau (Attention: PRA Office), 1700 G Street NW., Washington, DC 20552, or by email to *CFPB_Public_PRA@cfpb.gov.*

List of Subjects in 12 CFR Part 1003

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

Authority and Issuance

For the reasons set forth above, the Bureau proposes to amend Regulation C, 12 CFR part 1003, as set forth below:

PART 1003—HOME MORTGAGE DISCLOSURE (REGULATION C)

■ 1. The authority citation for part 1003 continues to read as follows:

Authority: 12 U.S.C. 2803, 2804, 2805, 5512, 5581.

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

■ 2. Section 1003.2 is further amended by revising paragraphs (g)(1)(v)(A) and (g)(2)(ii)(A) to read as follows:

§ 1003.2 Definitions.

* * * * *

(g) * * *

(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 (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 (13); or

* * * * *

■ 3. Section 1003.3 is further amended by revising paragraphs (3)(c)(11) and (12) and adding paragraph (3)(c)(13) to read as follows:

§ 1003.3 Exempt institutions and excluded 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;

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

(13) A transaction that provided or, in the case of an application, proposed to provide new funds to the borrower in advance of being consolidated in a New York State consolidation, extension, and modification agreement classified as a supplemental mortgage under New York Tax Law section 255. The transaction is excluded only if final action on the consolidation was taken in the same calendar year as final action on the new funds.

■ 4. Section 1003.4 is further amended by revising paragraphs (4)(a)(2), (4)(a)(12), and (4)(a)(35) to read as follows:

§ 1003.4 Compilation of reportable data.

(a) * * *

(2) Whether the covered loan is, or in the case of an application would 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.

* * * * *

(12)(i) For covered loans subject to Regulation Z, 12 CFR part 1026, other than assumptions, purchased covered loans, and reverse mortgages, the difference between the covered loan's annual percentage rate and the average prime offer rate for a comparable transaction as of the date the interest rate is set.

(ii) ''Average prime offer rate'' means an annual percentage rate that is derived from average interest rates and other loan pricing terms currently offered to consumers by a set of creditors for mortgage loans that have low-risk pricing characteristics. The Bureau publishes tables of average prime offer rates by transaction type at least weekly and also publishes the methodology it uses to derive these rates.

* * * * *

(35)(i) Except for purchased covered loans, the name of the automated underwriting system used by the financial institution to evaluate the application and the result generated by that automated underwriting system.

(ii) For purposes of this paragraph (a)(35), 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, provided Federal government insurance, or provided a Federal government guarantee for a closed-end mortgage loan or open-end line of credit.

* * * * *

■ 5. Appendix B to part 1003 is further amended by revising paragraphs 8, 9(i), 9(ii), and 9(iv) and the Sample Data Collection Form to read as follows:

Appendix B to Part 1003—Form and Instructions for Data Collection on Ethnicity, Race, and Sex

* * * * *

8. You must report the ethnicity, race, and sex of an applicant as provided by the applicant. For example, if an applicant selects the ''Asian'' box the institution reports ''Asian'' for the race of the applicant. Only an applicant may self-identify as being of a particular Hispanic or Latino subcategory (Mexican, Puerto Rican, Cuban, Other Hispanic or Latino) or of a particular Asian subcategory (Asian Indian, Chinese, Filipino, Japanese, Korean, Vietnamese, Other Asian) or of a particular Native Hawaiian or Other Pacific Islander subcategory (Native Hawaiian, Guamanian or Chamorro, Samoan, Other Pacific Islander) or of a particular American Indian or Alaska Native enrolled or principal tribe. An applicant may select an ethnicity or race subcategory even if the applicant does not select an aggregate ethnicity or aggregate race category. For example, if an applicant selects only the ''Mexican'' box, the institution reports ''Mexican'' for the ethnicity of the applicant and should not also report ''Hispanic or Latino.''

9. * * *

i. *Ethnicity—Aggregate categories and subcategories.* There are two aggregate ethnicity categories: Hispanic or Latino; and Not Hispanic or Latino. The Hispanic or Latino category has four subcategories: Mexican; Puerto Rican; Cuban; and Other Hispanic or Latino. You must report every aggregate ethnicity category selected by the applicant. If the applicant also selects one or more ethnicity subcategories, you must report each ethnicity subcategory selected by the applicant, except that you must not report more than a total of five aggregate ethnicity categories and ethnicity subcategories combined. For example, if the applicant selects both aggregate ethnicity categories and also selects all four ethnicity subcategories, you must report Hispanic or Latino, Not Hispanic or Latino, and any three, at your option, of the four ethnicity subcategories selected by the applicant. To determine how to report the Other Hispanic or Latino ethnicity subcategory for purposes of the five-ethnicity maximum, see paragraph 9.ii below.

ii. *Ethnicity—Other subcategories.* An applicant may select the Other Hispanic or Latino ethnicity subcategory, an applicant may provide a particular Hispanic or Latino ethnicity not listed in the standard subcategories, or an applicant may do both. For example, if an applicant provides only Dominican, you should report Dominican and should not also report Other Hispanic or Latino. If an applicant selects the Other Hispanic or Latino ethnicity subcategory and also provides a particular Hispanic or Latino ethnicity not listed in the standard subcategories, you must report both the selection of Other Hispanic or Latino and the additional information provided by the applicant, subject to the five-ethnicity maximum. In all such cases, for purposes of the maximum of five reportable ethnicity categories and ethnicity subcategories combined set forth in paragraph 9.i, the Other Hispanic or Latino subcategory and additional information provided by the applicant together constitute only one selection. For example, if the applicant selects Other Hispanic or Latino and enters ''Dominican'' in the space provided, Other Hispanic or Latino and Dominican are considered one selection.

* * * * *

iv. *Race—Other subcategories.* An applicant may select the Other Asian race subcategory or the Other Pacific Islander race subcategory, an applicant may provide a particular Other Asian race or Other Pacific Islander race not listed in the standard subcategories, or an applicant may do both. For example, if an applicant provides only Hmong, you should report Hmong and should not also report Other Asian. If an applicant selects the Other Asian race or the Other Pacific Islander race subcategory and provides a particular Other Asian race or Other Pacific Islander race not listed in the standard subcategories, you must report both the selection of Other Asian or Other Pacific Islander, as applicable, and the additional information provided by the applicant, subject to the five-race maximum. In all such cases, for purposes of the maximum of five reportable race categories and race subcategories combined set forth in paragraph 9.iii, the Other race subcategory and additional information provided by the applicant together constitute only one selection. Thus, using the same facts in the example offered in paragraph 9.iii above, if the applicant also selected Other Asian and entered ''Thai'' in the space provided, Other Asian and Thai are considered one selection. You must report any two (at your option) of the four race subcategories selected by the applicant, Korean, Vietnamese, Other Asian-Thai, and Samoan, in addition to the three aggregate race categories selected by the applicant.

* * * * *

SAMPLE DATA COLLECTION FORM
DEMOGRAPHIC INFORMATION OF APPLICANT AND CO-APPLICANT

The purpose of collecting this information is to help ensure that all applicants are treated fairly and that the housing needs of communities and neighborhoods are being fulfilled. For residential mortgage lending, Federal law requires that we ask applicants for their demographic information (ethnicity, race, and sex) in order to monitor our compliance with equal credit opportunity, fair housing, and home mortgage disclosure laws. You are not required to provide this information, but are encouraged to do so. You may select one or more designations for "Ethnicity" and one or more designations for "Race."

The law provides that we may not discriminate on the basis of this information, or on whether you choose to provide it. However, if you choose not to provide the information and you have made this application in person, Federal regulations require us to note your ethnicity, race, and sex on the basis of visual observation or surname. If you do not wish to provide some or all of this information, please check below.

Applicant:

Ethnicity: – *Check one or more*
☐ Hispanic or Latino
  ☐ Mexican
  ☐ Puerto Rican
  ☐ Cuban
  ☐ Other Hispanic or Latino – *Print origin, for example, Argentinean, Colombian, Dominican, Nicaraguan, Salvadoran, Spaniard, and so on:*
☐ Not Hispanic or Latino

☐ I do not wish to provide this information

Race: *Check one or more*
☐ American Indian or Alaska Native – *Print name of enrolled or principal tribe:*
☐ Asian
  ☐ Asian Indian
  ☐ Chinese
  ☐ Filipino
  ☐ Japanese
  ☐ Korean
  ☐ Vietnamese
  ☐ Other Asian – *Print race, for example, Hmong, Laotian, Thai, Pakistani, Cambodian, and so on:*
☐ Black or African American
☐ Native Hawaiian or Other Pacific Islander
  ☐ Native Hawaiian
  ☐ Guamanian or Chamorro
  ☐ Samoan
  ☐ Other Pacific Islander – *Print race, for example, Fijian, Tongan, and so on:*
☐ White

☐ I do not wish to provide this information

Sex:
☐ Female
☐ Male

☐ I do not wish to provide this information

Co-Applicant:

Ethnicity: – *Check one or more*
☐ Hispanic or Latino
  ☐ Mexican
  ☐ Puerto Rican
  ☐ Cuban
  ☐ Other Hispanic or Latino – *Print origin, for example, Argentinean, Colombian, Dominican, Nicaraguan, Salvadoran, Spaniard, and so on:*
☐ Not Hispanic or Latino

☐ I do not wish to provide this information

Race: – *Check one or more*
☐ American Indian or Alaska Native – *Print name of enrolled or principal tribe:*
☐ Asian
  ☐ Asian Indian
  ☐ Chinese
  ☐ Filipino
  ☐ Japanese
  ☐ Korean
  ☐ Vietnamese
  ☐ Other Asian – *Print race, for example, Hmong, Laotian, Thai, Pakistani, Cambodian, and so on:*
☐ Black or African American
☐ Native Hawaiian or Other Pacific Islander
  ☐ Native Hawaiian
  ☐ Guamanian or Chamorro
  ☐ Samoan
  ☐ Other Pacific Islander – *Print race, for example, Fijian, Tongan, and so on:*
☐ White

☐ I do not wish to provide this information

Sex:
☐ Female
☐ Male

☐ I do not wish to provide this information

■ 6. Appendix C to part 1003 is further amended by revising Step 3 of ''Generating a Check Digit'' and Step 3 of the ''Example'' to ''Generating a Check Digit'' to read as follows:

Appendix C to Part 1003—Procedures for Generating a Check Digit and Validating a ULI

* * * * *

Generating a Check Digit

* * * * *

Step 3: Apply the mathematical function mod = (n,97) where n = the number obtained in step 2 above and 97 is the divisor.

Alternatively, to calculate without using the modulus operator, divide the numbers in step 2 above by 97. Truncate the remainder to three digits and multiply it by 97. Round the result to the nearest whole number.

* * * * *

Example

* * * * *

Step 3: Apply the mathematical function mod = (*n*,97) where *n* = the number obtained in step 2 above and 97 is the divisor. The result is 60.

Alternatively, to calculate without using the modulus operator, divide the numbers in step 2 above by 97. The result is 10426 17929129312294946332267952920. 618556701030928. Truncate the remainder to three digits, which is .618, and multiply it by 97. The result is 59.946. Round this result to the nearest whole number, which is 60.

* * * * *

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

■ a. Under *Section 1003.2—Definitions:*

■ i. Under *2(d) Closed-end mortgage loan,* paragraph 2 is revised.

■ ii. Under *2(f) Dwelling,* paragraph 2 is revised.

■ iii. Under *2(i) Home improvement loan,* paragraph 4 is revised.

■ iv. Under *2(j) Home purchase loan,* paragraph 3 is revised.

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

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

■ A. Under *Paragraph 3(c)(3),* paragraph 1 is revised and paragraph 2 is added.

■ B. Under *Paragraph 3(c)(10),* paragraph 3 is revised.

■ C. Under *Paragraph 3(c)(11),* as added October 28, 215, at 80 FR 66127, paragraph 1 is revised and paragraph 2 is added.

■ D. Under *Paragraph 3(c)(12),* paragraph 1 is revised and paragraph 2 is added.

■ E. Heading *Paragraph 3(c)(13)* and paragraph 1 under that heading is added.

■ c. Under *Section 1003.4—Compilation of Reportable Data:*

■ i. Under *4(a) Data format and itemization:*

■ A. Under *Paragraph 4(a)(1)(i),* paragraphs 3 and 4 are revised.

■ B. Under *Paragraph 4(a)(2),* paragraph 1 is revised.

■ C. Under *Paragraph 4(a)(3),* paragraph 6 is added.

■ D. Under *Paragraph 4(a)(8)(i),* paragraphs 6 and 9 are revised.

■ E. Under *Paragraph 4(a)(9)(i),* paragraph 3 is revised.

■ F. Under *Paragraph 4(a)(9)(ii)(A),* paragraph 1 is revised.

■ G. Under *Paragraph 4(a)(9)(ii)(B),* paragraph 2 is revised.

■ H. Under *Paragraph 4(a)(9)(ii)(c),* paragraph 2 is revised.

■ I. Under *Paragraph 4(a)(10)(ii),* paragraph 3 is revised.

■ J. Under *Paragraph 4(a)(10)(iii),* paragraph 4 is revised.

■ K. Under *Paragraph 4(a)(12),* paragraphs 1, 2, 3, 5, and 8 are revised and paragraph 9 is added.

■ L. Under *Paragraph 4(a)(15),* paragraphs 2 and 3 are revised.

■ M. Under *Paragraph 4(a)(17)(i),* paragraph 3 is revised.

■ N. Under *Paragraph 4(a)(18),* paragraph 3 is revised.

■ O. Under *Paragraph 4(a)(19),* paragraph 3 is revised.

■ P. Under *Paragraph 4(a)(20),* paragraph 3 is revised.

■ Q. Under *Paragraph 4(a)(21),* paragraph 1 is revised.

■ R. Under *Paragraph 4(a)(24),* paragraph 2 is revised and paragraph 6 is added.

■ S. Under *Paragraph 4(a)(26),* paragraph 5 is added.

■ T. Under *Paragraph 4(a)(34),* paragraph 4 is added.

■ U. Under *Paragraph 4(a)(35),* paragraph 2 is revised and paragraph 7 is added.

■ d. Under *Section 1003.6—Enforcement:*

■ i. Under *6(b) Bona Fide Errors,* paragraph 1 is revised and paragraph 2 is added.

Supplement I to Part 1003—Official Interpretations

* * * * *

Section 1003.2—Definitions

* * * * *

2(d) Closed-End Mortgage Loan

* * * * *

2. *Extension of credit.* Under § 1003.2(d), a dwelling-secured loan is not a closed-end mortgage loan unless it involves an extension of credit. For example, some transactions completed pursuant to installment sales contracts, such as some land contracts, depending on the facts and circumstances may or may not involve extensions of credit rendering the transactions closed-end mortgage loans. In general, extension of credit under § 1003.2(d) refers to the granting of credit only pursuant to a new debt obligation. Thus, except as described in comments 2(d)–2.i and .ii, if a transaction modifies, renews, extends, or amends the terms of an existing debt obligation, but the existing debt obligation is not satisfied and replaced, the transaction is not a closed-end mortgage loan under § 1003.2(d) because there has been no new extension of credit. The phrase extension of credit thus is defined differently under Regulation C than under Regulation B, 12 CFR part 1002.

i. *Assumptions.* For purposes of Regulation C, an assumption is a transaction in which an institution enters into a written agreement accepting a new borrower in place of an existing borrower as the obligor on an existing debt obligation. For purposes of Regulation C, assumptions include successor-in-interest transactions, in which an individual succeeds the prior owner as the property owner and then assumes the existing debt secured by the property. Under § 1003.2(d), assumptions are extensions of credit even if the new borrower merely assumes the existing debt obligation and no new debt obligation is created. *See also* comment 2(j)–5.

ii. *New York State consolidation, extension, and modification agreements.* A transaction completed pursuant to a New York State consolidation, extension, and modification agreement and classified as a supplemental mortgage under New York Tax Law section 255, such that the borrower owes reduced or no mortgage recording taxes, is an extension of credit under § 1003.2(d). Comments 2(i)–1, 2(j)–5, and 2(p)–2 clarify whether such transactions are home improvement loans, home purchase loans, or refinancings, respectively. Section 1003.3(c)(13) provides an exclusion from the reporting requirement for a preliminary transaction providing new funds that has been consolidated within the same calendar year into a supplemental mortgage under New York Tax Law section 255. See comment 3(c)(13)–1 for how to report a supplemental mortgage in this situation.

2(f) Dwelling

* * * * *

2. *Multifamily residential structures and communities.* A dwelling also includes a multifamily residential structure or community such as an apartment, condominium, cooperative building or housing complex, or a manufactured home community. A loan related to a manufactured home community is secured by a dwelling for purposes of § 1003.2(f) even if it is not secured by any individual manufactured homes, but only by the land that constitutes the manufactured home community including sites for manufactured homes. However, a loan related to a multifamily residential structure or community that is not a manufactured home community is not secured by a dwelling for purposes of § 1003.2(f) if it is not secured by any individual dwelling units and is, for example, instead secured only by property that only includes common areas, or is secured only by an assignment of rents or dues. In addition, a loan secured by five or more separate dwellings in more than one location is a loan secured by a multifamily dwelling. For example, assume a landlord uses a covered loan to improve five or more rental property dwellings located in different parts of a town, and the loan is secured by those properties. The loan should be reported as secured by a multifamily dwelling.

* * * * *

2(i) Home Improvement Loan

* * * * *

4. *Mixed-use property.* A closed-end mortgage loan or an open-end line of credit to improve a multifamily dwelling used for residential and commercial purposes (for example, a building containing apartment units and retail space), or the real property on which such a dwelling is located, is a home improvement loan if the loan's

proceeds are used either to improve the entire property (for example, to replace the heating system), or if the proceeds are used primarily to improve the residential portion of the property. An institution may use any reasonable standard to determine the primary use of the loan proceeds. An institution may select the standard to apply on a case-by-case basis.

* * * * *

2(j) Home Purchase Loan

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3. *Construction and permanent financing.* A home purchase loan includes both a combined construction/permanent loan or line of credit, and the separate permanent financing that replaces a construction-only loan or line of credit for the same borrower at a later time. A home purchase loan does not include a construction-only loan or line of credit that is designed to be replaced by separate permanent financing extended to the same borrower at a later time or that is extended to a person exclusively to construct a dwelling for sale, which are excluded from Regulation C as temporary financing under § 1003.3(c)(3). Comments 3(c)(3)–1 and -2 provide additional details about transactions that are excluded as temporary financing.

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Section 1003.3—Exempt Institutions and Excluded Transactions

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3(c) Excluded Transactions

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Paragraph 3(c)(3)

1. Temporary financing. Section 1003.3(c)(3) provides that closed-end mortgage loans or open-end lines of credit obtained for temporary financing are excluded transactions. Except as provided in comment 3(c)(3)–2, a loan or line of credit is considered temporary financing and excluded under § 1003.3(c)(3) if the loan or line of credit is designed to be replaced by separate permanent financing extended to the same borrower at a later time. For example:

i. Lender A extends credit in the form of a bridge or swing loan to finance a borrower's down payment on a home purchase. The borrower pays off the bridge or swing loan with funds from the sale of his or her existing home and obtains permanent financing for his or her new home from Lender A. The bridge or swing loan is excluded as temporary financing under § 1003.3(c)(3).

ii. Lender A extends credit to a borrower to finance construction of a dwelling. The borrower will obtain a new extension of credit for permanent financing for the dwelling, either from Lender A or from another lender, and either through a refinancing of the initial construction loan or a separate loan. The initial construction loan is excluded as temporary financing under § 1003.3(c)(3).

iii. Assume the same scenario as in comment 3(c)(3)–1.ii, except that the initial construction loan is, or may be, renewed one or more times before the separate permanent financing is obtained. The initial construction loan, including any renewal thereof, is excluded as temporary financing under § 1003.3(c)(3).

iv. Lender A extends credit to finance construction of a dwelling. The loan automatically will convert to permanent financing extended to the same borrower with Lender A once the construction phase is complete. Under § 1003.3(c)(3), the loan is not designed to be replaced by separate permanent financing extended to the same borrower and therefore the temporary financing exclusion does not apply. *See also* comment 2(j)–3.

v. Lender A originates a loan with a nine-month term to enable an investor to purchase a home, renovate it, and re-sell it before the term expires. Under § 1003.3(c)(3), the loan is not designed to be replaced by separate permanent financing extended to the same borrower and therefore the temporary financing exclusion does not apply. Such a transaction is not temporary financing under § 1003.3(c)(3) merely because its term is short.

2. *Loan or line of credit to construct a dwelling for sale.* A construction-only loan or line of credit is considered temporary financing and excluded under § 1003.3(c)(3) if the loan or line of credit is extended to a person exclusively to construct a dwelling for sale. See comment 3(c)(3)–1.ii through .iv for examples of the reporting requirement for construction loans that are not extended to a person exclusively to construct a dwelling for sale.

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Paragraph 3(c)(10)

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3. *Examples—covered business- or commercial-purpose transactions.* The following are examples of closed-end mortgage loans and open-end lines of credit that are not excluded from reporting under § 1003.3(c)(10) because, although they primarily are for a business or commercial purpose, they also meet the definition of a home improvement loan under § 1003.2(i), a home purchase loan under § 1003.2(j), or a refinancing under § 1003.2(p):

i. A closed-end mortgage loan or an open-end line of credit to purchase or to improve a multifamily dwelling or a single-family investment property, or a refinancing of a closed-end mortgage loan or an open-end line of credit secured by a multifamily dwelling or a single-family investment property;

ii. A closed-end mortgage loan or an open-end line of credit to improve a doctor's office or a daycare center that is located in a dwelling other than a multifamily dwelling; and

iii. A closed-end mortgage loan or an open-end line of credit to a corporation, if the funds from the loan or line of credit will be used to purchase or to improve a dwelling, or if the transaction is a refinancing.

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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 2022 under § 1003.2(g) because it originated 200 open-end lines of credit in 2020, 250 open-end lines of credit in 2021, 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 2020 and 2021, respectively. The open-end lines of credit 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 closed-end mortgage loans that the bank originated or purchased, or for which it received applications, during 2022 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. *Voluntary reporting.* A financial institution may voluntarily report closed-end mortgage loans and applications for 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.

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

Paragraph 3(c)(13)

1. *New funds extended prior to consolidation.* Section 1003.3(c)(13) provides an exclusion from the reporting requirement for a transaction that provided or, in the case of an application, proposed to provide new funds to the borrower in advance of being consolidated in a New York State consolidation, extension, and modification agreement classified as a supplemental mortgage under New York Tax Law section 255 and for which final action is taken on both transactions within the same calendar

year. The excluded transaction provides or proposes to provide funds that are not part of any existing debt obligation of the borrower, and that are then consolidated or proposed to be consolidated with an existing debt obligation or obligations as part of the supplemental mortgage. The new funds are reported only insofar as they form part of the total amount of the reported New York State consolidation, extension, and modification agreement, and not as a separate amount. The exclusion does not apply to similar preliminary transactions that provide or propose to provide new funds to be consolidated not pursuant to New York Tax Law section 255 but under some other law in a transaction that is not an extension of credit. For example, assume a financial institution extends new funds to a consumer in a preliminary transaction that is then consolidated as part of a consolidation, extension and modification agreement pursuant to the law of a State other than New York. If the preliminary extension of new funds is a covered loan, it must be reported. If the consolidation, extension and modification agreement pursuant to the law of a State other than New York is not an extension of credit pursuant to Regulation C, it may not be reported. For discussion of how to report a true cash-out refinancing, see comment 4(a)(3)–2.

Section 1003.4—Compilation of Reportable Data

4(a) Data Format and Itemization

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Paragraph 4(a)(1)(i)

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3. *ULI—purchased covered loan.* If a financial institution previously has 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 previously was assigned or reported. For example, if a loan origination previously was reported under this part with a ULI, the financial institution that purchases the covered loan would report the purchase of the covered loan using the same ULI. A financial institution that purchases a covered loan must use the ULI that was assigned by the financial institution that originated the covered loan. A financial institution that purchases a covered loan assigns a ULI and records and submits it in its loan/application register pursuant to § 1003.5(a)(1) 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 or the loan was originated by a financial institution not required to report under this part.

4. *ULI—reinstated or reconsidered application.* 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 in its annual 2020 data submission, pursuant to § 1003.5(a)(1), but then reconsiders the application, which results in an origination in 2021, the financial institution reports a denied application under the original ULI in its annual 2020 data submission and an origination with a different ULI in its annual 2021 data submission, pursuant to § 1003.5(a)(1).

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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)

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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.

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Paragraph 4(a)(8)(i)

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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).

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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 counteroffer takes the place of the prior application, and the financial institution reports the action taken in relation to the terms of the counteroffer. For example, assume a financial institution makes a counteroffer and the applicant agrees to proceed with consideration of the counteroffer, and the financial institution sends the applicant a conditional approval letter stating the conditions to be met in order 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.

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Paragraph 4(a)(9)(i)

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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)(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 is not known before the application was denied, withdrawn, or closed for incompleteness.

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

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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 is not known before the application was denied, withdrawn, or closed for incompleteness.

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

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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 is not known before the application was denied, withdrawn, or closed for incompleteness.

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Paragraph 4(a)(10)(ii)

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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.

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Paragraph 4(a)(10)(iii)

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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.

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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 (*http://www.consumerfinance.gov*). The Bureau calculates an annual percentage rate, consistent with Regulation Z (*see* 12 CFR 1026.22 and part 1026, appendix J), for each transaction type for which pricing terms are available from the 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 may 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. 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 closed-end mortgage loans) or 1026.6 (for open-end lines of credit), as applicable.

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5. *Rate-set date.* The relevant date to use to determine the average prime offer rate for a comparable transaction is the date on which the covered loan's interest rate was set by the financial institution for the final time before closing or account opening.

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

ii. *Change in loan program.* If a financial institution issues a rate-lock commitment under one loan program, the borrower subsequently changes to another program that is subject to different pricing terms, and the financial institution changes the rate promised to the borrower under the rate-lock commitment accordingly, the rate-set date is the date of the program change. However, if the financial institution changes the promised rate to the rate that would have been available to the borrower under the new program on the date of the original rate-lock commitment, then that is the date the rate is set, provided the financial institution consistently follows that practice in all such cases or the original rate-lock agreement so provided. For example, assume that a borrower locks a rate of 2.5 percent on June 1 for a 30-year, variable-rate loan with a 5-year, fixed-rate introductory period. On June 15, the borrower decides to switch to a 30-year, fixed-rate loan, and the rate available to the borrower for that product on June 15 is 4.0 percent. On June 1, the 30-year, fixed-rate loan would have been available to the borrower at a rate of 3.5 percent. If the financial institution offers the borrower the 3.5 percent rate (*i.e.,* the rate that would have been available to the borrower for the fixed-rate product on June 1, the date of the original rate-lock) because the original agreement so provided or because the financial institution consistently follows that practice for borrowers who change loan programs, then the financial institution should use June 1 as the rate-set date. In all other cases, the financial institution should use June 15 as the rate-set date.

iii. *Brokered loans.* When a financial institution has reporting responsibility for 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.

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8. *Application approved but not accepted or preapproval request approved but not accepted.* In the case of an application approved but not accepted or a 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 could 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.

9. *Corrected disclosures.* In the case of an application approved but not accepted or a preapproval request 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 disclosed pursuant to Regulation Z, 12 CFR 1026.38(a)(3)(i). The corrected disclosure does not affect the rate-set date. See comment 4(a)(12)–5. For example, in the case of a financial institution's annual loan/application register submission made pursuant to § 1003.5(a)(1), if the financial institution provides a corrected disclosure to the borrower 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 if the corrected disclosure was provided to the borrower prior to the end of the calendar year in which final action is taken.

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Paragraph 4(a)(15)

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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 which 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, alternatively, 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, alternatively, 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.

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Paragraph 4(a)(17)(i)

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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 final action is taken. 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, in the case of a financial institution's annual loan/application register submission made pursuant to § 1003.5(a)(1), 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 final action is taken.

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Paragraph 4(a)(18)

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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 final action is taken. 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, in the case of a financial institution's annual loan/application register submission made pursuant to § 1003.5(a)(1), 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 origination charges only if 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)(19)

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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 final action is taken. 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, in the case of a financial institution's annual loan/application register submission made pursuant to § 1003.5(a)(1), 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 final action is taken.

Paragraph 4(a)(20)

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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 final action is taken. 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, in the case of a financial institution's annual loan/application register submission made pursuant to § 1003.5(a)(1), 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 final action is taken.

Paragraph 4(a)(21)

1. *Interest rate—disclosures.* Section 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 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 date disclosed pursuant to Regulation Z, 12 CFR 1026.37(a)(4) or 1026.38(a)(3)(i), as applicable.

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Paragraph 4(a)(24)

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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.

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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, and 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.

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Paragraph 4(a)(26)

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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.

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Paragraph 4(a)(34)

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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 voluntarily.

Paragraph 4(a)(35)

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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 since 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 but 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, in order 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).

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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.

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Section 1003.6—Enforcement

6(b) Bona Fide Errors

1. *Information from third parties.* Section 1003.6(b) provides that an error in compiling or recording data for a covered loan or application is not a violation of the Act or this part if the error was unintentional and occurred despite the maintenance of procedures reasonably adapted to avoid such an error. A financial institution that obtains the required data, such as property-location information, from third parties is responsible for ensuring that the information reported pursuant to § 1003.5 is correct. See comment 6(b)–2 concerning obtaining census tract information from the geocoding tool provided by the Bureau.

2. *Information from the Bureau.* Section 1003.6(b)(2) provides that an incorrect entry for census tract number is deemed a bona fide error, and is not a violation of the Act or this part, provided that the financial institution maintains procedures reasonably adapted to avoid an error. The Bureau makes available on its Web site a geocoding tool (the Bureau's geocoding tool) that identifies the census tract of a property using property addresses entered by users. Obtaining the census tract numbers for covered loans and applications from the Bureau's geocoding tool is an example of a procedure reasonably adapted to avoid errors under § 1003.6(b)(2). Accordingly, a census tract error is not a violation of the Act or this part if the financial institution obtained the census tract number from the Bureau's geocoding tool. However, a financial institution's failure to provide the correct census tract number for a covered loan or application on its loan/application register, as required by § 1003.4(a)(9)(ii)(C) or § 1003.4(e), because the Bureau's geocoding tool did not provide a census tract number for the property address entered by the financial institution is not excused as a bona fide error. In addition, a census tract error caused by a financial institution entering an inaccurate property address into the Bureau's geocoding tool is not excused as a bona fide error.

[The following amendments would be effective January 1, 2019, further amending the sections as amended October 28, 2015, at 80 FR 66127.]

■ 8. Section 1003.5 is further amended by revising paragraph (a)(3)(ii) to read as follows:

§ 1003.5 Disclosure and reporting.

(a) * * *

(3) * * *

(ii) The calendar year the data submission covers pursuant to paragraph (a)(1)(i) of this section;

* * * * *

■ 9. § 1003.6 is further amended by redesignating paragraph (c)(1) as paragraph (c) and removing paragraph (c)(2).

§ 1003.6 Enforcement. [Further amended]

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

■ 10. Section 1003.5 is further amended by revising paragraph (a)(3)(ii) to read as follows:

§ 1003.5 Disclosure and reporting.

(a) * * *

(3) * * *

(ii) The calendar year the data submission covers pursuant to paragraph (a)(1)(i) of this section or calendar quarter and year the data submission covers pursuant to paragraph (a)(1)(ii) of this section;

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■ 11. Section 1003.6 is further amended by redesignating paragraph (c) as paragraph (c)(1) and by adding paragraph (c)(2) to read as follows:

§ 1003.6 Enforcement.

* * * * *

(c) * * *

(2) If a financial institution required to comply with § 1003.5(a)(1)(ii) makes a good-faith effort to report all data required to be reported pursuant to § 1003.5(a)(1)(ii) fully and accurately within 60 calendar days after the end of each calendar quarter, and some data are nevertheless inaccurate or incomplete, the inaccuracy or omission is not a violation of the Act or this part provided that the institution corrects or completes the data prior to submitting its annual loan/application register pursuant to § 1003.5(a)(1)(i).

■ 12. In Supplement I to Part 1003—Official Interpretations:

■ a. Under *Section 1003.4*—Compilation of Reportable Data:

■ i. Under *4(a) Data format and itemization:*

■ A. Under *Paragraph 4(a)(1)(i),* paragraphs 3 and 4 are revised.

■ B. Under *Paragraph 4(a)(12),* paragraph 9 is revised.

■ C. Under *Paragraph 4(a)(17)(i),* paragraph 3 is revised.

■ D. Under *Paragraph 4(a)(18),* paragraph 3 is revised.

■ E. Under *Paragraph 4(a)(19),* paragraph 3 is revised.

■ F. Under *Paragraph 4(a)(20),* paragraph 3 is revised.

Supplement I to Part 1003—Official Interpretations

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Section 1003.4—Compilation of Reportable Data

4(a) Data Format and Itemization

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Paragraph 4(a)(1)(i)

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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. 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 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. 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), then 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 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 or the loan was originated by a financial institution not required to report under this part.

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, which results 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 in its fourth-quarter 2020 data submission, pursuant to § 1003.5(a)(1)(ii), but then reconsiders the application, which results in an origination 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).

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Paragraph 4(a)(12)

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9. *Corrected disclosures.* In the case of an application approved but not accepted or a preapproval request 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 disclosed pursuant to Regulation Z, 12 CFR 1026.38(a)(3)(i). The corrected disclosure does not affect 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.

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Paragraph 4(a)(17)(i)

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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 final action is taken. 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 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 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 final action is taken. 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 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 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 final action is taken.

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Paragraph 4(a)(18)

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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 final action is taken. 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 total loan costs 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 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 origination charges 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 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 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 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 final action is taken.

Paragraph 4(a)(19)

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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 final action is taken. 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 final action is taken.

ii. In the case of a financial institution's quarterly submission made pursuant to § 1003.5(a)(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 final action is taken. 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 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 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 final action is taken.

Paragraph 4(a)(20)

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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 final action is taken. 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 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 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 final action is taken. 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 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 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 final action is taken.

Dated: April 13, 2017.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.

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