

**BUREAU OF CONSUMER FINANCIAL PROTECTION****12 CFR Part 1003**

[Docket Nos. CFPB–2017–0010; CFPB–2017–0021]

RIN 3170–AA64; 3170–AA76

**Home Mortgage Disclosure (Regulation C)****AGENCY:** Bureau of Consumer Financial Protection.**ACTION:** Final rule.

**SUMMARY:** The Bureau of Consumer Financial Protection (Bureau) is amending 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), which was published in the *Federal Register* on October 28, 2015. The Bureau is also amending Regulation C to increase the threshold for collecting and reporting data about open-end lines of credit for a period of two years so that financial institutions originating fewer than 500 open-end lines of credit in either of the preceding two years would not be required to begin collecting such data until January 1, 2020. The Bureau also is adopting a new reporting exclusion.

**DATES:** This rule is effective on January 1, 2018, except that the amendments to § 1003.5 in amendatory instruction 8, the amendments to § 1003.6 in amendatory instruction 9, and the amendments to supplement I to part 1003 in amendatory instruction 10 are effective on January 1, 2019; and the amendments to § 1003.2 in amendatory instruction 11, the amendments to § 1003.3 in amendatory instruction 12, the amendments to § 1003.5 in amendatory instruction 13, the amendments to § 1003.6 in amendatory instruction 14, and the amendments to supplement I to part 1003 in amendatory instruction 15 are effective on January 1, 2020. See part VI for more information.

**FOR FURTHER INFORMATION CONTACT:** Shaakira Gold-Ramirez, Paralegal Specialist, Joseph Devlin, Angela Fox, Kathryn Lazarev, and Alexandra W. Reimelt, Counsels; and Terry J. Randall, Senior Counsel, Office of Regulations, at 202–435–7700 or <https://www.consumerfinance.gov/policy-compliance/guidance/>.

**SUPPLEMENTARY INFORMATION:****I. Summary of the Final 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.<sup>1</sup> In October 2015, the Bureau issued the 2015 HMDA Final Rule implementing the Dodd-Frank Act amendments to HMDA.<sup>2</sup> The 2015 HMDA 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.<sup>3</sup> In addition, the 2015 HMDA Final Rule established transactional thresholds that determine whether financial institutions are required to collect data on open-end lines of credit or closed-end mortgage loans. The closed-end threshold was set at 25 loans in each of the two preceding calendar years, and the open-end threshold was set at 100 open-end lines of credit in each of the two preceding calendar years. Most of the 2015 HMDA Final Rule takes effect on January 1, 2018.

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. On April 25, 2017, the Bureau published a notice of proposed rulemaking (April 2017 HMDA Proposal) that would make certain amendments to Regulation C to address those areas.<sup>4</sup> Since issuing the 2015 HMDA Final Rule, the Bureau also has heard concerns that the open-end threshold at 100 transactions is too low. On July 20, 2017, the Bureau published a proposal (July 2017 HMDA Proposal) to address the threshold for reporting open-end lines of credit.<sup>5</sup> The Bureau is

publishing final amendments to Regulation C pursuant to the April 2017 HMDA Proposal and the July 2017 HMDA Proposal.

This final rule temporarily increases the open-end threshold to 500 or more open-end lines of credit for two years (calendar years 2018 and 2019). In addition, the final rule corrects a drafting error by clarifying both the open-end and closed-end thresholds so that only financial institutions that meet the threshold for two years in a row are required to collect data in the following calendar years. With these amendments, financial institutions that originated between 100 and 499 open-end lines of credit in either of the two preceding calendar years will not be required to begin collecting data on their open-end lending before January 1, 2020. This temporary increase in the open-end threshold will provide time for the Bureau to consider whether to initiate another rulemaking to address the appropriate level for the open-end threshold for data collected beginning January 1, 2020.

The final rule establishes transition rules for two data points, loan purpose and the unique identifier for the loan originator. The transition rules require, in the case of loan purpose, or permit, in the case of the unique identifier for the loan originator, financial institutions to report not applicable for these data points when reporting certain loans that they purchased and that were originated before certain regulatory requirements took effect. The final rule also makes additional amendments to clarify certain key terms, such as multifamily dwelling, temporary financing, and automated underwriting system, and to create a new reporting exception for certain transactions associated with New York State consolidation, extension, and modification agreements.

In addition, the 2017 HMDA Final Rule facilitates reporting the census tract of the property securing or, in the case of an application, proposed to secure a covered loan that is required to be reported by Regulation C. The Bureau plans to make available on its Web site a geocoding tool that financial institutions may use to identify the census tract in which a property is located. The final rule establishes 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 geocoding tool on the Bureau's Web site, provided that the financial institution

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

<sup>2</sup> Home Mortgage Disclosure (Regulation C); 80 FR 66128 (Oct. 28, 2015) (2015 HMDA Final Rule).

<sup>3</sup> *Id.* at 66129.

<sup>4</sup> Technical Corrections and Clarifying Amendments to the Home Mortgage Disclosure (Regulation C) October 2015 Final Rule; 82 FR 19142 (Apr. 25, 2017) (April 2017 HMDA Proposal).

<sup>5</sup> Home Mortgage Disclosure (Regulation C) Temporary Increase in Institutional and Transactional Coverage Thresholds for Open-End

Lines of Credit, 82 FR 33455 (July 20, 2017) (July 2017 HMDA Proposal).

entered an accurate property address into the tool and the tool returned a census tract for the address entered.

Finally, the final rule also makes certain technical corrections. These technical corrections include, for example, a change to the calculation of the check digit under § 1003.4(a)(1)(i) and replacement of the word “income” with the correct word “age” in comment 4(a)(10)(ii)–3.

## 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). When the statute was 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.<sup>6</sup> Congress later expanded HMDA to require, among other things, financial institutions to report racial characteristics, gender, and income information on applicants and borrowers.<sup>7</sup> In light of these amendments, the Board of Governors of the Federal Reserve System (Board) subsequently recognized a third HMDA purpose of identifying possible discriminatory lending patterns and enforcing antidiscrimination statutes, which now is recited with HMDA’s other purposes in Regulation C.<sup>8</sup>

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.<sup>9</sup> 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, 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.<sup>10</sup> 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.<sup>11</sup> The Dodd-Frank Act also provides the Bureau with the authority to require “such other information as the Bureau may require.”<sup>12</sup> In addition, the Dodd-Frank Act mandated that the Bureau, in consultation with other appropriate agencies, develop regulations after notice and comment that (1) 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; (2) 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; (3) require disclosure of the class of the purchaser of such loans; (4) 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 (5) 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.<sup>13</sup>

## III. Summary of Rulemaking Process

In October 2015, the Bureau issued the 2015 HMDA Final Rule, which implemented the Dodd-Frank Act amendments to HMDA.<sup>14</sup> The 2015 HMDA 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. Most of the provisions of the 2015 HMDA Final Rule will become effective on January 1, 2018.

The 2015 HMDA Final Rule requires some financial institutions to begin collecting data on certain dwelling-secured, open-end lines of credit, including home-equity lines of credit. Current Regulation C allows, but does not require, reporting of home-equity lines of credit.<sup>15</sup> In amending Regulation C, the Bureau explained that it believed collection of data on these products was important because of the risks posed by these products to consumers and local markets and the lack of visibility into these products. The Bureau noted in the 2015 HMDA Final Rule that overleverage due to open-end mortgage lending and defaults on open-end lines of credit contributed to the foreclosure crises that many communities experienced in the late 2000s.<sup>16</sup> More generally, as the Bureau also noted in the 2015 HMDA Final Rule, open-end lines of credit can increase borrowers’ risk of losing their homes to foreclosure when property values decline.<sup>17</sup> The Bureau concluded that including data on such lines within the HMDA dataset would help the public and public officials understand how financial institutions are meeting the housing needs of communities, would inform public officials identify areas for targeted investment, and would assist the public and public officials in identifying potential fair lending violations.<sup>18</sup> For these and other reasons articulated in the 2015 HMDA Final Rule, the Bureau decided to improve visibility into this key segment of the mortgage market by requiring reporting of open-end lines of credit.

As noted in the July 2017 HMDA Proposal and in the 2015 HMDA Final Rule, in expanding coverage to include mandatory reporting of open-end lines of credit, the Bureau recognized that doing so would impose one-time and ongoing operational costs on reporting institutions; that the one-time costs of modifying processes and systems and training staff to begin open-end line of credit reporting likely would impose significant costs on some institutions; and that institutions’ ongoing reporting costs would increase as a function of

<sup>6</sup> HMDA section 302(b), 12 U.S.C. 2801(b); see also 12 CFR 1003.1(b)(1)(i) and (ii).

<sup>7</sup> 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).

<sup>8</sup> 54 FR 51356, 51357 (Dec. 15, 1989), codified at 12 CFR 1003.1(b)(1).

<sup>9</sup> Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376, sections 1022, 1061, and 1094 (2010). Also, in 2010, the Board conducted public hearings on potential revisions to Regulation C.

<sup>10</sup> Dodd-Frank Act section 1094(3)(A), amending HMDA section 304(b), 12 U.S.C. 2803(b).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> Dodd-Frank Act section 1094(3)(B), amending HMDA section 304(h), 12 U.S.C. 2803(h).

<sup>14</sup> 2015 HMDA Final Rule, 80 FR 66128 (Oct. 28, 2015).

<sup>15</sup> 12 CFR 1003.4(c)(3).

<sup>16</sup> 2015 HMDA Final Rule, 80 FR 66128, 66160–61 (Oct. 28, 2015).

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 66160.

their open-end lending volume.<sup>19</sup> The Bureau sought to avoid imposing these costs on small institutions with limited open-end lending, where the benefits of reporting the data do not justify the costs of reporting.<sup>20</sup> In seeking to draw such a line, the Bureau acknowledged that it was handicapped by the lack of available data concerning open-end lending.<sup>21</sup> This created challenges both in estimating the distribution of open-

end origination volume across financial institutions and in estimating the one-time and ongoing costs that would be incurred by institutions of various sizes in collecting and reporting data on open-end lending.

Concerning open-end origination volume, the Bureau used multiple data sources, including credit union Call Reports, Call Reports for banks and thrifts, and data from the Bureau's

Consumer Credit Panel to develop estimates for different potential thresholds in the 2015 HMDA Final Rule.<sup>22</sup> The Bureau assumed that all of the depository institutions that were exempted from HMDA reporting under Regulation C because of their location or asset size would continue to be exempt.<sup>23</sup> Concerning the remaining depositories, the Bureau developed the following estimates:<sup>24</sup>

TABLE 8—ESTIMATES OF DEPOSITORY INSTITUTION COVERAGE BY OPEN-END LINE OF CREDIT THRESHOLDS

Potential open-end-line-of-credit threshold	Number of reporting financial institutions	Number of open-end lines of credit (rounded to nearest ten thousand)	Percentage of market covered	Number of reporting financial institutions that also report closed-end mortgage loans	
				Not a closed-end reporter	Closed-end reporter
Proposed .....	4,146	910,000	94	0	4,146
25 .....	1,770	900,000	93	103	1,667
50 .....	1,155	870,000	91	55	1,100
100 .....	749	850,000	88	24	725
500 .....	231	730,000	76	3	228
1,000 .....	123	650,000	68	0	123
5,000 .....	25	440,000	46	0	25

The Bureau noted that expansions or contractions in the number of financial institutions, or changes in product offerings and demands during implementation could alter the estimated impacts.<sup>25</sup>

To estimate the one-time and ongoing costs of collecting and reporting data under HMDA in the 2015 HMDA Final Rule, the Bureau identified seven “dimensions” of compliance operations and used those to define three broadly representative financial institutions according to the overall level of complexity of their compliance operations: “tier 1” (high-complexity); “tier 2” (moderate-complexity); and “tier 3” (low-complexity).<sup>26</sup> In estimating costs specific to collecting and reporting data for open-end lines of credit, the Bureau assumed that tier 1 institutions each originate more than 7,000 such lines of credit, that tier 2 institutions each originate between 200 and 7,000 such lines of credit, and that

tier 3 institutions each originate fewer than 200 such lines of credit.<sup>27</sup> The Bureau then sought to estimate one-time and ongoing costs for the average-size institution in each tier.<sup>28</sup>

Concerning one-time costs, the Bureau recognized in the 2015 HMDA Final Rule that the one-time cost of reporting open-end lines of credit could be substantial because most financial institutions do not report open-end lines of credit currently and thus would have to develop completely new systems to begin reporting these data. As a result, there would be one-time costs to create processes and systems for open-end lines of credit.<sup>29</sup> However, for tier 3, low-complexity institutions, the Bureau believed that the additional one-time costs of open-end reporting would be relatively low because these institutions are less reliant on information technology systems for HMDA reporting and that they may process open-end lines of credit on the same system and

in the same business unit as closed-end mortgage loans, so that their one-time costs would be derived mostly from new training and procedures adopted for the overall changes in the final rule, not distinct from costs related to changes in reporting of closed-end mortgage loans.<sup>30</sup>

Concerning ongoing costs, the Bureau acknowledged that costs for open-end reporting vary by institutions due to many factors, such as size, operational structure, and product complexity, and that this variance exists on a continuum that was impossible to capture fully.<sup>31</sup> At the same time, the Bureau stated it believed that the HMDA reporting process and ongoing operational cost structure for open-end reporting would be fundamentally similar to closed-end reporting.<sup>32</sup> Thus, using the ongoing cost estimates developed for closed-end reporting, the Bureau estimated that for the average tier 1 institutions the ongoing operational costs would be

<sup>19</sup> *Id.* at 66161.

<sup>20</sup> *Id.* at 66149.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 66261, 66275 n.477. As the Bureau explained, credit union Call Reports provide the number of originations of open-end lines of credit secured by real estate but exclude lines of credit with first-lien status and may include business loans that are excluded from reporting under the 2015 HMDA Final Rule. *Id.* at 66281 n.489.

<sup>23</sup> *Id.* at 66281 n.489. The Bureau limited its estimate to depositories because it believes that most nondepositories do not originate open-end lines of credit. *Id.* at 66281.

<sup>24</sup> The first row in the chart, labeled “Proposed,” assumed that financial institutions would be

required to report on their open-end lines of credit regardless of the number originated so long as the institution originated at least 25 closed-end mortgages during each of the prior two calendar years. This row reflects the impact of the rule that the Bureau had proposed. The remaining rows assume that reporting of open-end lines of credit would be required without regard to the number of closed-end loans originated and, instead, only if the financial institution originated the number of open-end lines of credit shown in the various rows. *Id.* at 66281.

<sup>25</sup> *Id.* at 66275 n.477.

<sup>26</sup> *Id.* at 66261. The seven factors were: the reporting system used; the degree of system integration; the degree of system automation; the

compliance program; and the tools for geocoding, performing completeness checks, and editing. *Id.* at 66269.

<sup>27</sup> *Id.* at 66285.

<sup>28</sup> For purposes of calculating aggregate costs, the Bureau assumed that the average tier 1 institution received 30,000 applications for open-end lines of credit; the average tier 2 institution received 1,000 such applications; and the average tier 3 institution received 150 such applications. *Id.* at 66286.

<sup>29</sup> *Id.* at 66264; *see also id.* at 66284–85.

<sup>30</sup> *Id.* at 66265; *see also id.* at 66284.

<sup>31</sup> *Id.* at 66285.

<sup>32</sup> *Id.*

\$273,000 per year; for the average tier 2 institution \$43,400 per year; and for the average tier 3 institution \$8,600 per year.<sup>33</sup> These translated into average costs per HMDA record of \$9, \$43, and \$57 respectively.<sup>34</sup> Importantly, the Bureau acknowledged that, precisely because no good source of publicly available data exists concerning open-end lines of credit, it was difficult to predict the accuracy of the Bureau's cost estimates but also stated its belief that they were reasonably reliable.<sup>35</sup>

Drawing on all of these estimates, the Bureau decided to establish an open-end threshold that would require institutions that originate 100 or more open-end lines of credit to collect and report data. The Bureau estimated that this threshold would avoid imposing the burden of establishing open-end reporting on approximately 3,000 predominantly smaller-sized institutions with low-volume open-end lending<sup>36</sup> and would require reporting by only 749 financial institutions, all but 24 of which would also report data on their closed-end mortgage lending.<sup>37</sup> The Bureau explained that it believed this threshold appropriately balanced the benefits and burdens of covering institutions based on their open-end mortgage lending.<sup>38</sup>

To effectuate this decision, the 2015 HMDA Final Rule amended Regulation C to define two discrete thresholds that were intended to work in tandem. First, the rule established an institutional coverage threshold that limits the definition of "financial institution" to include only those institutions that either originated at least 25 covered closed-end mortgages in each of the preceding years or that originated at least 100 covered open-end lines of credit in each of the two preceding years.<sup>39</sup> Second, the rule separately established a transactional coverage

threshold for open-end lines of credit by providing that an open-end line of credit is an excluded transaction if the financial institution originated fewer than 100 open-end lines of credit in each of the two preceding calendar years.<sup>40</sup>

#### *April 2017 HMDA Proposal*

Since issuing the 2015 HMDA Final Rule, the Bureau has conducted outreach with financial institutions, HMDA vendors, and other interested parties. As part of these efforts and through its own analysis of the 2015 HMDA Final Rule, the Bureau 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 Regulation C. On April 13, 2017, the Bureau issued the April 2017 HMDA Proposal, which was published in the **Federal Register** on April 25, 2017,<sup>41</sup> addressing these issues.

The comment period for the April 2017 HMDA Proposal closed on May 25, 2017. The Bureau received a total of 51 comments from financial institutions, financial trade associations, compliance and software vendors, consumer advocacy groups, and individuals. The Bureau has considered all the comments and discusses the responsive comments below and now issues this final rule with certain changes and adjustments, as described below. As discussed in a number of instances below, the Bureau received comments on topics related to the 2015 HMDA Final Rule, but not relevant to those topics the Bureau had raised in the April and July 2017 HMDA Proposals. The Bureau considered all the comments but, as discussed further below, in many instances, found that these comments did not raise points relevant to the Bureau's decisions raised in its proposals.

#### *July 2017 HMDA Proposal*

Since the Bureau issued the 2015 HMDA Final Rule, many industry stakeholders have expressed concerns

<sup>40</sup> Revised § 1003.3(c)(12). As discussed below, the exclusion as adopted in the 2015 HMDA Final Rule was intended to apply if the financial institution originated fewer than 100 open-end lines of credit in either of the two preceding calendar years; the current text of the rule was a drafting error that the Bureau is correcting with this notice. The 2015 HMDA Final Rule created a separate transactional coverage threshold for closed-end mortgages, treating those as excluded transactions if an institution originated fewer than 25 closed-end mortgage loans in each of the two preceding calendar years. *Id.* at § 1003.3(c)(11). As discussed below, the Bureau is adopting a proposal to change the "each" in this text to "either."

<sup>41</sup> April 2017 HMDA Proposal, 82 FR 19142 (Apr. 25, 2017).

over the levels for the transactional coverage thresholds. Recent credit union Call Report data, coupled with the evidence as to the number of institutions that would be covered by the open-end threshold contained in the 2015 HMDA Final Rule, led the Bureau to seek comment to determine whether an adjustment to the threshold is appropriate. On July 14, 2017, the Bureau issued the July 2017 HMDA Proposal, which was published in the **Federal Register** on July 20, 2017.<sup>42</sup> The proposal would have increased temporarily the open-end threshold for both institutional and transactional coverage so that institutions originating fewer than 500 open-end lines of credit in either of the two preceding calendar years would not have been required to commence collecting or reporting data on their open-end lines of credit until January 1, 2020.

The comment period for the July 2017 HMDA Proposal closed on July 31, 2017. The Bureau received 35 comments, which were from financial institutions, financial trade associations, consumer advocacy groups, and individuals. The Bureau has considered all comments and now finalizes the amendments as proposed for the reasons discussed below.

The Bureau consulted or offered to consult with the appropriate Federal agencies concerning both proposals, at both the proposed and final rule stages of the rulemaking. The Bureau consulted or offered to consult with the Board, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the National Credit Union Administration, the Department of Housing and Urban Development, the Securities and Exchange Commission, the Department of Justice, the Department of Veterans Affairs, the Federal Housing Finance Agency (FHFA), the Department of the Treasury, the Department of Agriculture, the Federal Trade Commission, and the Federal Financial Institutions Examination Council (FFIEC).

#### **IV. Legal Authority**

The Bureau is issuing this final rule pursuant to its authority under the Dodd-Frank Act and HMDA. This final rule consists of amendments and corrections to the 2015 HMDA Final Rule and a temporary change to the threshold for reporting open-end lines of credit established in the 2015 HMDA Final Rule. Section 1061 of the Dodd-Frank Act transferred to the Bureau the

<sup>42</sup> July 2017 HMDA Proposal, 82 FR 33455 (July 20, 2017).

<sup>33</sup> *Id.* at 66286.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.* at 66162.

<sup>36</sup> *Id.* The estimate of the number of institutions that would be excluded by the transaction coverage threshold was relative to the number that would have been covered under the Bureau's proposal that led to the 2015 HMDA Final Rule. Under that proposal, a financial institution would have been required to report its open-end lines of credit if it had originated at least 25 closed-end mortgage loans in each of the preceding two years without regard to how many open-end lines of credit the institution originated. See Home Mortgage Disclosure (Regulation C), 79 FR 51732 (Aug. 29, 2014).

<sup>37</sup> 2015 HMDA Final Rule, 80 FR 66128, 66281 (Oct. 28, 2015).

<sup>38</sup> *Id.* at 66162.

<sup>39</sup> Revised § 1003.2(g)(1)(v) and (g)(2)(ii). The 2015 HMDA Final Rule excludes certain transactions from the definition of covered loans and those excluded transactions do not count towards the institutional transaction threshold.

“consumer financial protection functions” previously vested in certain other Federal agencies, including the Board.<sup>43</sup> 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.”<sup>44</sup> 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.”<sup>45</sup> Both HMDA and title X of the Dodd-Frank Act are Federal consumer financial laws.<sup>46</sup> 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.<sup>47</sup> 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.”<sup>48</sup>

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.”<sup>49</sup> 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.<sup>50</sup> HMDA section 304(j)(2)(B) provides that “[t]he Bureau shall require, by regulation, such deletions as the Bureau may determine to be appropriate to protect—(i) any privacy interest of any applicant . . . and (ii) a depository institution from liability under any Federal or State privacy law.”<sup>51</sup> HMDA section 304(j)(7) also directs the Bureau to make every effort in prescribing regulations under the section to minimize the costs incurred by a depository institution in complying with such regulations.<sup>52</sup>

HMDA section 304(e) directs the Bureau to prescribe a standard format for HMDA disclosures required under HMDA section 304.<sup>53</sup> 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.”<sup>54</sup> HMDA section 304(h)(1) also directs the Bureau, in consultation with other appropriate agencies, to develop regulations after notice and comment that (1) 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; (2) 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; (3) require disclosure of the class of the purchaser of such loans; (4) 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 (5) 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.<sup>55</sup>

HMDA also authorizes the Bureau to issue regulations relating to the timing of HMDA disclosures.<sup>56</sup>

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.”<sup>57</sup> 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.”<sup>58</sup> 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.<sup>59</sup>

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.<sup>60</sup> 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 million or less.<sup>61</sup>

In preparing this final 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.

<sup>43</sup> 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.*

<sup>44</sup> 12 U.S.C. 5581(a)(1)(A).

<sup>45</sup> 12 U.S.C. 5512(b)(1).

<sup>46</sup> 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).

<sup>47</sup> 12 U.S.C. 2804(a).

<sup>48</sup> *Id.*

<sup>49</sup> *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).

<sup>50</sup> 12 U.S.C. 2803(j)(1).

<sup>51</sup> 12 U.S.C. 2803(j)(2)(B).

<sup>52</sup> 12 U.S.C. 2803(j)(7).

<sup>53</sup> 12 U.S.C. 2803(e).

<sup>54</sup> 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 HUD. 12 U.S.C. 2803(h)(2).

<sup>55</sup> 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).

<sup>56</sup> 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(m), 12 U.S.C. 2803(m).

<sup>57</sup> HMDA section 304(b)(5)(D), (b)(6)(J), 12 U.S.C. 2803(b)(5)(D), (b)(6)(J).

<sup>58</sup> HMDA section 304(b)(6)(F), (G), (H), 12 U.S.C. 2803(b)(6)(F), (G), (H).

<sup>59</sup> HMDA section 304(h)(3)(A)(ii), 12 U.S.C. 2803(h)(3)(A)(ii).

<sup>60</sup> 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).

<sup>61</sup> HMDA section 309(a), 12 U.S.C. 2808(a).

## V. Section-by-Section Analysis

The discussion below uses the following terminology to refer to provisions or proposed provisions of Regulation C, as applicable: “Current § 1003.X” refers to the provision currently in effect, which does not reflect amendments to Regulation C made by the 2015 HMDA Final Rule that have not yet taken effect; “Revised § 1003.X” refers to the provision as revised by the 2015 HMDA Final Rule; “§ 1003.X as adopted by the 2015 HMDA Final Rule,” refers to a provision newly adopted by the 2015 HMDA Final Rule; and “Proposed § 1003.X” refers to the proposed amendments from the April 2017 HMDA Proposal or the July 2017 HMDA Proposal, pursuant to which this final rule is adopted.

### Section 1003.2 Definitions

#### 2(d) Closed-End Mortgage Loan

In the 2015 HMDA 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 2015 HMDA Final Rule, provides guidance on what constitutes an extension of credit, including an example of a transaction that would not be 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 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. The Bureau proposed certain clarifying amendments to comment 2(d)–2.

As adopted by the 2015 HMDA Final Rule, the example in comment 2(d)–2 illustrating a transaction in which there is no extension of credit discussed installment land sales contracts and included a specific description of an installment land sales contract that would not be considered an extension of credit. The Bureau proposed to remove this specific description 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.

Three industry commenters expressed support for the proposed change. One stated that the new language would add

clarity by acknowledging the complexity of the determination of whether the transaction involves an extension of credit. Two industry commenters expressed opposition to the proposal, stating that it would introduce additional ambiguity and reporting challenges.

For the reasons discussed below, the Bureau is adopting the provision as proposed. The Bureau believes that the specific description of an installment land sales contract that would not be an extension of credit, which was included in the 2015 HMDA Final Rule, is not helpful for illustrating a transaction in which there is no extension of credit. Whether an installment land sales contract is an extension of credit is a fact-specific inquiry that depends on the particular installment contract’s terms and other facts and circumstances. A short description without relevant details does not accurately illustrate the complexity of such a determination. Although making this determination may be challenging for some financial institutions, it is not feasible for the Bureau to provide specific examples, due to the numerous and complex forms of installment land sales contracts and situations in which they arise.

Comment 2(d)–2.ii, as adopted by the 2015 HMDA Final Rule, also 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. Under that exception, 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 (New York CEMA), is deemed an extension of credit.<sup>62</sup> The Bureau proposed no changes to the extension of credit exception for New York CEMAs in comment 2(d)–2.ii but did propose to include in it a clarifying reference to the new § 1003.3(c)(13) exclusion for preliminary transactions consolidated into New York CEMAs, discussed below. There were no comments on this clarifying reference, and the Bureau is adopting it as proposed with minor edits for clarity.

#### 2(f) Dwelling

The Bureau proposed to revise comment 2(f)–2 as adopted by the 2015 HMDA Final Rule by adding language to clarify treatment of multi-location loans.

<sup>62</sup> Revised comment 2(d)–2.i provides another exception, for assumptions, which Regulation C historically has covered. The Bureau is not making any change to the assumptions exception.

The Bureau is revising the proposed language, and is incorporating that language into new comment 2(n)–3, as discussed below.

In addition to the multi-location loan clarification, the Bureau proposed a technical correction to comment 2(f)–2. The Bureau proposed to change the term “complexes” to “housing complexes” for clarity, with no change in meaning intended. The Bureau received only one comment on this change, and the commenter expressed support for the change. The Bureau is now adopting this technical correction as proposed.

#### 2(g) Financial Institution

Section 1003.2(g) defines financial institution for purposes of Regulation C, and sets forth Regulation C’s institutional coverage for depository financial institutions and nondepository financial institutions. The Bureau proposed amendments to § 1003.2(g) and associated commentary to increase temporarily the level of open-end originations required to trigger collection and reporting responsibilities and to make conforming changes related to a new reporting exclusion for preliminary transactions providing new funds before consolidation as part of a New York CEMA. The Bureau is adopting the proposed amendments as proposed for the reasons discussed below.

#### Open-End Line of Credit Threshold

Section 1003.2(g), as adopted by the 2015 HMDA Final Rule, conditions Regulation C’s institutional coverage, in part, on the lender’s volume of origination of open-end lines of credit or closed-end mortgage loans by establishing loan-volume thresholds. The threshold for closed-end mortgage loans is at least 25 in each of the two preceding calendar years, and the threshold for open-end lines of credit is at least 100 in each of the two preceding calendar years. Section 1003.3(c)(11) and (12), as adopted by the 2015 HMDA Final Rule, includes complementary thresholds set at the same levels that determine whether a financial institution is required to collect and report data on closed-end mortgage loans or open-end lines of credit, respectively.<sup>63</sup> In the July 2017 HMDA

<sup>63</sup> As noted below and as explained in the April 2017 HMDA Proposal, under the institutional coverage threshold adopted by the 2015 HMDA Final Rule, the definition of financial institution included only institutions that originate either 25 or more closed-end mortgage loans or 100 or more open-end lines of credit in each of the two preceding calendar years and satisfy the other applicable coverage criteria. That threshold and the transactional coverage threshold in 12 CFR

Proposal, the Bureau proposed to amend § 1003.2(g)(1)(v)(B) and (g)(2)(ii)(B), effective January 1, 2018, to increase the open-end threshold from 100 to 500 and, effective January 1, 2020, to amend § 1003.2(g)(1)(v)(B) and (g)(2)(ii)(B) to restore the threshold to 100. The Bureau proposed conforming amendments to comments 2(g)-3 and -5. As discussed in the section-by-section analysis of § 1003.3(c)(12), the Bureau also proposed conforming amendments to the open-end threshold in § 1003.3(c)(12). For the reasons discussed below, the Bureau is finalizing the amendments as proposed.

As noted in the 2015 HMDA Final Rule, the Bureau believes that including dwelling-secured lines of credit within the scope of Regulation C is a reasonable interpretation of HMDA section 303(2), which defines “mortgage loan” as a loan secured by residential real property or a home improvement loan. In the 2015 HMDA Final Rule, the Bureau interpreted “mortgage loan” to include dwelling-secured lines of credit, as they are secured by residential real property and they may be used for home improvement purposes.<sup>64</sup> As further noted in the 2015 HMDA Final Rule, pursuant to section 305(a) of HMDA, the Bureau believes that requiring reporting of dwelling-secured, consumer purpose open-end lines of credit is necessary and proper to effectuate the purposes of HMDA and prevent evasions thereof.<sup>65</sup>

In establishing the open-end threshold at 100 in the 2015 HMDA Final Rule, the Bureau drew on estimates of the distribution of open-end origination volume across financial institutions and estimates of the one-time and ongoing costs that would be incurred by institutions of various sizes in collecting and reporting data on open-end lines of credit. The Bureau explained that it believed this threshold appropriately balanced the benefits and burdens of covering institutions based on their open-end mortgage lending.<sup>66</sup>

1003.3(c)(11) and (12) were intended to be complementary exclusions. This final rule corrects a drafting error. April 2017 HMDA Proposal, 82 FR 19142, 19149 (Apr. 25, 2017).

<sup>64</sup> 2015 HMDA Final Rule, 80 FR 66128, 66160 (Oct. 28, 2015).

<sup>65</sup> *Id.* (noting “HMDA and Regulation C are designed to provide citizens and public officials sufficient information about mortgage lending to ensure that financial institutions are serving the housing needs of their communities, to assist public officials in distributing public sector investments, and to identify possible discriminatory lending patterns” and that the “Bureau believes that collecting information about all dwelling-secured, consumer-purpose open-end lines of credit serves these purposes.”).

<sup>66</sup> *Id.* at 66162. The Bureau also explained that it believed “that adopting a 100-open-end line of credit threshold will avoid imposing the burden of

In striking this balance, the Bureau estimated that, based on 2013 data, 749 depository institutions would be required to report their open-end lines of credit under the 100-loan threshold. However, as discussed in part III above, the Bureau lacked robust data for the estimates that were used to establish the open-end threshold in the 2015 HMDA Final Rule.

As explained in the July 2017 HMDA Proposal, since 2013 the number of dwelling-secured open-end lines of credit originated has increased by 36 percent and continues to grow.<sup>67</sup> To the extent that institutions that had been originating fewer than 100 open-end lines of credit share in that growth, the number of institutions at the margin that will be required to report under the 2015 HMDA Final Rule open-end threshold will also increase. In the July 2017 HMDA Proposal, the Bureau explained that its available data concerning open-end lines of credit extended by banks and thrifts are not sufficiently robust to allow the Bureau to estimate with any precision the number of such institutions that have crossed over the open-end threshold adopted in the 2015 HMDA Final Rule. The Bureau also explained, however, that there are reliable data concerning credit unions that are required to report open-end originations in their Call Reports. The Bureau’s review of credit union Call Report data for the July 2017 HMDA Proposal indicates that the number of credit unions that originated 100 or more open-end lines of credit in 2015 was up 31 percent over 2013,<sup>68</sup> the most recent data cited by the Bureau for its analysis of the 2015 HMDA Final Rule. The Bureau explained in the July 2017 HMDA Proposal that, if there were a comparable increase among banks and thrifts, the total number of open-end reporters exceeding the transactional coverage threshold could be estimated at 980, as compared to the estimate of 749 in the 2015 HMDA Final Rule, which was based on 2013 data.<sup>69</sup>

Additionally, in the July 2017 HMDA Proposal, the Bureau explained that information received by the Bureau since issuing the 2015 HMDA Final Rule has caused the Bureau to question its assumption that tier 3, low-complexity institutions process home-equity lines of credit on the same data platforms as closed-end mortgages, which in turn drove the Bureau’s

establishing open-end reporting on many small institutions with low open-end lending volumes.” *Id.* at 66149.

<sup>67</sup> July 2017 HMDA Proposal, 82 FR 33455, 33459 (July 20, 2017).

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

assumption that the one-time costs for these institutions would be minimal. After issuing the 2015 HMDA Final Rule, the Bureau had heard anecdotal evidence suggesting that one-time costs to begin reporting open-end lines of credit could be as high as \$100,000 for tier 3, low-complexity institutions. The Bureau likewise had heard anecdotal evidence suggesting that the ongoing costs for these institutions to report open-end lines of credit, which the Bureau estimated would be under \$10,000 per year and add under \$60 per line of credit, could be at least three times higher.

Based on this anecdotal evidence regarding one-time and ongoing costs and new data indicating that more institutions would have reporting responsibilities under the 100-loan open-end threshold than estimated in the 2015 HMDA Final Rule, the Bureau believed it was appropriate to seek comment on whether a temporary adjustment to the open-end threshold was advisable to allow for additional data collection and assessment. The temporary increase proposed in the July 2017 HMDA Proposal would allow the Bureau to do such an evaluation without requiring financial institutions originating fewer than 500 open-end lines of credit per year to collect and report data concerning open-end lines of credit in the meantime.

The Bureau sought comment on whether to increase the open-end threshold temporarily and, if so, whether to raise the threshold to 500 or to a larger or smaller number. The Bureau also sought comment on what time period to increase the open-end threshold, should it do so.

Comments regarding the proposed changes to the open-end threshold in both §§ 1003.2(g) and 1003.3(c)(12) are discussed below. Industry commenters expressed support for increasing the threshold, but requested that the Bureau further raise the threshold to exclude more financial institutions from the obligation to report open-end lines of credit. Commenters most often requested that the Bureau raise the open-end threshold to 1,000. Many commenters also requested that the Bureau make the open-end threshold increase permanent instead of temporary. Some commenters also urged the Bureau to reverse the 2015 HMDA Final Rule’s decision to require some financial institutions to report data on open-end lines of credit and, instead, to maintain optional reporting. Further, many commenters requested that the Bureau also increase the closed-end threshold.

Consumer advocacy groups opposed the Bureau's proposal. These commenters expressed concern about the gaps in the HMDA data resulting from the proposed increase in the threshold. They noted that these gaps in the HMDA data would make it harder for them and other members of the public to understand whether open-end credit lending is conducted in a responsible and non-discriminatory manner, and whether credit needs are being met in communities, particularly if the major lenders in their areas are institutions below the temporarily raised threshold. They stated that the benefits of reporting were clear and based on concrete evidence, but that the costs of reporting were not clear, arguing that industry cost estimates relied on by the Bureau in the proposal were based on anecdotal evidence. They suggested that only by allowing open-end reporting to begin as provided in the 2015 HMDA Final Rule would the Bureau learn the concrete costs. Further, they expressed support for the Bureau's decision not to propose changes to the closed-end threshold.

The Bureau is finalizing the proposed temporary increase in the open-end threshold to 500 loans. The Bureau is amending § 1003.2(g)(1)(v)(B) and (g)(2)(ii)(B) and comment 2(g)-3 and -5, effective January 1, 2018, to increase the open-end threshold from 100 to 500 and, effective January 1, 2020, to restore the threshold to 100.

The Bureau does not believe that increasing the threshold to 1,000 is appropriate at this time. The Bureau believes that the temporary increase in the threshold will avoid imposing the costs of reporting on tier 3, low-complexity institutions, while the Bureau studies the appropriate level of the threshold in light of the market conditions described in the July 2017 HMDA Proposal. The Bureau estimates that, in 2015, 289 depository institutions originated 500 or more open-end lines of credit as compared to an estimated 980 depository institutions that originated at least 100 open-end lines of credit.<sup>70</sup> On average, the institutions that would be excluded by increasing the open-end threshold from 100 to 500 loans originated fewer than 250 open-end lines of credit per year.<sup>71</sup> Under a 500-loan open-end threshold,

approximately three quarters of the loan application volume in the open-end market would be reported.<sup>72</sup> Increasing the open-end threshold to 1,000 would reduce the number of institutions reporting open-end lines of credit by 90 in 2016 relative to a 500-loan threshold.<sup>73</sup> While this represents a relatively low number of institutions relative to the number under a 500-loan open-end threshold, in 2016, those institutions originated, on average, close to 1,000 open-end lines of credit per year.<sup>74</sup> The Bureau believes that institutions with that level of loan volume have moderately-complex operations able to collect and report data on their open-end lines of credit without major disruptions or burdens to their existing operations.<sup>75</sup> Thus, increasing the threshold to 1,000 is not needed to achieve the Bureau's goal of avoiding imposing costs on, and only on, tier 3, low-complexity institutions while the Bureau studies the appropriate level of the threshold. None of the commenters advocating for a higher threshold took issue with the Bureau's estimate as to the number of institutions that would be affected by increasing the threshold to 1,000 open-end lines of credit nor did any of the commenters offer evidence inconsistent with the Bureau's estimate of the compliance costs for moderately complex, tier 2, institutions.

Additionally, the Bureau agrees generally with consumer advocacy groups about the importance of increasing visibility into the open-end line of credit market. Increasing the threshold from 100 to 500 will decrease visibility into the open-end line of credit market. The Bureau believes, however, that the limited loss of visibility occasioned by increasing the threshold from 100 to 500, at least for the next two years while the Bureau further studies the issue, is justified by the uncertainty surrounding the costs of reporting borne by tier 3, low-complexity institutions and the recent trends in the market. However, the Bureau is not persuaded that the limited

benefits of an even higher threshold would justify any additional loss of data.

The Bureau is not making the threshold increase for open-end lines of credit permanent at this time. As discussed in the July 2017 HMDA Proposal, the Bureau believes it is vitally important to begin the collection and reporting of data on the growing market for open-end lines of credit and that the increase in open-end origination volume since 2013 further demonstrates the importance of these data. However, the Bureau recognizes that anecdotal evidence and recent market trends suggest that costs associated with the 100-loan open-end threshold may be significantly higher and affect more institutions than the Bureau estimated in the 2015 HMDA Final Rule. The two-year period will allow time for the Bureau to decide, through an additional rulemaking, whether any adjustments to the open-end threshold are needed. The Bureau intends to make that determination in sufficient time so that if institutions are covered under any permanent threshold set by the Bureau but not under the temporary threshold, those institutions will be able to resume and complete their implementation processes.<sup>76</sup>

Similarly, the Bureau declines to retain optional reporting of open-end lines of credit. As discussed in the 2015 HMDA Final Rule, improved visibility into this key segment of the mortgage market is critical because of the risks posed by these products to consumers and local markets and the lack of other publicly available data about these products.<sup>77</sup> However, the Bureau agrees that optional reporting should be allowed for those financial institutions that do not meet the open-end threshold and is providing for optional reporting, as discussed below in the section-by-section analysis of § 1003.3(c)(12).

The Bureau, as explained in the July 2017 HMDA Proposal, does not believe increasing the closed-end threshold is appropriate.<sup>78</sup> Unlike open-end lines of credit, when adopting the 2015 HMDA Final Rule, the Bureau had robust data to make a determination about the number of transactions that would be reported and the costs, both one-time and ongoing, that industry would face. Additionally, unlike open-end lines of credit, there is no evidence of a similar change in market conditions post issuance of the 2015 HMDA Final Rule

<sup>70</sup> *Id.*

<sup>71</sup> *Id.* One commenter asserted that a 1,000-loan threshold would have relieved significantly more institutions from reporting. However, in subsequent ex parte communication, the commenter determined that its calculations were mistaken.

<sup>72</sup> July 2017 HMDA Proposal, 82 FR 33455, 33459-60 (July 20, 2017).

<sup>73</sup> *Id.* at 33460. The July 2017 HMDA Proposal explained as an example that it had received information from the credit league of one State indicating that, of the seven credit unions in that State that had originated more than 250 home-equity lines of credit in the first six months of 2016 (and thus were on track to originate 500 for the year), six had assets over \$1 billion.

<sup>74</sup> *Id.*

<sup>75</sup> 2015 HMDA Final Rule, 80 FR 66128, 66160-61 (Oct. 28, 2015).

<sup>76</sup> July 2017 HMDA Proposal, 82 FR 33460 (July 20, 2017).

<sup>70</sup> *Id.*

<sup>71</sup> *Id.* In estimating costs specific to collecting and reporting data for open-end lines of credit in the 2015 HMDA Final Rule, the Bureau assumed that tier 2 institutions originate between 200 and 7,000 such lines of credit and that tier 3 institutions originate fewer than 200 such lines of credit. 2015 HMDA Final Rule, 80 FR 66128, 66285 (Oct. 28, 2015).



for closed-end mortgage loans. None of the commenters advocating a change in the closed-end threshold took issue with the Bureau's estimates of costs for closed-end reporters or offered any data inconsistent with the Bureau's estimates.

As discussed in the 2015 HMDA Final Rule, the Bureau adopted § 1003.2(g)(1) pursuant to its authority under section 305(a) of HMDA to provide for such adjustments and exceptions for any class of transactions that the Bureau judges are necessary and proper to effectuate the purposes of HMDA. Pursuant to section 305(a) of HMDA, for the reasons given in the 2015 HMDA Final Rule, the Bureau found that the exception in § 1003.2(g)(1) is necessary and proper to effectuate the purposes of HMDA. By reducing burden on financial institutions and establishing a consistent loan-volume test applicable to all financial institutions, the Bureau found that the provision will facilitate compliance with HMDA's requirements.<sup>79</sup> Similarly, the Bureau believes that the temporary change in the open-end threshold in § 1003.2(g)(1) is necessary and proper to effectuate the purposes of HMDA, including to facilitate compliance and reduce burden. Additionally, as discussed in the 2015 HMDA Final Rule, the Bureau adopted § 1003.2(g)(2) pursuant to its interpretation of HMDA sections 303(3)(B) and 303(5), which require persons other than banks, savings associations, and credit unions that are "engaged for profit in the business of mortgage lending" to report HMDA data. The Bureau stated that it interprets these provisions, as the Board also did, to evince the intent to exclude from coverage institutions that make a relatively small volume of mortgage loans.<sup>80</sup> Pursuant to its authority under section 305(a) of HMDA, and for the reasons discussed above, the Bureau finds that the temporary change of the open end threshold from 100 to 500 for two years in both § 1003.2(g)(1) and 1003.2(g)(2) is necessary and proper to facilitate compliance.

#### Conforming Amendment Related to New York CEMAs

As discussed below, the Bureau proposed an exclusion from reporting, in proposed § 1003.3(c)(13), for any preliminary transaction providing new funds before consolidation as part of a New York CEMA. Consistent with that proposal, the Bureau proposed a conforming change to

§ 1003.2(g)(1)(v)(A) and (2)(ii)(A), as adopted by the 2015 HMDA Final Rule, in the definition of "financial institution," which would add the new exclusion to a list of exclusions referenced in that definition regarding closed-end mortgage loans.

The Bureau received no comments on this conforming change, and now adopts the provision as proposed.

#### 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, *i.e.*, a dwelling used for both residential and commercial purposes. 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 2015 HMDA Final Rule, and revised the accompanying commentary regarding mixed-use property. In the April 2017 HMDA Proposal, the Bureau proposed to amend the commentary to § 1003.2(i) to clarify further the reporting requirements for home improvement loans secured by mixed-use property. Specifically, the Bureau proposed to amend comment 2(i)-4 to clarify that the comment applies only to multifamily dwellings.<sup>81</sup> For the reasons discussed below, the Bureau is adopting comment 2(i)-4 as proposed, with a minor amendment for further clarity.

Several State trade associations and one large financial institution supported the proposed amendments to comment 2(i)-4. One commenter stated that the proposal would ease the compliance burden regarding mixed-use properties. Another commenter stated that it shared the Bureau's concern that, as adopted by the 2015 HMDA Final Rule, comments 2(i)-4 and 3(c)(10)-3.ii could be interpreted as providing inconsistent guidance. This commenter stated that it agreed that loans or lines of credit to improve primarily the commercial portion of a multifamily dwelling should not be reported because they 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 non-multifamily dwelling.

A few commenters recommended alternative reporting requirements for

loans to improve primarily the commercial portion of a mixed-use dwelling. One national trade association suggested that, if a property is subject to HMDA reporting requirements and a loan is made for any improvement on that property, that loan should be considered a home improvement loan. It stated that this recommendation would simplify compliance by providing a single standard for all loans to improve property used for residential and commercial purposes and avoid financial institutions having to determine the percentage of loan proceeds used for a residential purpose and whether the loan is for a non-multifamily or multifamily dwelling. Another national trade association suggested that it would improve consistency to apply the same treatment to all loans that improve mixed-use properties. Alternatively, one State trade association recommended that, if any portion of the loan proceeds will be used to improve the commercial portion of a mixed-use property, the loan should not be a reportable home improvement loan, regardless of whether the dwelling is a multifamily dwelling. It suggested that, if the Bureau were to adopt the proposed guidance on reporting loans to improve commercial portions of mixed-use property, it would be helpful to clarify in comment 2(i)-4 that a loan to improve commercial space in a dwelling other than a multifamily dwelling would be a reportable home improvement loan. A national trade association stated that all commercial-purpose loans should be excluded from HMDA reporting. Finally, a few commenters expressed concern that the proposed guidance did not address how to treat loans to improve commercial portions of mixed-use property where the property would have been considered a multifamily dwelling under the proposed guidance in comment 2(f)-2, which would have explained that a loan secured by five or more separate dwellings in more than one location is a loan secured by a multifamily dwelling.

The Bureau is adopting comment 2(i)-4 as proposed, with a minor amendment to provide further clarity. As adopted, comment 2(i)-4 also includes a cross-reference to comment 3(c)(10)-3.ii for guidance on loans to improve primarily the commercial portion of a dwelling other than a multifamily dwelling. The Bureau declines to treat all loans to improve mixed-use property as home improvement loans as this would expand coverage of commercial-purpose transactions and result in the reporting of loans or lines of credit to improve

<sup>79</sup> 2015 HMDA Final Rule, 80 FR 66128, 66150 (Oct. 28, 2015).

<sup>80</sup> *Id.* at 66153.

<sup>81</sup> As discussed in more detail in the section-by-section analysis of § 1003.3(c)(10), the Bureau proposed to revise the example in comment 3(c)(10)-3.ii to clarify that it applies to dwellings other than multifamily dwellings.

primarily the commercial portion of a multifamily dwelling. As discussed in the April 2017 HMDA Proposal, 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 dwelling. Consequently, reporting such loans would provide limited information, at best, toward HMDA's purpose of helping determine whether financial institutions are serving the housing needs of the communities in which they are located. The Bureau also declines to exclude all loans or lines of credit where any portion of the loan proceeds will be used to improve the commercial portion of a mixed-use property or to exclude all commercial-purpose loans. Regulation C currently covers closed-end, commercial-purpose loans made to purchase, refinance, or improve a dwelling, including certain loans to improve mixed-use property, and the Bureau has not proposed or seen any new reason to decrease the coverage of commercial-purpose transactions from its current level.<sup>82</sup> Finally, as discussed in more detail in the section-by-section analysis of § 1003.2(f) above, the Bureau believes the revisions adopted in comment 2(f)–2 regarding the definition of multifamily dwellings address potential uncertainty that may have arisen regarding how proposed comment 2(f)–2 would have applied to the Bureau's guidance regarding reporting requirements for loans to improve various types of mixed-use property.

#### 2(j) Home Purchase Loan

Current § 1003.2 provides a definition of home purchase loan and provides guidance in commentary. The 2015 HMDA 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. As discussed in more detail in the section-by-section analysis of § 1003.3(c)(3), the Bureau proposed certain amendments to the § 1003.3(c)(3) commentary regarding temporary financing. The Bureau

<sup>82</sup> Current comment 2 (Home Improvement Loan)–4. In the 2015 HMDA Final Rule, the Bureau explained that “[e]xamples of commercial-purpose loans that currently are reported are: (1) A loan to an entity to purchase or improve an apartment building (or to refinance a loan secured thereby); and (2) a loan to an individual to purchase or improve a single-family home to be used either as a professional office or as a rental property (or to refinance a loan secured thereby).” 2015 HMDA Final Rule, 80 FR 66128, 66169 (Oct. 28, 2015).

proposed conforming amendments to comment 2(j)–3 to reflect the proposed revisions to the § 1003.3(c)(3) commentary. Commenters supported the proposed amendments to comment 2(j)–3. The Bureau is adopting comment 2(j)–3 as proposed, with a minor amendment to conform to a clarification the Bureau is adopting in the commentary to § 1003.3(c)(3).

#### 2(n) Multifamily Dwelling

In revised § 1003.2(f) and comment 2(f)–2, the 2015 HMDA 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. Revised § 1003.2(n) provides that a “multifamily dwelling” is a dwelling that contains five or more individual dwelling units. To apply this definition and ease compliance, the Bureau proposed to add language to comment 2(f)–2 that would have clarified that a loan secured by five or more separate dwellings in more than one location is a loan secured by a multifamily dwelling and provided an example.

Revised § 1003.4(a) excludes several data points for covered loans secured by or applications proposed to be secured by multifamily dwellings because such data may not be easily available, relevant, or useful for multifamily transactions. During implementation of the 2015 HMDA 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 and, thus, may take advantage of the exclusions for covered loans secured by or applications proposed to be secured by multifamily dwellings in revised § 1003.4(a). 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. At the time of the April 2017 HMDA Proposal, the Bureau believed that such a loan should be reported as secured by a multifamily dwelling. The Bureau believed that 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, 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, the Bureau proposed 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 received 14 comments discussing the proposed change to comment 2(f)–2. Five commenters expressed support for the change, and nine expressed opposition to it. The commenters supporting the change stated that it would ease compliance, and one wanted clarification of how loans with cross-collateralization clauses, which the commenter stated are often used in the multi-location loans that are implicated in the change, should be reported.

The commenters opposing the proposed change stated several different objections. Several commenters stated that the change would not ease compliance but, instead, would make it more confusing and difficult. Commenters said that the new provision conflicted with Regulations X, Z, and B, as well as the Call Report<sup>83</sup> instructions that they were required to follow and the definition of multifamily under the Community Reinvestment Act (CRA).<sup>84</sup> They stated that the proposed change to Regulation C's definition of multifamily would require double tracking of multifamily loans under HMDA and CRA. Two commenters pointed out that the proposed change appeared to conflict with the proposed clarification on home improvement loans in comment 2(i)–4 because that provision relies on non-multifamily status to determine a loan's purpose, but the change to comment 2(f)–2 would make non-multifamily structures potentially part of multifamily dwellings, muddling their status. One commenter suggested that the proposed change could make rural lending to investors look like loans secured by apartment buildings. Another commenter stated that the proposed language would conflict with

<sup>83</sup> Every national bank, State member bank, insured nonmember bank, and savings association is required by its primary Federal regulator to file consolidated Reports of Condition and Income, also known as Call Reports, for each quarter as of the close of business on the last day of each calendar quarter. The specific reporting requirements depend upon the size of the institution, the nature of its activities, and whether it has any foreign offices. See, e.g., FDIC, “Consolidated Reports of Condition and Income,” <https://www.fdic.gov/regulations/resources/call/index.html> (last visited Aug. 13, 2017). Credit unions that are not privately insured are also required to report Call Report data to NCUA. See, e.g., NCUA, “Credit Union and Corporate Call Report Data,” <http://www.ncua.gov/DataApps/QCallRptData/Pages/default.aspx> (last visited Aug. 13, 2017).

<sup>84</sup> 12 U.S.C. 2901 *et seq.*

the definition of multifamily in Regulation C itself.

After careful consideration of all the comments received, the Bureau now believes that it is not appropriate to add language to comment 2(f)-2 providing that a loan secured by five or more separate dwellings in more than one location is a loan secured by a multifamily dwelling. To ensure clarity and facilitate compliance, the Bureau is now changing the language proposed in the April 2017 HMDA Proposal to provide explicitly that such a loan is not secured by a multifamily dwelling. The Bureau is also altering the example provided to clarify that the multi-location loan described in the example should not be reported as secured by a multifamily dwelling. In addition, the Bureau has incorporated the new language into new comment 2(n)-3, because the comment involves the definition of multifamily dwelling in § 1003.2(n), rather than the definition of dwelling in § 1003.2(f). The Bureau has also added to the new comment a description and example of a situation similar to that of multi-location loans, as discussed below.

The Bureau believes that the conflicts commenters described regarding the CRA and Call Reports would create the compliance burdens described by commenters. In addition, the Bureau acknowledges that additional clarification would be required to reconcile the proposed classification of multi-site loans language with the proposed change to the commentary on loans for improvement of commercial space in a non-multifamily dwellings in comment 2(i)-4. Consequently, the Bureau believes that the proposed language might have increased the compliance burden rather than decreased it as intended.

In addition, further review of the five data points that are excluded<sup>85</sup> for multifamily loans suggests that it will be feasible for reporters of the multi-location loans that were the subject of the proposal to provide entries for them. If the borrower of such a loan is not a natural person, two of the data points, income and debt-to-income ratio, can be excluded. If the borrower is a natural person, these two data points will need to be reported only if they are relied on in making the credit decision or in processing the application. Similarly, the financial institution should be able to answer whether the application or

covered loan involved a preapproval request. The two other data points that are excluded from reporting for loans secured by multifamily dwellings involve questions about manufactured housing that the financial institution should be able to answer for these loans. To the extent the clarifications in this rule require financial institutions to make technical changes, those changes require only minor adjustments, not significant system updates. In addition, the Bureau has issued this final rule in August, four months before 2018, which the Bureau believes should afford ample time to implement any necessary minor system adjustments. The Bureau is releasing implementation aids with this final rule to facilitate implementation.

During consideration of the public comments and consultation with the relevant Federal agencies, the Bureau became aware that it might also be useful to provide guidance on the treatment of covered loans that are secured by multiple dwellings within a multifamily dwelling, but not secured by the entire multifamily dwelling itself. The Bureau has been told that these loans potentially could increase similar issues for HMDA, CRA, and Call Report reporting requirements unless the Bureau clarifies that they are not secured by a multifamily dwelling. In addition, revised § 1002.2(n)'s definition of a multifamily dwelling, stating that a multifamily dwelling is one that "contains" five or more individual dwelling units, is reasonably interpreted to mean that a loan secured by five or more separate dwellings located in a multifamily dwelling but not secured by the entire multifamily dwelling is not secured by a loan that "contains" five or more individual dwelling units, just as it is reasonably interpreted to mean that a loan secured by a multi-location loan is not secured by a dwelling that "contains" five or more dwelling units.

Consequently, the Bureau is adding language to new comment 2(n)-2 stating that a covered loan secured by five or more separate dwellings that are located within a multifamily dwelling, but which is not secured by the entire multifamily dwelling (e.g., an entire apartment building or housing complex), is not secured by a multifamily dwelling as defined by § 1003.2(n), and providing an example. The Bureau is also adding cross references and instructions to comment 2(n)-2 to facilitate reporting of both the multi-location loans and the loans secured by multiple dwellings within a multifamily dwelling.

Regarding reporting cross-collateralized loans, the Bureau notes that § 1003.4(a)(31) requires reporting of

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. If the documents for a multi-location loan or a loan secured by multiple dwellings within a multifamily dwelling include a cross-collateralization clause that results in the loan being secured by six dwelling units, the financial institution complies with § 1003.4(a)(31) by reporting "6," even though the loan is not secured by a multifamily dwelling. Nonetheless, the HMDA data will have a clear indication of whether a loan is in fact wholly or partially secured by a multifamily dwelling in the response to § 1003.4(a)(32), which requires reporting of income restricted dwelling units if the property securing or proposed to secure the loan includes a multifamily dwelling. Revised comment 4(a)(32)-6 makes clear that when no multifamily dwelling is included in the collateral, the institution reports that the data point is not applicable. The Filing Instructions Guide for HMDA Data Collected in 2018 (2018 FIG)<sup>86</sup> reflects this rule, further providing that when a multifamily dwelling is part of the collateral for a loan, the institution must report a number or "0," and reports "NA" for not applicable if the requirement to report multifamily affordable units does not apply to the covered loan or application. Therefore, any correctly reported loan or application with a value of "NA" in response to § 1003.4(a)(32) will not be either wholly or partially secured or proposed to be secured by a multifamily dwelling.

### Section 1003.3 Exempt Institutions and Excluded Transactions

#### 3(c) Excluded Transactions

##### 3(c)(3)

Current Regulation C provides an exclusion for temporary financing in § 1003.4(d)(3). The 2015 HMDA 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 included in a Federal Financial Institutions Examination Council (FFIEC) Frequently Asked Question (FAQ).<sup>87</sup> As

<sup>86</sup> FFIEC, "Filing Instructions Guide for HMDA Data Collected in 2018," (2018 FIG), available at <https://www.consumerfinance.gov/data-research/hmda/static/for-filers/2018/2018-HMDA-FIG.pdf>. The 2018 FIG is a compendium of resources to help financial institutions file HMDA data collected in 2018 with the Bureau in 2019.

<sup>87</sup> See FFIEC, "Home Mortgage Disclosure Act: Regulatory & Interpretive FAQ's, Temporary

<sup>85</sup> Covered loans secured by a multifamily dwelling are subject to additional reporting requirements under revised § 1003.4(a)(32), but are not subject to reporting requirements under revised § 1003.4(a)(4), (a)(10)(iii), (a)(23), (a)(29), or (a)(30). Revised comment 2(n)-2.

adopted by the 2015 HMDA Final Rule, comment 3(c)(3)-1 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. The Bureau proposed to clarify further the meaning of comment 3(c)(3)-1 and 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. For the reasons discussed below, the Bureau is adopting the § 1003.3(c)(3) commentary as proposed, with certain minor amendments for further clarity.

The majority of commenters supported the proposed changes to the § 1003.3(c)(3) commentary. Several expressed support for the proposed clarifications generally, while a few State and national trade associations stated that the proposal would reduce burden and uncertainty. A few commenters indicated that construction-only loans are often originated through separate channels from residential loans and that it would be expensive to develop systems to report construction-only loans. A few commenters that supported the proposed clarifications regarding construction-only loans or lines of credit stated that buyers of the newly-constructed dwellings would often seek permanent financing that would be reportable under HMDA.

One national trade association stated that the proposal would not clarify what constitutes temporary financing and that temporary financing may be structured in different ways, may involve a change in lender, or may involve only a single set of loan documents that does not reflect the permanent financing. This commenter suggested that the Bureau define temporary financing as any dwelling-secured loan to a borrower for any purpose where the initial advance of funds will be replaced by permanent financing at a later date. One State trade

association requested further clarification on which loans would be excluded as temporary financing and expressed the belief that the proposal did not sufficiently distinguish between one-time closing home purchase loans and short-term construction loans with permanent financing to be obtained at a later date. A few commenters requested additional clarification on the treatment of bridge loans or construction loans that are paid in full with proceeds from the sale of the borrower's current dwelling without the borrower obtaining permanent financing.

The Bureau is adopting the amendments to the § 1003.3(c)(3) commentary substantially as proposed, with minor clarifications to comment 3(c)(3)-1. Final comment 3(c)(3)-1 states that § 1003.3(c)(3) provides that closed-end mortgage loans or open-end lines of credit obtained for temporary financing are excluded transactions. The comment then provides 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 by any financial institution to the same borrower at a later time. The Bureau is also adopting revisions to the illustrative example in comment 3(c)(3)-1.i to provide that the borrower obtains permanent financing for his or her new home either from the same lender or from another lender.

Final comment 3(c)(3)-1 thus clarifies further that the applicability of the temporary financing exclusion does not depend on whether the financial institution that originates the permanent financing is the same institution that originated the loan or line of credit the permanent financing is designed to replace. The Bureau notes that, as adopted by the 2015 HMDA Final Rule, comment 3(c)(3)-1.ii provides an illustrative example of a construction loan that is excluded because it is designed to be replaced by permanent financing from either the lender that originated the loan or another lender. Nevertheless, the Bureau believes that the additional revisions adopted here to comment 3(c)(3)-1 clarify further that the determination of whether a loan or line of credit is temporary financing does not depend on the identity of the financial institution that originates the permanent financing to replace that loan or line of credit. Final comment 3(c)(3)-1 also omits proposed language regarding "except as provided in comment 3(c)(3)-2," because both comments 3(c)(3)-1 and -2 set forth independent criteria for determining

whether a loan or line of credit is considered temporary financing.

Final comment 3(c)(3)-2 provides 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 and cross-references 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 declines to adopt further revisions to the § 1003.3(c)(3) commentary as it believes the guidance adopted in this final rule provides a clear standard that serves HMDA's purposes. Regarding the treatment of loans that close in a single transaction, the 2015 HMDA Final Rule explained that "the loan is temporary financing if it is designed to be replaced by longer-term financing at a later time (e.g., financing completed through a separate closing that will pay off the short-term loan)." <sup>88</sup> Final comment 3(c)(3)-1 clarifies further that, for the temporary financing exclusion to apply, the permanent financing must be separate from the loan or line of credit it is designed to replace. Regarding the treatment of loans that are paid in full without the borrower obtaining separate permanent financing, except as provided in comment 3(c)(3)-2, the applicability of the temporary financing exclusion depends on whether the loan or line of credit is designed to be replaced by separate permanent financing extended to the same borrower at a later time. As discussed in the 2015 HMDA Final Rule, the commentary to § 1003.3(c)(3) will help to ensure reporting of short-term transactions that function as permanent financing while excluding those transactions that will be captured by the separate reporting of the longer-term financing, if it otherwise is covered by Regulation C. <sup>89</sup>

3(c)(10)

Regulation C currently covers closed-end, commercial-purpose loans made to purchase, refinance, or improve a dwelling. The 2015 HMDA 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

Financing." <http://www.ffiec.gov/hmda/faqreg.htm#TemporaryFinancing> (last visited Aug. 9, 2017). The existing FFIEC FAQ concerning temporary financing acknowledges that temporary financing is exempt and states that "financing is temporary if it is designed to be replaced by permanent financing of a much longer term. A loan is not temporary financing merely because its term is short. For example, a lender may make a loan with a one-year term to enable an investor to purchase a home, renovate it, and re-sell it before the term expires. Such a loan must be reported as a home purchase loan."

<sup>88</sup> 2015 HMDA Final Rule, 80 FR 66128, 66168 (Oct. 28, 2015).

<sup>89</sup> *Id.*

§ 1003.2(p). The Bureau proposed 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.<sup>90</sup>

Comments addressing the proposed changes to both comments 2(i)–4 and 3(c)(10)–3.ii and comments related to the proposed clarifications regarding reporting requirements for loans to improve mixed-use property generally are discussed above in the section-by-section analysis of § 1003.2(i). One large financial institution expressed the belief that the examples in proposed comment 3(c)(10)–3.ii would lead to uncertainty and stated that neither a doctor’s office nor a daycare center is considered a dwelling for purposes of HMDA reporting because they are commercial properties without any residential purposes.

The Bureau is adopting comment 3(c)(10)–3.ii as proposed. The Bureau notes that final comment 3(c)(10)–3.ii provides an illustrative example regarding a doctor’s office or a daycare center located in a dwelling other than a multifamily dwelling. Final comment 3(c)(10)–3.ii does not affect the definition of dwelling in § 1003.2(f) or the guidance in comment 2(f)–4 regarding the determination of whether a property used for both residential and commercial purposes is a dwelling for purposes of Regulation C.

3(c)(11)

Section 1003.2(g), as adopted by the 2015 HMDA 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 2015 HMDA Final Rule, provides a complementary exclusion for financial institutions with loan volumes 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. However, the use of the word “each” in § 1003.3(c)(11) was a drafting error.<sup>91</sup>

<sup>90</sup> As discussed in more detail in the section-by-section analysis of § 1003.2(i), the Bureau proposed to revise comment 2(i)–4 to clarify that it applies to multifamily dwellings.

<sup>91</sup> As noted in the April 2017 HMDA Proposal, this provision as adopted by the 2015 HMDA Final Rule states the test as “fewer than 100 open-end lines of credit in each of the two preceding calendar years,” but this was a drafting error; the intent was to require that a financial institution exceeded the threshold in both of the two preceding calendar

Therefore, the Bureau proposed to amend § 1003.3(c)(11) and comment 3(c)(11)–1 by replacing the word “each” with “either” to clarify how a financial institution applies the exclusion and to include an unrelated clarifying reference to purchased loans. In addition, the Bureau proposed to allow financial institutions voluntarily to report covered loans and applications excluded by § 1003.3(c)(11).

#### Replacing “Each” With “Either”

Five financial industry and vendor commenters supported the proposal to replace the word “each” with “either,” stating that it would add clarity. One consumer advocacy group commenter opposed the change, stating that the word “each” would increase the number of institutions reporting, and would particularly promote accountability for small financial institutions. One industry commenter requested that the Bureau add more examples so that community banks can better understand application of the loan-volume test.

The Bureau is adopting the provision as proposed. To ensure that the exclusion mirrors the loan-volume threshold for financial institutions in § 1003.2(g) and excludes transactions when that threshold is not met, § 1003.3(c)(11) must 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 the two preceding calendar years.<sup>92</sup> Using the word “each” would increase the reporting requirements for smaller volume financial institutions, as one commenter explained, but the decision regarding how to apply the thresholds was carefully considered and explained when the Bureau adopted the 2015 HMDA Final Rule,<sup>93</sup> and commenters have not provided a basis to restructure the two-year look-back period in a way that would avoid re-introducing the reporting uncertainty that the structure of the thresholds aims to eliminate. The April 2017 HMDA Proposal did not

years to be subject to closed-end mortgage loan reporting, thus the exclusion should require that a financial institution originate fewer than 100 such lines of credit in either of the two preceding calendar years. See April 2017 HMDA Proposal, 82 FR 19142, 19148–49 (Apr. 25, 2017).

<sup>92</sup> The preamble to the 2015 HMDA 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.” 2015 HMDA Final Rule, 80 FR 66128, 66149 (Oct. 28, 2015).

<sup>93</sup> *Id.* at 66150.

envision increasing small entity reporting requirements. In addition, the Bureau did not propose additional compliance examples, and does not believe they are needed at this time. With the change from “each” to “either,” the application of the thresholds and complementary exclusions should be much clearer than before.

The Bureau also proposed a technical clarification to the example in comment 3(c)(11)–1 to describe more thoroughly the reporting requirements for financial institutions whose origination totals for the prior two years are above the threshold. The clarification would specify 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). One commenter stated its support for the change, without further discussion, and no other commenters discussed it. The Bureau now adopts the clarification as proposed.

#### Optional Reporting

Although the 2015 HMDA Final Rule did not specifically state that optional 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 proposed to clarify further that it interprets the exclusion in § 1003.3(c)(11), providing that the requirements of Regulation C 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 solicited comment on whether a financial institution that reports such transactions voluntarily should be required to report all such transactions, and whether the voluntary reporting provision should be included in the regulation text, as well as the commentary.

The Bureau received six comments discussing the voluntary reporting clarification. Four commenters expressed support for the provision and none expressed opposition. One commenter stated that voluntary reporting would reduce burden on smaller institutions. Another stated that voluntary reporting would allow financial institutions to prepare for implementation before they are required to report. A third commenter stated that a financial institution may prefer

voluntary reporting because it may continue to use the same compliance processes without incurring additional cost by switching implementation on and off from year to year, should its loan volumes vary above and below the threshold over time. However, one commenter stated that it did not believe that the information from voluntary reporting would be useful for fair lending analyses and that it would not itself choose to voluntarily report. Another commenter suggested that the Bureau explicitly state that the voluntary reporting provision includes and authorizes voluntary collection of demographic and other information. This commenter also requested that the Bureau clarify how the “permissible” collection of such information referenced in Regulation B relates to voluntary reporting. Regulation B generally prohibits the collection of certain consumer information unless such collection is required or permitted by law. The Bureau recently issued a proposed rule that would amend Regulation B.<sup>94</sup> Under that proposal, proposed Regulation B § 1002.5(a)(4)(i) would permit certain voluntary collection of information as discussed in greater detail below.

Three commenters expressed support for the inclusion of a requirement that voluntary reporters report all the relevant excluded covered loans and applications. No commenters expressed opposition to including this requirement. One industry commenter stated that requiring the reporting of all excluded covered loans and applications would give financial institutions a more complete understanding of the HMDA requirements. A consumer advocacy group commenter stated that selective reporting of excluded transactions could hide fair lending violations and compromise CRA exams.

Two commenters expressed support for including the voluntary reporting provision in the regulation text rather than just the comment. No commenters expressed opposition. One of these commenters said that including the provision in the regulation text would avoid confusion, and the other stated that it would highlight the Bureau’s demonstrated attempts to harmonize regulations to reduce obligations on smaller institutions.

The Bureau has considered the comments and is adopting the provision allowing optional reporting of the loans excluded by § 1003.3(c)(11) as proposed,

and is placing it in the rule text with additional explanation in the commentary. Final § 1003.3(c)(11) includes new language stating that a financial institution may collect, record, report, and disclose information, as described in §§ 1003.4 and 1003.5, a closed-end mortgage loan that would otherwise be excluded under § 1003.3(c)(11) because of the threshold as though it is a covered loan, provided that the financial institution complies with such requirements for all applications for closed-end mortgage loans which it receives, closed-end mortgage loans that it originates, and closed-end mortgage loans that it purchases during the calendar year during which final action is taken on the closed-end mortgage loan. As noted above, the Bureau recently proposed to amend Regulation B to add § 1002.5(a)(4)(i), which would permit a creditor that is a financial institution under 12 CFR 1003.2(g) to collect information regarding the ethnicity, race, and sex of an applicant for a closed-end mortgage loan that is an excluded transaction under 12 CFR 1003.3(c)(11) if it submits HMDA data concerning such closed-end mortgage loans and applications or if it submitted HMDA data concerning closed-end mortgage loans for any of the preceding five calendar years. The Bureau is in the process of reviewing the comments and considering whether to issue a final rule, which the Bureau expects would be issued soon after the date this rule is issued. The Bureau may offer additional clarification about the relationship between permissible collection and reporting at that time.

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 § 1003.3(c)(13), discussed below, because the applicability of the § 1003.3(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 when they are not required to, particularly when the institution’s total of closed-end mortgage loans may fluctuate above or below the threshold, may reduce their regulatory burden by doing so. In addition, the Bureau believes that requiring financial institutions that choose to report such excluded loans to report all such covered loans and applications will help ensure the accuracy and usefulness of the HMDA

data reported and prevent selective reporting that could disguise fair lending violations. The Bureau agrees that including the optional reporting provision in the regulation text will avoid confusion and facilitate compliance.

As discussed in the 2015 HMDA Final Rule, the Bureau adopted § 1003.2(g)(1) pursuant to its authority under section 305(a) of HMDA to provide for such adjustments and exceptions for any class of transactions that the Bureau judges are necessary and proper to effectuate the purposes of HMDA. Pursuant to section 305(a) of HMDA, for the reasons given in the 2015 HMDA Final Rule, the Bureau found that the exception in § 1003.2(g)(1) exception is necessary and proper to effectuate the purposes of HMDA. The Bureau found that by reducing burden on financial institutions and establishing a consistent loan-volume test applicable to all financial institutions, the provision will facilitate compliance with HMDA’s requirements.<sup>95</sup> As discussed in the 2015 HMDA Final Rule, the Bureau adopted § 1003.2(g)(2) pursuant to its interpretation of HMDA sections 303(3)(B) and 303(5), which require persons other than banks, savings associations, and credit unions that are “engaged for profit in the business of mortgage lending” to report HMDA data. The Bureau stated that it interprets these provisions, as the Board also did, to evince the intent to exclude from coverage institutions that make a relatively small volume of mortgage loans.<sup>96</sup> The Bureau implemented § 1003.3(c)(11) (and, for similar reasons, § 1003.3(c)(12), as discussed further below), because the Bureau does not believe that it is useful to burden such institutions with reporting closed-end mortgage data merely because their open-end lending exceeded the separate, open-end loan volume threshold in § 1003.2(g).<sup>97</sup> As discussed above, the Bureau believes that permitting optional reporting of these excluded loans by a financial institution is consistent with the statute and will reduce burden on certain financial institutions.

In addition to the comments directly addressing the voluntary reporting provision, two commenters suggested that the Bureau provide a safe harbor in relation to voluntary reporting. One of these commenters stated that the Bureau should provide voluntary reporters a safe harbor or other relief from liability

<sup>94</sup> Amendments to Equal Credit Opportunity Act (Regulation B) Ethnicity and Race Information Collection, 82 FR 16307 (Apr. 4, 2017).

<sup>95</sup> 2015 HMDA Final Rule, 80 FR 66128, 66150 (Oct. 28, 2015).

<sup>96</sup> *Id.* at 66153.

<sup>97</sup> *Id.* at 66173.

under Regulation C. The other suggested that financial institutions should be given a safe harbor to collect demographic data if they are using the information for fair lending self-testing in accordance with Regulation B or the institution has met the reporting threshold in either of the previous two years.

The Bureau did not propose a safe harbor for voluntary reporters of excluded transactions below the origination threshold and therefore does not believe that adopting one in this final rule would be appropriate. A safe harbor may weaken the reliability of the data reported, and the Bureau has not had the benefit of notice and public comment in considering this complex issue.

### 3(c)(12)

As adopted in the 2015 HMDA Final Rule, § 1003.3(c)(12) provides an exclusion from the requirement to report open-end lines of credit for institutions that did not originate at least 100 such loans in each of the two preceding calendar years. This threshold was intended to complement an open-end reporting threshold included in the definition of financial institution in § 1003.2(g), which sets forth Regulation C's institutional coverage. The Bureau proposed amendments to § 1003(c)(12) and its commentary to raise temporarily the open-end threshold to 500 loans and to make the same clarifying amendments, including optional reporting, as in § 1003.3(c)(11), which addresses the reporting threshold for closed-end mortgage loans. The Bureau is finalizing the proposed amendments as discussed below.

#### Level of Threshold

Section 1003.3(c)(12), as adopted by the 2015 HMDA Final Rule, provides that an open-end line of credit is an excluded transaction, and thus not subject to Regulation C, if the financial institution originated fewer than 100 open-end lines of credit in each of the two preceding calendar years. As discussed in more detail in the section-by-section analysis of § 1003.3(c)(11) and further below, the exclusion as adopted in the 2015 HMDA Final Rule was intended to apply if the financial institution originated fewer than 100 open-end lines of credit in either of the two preceding calendar years.<sup>98</sup> As

discussed in more detail in the section-by-section analysis of § 1003.2(g), in the July 2017 HMDA Proposal, the Bureau proposed to raise temporarily the open-end threshold to 500 loans. The Bureau proposed conforming amendments to § 1003.3(c)(12) and comment 3(c)(12)-1, and to proposed new comment 3(c)(12)-2, which was included in the April 2017 HMDA Proposal, as discussed in more detail below, to provide guidance regarding voluntary reporting. Under proposed § 1003.3(c)(12), for calendar years 2018 and 2019, a financial institution that originated between 100 and 499 open-end lines of credit in either of the two preceding calendar years would not be required to begin collecting data on such open-end lines of credit before 2020. Comments regarding the proposed temporary adjustment to the open-end threshold are discussed in the section-by-section analysis of § 1003.2(g). For the reasons discussed in the section-by-section analysis of § 1003.2(g), the Bureau is adopting the amendments as proposed, increasing the open-end line of credit threshold to 500 for calendar years 2018 and 2019.

#### Optional Reporting and Other Technical and Clarifying Amendments

Section 1003.2(g), as adopted by the 2015 HMDA 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. As discussed above, the 2015 HMDA Final Rule set the threshold for open-end lines of credit at 100 open-end lines originated in each of the two preceding calendar years. Section 1003.3(c)(12), as adopted by the 2015 HMDA Final Rule, provides an exclusion for loans below a given 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 section-by-section analysis of § 1003.3(c)(11), the Bureau proposed to amend § 1003.3(c)(12) and comment 3(c)(12)-1 by replacing the word "each" with "either" to clarify how a financial institution applies the exclusion. The Bureau is now adopting that correction. Comments generally discussing the

open-end lines of credit in each of the two preceding calendar years and satisfy the other applicable coverage criteria. That threshold and the transactional coverage threshold in 12 CFR 1003.3(c)(11) and (12) were intended to be complementary exclusions. April 2017 HMDA Proposal, 82 FR 19142, 19149 (Apr. 25, 2017).

proposed adjustment to the open-end threshold are discussed in the section-by-section analysis of § 1003.2(g). None of the comments received on the proposal to replace "each" with "either" differentiated between the § 1003.3(c)(11) closed-end mortgage loan exclusion explained above and the § 1003.3(c)(12) open-end line of credit exclusion, and the Bureau believes that the same reasoning applies to both.

Similarly, the Bureau adopts the clarification that would specify 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), for the same reasons as described above in the section-by-section analysis of § 1003.3(c)(11).

As with the § 1003.3(c)(11) exclusion for closed-end mortgage loans, the Bureau proposed to clarify that it interprets the exclusion in § 1003.3(c)(12), now providing that the requirements of Regulation C do not apply to an open-end line of credit if the financial institution originated fewer than 500 open-end lines of credit in either of the two preceding calendar years, to permit a financial institution to report such open-end lines of credit and applications for open-end lines of credit voluntarily.

For the same reasons as explained above regarding the § 1003.3(c)(11) closed-end mortgage loan exclusion, the Bureau is adopting the provision allowing optional reporting of transactions excluded by § 1003.3(c)(12) by including language in the regulation text that states that a financial institution may collect and report data on such loans provided that it reports all open-end lines of credit and applications that would otherwise be covered loans for a given calendar year. None of the comments received on the issue of optional reporting differentiated between the § 1003.3(c)(11) closed-end mortgage loan exclusion explained above and the § 1003.3(c)(12) open-end line of credit exclusion, and the Bureau believes that the same reasoning applies to both.

### 3(c)(13)

Comment 2(d)-2.ii, as adopted by the 2015 HMDA 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.<sup>99</sup> The exception covers

<sup>98</sup> As noted above and as explained in the April 2017 HMDA Proposal, under the institutional coverage threshold adopted by the 2015 HMDA Final Rule, the definition of financial institution included only institutions that originate either 25 or more closed-end mortgage loans or 100 or more

<sup>99</sup> In the 2015 HMDA 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. Revised comment 2(d)-2 explains that, for purposes of Regulation C, an "extension of credit" refers to the

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). To facilitate the newly required reporting of New York CEMAs, the Bureau proposed an exclusion from reporting for preliminary transactions that provide new funds that are then consolidated into New York CEMAs, as explained below, and an associated comment. The Bureau is adopting this provision largely as proposed, with language added to the associated comment to clarify use of the exclusion.

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 by a new obligation. 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 then becomes part of the consolidation. Under New York State law, if no new money is added by a preliminary, subsequently consolidated transaction, 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 that then becomes part of the consolidated loan, the borrower pays mortgage recording taxes only on the new money.<sup>100</sup> 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,

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, revised comment 2(d)-2.i provided another exception, for assumptions, which Regulation C historically has covered. The Bureau is not making any change to the assumptions exception.

<sup>100</sup> See N.Y. Tax Law section 255 (McKinney, 2004).

and that balance is consolidated with a new loan to the borrower for the remainder of the purchase price that the buyer is financing.

The Bureau explained in the 2015 HMDA 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.<sup>101</sup> 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 2015 HMDA Final Rule was meant to clarify the reporting requirements regarding New York CEMAs.

In treating New York CEMAs as extensions of credit, the 2015 HMDA 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.<sup>102</sup> Comment 2(d)-2.ii, as adopted by the 2015 HMDA Final Rule, explains that a New York CEMA should be considered an extension of credit for purposes of Regulation C, and a financial institution must report New York CEMAs if they are otherwise covered transactions. To facilitate the reporting of New York CEMAs, the Bureau's April 2017 HMDA Proposal would include an exclusion from reporting for preliminary transactions that provide new funds that are then consolidated into New York CEMAs, as explained above. The exception would further provide 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.

Four commenters discussed the proposed exclusion. Three expressed support for the exclusion, and the fourth only objected to the proposed timing requirement, as discussed below. A consumer advocacy group commenter stated that the proposal would eliminate double counting and lead to a more accurate picture of how successful financial institutions are at meeting credit needs. Although they expressed support for the proposal, two industry commenters objected to the 2015 HMDA

<sup>101</sup> 2015 HMDA Final Rule, 80 FR 66128, 66143 (Oct. 28, 2015).

<sup>102</sup> See *id.* at 66142.

Final Rule's treatment of New York CEMAs as extensions of credit, and another requested that the proposed exclusion for preliminary transactions be expanded to include non-New York consolidations.

The Bureau has considered the comments and is adopting the proposed exclusion as proposed, with the clarifications discussed below. The Bureau is adopting the exclusion to simplify and 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 would be reportable under revised Regulation C if it were otherwise a covered loan. Regarding New York CEMAs, this would 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 is adopting § 1003.3(c)(13), which provides 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 is an excluded transaction. The Bureau also adopts proposed comment 3(c)(13)-1 explaining the application of the new § 1003.3(c)(13) exclusion. The Bureau believes that this exclusion will clarify and simplify reporting of New York CEMAs, eliminating double reporting



and facilitating compliance for financial institutions that provide New York CEMAs. The exclusion does not change the exception in comment 2(d)–2.ii that requires New York CEMAs to be reported as extensions of credit, which the Bureau continues to believe is appropriate and necessary for the reasons stated above and in the 2015 HMDA Final Rule.<sup>103</sup> In addition, the Bureau chose not to change the treatment of preliminary, new money transactions regarding CEMAs made pursuant to the law of States other than New York because the problem of double counting does not exist when the CEMA is not itself being reported, as is the case outside New York.

One industry commenter expressed support for the timing requirement of the § 1003.3(c)(13) exclusion, which requires that the preliminary transaction and the consolidation occur within the same calendar year, stating that it would provide a clear timeline for reporting. Two other industry commenters objected to the timing requirement, stating that it was unnecessary because the preliminary transaction and consolidation usually happens at about the same time. One of these commenters said that the timing provision was potentially confusing and problematic, and could create difficulties for year-end transactions. That commenter suggested that the Bureau should instead limit the exclusion to cases where the borrower applies for the new money and the consolidation at the same time. That commenter also requested that, if the timing provision is not changed, the Bureau clarify that an earlier, unrelated loan that occurs in the same year and is later consolidated in a New York CEMA is not required to be excluded, which would otherwise create tracking and compliance challenges. In addition, the industry commenter that expressed support for the timing provision requested that the Bureau clarify that a consolidation will be considered as having been concluded in a calendar year even if the right of rescission extends into January of the next year.

The Bureau has considered the comments on the timing provision and is adopting the provision as proposed, clarifying that the exclusion applies only to a transaction that is consolidated in a New York CEMA if the final action on the consolidation has been taken before the end of the calendar year in which final action on the preliminary transaction occurred. The Bureau is also adding new language to comment 3(c)(13)–1 to address how the exclusion

relates to earlier, unrelated transactions that are consolidated into New York CEMAs in the same calendar year and how to report New York CEMAs that involve assumptions.

The Bureau believes that consolidation of a prior transaction into the New York CEMA qualifies it as an excluded transaction, thus final action on the consolidation must occur within the relevant final reporting period in order for the HMDA data to be accurate and reporting requirements to be clear. As two of the commenters pointed out, the preliminary new funds transaction and the consolidation will generally occur at about the same time, and therefore in the vast majority of these situations the timing requirement will not even be potentially implicated. In addition, the three-day right of rescission has no bearing on the date of the action taken on the originated preliminary transaction or the New York CEMA, which would occur at closing. As long as the consolidation occurs on or before December 31 of the year final action was taken on the preliminary transaction, it would be excluded. For those very few situations in which the two transactions might straddle the year's end, the financial institution can avoid this problem through a scheduling change, or can report the two transactions separately.

The Bureau chooses not to adopt the suggestion that the proposed timing requirement be replaced with a requirement that the applications for the preliminary transaction and the consolidation into the New York CEMA occur at the same time. Such a provision would lack the clarity regarding reporting requirements that a definite year-end cutoff provides.

To clarify the exclusion's timing requirement, the Bureau is adding language to comment 3(c)(13)–1 to clarify that a transaction that occurs earlier in the same year and is later consolidated in a New York CEMA is not excluded if the financial institution did not, when originated, intend to later consolidate it into a New York CEMA. The comment now states that the exclusion applies only if, at the time of the transaction that provided or proposed to provide new funds, the financial institution intended to consolidate the loan into a New York CEMA. The Bureau believes that this language will clarify and simplify reporting requirements in this situation because the financial institution will not need to track earlier, unrelated loans and can apply the exclusion based on its own knowledge of the transaction.

The commenters who discussed New York CEMAs also asked for certain

clarifications of how the proposed exclusion and the 2015 HMDA Final Rule provision will work. One commenter requested clarification of how to report a new money transaction preliminary to a consolidation outside of New York. Another commenter asked the Bureau to clarify whether preliminary, new money transactions that are consolidated into New York CEMAs involving assumptions will be covered by the new exclusion. In addition, one commenter asked for clarification that the Bureau's interpretation of New York CEMAs as extensions of credit is not meant to preempt State law interpretations of New York Tax Law section 255.

Consolidation transactions similar to New York CEMAs occur in States other than New York, although the Bureau believes they are far less common.<sup>104</sup> Non-New York CEMAs may be called CEMAs or MECAs (modification, extension and consolidation agreements). In the 2015 HMDA 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, comment 3(c)(13)–1 explains that the exclusion for preliminary transactions consolidated into New York CEMAs does not apply to similar preliminary transactions that are consolidated pursuant to the law of States other than New York, providing an example. The comment also explains that, if such a preliminary transaction providing or proposing to provide new funds is a covered loan or application, it must be reported. In addition, the comment also states 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.

Regarding the method for reporting these preliminary transactions for CEMAs or MECAs outside New York, if the eventual consolidation is not an extension of credit, as described by comments 2(d)–2 as adopted by the 2015 HMDA Final Rule, the financial institution should report data related only to the terms of the preliminary, new funds transaction and treat the CEMA or MECA that follows as if it were an unrelated transaction. As noted in the 2015 HMDA Final Rule, the Bureau believes that limiting the scope

<sup>103</sup> *Id.* at 66143.

<sup>104</sup> *Id.* at 66143 n.113.

of reportable MECAs/CEMAs to those covered by New York Tax Law section 255 will permit New York CEMAs to be reported while avoiding the confusion that, as the Board worried, could result from departing from a bright-line “satisfies and replaces” rule for the definition of refinancings generally.

New York CEMAs are sometimes carried out in a transaction involving an assumption. The Bureau notes that the 2015 HMDA Final Rule, the April 2017 HMDA Proposal, and this final rule all include references to home purchase by assumption using a New York CEMA.<sup>105</sup> As long as the CEMA fits the description of a New York CEMA in comment 2(d)–2.ii, and the preliminary new money transaction meets the requirements of § 1003.3(c)(13), the financial institution should report the New York CEMA, pursuant to comment 2(d)–2.ii, and should not report the preliminary transaction, pursuant to § 1003.3(c)(13). In this way, the assumption is reported under Regulation C. The Bureau is adding language to comment 3(c)(13)–1 to make this clear.

Regarding the comment requesting clarification of the relation of Regulation C’s requirement to report New York CEMAs to New York State’s interpretation of New York Tax Law section 255, the Bureau points out that Regulation C and HMDA set out requirements for collecting, recording, and reporting information. The requirement to report New York CEMAs as extensions of credit for HMDA purposes is not intended to preempt or otherwise affect the proper interpretation of New York Tax Law section 255.

HMDA section 305(a) authorizes the Bureau to prescribe such regulations as may be necessary to carry out HMDA’s purposes.<sup>106</sup> 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.”<sup>107</sup> As explained above, the new exception would effectuate the purposes of HMDA and facilitate compliance by eliminating double reporting of preliminary transactions that are subsequently

consolidated in New York CEMA transactions.

#### *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 (ULI), as it may determine to be appropriate.<sup>108</sup> Current § 1003.4(a)(1) requires financial institutions to report an identifying number for each covered loan or application reported. As adopted by the 2015 HMDA 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, § 1003.4(a)(1)(i)(C), as adopted by the 2015 HMDA Final Rule, requires a check digit as part of the ULI. 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 2015 HMDA 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. In the April 2017 HMDA Proposal, the Bureau proposed certain amendments to appendix C and to the commentary to § 1003.4(a)(1)(i).

Previous to the April 2017 HMDA Proposal, the Bureau had become aware of a typographical error that occurs twice in appendix C and makes one method of computing the check digit inaccurate. The Bureau proposed to revise appendix C by substituting 97 for .97 in two places in the relevant instructions in appendix C.

All the commenters that discussed the proposed technical correction to appendix C expressed support for the change. One industry commenter stated that it had noticed the error and had begun implementation assuming that it was wrong.

The Bureau is adopting the technical correction as proposed. Step 3 of the method for computing the check digit has two alternatives. Appendix C mistakenly provided 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 occurred 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. To ensure correct computation of the check digit, the Bureau now substitutes 97 for .97 in the two places where the error occurred.

For those financial institutions that do not wish to calculate the check digit themselves, the Bureau also notes that it will provide a check digit tool on its Web site before the effective date of the 2015 HMDA Final Rule.

In addition to the check digit technical correction, the Bureau proposed to amend comments 4(a)(1)(i)–3 and –4 to reflect the different effective dates for data reporting requirements adopted by the 2015 HMDA Final Rule. Specifically, the Bureau proposed to amend comments 4(a)(1)(i)–3 and –4, effective January 1, 2018, to remove the references to quarterly reporting, and to amend comments 4(a)(1)(i)–3 and –4, effective January 1, 2020, to reincorporate the references to quarterly reporting. The Bureau also proposed certain non-substantive clarifications to comments 4(a)(1)(i)–3 and –4. For the reasons discussed below, the Bureau is adopting comments 4(a)(1)(i)–3 and –4, effective January 1, 2018, and as amended again effective January 1, 2020, as proposed, with minor technical revisions.

Several commenters expressed support for the proposed clarifications to comments 4(a)(1)(i)–3 and –4 regarding purchased loans and reconsidered or reinstated applications. One national trade association stated that the guidance regarding reinstated or reconsidered applications generally reflects the operations of most lenders. A few vendor commenters expressed concern with the term “assigned” as used in proposed comment 4(a)(1)(i)–3 and requested that it be removed or that a definition of the term be provided. These commenters also stated that, because the loan identification number is often part of the ULI, not being able to use the same ULI for a reconsidered or reinstated application more than once would result in lenders needing to restart the application process to obtain a unique ULI. A few commenters expressed concern that multiple entities involved in a transaction could assign a ULI and requested additional guidance on which ULI to report in such instances. One commenter requested additional guidance on whether a new

<sup>105</sup> 2015 HMDA Final Rule, 80 FR 66128, 66142 (Oct. 28, 2015); April 2017 HMDA Proposal, 82 FR 19142, 19150 (Apr. 25, 2017).

<sup>106</sup> 12 U.S.C. 2804(a).

<sup>107</sup> *Id.*

<sup>108</sup> 12 U.S.C. 2803(b)(6)(G).

ULI should be generated and reported in the case of assumptions while another commenter stated that uncertainty remained over how the ULI will be transferred between lenders, investors, and servicers.

The Bureau is adopting comments 4(a)(1)(i)–3 and –4 effective January 1, 2018, and again as amended effective January 1, 2020, as proposed, with minor technical revisions. Final comment 4(a)(1)(i)–3 does not change any substantive reporting requirements regarding purchased covered loans with previously assigned ULIs. Rather, it clarifies further the requirement in § 1003.4(a)(1)(i)(D) that, for a purchased covered loan that any financial institution has previously assigned or reported with a ULI under Regulation C, the financial institution that purchases the covered loan must use the ULI that was assigned or previously reported for the covered loan. Regarding commenters' concerns about reinstated or reconsidered applications, final comment 4(a)(1)(i)–4 does not change the substantive requirements regarding when a financial institution may or may not use a previously reported ULI. Final comment 4(a)(1)(i)–4, effective January 1, 2020, clarifies that 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, but that a financial institution does have the option to report a ULI previously reported if an application is reconsidered or reinstated during the same calendar year. As explained in the 2015 HMDA Final Rule, “the Bureau believes that providing this option for financial institutions will reduce burden associated with assigning a new ULI for a later transaction that a financial institution considers as a continuation of an earlier transaction.”<sup>109</sup>

As to questions regarding the assignment of a ULI in situations where more than one entity is involved in a transaction, § 1003.4(a)(1) requires that, if a financial institution is required to report an application or origination under Regulation C, then, except as set forth in § 1003.4(a)(1)(i)(D) and (E), that financial institution is responsible for assigning and reporting a unique ULI for that application or origination. Comment 4(a)(1)(i)–1 clarifies that a financial institution should assign only one ULI to any particular covered loan or application, and each ULI should correspond to a single application and ensuing loan if the application is approved and a loan is originated.

Comment 4(a)(1)(i)–1 clarifies further that a financial institution may use a ULI that was reported previously to refer only to the same loan or application for which the ULI was used previously or a loan that ensues from an application for which the ULI was used previously. Under comment 4(a)–2.i, if more than one financial institution is involved in the origination of a covered loan, then the institution that makes the credit decision approving the application before loan closing or account opening reports the origination and pursuant to § 1003.4(a)(1) must assign a unique ULI to the covered loan. Pursuant to comment 4(a)–2.ii, in the case of an application for a covered loan that did not result in an origination, a financial institution reports the action it took on that application, and pursuant to § 1003.4(a)(1) assigns a unique ULI to that application, if the financial institution made a credit decision on the application or was reviewing the application when the application was withdrawn or closed for incompleteness. Comment 4(a)–2.ii further provides that it is not relevant whether the financial institution received the application from the applicant or from another institution, such as a broker, or whether another financial institution also reviewed, reported an action taken, and assigned a ULI to the same application.

#### 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 HMDA section 304(b)(1) by requiring financial institutions to report the type of loan or application. In the 2015 HMDA 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. The Bureau proposed to substitute “Department of Veterans Affairs” for “Veterans Administration” in § 1003.4(a)(2) and comment 4(a)(2)–1. The Bureau received one comment in support of these proposed changes, and is adopting § 1003.4(a)(2) and comment 4(a)(2)–1 as proposed.

#### 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 2015 HMDA 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. In the April 2017 HMDA Proposal the Bureau proposed to add new comment 4(a)(3)–6 to provide that, for purchased covered loans where the origination took place before January 1, 2018, a financial institution complies with § 1003.4(a)(3) by reporting that the requirement is not applicable.

The Bureau received many comments supporting the proposed clarification, and several commenters stated that it would alleviate burden for purchasers of loans originated before January 1, 2018. One vendor stated that many smaller financial institutions may be able to determine loan purpose because they review purchased loan files and recommended that financial institutions have the option to comply with § 1003.4(a)(3) by reporting the loan purpose or not applicable. A few commenters requested that the definitions of the loan purpose categories be changed to align with those set forth in Regulation Z § 1026.37(a)(9).

The Bureau is adopting comment 4(a)(3)–6 as proposed. The Bureau believes that final comment 4(a)(3)–6 provides a consistent standard that will facilitate compliance for financial institutions that purchase covered loans originated before January 1, 2018. The Bureau declines to revise § 1003.4(a)(3) to align with Regulation Z § 1026.37(a)(9). As explained in the 2015 HMDA Final Rule, the Bureau does not believe that aligning § 1003.4(a)(3) with Regulation Z § 1026.37(a)(9) would be appropriate because Regulation Z § 1026.37(a)(9) does not include a loan purpose for home improvement loans and does not include a separate cash-out refinancing purpose.<sup>110</sup>

#### 4(a)(8)

##### 4(a)(8)(i)

Section 1003.4(a)(8)(i), as adopted by the 2015 HMDA Final Rule, requires financial institutions to report the action taken on covered loans and

<sup>109</sup> 2015 HMDA Final Rule, 80 FR 66128, 66178 (Oct. 28, 2015).

<sup>110</sup> *Id.* at 66180.

applications, and comment 4(a)(8)(i)–9 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. Comment 4(a)(8)(i)–13, as adopted by the 2015 HMDA Final Rule, provides guidance on how to report the action taken for different scenarios in which a conditional approval occurs. The Bureau proposed to clarify the guidance on reporting action taken for counteroffers, including its relation to the guidance on reporting action taken on conditional approvals.

The Bureau recognized 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 could 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 could 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, the Bureau believed that limiting the reportable actions taken for counteroffers to only covered loan originated or application denied might lead to less complete and accurate reporting.

In addressing inquiries raising this concern, the Bureau had 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 proposed to amend the language of comment 4(a)(8)(i)–9 to broaden the possible actions taken that could be reported. The Bureau proposed to clarify 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

proposed 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, 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.

Five industry commenters expressed support for the changes to comment 4(a)(8)(i)–9, and three industry commenters expressed opposition. One commenter who expressed support for the changes stated that the guidance would ease the difficulties of reporting by allowing financial institutions' systems to reflect more accurately the specifics of the loan file at the time of final action without requiring additional fields.

One commenter who expressed opposition to the changes preferred that comment 4(a)(8)(i)–9 be read to require that the action taken be reported as loan denied whenever a counteroffer is made and the loan is not ultimately originated. This commenter also stated that the new language was a major change and that financial institutions would have problems implementing it before the effective date. Two commenters expressed concern that it might be difficult for financial institutions to determine and track whether an applicant agrees to proceed with a counteroffer. Two commenters stated that this difficulty would be greater in the case of commercial and multifamily transactions because the negotiations are often fluid and several counteroffers may go back and forth. One commenter suggested that a financial institution should only have to report something more than loan denied if the loan origination system has been updated with the applicant's agreement to proceed. Another commenter suggested specific guidance for reporting action taken for different scenarios after a counteroffer.

Two commenters suggested that the language added to comment 4(a)(8)(i)–9 conflicts with the treatment of counteroffers in Regulation B, which one suggested does not treat a counteroffer as a new application when an applicant agrees to proceed. Two commenters objected to the idea of a counteroffer being treated as a new application, with one asking how the original application should then be reported. One commenter who expressed support for the changes stated

that many financial institutions do not use conditional approval letters, and requested that the example in comment 4(a)(8)(i)–9 be changed to allow other indications of a conditional approval. Finally, one commenter requested that a deleted sentence stating that a financial institution should report the action taken as loan originated when a loan is originated after a counteroffer should be put back into the comment.

The Bureau now adopts the amendment to comment 4(a)(8)(i)–9 largely as proposed, with some modifications to address commenters' concerns. First, the example in comment 4(a)(8)(i)–9 no longer includes a reference to a conditional approval letter, which the Bureau did not intend to suggest was required for a conditional approval to exist. The Bureau believes that removing the reference to a conditional approval letter will broaden the applicability of the example and facilitate compliance. Second, the comment is revised to clarify that a financial institution reports the action taken based on the final disposition of the application in response to the terms of the counteroffer. Information such as the application date and ULI will not change as a result of the existence of a counteroffer with which the applicant is proceeding. An additional example is also added to the commentary.

The Bureau continues to believe that it is necessary to provide a full range of options in reporting the action taken on an application when there is a counteroffer. The Bureau agrees with the industry commenter who stated that the guidance would ease the difficulties of reporting by allowing financial institutions' systems to reflect more accurately the specifics of the loan file at the time of final action. In addition, the Bureau believes that those institutions and vendors that were reading comments 4(a)(8)(i)–9 and –13 differently from this clarification will have adequate time to change their systems. To the extent the clarifications in this rule require financial institutions to make technical changes, those changes require only minor adjustments, not significant system updates. In addition, the Bureau has issued this final rule in August, four months before 2018, which the Bureau believes should afford ample time to implement any necessary minor system adjustments. The Bureau is releasing implementation aids with this final rule to facilitate implementation.

Although some financial institutions may find added difficulty in determining and tracking the action taken for counteroffers if they were previously interpreting the comments

differently, the majority of industry commenters support the clarification and do not appear to believe that undue burden will result. In addition, the Bureau believes that accurate reporting of the action taken in this situation will enhance the accuracy and usefulness of HMDA data. The Bureau does not believe that allowing compliance and accuracy to depend entirely on whether a financial institution has updated its loan origination system would provide the necessary accuracy or uniformity. Regarding commercial and multifamily transactions, the Bureau notes that a financial institution may report the action taken on an application that does not result in an originated loan by reference to the final counteroffer made and is not required to consider any previous negotiations. Although the Bureau appreciates the suggestion of new options for reporting action taken that were provided by one of the commenters, the Bureau believes that the combination of options provided by comments 4(a)(8)(i)–9 and –13 are sufficient, and the Bureau has not had the benefit of notice and public comment on this newly suggested guidance.

In addition, the Bureau does not believe that the new language in comment 4(a)(8)(i)–9 conflicts with the requirements of Regulation B.<sup>111</sup> Regulation B and Regulation C address different requirements: The revisions to comment 4(a)(8)(i)–9 clarify reporting of the action taken field while Regulation B, 12 CFR 1002.9(a), sets forth when an adverse action notice is required. Thus, comment 4(a)(8)(i)–9 does not affect a financial institution's obligation to comply with Regulation B.

Furthermore, the Bureau has replaced the language in the proposed comment stating that the counteroffer takes the place of the prior application. This change is meant to make clear that the revisions to comment 4(a)(8)(i)–9 do not treat a counteroffer as a new covered loan that must be reported as a separate entry in the loan/application register, but rather provide that for purposes of reporting action taken, where the applicant agrees to proceed with consideration of the financial institution's counteroffer, the financial institution reports the action taken field as the disposition of the application based on the terms of counteroffer.

<sup>111</sup> The new language in comment 4(a)(8)(i)–9 does not affect a financial institution's obligation to comply with Regulation B § 1002.9. See comment 4(a)(8)(i)–6 for a discussion of the relation between Regulation B and Regulation C compliance regarding reporting the action taken when the file is closed for incompleteness.

In addition to the change to comment 4(a)(8)(i)–9, the Bureau proposed a technical correction to comment 4(a)(8)(i)–6, as adopted by the 2015 HMDA Final Rule, correcting a citation that was intended to reference Regulation B, 12 CFR 1002.9(c)(1)(i). The citation read, "12 CFR 1002.9(c)(i)." The proposal would correct the typographical error by inserting the "(1)" paragraph designation missing from the citation. The Bureau received no comments on this technical correction and now adopts it as proposed. The Bureau is also adding language to clarify a different, correct citation in the comment.

#### 4(a)(9)

##### 4(a)(9)(i)

Section 1003.4(a)(9)(i) as adopted by the 2015 HMDA 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.<sup>112</sup> Comment 4(a)(9)(i)–3 as adopted by the 2015 HMDA 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 proposed certain non-substantive amendments to comment 4(a)(9)(i)–3 to replace "indicating" with "reporting" for consistency with other comments providing similar guidance.

The Bureau did not receive any comments discussing the replacement of "indicating" with "reporting" in comment 4(a)(9)(i)–3. The Bureau is adopting the amendments to comment 4(a)(9)(i)–3 as proposed, replacing "indicating" with "reporting" for consistency with other comments providing similar guidance.

##### 4(a)(9)(ii)

Current § 1003.4(a)(9) introductory text and (a)(9)(ii), as adopted by the 2015 HMDA 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.<sup>113</sup> The Bureau

<sup>112</sup> See HMDA section 304(b)(6)(H), 12 U.S.C. 2803(b)(6)(H).

<sup>113</sup> 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

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

The Bureau received two comments on the proposed comments, and both expressed support for the change. One commenter stated that the new comments would be extremely helpful. The Bureau also received one comment urging the Bureau to clarify whether reporting State, county, or census tract is permissible when a property is not located in a Metropolitan Statistical Area (MSA) or Metropolitan Division (MD) in which a financial institution has a home or branch office. Instruction I.C.5 in current appendix A to Regulation C addresses the situations when a financial institution may report not applicable. It states that for loans on property located outside the MSAs and MDs in which an institution has a home or branch office, or for property located outside of any MSA or MD and for which the institution is not required to report such information by § 1003.4(e), the institution may choose one of the following two options: First, a financial institution may enter the property location information, and the information reported must accurately identify the property location. Second, a financial institution may indicate that the requirement to report the property location is not applicable. The Bureau agrees that it is appropriate to clarify that a financial institution may report not applicable in these circumstances and is finalizing new comment 4(a)(9)(ii)–1 to clarify that in

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.

circumstances where State, county, or census tract reporting is not required, financial institutions may report that the requirement is not applicable, or may voluntarily report the State, county, or census tract information.

In addition, the Bureau is adopting new comments 4(a)(9)(ii)(A)–1, 4(a)(9)(ii)(B)–2, and 4(a)(9)(ii)(C)–2 as proposed.

4(a)(10)

4(a)(10)(ii)

Section 1003.4(a)(10)(ii) as adopted by the 2015 HMDA 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 2015 HMDA Final Rule, contains a drafting error in providing guidance on treatment of purchased loans that refers to reporting income rather than age. The Bureau proposed to correct the drafting error in comment 4(a)(10)(ii)–3 by replacing the term “income” with “age” to clarify 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 received one comment discussing this correction. The commenter expressed support for the change and asked for further guidance on reporting an applicant’s age for a purchased loan when a financial institution chooses to report age.

The Bureau adopts the technical correction as proposed. Regarding optional reporting of a borrower’s age for purchased loans, as explained in comment 4(a)(10)(ii)–1, a financial institution complies with § 1003.4(a)(10)(ii) by reporting the applicant’s age, as of the application date under § 1003.4(a)(1)(ii), as the number of whole years derived from the date of birth as shown on the application form.

4(a)(10)(iii)

HMDA section 304(b)(4) requires the reporting of income level for borrowers and applicants. The 2015 HMDA Final Rule requires 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.<sup>114</sup> Comment 4(a)(10)(iii)–4

<sup>114</sup> Revised § 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

adopted by the 2015 HMDA 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 proposed to clarify the intended meaning of this comment by amending the comment language to specify 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. The new comment language would also state that actual distributions from retirement accounts or other assets that are relied on by the financial institution as income should be reported as income, and that comment 4(a)(10)(iii)–4’s interpretation of income does not apply to § 1003.4(a)(23), which requires reporting of the debt-to-income ratio.

The Bureau proposed this clarification because it had 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 Bureau explained in the proposal that the use of the modifier “remaining” regarding the assets referred to was meant to specify 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.

Four industry commenters discussed the proposed clarification, and all four expressed opposition to it. Commenters stated that the provision would require separate tracking of income and hypothetical income formulated from assets for HMDA compliance. One commenter stated that this would make compliance and programming difficult, and another suggested that filers should be able to report either the income and formulated asset depletion together as income or else that the income data point is not applicable when a financial institution relies on formulated asset depletion. Otherwise, one commenter suggested, the institution will be reporting partial information that could incorrectly raise fair lending red flags. Another commenter stated that failure

in which the income reporting requirement is not applicable.

to include the asset depletion information may result in false positives during an underwriting matched pair analysis. One commenter stated that applicants that have reportable income may use assets to qualify for the loan, such as when an applicant will be returning to work from an extended leave or is planning to retire shortly after receiving the loan.

One commenter asked that the Bureau create a special rule for reverse mortgages or else exclude them from the income reporting requirement. Another asked for guidance in reporting income as “0,” such as when an applicant becomes unemployed after applying for the loan.

The Bureau is adopting the clarifying language in comment 4(a)(10)(iii)–4 as proposed, providing that a financial institution does not include as income amounts considered in making a credit decision based on factors in addition to income, such as amounts derived from underwriting calculations of the potential annuitization or depletion of an applicant’s remaining assets. The comment further provides that 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 2015 HMDA Final Rule.<sup>115</sup> In addition, to avoid confusion and facilitate compliance, the Bureau also adopts the proposed language clarifying that the comment’s interpretation of income does not apply to § 1003.4(a)(23) as adopted in the 2015 HMDA 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 commenters’ objections to separate tracking of income and asset depletion were not relevant in assessing the proposed clarification. The 2015 HMDA Final Rule income reporting provision already required a separate determination when remaining assets were used, and the April 2017 HMDA Proposal would limit the number of times that separate tracking would be required. Similarly, although the Bureau believes that careful analysis will avoid fair lending misinterpretations, the

<sup>115</sup> Intermittent actual withdrawals from the remaining assets should not be reported if the financial institution does not consider them as income in its underwriting.

potential for such problems should actually be mitigated by the new language. The comments about the use of assets when income is available also appear more relevant to the provision adopted by the 2015 HMDA Final Rule, as opposed to the proposed clarification in the April 2017 HMDA Proposal. The Bureau did not propose revisions to the 2015 HMDA Final Rule's treatment of the reliance on assets when income is not available and therefore the need for such revisions has not benefited from appropriate notice and comment regarding any such amendment. The comment does not provide a basis to change the approach proposed by the Bureau in the April 2017 HMDA Proposal. Accordingly, the Bureau declines to adopt such amendments in this final rule.

Similarly, the Bureau did not propose any change to the treatment of income reporting for reverse mortgages and so has not benefited from notice and comment on this complex issue. In addition, the 2015 HMDA Final Rule preamble noted that the reverse mortgage flag required by § 1003.4(a)(36) will ensure that data reported for reverse mortgages will not be commingled unknowingly with data reported for other covered loans.<sup>116</sup>

Finally, the Bureau notes that the 2015 HMDA Final Rule and the 2018 FIG do not include any language that would bar a financial institution from reporting an applicant's gross annual income as "0" or even a negative number when that is the accurate figure that it relied on.<sup>117</sup>

#### 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."<sup>118</sup> Current § 1003.4(a)(12)(i) requires financial institutions to report, for originated loans subject to Regulation Z, 12 CFR part 1026 that are considered higher priced, 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. Current § 1003.4(a)(12)(ii) explains the definition of APOR, that the Bureau publishes APORs for a broad range of

types of transactions in tables updated at least weekly, and the methodology the Bureau uses to derive these rates. As revised by the 2015 HMDA 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. The Bureau proposed certain amendments to § 1003.4(a)(12)(ii) and to the § 1003.4(a)(12) commentary adopted by the 2015 HMDA Final Rule and proposed new comment 4(a)(12)–9 to address reporting requirements when a financial institution provides corrected disclosures. For the reasons discussed below, the Bureau is revising § 1003.4(a)(12)(i) to clarify its scope and is adopting § 1003.4(a)(12)(ii) and the associated commentary substantially as proposed, with certain additional amendments for clarity.

#### Scope

The Bureau is adopting an amendment to § 1003.4(a)(12)(i) to clarify that the reporting requirement applies to covered loans and applications that are approved but not accepted. Although the Bureau did not propose to revise § 1003.4(a)(12)(i), it believes this amendment will address potential uncertainty regarding the scope of § 1003.4(a)(12). As discussed above, the 2015 HMDA Final Rule revised § 1003.4(a)(12)(i) to require that financial institutions report, for covered loans subject to Regulation Z, other than assumptions, purchased covered loans, and reverse mortgages, the difference between the covered loan's APR and the APOR for a comparable transaction as of the date the interest rate is set. However, as adopted in the 2015 HMDA Final Rule, comments 4(a)(12)–7 and –8 clarify the Bureau's intent that § 1003.4(a)(12) also apply to applications and preapproval requests approved but not accepted. Several other data points revised or adopted by the 2015 HMDA Final Rule, such as loan purpose, interest rate, and prepayment penalty, specify that reporting is required for covered loans or applications.<sup>119</sup> The Bureau believes

it would improve clarity and consistency between § 1003.4(a)(12)(i) and its associated commentary to provide expressly in regulation text that the rate spread reporting requirement applies to covered loans and applications that are approved but not accepted. Thus, final § 1003.4(a)(12)(i) provides that, for covered loans and applications that are approved but not accepted subject to Regulation Z, other than assumptions, purchased covered loans, and reverse mortgages, the financial institution must report the difference between the covered loan's APR and the APOR for a comparable transaction as of the date the interest rate is set.

#### 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. In light of recent variability in the sources of survey data used to calculate APORs and the Bureau's resulting revisions to the methodology statement,<sup>120</sup> the Bureau proposed certain amendments to § 1003.4(a)(12)(ii). The Bureau proposed to amend revised comment 4(a)(12)–1 to conform to the proposed amendments to § 1003.4(a)(12)(ii). The Bureau proposed 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, and to make certain other minor clarifications. The Bureau received no specific comments on the proposed changes to § 1003.4(a)(12)(ii) and comments 4(a)(12)–1 and –2 and, accordingly, is adopting those provisions as proposed, with a minor technical revision to comment 4(a)(12)–2.

#### Open-End Lines of Credit

The 2015 HMDA 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

covered loan at closing or account opening. Revised § 1003.4(a)(22) requires a financial institution to report, for covered loans or applications subject to Regulation Z, 12 CFR part 1026, other than reverse mortgages or purchased covered loans, the term in months of any prepayment penalty, as defined in Regulation Z § 1026.32(b)(6)(i) or (ii), as applicable.

<sup>120</sup> Notice of Availability of Revised Methodology for Determining Average Prime Offer Rates, 81 FR 64142 (Sept. 19, 2016). The source of survey data used by the Bureau to calculate APORs is currently available on the FFIEC Web site. FFIEC, "Mortgage Rate Survey Data Used To Calculate Rate Spreads for Loans Reportable Under HMDA," <https://www.ffiec.gov/ratespread/mortgagerates.htm> (last visited Aug. 8, 2017).

<sup>116</sup> 2015 HMDA Final Rule, 80 FR 66128, 66166 (Oct. 28, 2015).

<sup>117</sup> See revised comment 4(a)(10)(iii)–1.

<sup>118</sup> 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.

<sup>119</sup> For example, revised § 1003.4(a)(3) requires a financial institution to report whether the covered loan is, or the application is for, a home purchase loan, a home improvement loan, a refinancing, a cash-out refinancing, or for a purpose other than home purchase, home improvement, refinancing, or cash-out refinancing. Revised § 1003.4(a)(21) requires a financial institution to report the interest rate applicable to the approved application or to the

comment 4(a)(12)–3 explains further 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. The Bureau proposed to amend revised comment 4(a)(12)–3 to remove the reference to Regulation Z § 1026.40, which sets forth requirements regarding the disclosures provided at the time an application is provided to the consumer, and to replace it with a reference to Regulation Z § 1026.6, which sets forth the disclosure requirements for open-end lines of credit at account opening. For the reasons discussed below, the Bureau is adopting comment 4(a)(12)–3 substantially as proposed, with additional clarifications regarding open-end lines of credit and a cross-reference to comment 4(a)(12)–8.

A few commenters expressed support for the proposed clarification. One national trade association stated that information on rate spread would be more useful if calculated based on the account-specific APR disclosed on the account opening disclosures rather than on the non-specific APR disclosed at the time of application. Another national trade association suggested that a simple approach would be to require reporting based on the APR at the time of closing or account opening, and that in situations where the loan does not close, the lender rely on the last APR disclosed to the borrower. One commenter that supported the proposed clarification stated that account opening disclosures may disclose more than one APR and recommended that the final rule clarify which APR to use in that circumstance. The commenter also sought clarification on whether rate spreads for open-end lines of credit under Regulation C should be calculated in the same manner as set forth in Regulation Z § 1026.32(a).

Final comment 4(a)(12)–3 explains that the requirements of § 1003.4(a)(12)(i) refer to the covered loan's APR. It provides further 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. Final comment 4(a)(12)–3 provides still further that, for open-end lines of credit, 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 § 1026.6. The comment clarifies that, if multiple APRs are calculated and

disclosed pursuant to Regulation Z § 1026.6, a financial institution relies on the APR in effect at the time of account opening. It provides that, if an open-end line of credit has a variable-rate feature and a fixed-rate and -term payment option during the draw period, a financial institution relies on the APR in effect at the time of account opening under the variable-rate feature, which would be a discounted initial rate if one is offered under the variable-rate feature. Finally, the comment includes a cross-reference to comment 4(a)(12)–8 for guidance regarding the APR a financial institution relies on in the case of an application or preapproval request that was approved but not accepted.

As to the request for clarification regarding Regulation Z § 1026.32(a) and the calculation of rate spreads for open-end lines of credit, the Bureau believes that existing provisions already address this question. Regulation Z § 1026.14(b) sets forth the method of calculating APR for purposes of the disclosures required under Regulation Z § 1026.6, and Regulation C § 1003.4(a)(12) and its associated commentary set forth the method of calculating rate spread for purposes of Regulation C.

#### Rate-Set Date

The 2015 HMDA 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. To reflect the renumbering of proposed comment 4(a)–4 to comment 4(a)–2 in the 2015 HMDA Final Rule, the Bureau proposed 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. Comment 4(a)–2 provides guidance on a financial institution's reporting responsibilities when a single transaction involves more than one institution. The Bureau did not receive specific comment on the proposed amendment to comment 4(a)(12)–5.iii. One commenter stated that it agreed that the rate-set date should be the date when the lender last set the rate for the transaction. One commenter expressed concern that a financial institution would need to update its loan/application register when a rate-lock agreement is extended, and another commenter stated that, where a rate-lock agreement is extended, using the date the interest rate was originally locked to determine the APOR would provide more relevant pricing information. One commenter

requested further clarification on how a financial institution may exercise discretion in setting the rate before closing.

The Bureau is adopting comment 4(a)(12)–5 as proposed, with minor amendments for further clarity. Final comment 4(a)(12)–5 explains that the relevant date to use to determine the APOR for a comparable transaction is the date on which the interest rate was set by the financial institution for the final time before final action is taken (*i.e.*, the application was approved but not accepted or the covered loan was originated). Final comment 4(a)(12)–5.i also refers to the final time before final action is taken, rather than the final time before closing or account opening. Because § 1003.4(a)(12) also applies to applications that are approved but not accepted, the Bureau believes it is more appropriate to refer to final action rather than to closing or account opening. The Bureau has not seen any new reason to amend further the guidance adopted in the 2015 HMDA Final Rule regarding the determination of the rate-set date, and it does not believe that complying with § 1003.4(a)(12)(i) when a rate-lock agreement is extended will be unduly burdensome. The Bureau does not believe that it is appropriate to prescribe in Regulation C how a financial institution may exercise discretion in setting the rate.

#### Application or Preapproval Request Approved But Not Accepted

As adopted by the 2015 HMDA Final Rule, comment 4(a)(12)–8 explains that, in the case of an application or 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, final comment 4(a)(12)–3 provides 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 and 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. The Bureau proposed to amend comment 4(a)(12)–8 to clarify reporting requirements where an application or preapproval request is approved but not accepted and only the early disclosures required under Regulation Z § 1026.18 or § 1026.37 (for closed-end mortgage loans) or § 1026.40 (for open-end lines of credit) are provided. The Bureau is adopting comment 4(a)(12)–8 substantially as proposed, with a clarification to address



situations where no Regulation Z disclosures are required for a transaction.

A few national trade associations and one large financial institution expressed support for the proposed clarifications to comment 4(a)(12)–8. Several commenters stated, however, that an application or a preapproval request for purposes of Regulation C may not meet the definition of application under Regulation Z, and thus would not trigger the early disclosure requirements under Regulation Z. One national trade association requested further guidance because, in such instances where no Regulation Z disclosures are required, the proposed guidance regarding relying on the APR disclosed pursuant to the early Regulation Z disclosures would not suffice. One large financial institution expressed concern that the proposal would require a financial institution to provide the early Regulation Z disclosures in situations where such disclosures would not otherwise be required under Regulation Z, merely to permit compliance with Regulation C. This commenter, along with a national trade association and another large financial institution, requested that applications or preapproval requests that do not trigger the Regulation Z disclosure requirements be excluded from the reporting requirements in § 1003.4(a)(12).

One national trade association stated that rate spreads should not be required for open-end lines of credit where the account is not opened because the APR disclosed at the time of application is generic and would not provide useful data. Another national trade association stated that rate spreads would only be valuable for covered loans and recommended that this data point not apply to applications that do not result in a covered loan.

The Bureau is adopting comment 4(a)(12)–8 as proposed, with certain minor amendments for clarity and to address an issue discussed by several commenters. Final comment 4(a)(12)–8 provides that, in the case of an application or preapproval request that was approved but not accepted, § 1003.4(a)(12) requires a financial institution to report the applicable rate spread. The comment provides further that, in such cases, 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 might never provide any subsequent disclosures. Final comment 4(a)(12)–8 provides still 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 application or preapproval request, 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. Final comment 4(a)(12)–8 includes an additional clarification that, for transactions subject to Regulation C for which no disclosures under Regulation Z are required, a financial institution complies with § 1003.4(a)(12)(i) by reporting that the requirement is not applicable.

The Bureau recognizes that an application or a preapproval request as defined under Regulation C may not meet the definition of application under Regulation Z and, in such instances, would not trigger the early Regulation Z disclosures.<sup>121</sup> Where an application or a preapproval request under Regulation C is not an application under Regulation Z, then that application or preapproval request is not subject to Regulation Z and thus is not covered by the reporting requirements in § 1003.4(a)(12). Final § 1003.4(a)(12)(i) applies to covered loans and applications that are approved but not accepted subject to Regulation Z, other than assumptions, purchased covered loans, and reverse mortgages. The Bureau does not intend that a financial institution provide the early Regulation Z disclosures or calculate an APR for a transaction solely for purposes of complying with Regulation C where it is not otherwise required to do so under Regulation Z. Accordingly, this final rule clarifies further that the requirement to report under § 1003.4(a)(12) is not applicable if no Regulation Z disclosures are required for the transaction. The Bureau declines to specify further instances in which § 1003.4(a)(12) is not applicable for applications and preapproval requests that are approved but not accepted, as it continues to believe such data will further HMDA's purposes and that reporting rate spreads for transactions for which Regulation Z disclosures are required will not be unduly burdensome.

#### Corrected Disclosures

The 2015 HMDA Final Rule does not explain how a financial institution complies with § 1003.4(a)(12)(i) where a financial institution provides a corrected disclosure under Regulation Z that reflects a corrected APR. Specifically, the 2015 HMDA 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 as calculated and disclosed pursuant to the corrected disclosure. The Bureau proposed to add new comment 4(a)(12)–9 to provide that, if a financial institution provides a corrected disclosure under Regulation Z that reflects a corrected APR, 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, so long as the corrected disclosure was provided to the borrower before the end of the reporting period in which final action is taken. The Bureau also proposed to amend new comment 4(a)(12)–9, effective January 1, 2020, to include additional guidance pertaining to quarterly reporting. For the reasons discussed below, the Bureau is adopting new comment 4(a)(12)–9 effective January 1, 2018, and as amended effective January 1, 2020, substantially as proposed, with certain amendments for clarity.

A few commenters expressed support for the proposal to clarify reporting requirements under § 1003.4(a)(12) when a corrected disclosure is provided pursuant to Regulation Z. One national trade association noted that the proposed comment would apply to applications and preapproval requests that are approved but not accepted and stated that, because only the early Regulation Z disclosures could be provided in such instances, the proposed comment should apply to originated loans. This commenter also stated that the proposed guidance regarding the date on which the corrected disclosure was provided to the borrower would be helpful for transactions subject to Regulation Z § 1026.19(f) and requested additional guidance regarding the date on which the corrected disclosure was provided to the borrower for transactions subject to the disclosure requirements in Regulation Z § 1026.6(a) or § 1026.19(a). One national trade association that supported the proposal stated that the same guidance regarding the use of a corrected APR would also apply when a lender provides a corrected disclosure reflecting a corrected amount of total points and fees, total loan costs, borrower-paid origination charges, discount points, lender credits, or interest rate. This commenter stated that it would be simpler and more accurate if a financial institution were permitted to use the corrected information disclosed on the corrected disclosure so

<sup>121</sup> 12 CFR 1003.2(b), 1026.2(a)(3).

long as the corrected disclosure was provided to the borrower before the institution's submission of its loan/application register. One small financial institution that supported the proposed guidance regarding corrected disclosures nonetheless stated that many financial institutions begin gathering information to complete the loan/application register well before the end of a reporting period such that the proposal could increase significantly the number of adjustments made to the data when a corrected disclosure is provided before the end of the reporting period in which final action is taken.

The Bureau is adopting new comment 4(a)(12)–9 substantially as proposed, with certain clarifications to address issues discussed by commenters. To correct an oversight in the April 2017 HMDA Proposal, the Bureau is adopting the first sentence of comment 4(a)(12)–9 with revisions to clarify that the guidance in comment 4(a)(12)–9 applies to covered loans and applications that are approved but not accepted. The Bureau recognizes that, where 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), it is often doing so for a covered loan. The Bureau also understands that such corrected disclosures under Regulation Z could be provided in situations where the application is approved but not accepted and the loan is not originated or the account is not opened. Final comment 4(a)(12)–9 does not specifically refer to preapproval requests, which are included in the definition of application, because, in contrast to comment 4(a)(12)–8, the Bureau believes the situations described in comment 4(a)(12)–9 are not likely to arise in connection with preapproval requests.

Final comment 4(a)(12)–9 is also revised to explain that, for purposes of § 1003.4(a)(12), the date the corrected disclosure was provided to the borrower is the date the disclosure was mailed or delivered to the borrower in person; the financial institution's method of delivery does not affect the date provided. It includes an illustrative example providing that, where a financial institution provides a corrected version of the disclosures required under Regulation Z § 1026.19(f), pursuant to § 1026.19(f)(2), the date provided is the date disclosed pursuant to Regulation Z § 1026.38(a)(3)(i). Final comment 4(a)(12)–9 thus provides guidance

applicable to all of the Regulation Z disclosures discussed in the comment regarding the date the corrected version of the disclosures is provided to the borrower for purposes of § 1003.4(a)(12).

In addition, the Bureau is adopting comment 4(a)(12)–9 with a revision to explain that the provision of a corrected disclosure does not affect how a financial institution determines the rate-set date and to include a cross-reference to comment 4(a)(12)–5. The April 2017 HMDA Proposal explained that the corrected disclosure does not affect the rate-set date and cross-referenced comment 4(a)(12)–5. The Bureau recognizes, however, that the rate-set date may be affected in a situation where a corrected disclosure reflects a corrected APR that changed because of a change in the interest rate. Thus, while the provision of a corrected disclosure does not, on its own, affect the rate-set date, the circumstances necessitating the provision of a corrected disclosure could affect the rate-set date. The final rule makes clear that the provision of a corrected disclosure does not change how a financial institution applies the guidance in comment 4(a)(12)–5 to determine the rate-set date.

The Bureau declines to permit financial institutions to update their reporting when a corrected disclosure is provided to the borrower after the end of the reporting period in which final action is taken.<sup>122</sup> Comment 4(a)(12)–9 establishes a clear, bright-line standard for reporting that is consistent with Regulation C's December 31 cutoff date for data collection and recording for the calendar year. Additionally, the Bureau believes that the instances in which a corrected disclosure reflecting a corrected APR is provided to the borrower after the calendar year in which final action is taken but before the March 1 deadline in the following calendar year for a financial institution's submission of its annual loan/application register should be relatively limited and do not justify the potential inconsistencies in data that could result

<sup>122</sup> Effective January 1, 2020, when quarterly reporting begins, revised comment 4(a)(12)–9 will provide that a financial institution does not report on its quarterly loan/application register the difference between the corrected APR and the most recently available APOR 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. However, a financial institution does report the difference between the corrected APR and the most recently available APOR 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.

from permitting optional updates to data based on corrected disclosures provided after the end of the calendar year being reported. As to the burden associated with updating data when a corrected disclosure is provided before the end of the reporting period in which final action is taken, the guidance in final comment 4(a)(12)–9 is consistent with the guidance regarding corrected disclosures adopted in the 2015 HMDA Final Rule for the pricing data points in § 1003.4(a)(17) through (20). The Bureau believes such guidance will generally provide for greater accuracy in reporting without requiring that financial institutions continue to update their reportable data if corrected disclosures are provided after the reporting period in which final action is taken.

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.”<sup>123</sup> Section 1003.4(a)(15), as adopted by the 2015 HMDA Final Rule, requires that a financial institution report, except for purchased covered loans, the credit score or scores relied on in making the credit decision and the name and version of the scoring model used to generate each credit score. Comment 4(a)(15)–2, as adopted by the 2015 HMDA 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 2015 HMDA Final Rule, explains how to report credit scores when there are multiple applicants or borrowers. To facilitate the reporting of credit scores and credit scoring models, the Bureau proposed to add clarifying language to comments 4(a)(15)–2 and –3.

During implementation of the 2015 HMDA Final Rule, the Bureau had become aware that comments 4(a)(15)–2 and –3 might 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 proposed 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 proposed

<sup>123</sup> 12 U.S.C. 2803(b)(6)(I).

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 received eight comments on the proposed changes to the credit score commentary. Four commenters expressed support for the changes, and no commenters expressed opposition to them. Two commenters stated that comment 4(a)(15)–3, which in certain situations requires a financial institution to report a credit score for the applicant or, alternatively, for the co-applicant, is not clear on whether the choice of the two alternatives is within the financial institution's discretion. Commenters also stated that, when there are more than two applicants, a median or middle credit score may be used and that our proposal did not address this situation. One commenter said that our proposal would add clarity, but that these clarifications may not reflect how some lenders are programming their systems, and urged the Bureau to allow flexibility in treatment of these issues until the Bureau can propose further amendments to the Regulation C commentary with adequate time for implementation.

Commenters also asked for guidance on two issues not addressed in the April 2017 HMDA Proposal. Three commenters asked for guidance on reporting the credit score when a credit score is ordered but the applicant has no credit score. Another commenter asked that the Bureau adopt an exclusion from credit score reporting for loans to employees of the financial institution to protect their privacy.

The Bureau is adopting the clarifying language to comments 4(a)(15)–2 and –3 largely as proposed, with a small change to comment 4(a)(15)–3 to clarify the discretion a financial institution has in reporting a score for the applicant or, alternatively, the co-applicant, and a minor word edit. The commenters who expressed a position uniformly supported the proposed changes, and the Bureau believes that the adopted language will clarify and facilitate reporting of credit scores. Although there may be implementation challenges, the Bureau believes that

financial institutions and their software vendors will have sufficient time to adjust to this minor change and that any such challenges will be outweighed by the implementation benefits of these clarifications.

Comment 4(a)(15)–3 as adopted states that, in a transaction involving two or more applicants or borrowers for whom the financial institution obtains or creates a single credit score and relies on that credit score in making the credit decision for the transaction, the institution complies with § 1003.4(a)(15) by reporting that credit score for the applicant and reporting that the requirement is not applicable for the first co-applicant or, at the institution's discretion, by reporting that credit score for the first co-applicant and reporting that the requirement is not applicable for the applicant. This change to the language of the proposed comment will clarify that a financial institution may use its discretion in deciding whether to disclose a single credit score as the applicant's or co-applicant's score. The Bureau believes that any minor loss in the exactness of credit score reporting caused by this decision will be outweighed by the compliance benefits gained by not requiring financial institutions to calibrate systems and engage in ongoing compliance to account for the various situations likely to arise.

Regarding the comments discussing reporting when a median or middle credit score is relied on, the Bureau notes that comment 4(a)(15)–3 as adopted addresses this situation: A financial institution should report the median or middle credit score for the applicant or, at the financial institution's discretion, for the co-applicant.

Regarding the request for guidance on reporting when a credit score is requested but none is available, § 1003.4(a)(15) requires reporting the credit score or scores relied on in making the credit decision, so a financial institution would report that the requirement is not applicable if it did not rely on a credit score. In regard to the comment on employee loans, the Bureau did not propose or seek comment about an exclusion from credit score reporting for loans to employees, and declines to adopt one.

#### 4(a)(17)

Section 304(b)(5)(A) of HMDA <sup>124</sup> provides for reporting of “the total points and fees payable at origination in

<sup>124</sup> 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.

connection with the mortgage as determined by the Bureau, taking into account 15 U.S.C. 1602(aa)(4).” <sup>125</sup> Section 1003.4(a)(17), as adopted by the 2015 HMDA Final Rule, implements this provision and provides that, for covered loans subject to Regulation Z § 1026.43(c), other than purchased covered loans, 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 for the covered 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). As adopted by the 2015 HMDA Final Rule, 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, and provides an illustrative example. Comments 4(a)(18)–3, 4(a)(19)–3, and 4(a)(20)–3 provide identical guidance for reporting the other data points derived from the Closing Disclosure. The Bureau proposed to amend comment 4(a)(17)(i)–3, effective January 1, 2018, to remove the references to quarterly reporting, and to again amend comment 4(a)(17)(i)–3, effective January 1, 2020, to reincorporate the references to quarterly reporting. The Bureau also proposed other minor clarifications to comment 4(a)(17)(i)–3.

Two commenters stated that the proposal to refer to “final action” instead of the date that “closing occurred” regarding reporting total loan costs would create ambiguity in proposed comment 4(a)(17)(i)–3. These commenters requested clarification on whether final action refers to: (1) The

<sup>125</sup> 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. Section 1100A of the Dodd-Frank Act redesignated section 1602(aa)(4) as section 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 section 1602(aa)(4) is no longer relevant to a determination regarding points and fees.

date of disclosure; (2) the date of the corrected disclosure; (3) the date of the event that necessitated the corrected disclosure; or (4) the date the loan documents were recorded. One national trade association recommended that financial institutions be permitted to report corrected amounts reflected on a corrected disclosure so long as the disclosure was provided to the borrower before the financial institution's submission of its loan/application register.

The Bureau is adopting comment 4(a)(17)(i)–3 effective January 1, 2018, and as amended again effective January 1, 2020, substantially as proposed. The Bureau is not adopting the proposal to refer to the date “final action is taken” instead of the date “closing occurs.” The Bureau explained in the April 2017 HMDA Proposal that it believed 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.<sup>126</sup> However, in light of comments indicating potential uncertainty regarding the significance of this proposed change, the Bureau is adopting comment 4(a)(17)(i)–3 to include the phrase “closing occurs,” as adopted in the 2015 HMDA Final Rule. Because § 1003.4(a)(17)(i) applies to covered loans for which a Closing Disclosure is provided pursuant to Regulation Z § 1026.19(f), for purposes of comment 4(a)(17)(i)–3 final action means the date that closing occurs. Thus, the Bureau believes it is appropriate to refer to the date closing occurs in comment 4(a)(17)(i)–3. Regarding the cutoff date for reporting corrected amounts as disclosed on a corrected disclosure, the Bureau refers to the discussion in the section-by-section analysis of § 1003.4(a)(12) above.

#### 4(a)(18)

Pursuant to HMDA sections 305(a) and 304(b)(5)(D), in the 2015 HMDA 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, as adopted by the 2015 HMDA Final Rule, provides the same guidance concerning reporting of the total of all itemized amounts that are designated borrower-paid at or before closing as provided in comment

4(a)(17)(i)–3 regarding reporting total loan costs in situations where a financial institution has issued a revised Closing Disclosure with a new amount of total borrower-paid origination charges. The Bureau proposed parallel amendments to comment 4(a)(18)–3 to those proposed to comment 4(a)(17)(i)–3. For the reasons discussed above in the section-by-section analysis of § 1003.4(a)(17), the Bureau is adopting comment 4(a)(18)–3 effective January 1, 2018, and as amended again effective January 1, 2020, substantially as proposed.

#### 4(a)(19)

Pursuant to HMDA sections 305(a) and 304(b)(5)(D), in the 2015 HMDA 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). As adopted by the 2015 HMDA Final Rule, comment 4(a)(19)–3 provides the same guidance concerning reporting of discount points as provided in comment 4(a)(17)(i)–3 regarding reporting total loan costs in situations where a financial institution has issued a revised Closing Disclosure with a new amount of discount points. The Bureau proposed parallel amendments to comment 4(a)(19)–3 to those proposed to comment 4(a)(17)(i)–3. For the reasons discussed above in the section-by-section analysis of § 1003.4(a)(17), the Bureau is adopting comment 4(a)(19)–3 effective January 1, 2018, and as amended again effective January 1, 2020, substantially as proposed.

#### 4(a)(20)

Pursuant to HMDA sections 305(a) and 304(b)(5)(D), in the 2015 HMDA 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). As adopted by the 2015 HMDA Final Rule, comment 4(a)(20)–3 provides the same guidance concerning reporting of lender credits as provided in comment 4(a)(17)(i)–3 regarding reporting total loan costs in situations where a financial institution has issued a revised Closing Disclosure with a new amount of lender credits. The Bureau proposed parallel edits to comment 4(a)(20)–3 to those proposed to comment 4(a)(17)(i)–

3. For the reasons discussed above in the section-by-section analysis of § 1003.4(a)(17), the Bureau is adopting comment 4(a)(20)–3 effective January 1, 2018, and as amended again effective January 1, 2020, substantially as proposed.

#### 4(a)(21)

Pursuant to HMDA sections 305(a) and 304(b)(6)(J), the Bureau adopted § 1003.4(a)(21) in the 2015 HMDA 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). The Bureau proposed to amend comment 4(a)(21)–1 to clarify that, if a financial institution provides a revised or corrected version of the disclosures required under Regulation Z § 1026.19(e) or (f), 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 before the end of the reporting period in which final action is taken. The Bureau also proposed certain other minor clarifications to comment 4(a)(21)–1. One national trade association recommended that financial institutions be permitted to report corrected amounts reflected on a corrected disclosure so long as the disclosure was provided to the borrower before the financial institution's submission of its loan/application register. See the discussion above in the section-by-section analysis of § 1003.4(a)(12) concerning that comment. The Bureau is adopting comment 4(a)(21)–1 as proposed, with a minor clarification to specify the early and the final disclosure requirements in Regulation Z § 1026.19(e) and (f) and to add an omitted “the.”

#### 4(a)(24)

Pursuant to its authority under sections 304(b)(6)(J) and 305(a) of HMDA, the Bureau adopted § 1003.4(a)(24) in the 2015 HMDA 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

<sup>126</sup> April 2017 HMDA Proposal, 82 FR 19142, 19157 (Apr. 25, 2017).

loan-to-value (CLTV) ratio. The Bureau proposed a technical correction to comment 4(a)(24)–2 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.

A few commenters requested exemptions from the reporting requirements in § 1003.4(a)(24) for reverse mortgages, assumptions, or loans made by credit unions, with one commenter suggesting that the data point be removed entirely. One national trade association requested the Bureau clarify that, in the case of reverse mortgages, the total amount of debt secured by the property is limited to mortgage liens, while another national trade association requested resubmission guidelines for reporting CLTV ratio.

The Bureau is adopting comments 4(a)(24)–2 and –6 as proposed, with technical revisions for clarity. Regarding the calculation of the CLTV ratio, final comment 4(a)(24)–6 clarifies further that § 1003.4(a)(24) does not require a financial institution to use a particular CLTV ratio calculation method but instead requires financial institutions to report the CLTV ratio relied on in making the credit decision. As to commenters' requests for exemptions from § 1003.4(a)(24), the Bureau notes that § 1003.4(a)(24) does not require a financial institution to calculate a CLTV ratio and does not require a financial institution to rely on a CLTV ratio in making a credit decision. If a financial institution makes a credit decision without relying on a CLTV ratio, the financial institution complies with § 1003.4(a)(24) by reporting that the requirement is not applicable. The Bureau also notes that, as provided in comment 2(d)–2.i, assumptions are considered extensions of credit even if the new borrower assumes an existing debt obligation. Thus, if a financial institution that grants an assumption of a debt obligation relies on a CLTV ratio in making the credit decision related to the application for the assumption, the financial institution complies with § 1003.4(a)(24) by reporting that CLTV ratio. A financial institution that grants an assumption of a debt obligation does not report the CLTV ratio relied on by the originating institution, unless it relied on that CLTV ratio in making the credit decision related to the application for the assumption. The same principles regarding reporting the CLTV ratio apply to reverse mortgages as defined under § 1003.2(q).

4(a)(26)

The Bureau implemented HMDA section 304(b)(6)(B) in the 2015 HMDA 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. The Bureau proposed additional commentary to § 1003.4(a)(26) to clarify reporting requirements for non-monthly introductory interest rate periods.

A few commenters expressed support for the proposed clarification regarding non-monthly introductory rate periods, stating that the proposal would help facilitate implementation. A vendor that supported the proposal requested additional clarification on situations where a construction loan that converts to permanent financing features a different interest rate than the permanent financing and where a loan has a temporary buydown agreement that is separate from the note. A large financial institution expressed uncertainty regarding reporting when a variable-rate loan is tied to an index that can change at any time and requested that financial institutions be permitted to report “not applicable” in such circumstances. One national trade association recommended that the Bureau exempt purchases and assumptions of loans secured by multifamily dwellings, stating that reporting such information would provide limited public policy benefits. This commenter also suggested referring to the “initial rate period” instead of to the “introductory” rate to reduce confusion. One national trade association requested that reverse mortgages be exempt from § 1003.4(a)(26).

The Bureau is adopting new comment 4(a)(26)–5 as proposed. Comment 4(a)(26)–5 provides 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 provides an example. Regarding requests for further clarifications, § 1003.4(a)(26) requires a financial institution to report the number of months, or proposed number of months in the case of an application, from closing or account opening until the first date the interest rate may change. Regarding the request for

additional guidance on reporting when a construction loan converts to permanent financing, § 1003.4(a)(26) provides a single standard for reporting that does not depend on loan type or loan purpose and that applies regardless of how the interest rate adjustment is characterized. Regarding the request for additional guidance on reporting when a loan has a temporary buydown agreement, § 1003.4(a)(26) does not prescribe a specific method by which the change in interest rate must be reflected (*i.e.*, on the note or in a separate agreement). As to situations where it is not known with certainty when the interest rate may change, § 1003.4(a)(26) refers to the first date the interest rate may change, rather than will change, after closing or account opening. Comment 4(a)(26)–1 explains that § 1003.4(a)(26) requires a financial institution to report the number of months based on when the first interest rate adjustment may occur, even if an interest rate adjustment is not required to occur at that time and even if the rates that will apply, or the periods for which they will apply, are not known at closing or account opening, and includes an illustrative example. The Bureau notes that § 1003.4(a)(26) does not refer to “introductory” rates and that the commentary to § 1003.4(a)(26) uses this term solely to illustrate, and not to change, the substantive requirements in § 1003.4(a)(26). The Bureau declines to adopt further exemptions from § 1003.4(a)(26). As the Bureau explained in the 2015 HMDA Final Rule, interest rate variability can be an important feature in affordability, and having such information on covered loans and applications could be used to identify possible discriminatory lending patterns. The Bureau also notes that, as adopted in the 2015 HMDA Final Rule, comments 4(a)(26)–3 and –4 exclude certain transactions from the reporting requirements in § 1003.4(a)(26).

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 Secure and Fair Enforcement for Mortgage Licensing Act (SAFE Act).<sup>127</sup> Section 1003.4(a)(34) as adopted by the 2015 HMDA 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,

<sup>127</sup> Dodd-Frank Act section 1094(3)(A)(iv), 12 U.S.C. 2803(b)(6)(F).

including purchased loans. Comment 4(a)(34)–2 as adopted by the 2015 HMDA 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. To avoid difficulties that purchasers of loans are likely to experience in reporting the NMLSR ID during the transition to the new reporting regime, the Bureau proposed new comment 4(a)(34)–4, which would provide two transitional rules for loan purchases.

The preamble to the 2015 HMDA Final Rule stated the Bureau's belief 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 (the loan originator rules).<sup>128</sup> However, the Bureau had 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 that were originated before the ID disclosure requirement took effect. In addition, the loan documents for purchased loans that are not covered by Regulation Z may not include the NMLSR ID even when the loan originator has been assigned an NMLSR ID. A later purchaser must report the NMLSR ID according to the interpretation in comment 4(a)(34)–2, as adopted by the 2015 HMDA Final Rule, if it is a covered loan (e.g., a commercial purpose home purchase loan).

Consequently, the Bureau proposed two transitional rules for purchasers to facilitate the reporting of the NMLSR ID—one for loans covered by Regulation Z and originated before the effective date of the loan originator rules on January 10, 2014, and a second for loans not covered by Regulation Z and originated before January 1, 2018.

Seven commenters discussed the NMLSR ID transition rules and all of them expressed support for the changes. Three of these commenters requested that the Bureau extend or make permanent the transitional rule for non-Regulation Z loans. One commenter stated that there will be difficulties when purchasing loans from an originating seller that is not itself a HMDA reporter. Another commenter

said that the practical difficulties that the non-Regulation Z transitional rule is meant to allay will still exist after January 1, 2018. A third commenter suggested that the Bureau allow purchasers to report that the requirement is not applicable whenever there is no NMLSR ID on the loan documents.

Commenters also suggested that the transitional rules for purchasers be extended to data points beyond the NMLSR ID. One commenter suggested a transitional rule that would allow purchasers to report whatever data was originally reported on the loan. Another commenter requested a transitional rule for reporting of assumptions.

The Bureau has carefully considered the comments submitted and is adopting comment 4(a)(34)–4 as proposed. Commenters have pointed out that they may purchase after the effective date of the 2015 HMDA Final Rule loans that were originated before Regulation Z's loan originator rules became effective on January 10, 2014. In such cases, the loan documents may not include the NMLSR ID, even when the loan originator had been assigned one. Comment 4(a)(34)–2, however, otherwise provides that § 1003.4(a)(34) requires reporting the NMLSR ID for such loans. In such a circumstance, this reporting may impose considerable challenges to require purchasers to acquire this information. Therefore, the transitional rule in new comment 4(a)(34)–4 explains that, if a financial institution purchases a covered loan that satisfies the coverage criteria of Regulation Z § 1026.36(g) and that was originated before January 10, 2014, the financial institution complies with § 1003.4(a)(34) by reporting that the requirement is not applicable.

As explained above, the loan documents for purchased loans that are not covered by Regulation Z but are nevertheless covered loans (e.g., a commercial purpose home purchase loan) also may not include the NMLSR ID, even when the loan originator has been assigned an NMLSR ID. Nevertheless, a later purchaser must report the NMLSR ID under comment 4(a)(34)–2, as adopted by the 2015 HMDA Final Rule. 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. The Bureau also believes that originators and purchasers of such loans will be able to arrange for compliance given the extra transitional period provided and therefore declines to extend or make permanent this transitional rule. Therefore, the Bureau

adopts the second transitional rule in new comment 4(a)(34)–4 as proposed. The comment explains that, if a financial institution purchases a covered loan that does not satisfy the coverage criteria of Regulation Z § 1026.36(g) and that was originated before January 1, 2018, the financial institution complies with § 1003.4(a)(34) by reporting that the requirement is not applicable.

As adopted, new comment 4(a)(34)–4 also makes clear that purchasers of the loans exempted by the transitional rules discussed above may report the NMLSR ID voluntarily. The information may be useful, and the Bureau believes that, if the NMLSR ID is present in the loan data of purchased loans to which the transitional rules apply, it may add burden to require it to be removed.

Commenters' suggestions about transitional rules for other data points and general treatment of purchased loans were not proposed, and the Bureau has not benefited from public comment concerning them. The transitional rules regarding the NMLSR ID are being adopted due to specific documentation issues that will create challenges for purchasers, and the absence of data that will result is reasonably well known and circumscribed. Commenters did not provide specific discussion of the challenges that other transitional rules would address and what potential burdens would exist.

In addition, the Bureau notes that assumptions are reportable under the current HMDA rule and are treated as new extensions of credit, so reporting will not require data from the previous origination of the loan being assumed.

4(a)(35)

In the 2015 HMDA 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 2015 HMDA 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. The Bureau proposed to amend § 1003.4(a)(35)(ii) to clarify

<sup>128</sup> 2015 HMDA Final Rule, 80 FR 66128, 66231 (Oct. 28, 2015). See Regulation Z § 1026.36(g).

further the definition of AUS. The Bureau proposed conforming amendments to comment 4(a)(35)–2 and proposed new comment 4(a)(35)–7 to provide guidance regarding a financial institution's determination of whether the system it is using to evaluate an application is an AUS for purposes of § 1003.4(a)(35).

A few commenters supported the proposed clarifications to the definition of AUS and the additional guidance in proposed new comment 4(a)(35)–7. One national trade association stated that the 2015 HMDA Final Rule uses the term securitizer in the present tense, thereby indicating that, if the financial institution that developed the electronic system is no longer securitizing loans, that system would not meet the definition of AUS. It asserted that the proposal to clarify that a person is a securitizer if it has ever securitized a loan is a substantive change that should result in an additional implementation period. A software vendor commenter requested additional guidance on reporting requirements when a financial institution uses Technology Open to Approved Lenders (TOTAL) Scorecard in conjunction with other AUSs.

The Bureau is adopting § 1003.4(a)(35)(ii) and comments 4(a)(35)–2 and –7 as proposed, with minor amendments for clarity in comment 4(a)(12)–2. Accordingly, final § 1003.4(a)(35)(ii) explains that, for purposes of § 1003.4(a)(35), an AUS 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. Final § 1003.4(a)(35)(ii) explains further 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 is adopting conforming amendments to comment 4(a)(35)–2 to reflect final § 1003.4(a)(35)(ii). Final comment 4(a)(35)–2 clarifies 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. Final comment 4(a)(35)–2 provides further 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. It provides still further 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, final comment 4(a)(35)–2 clarifies 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 because an AUS was not used to evaluate the application. In addition to these conforming amendments, the Bureau is adopting final comment 4(a)(35)–2 with minor technical revisions.

The Bureau is adopting 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. Comment 4(a)(35)–7 sets forth the definition of AUS under final § 1003.4(a)(35)(ii). It clarifies 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. Comment 4(a)(35)–7 explains 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, comment 4(a)(35)–7 provides 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 explains 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, comment 4(a)(35)–7 includes illustrative examples demonstrating how a financial institution complies with § 1003.4(a)(35) depending on whether 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.

As to one commenter's statement that the proposal would constitute a substantive change requiring a new implementation period, the Bureau notes that, as discussed in the April 2017 HMDA Proposal, the 2015 HMDA Final Rule did not define the timeframe relevant to the determination of whether a person is a securitizer, Federal government insurer, or Federal government guarantor for purposes of § 1003.4(a)(35). Thus, the Bureau believes the final rule should facilitate implementation by addressing potential uncertainty while also 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. To the extent the clarifications in this rule require financial institutions to make technical changes, those changes require only minor adjustments, not significant system updates. In addition, the Bureau has issued this final rule in August, four months before 2018, which the Bureau believes should afford ample time to implement any necessary minor system adjustments. The Bureau is releasing implementation aids with this final rule to facilitate implementation.

The Bureau declines to clarify further reporting requirements when a financial institution uses TOTAL Scorecard to evaluate an application because that scenario is addressed in the 2015 HMDA Final Rule.<sup>129</sup> The Bureau explained that TOTAL Scorecard works in conjunction with various AUSs, and that if a financial institution uses TOTAL Scorecard to evaluate an application, the Bureau had determined that the HMDA data's usefulness will be improved by requiring the financial institution to report that it used TOTAL Scorecard along with the result generated by that system.<sup>130</sup>

#### Section 1003.5 Disclosure and Reporting

##### 5(a) Reporting to Agency

##### 5(a)(3)

Pursuant to HMDA section 305(a), in the 2015 HMDA 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 proposed 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 2015 HMDA Final Rule. The Bureau received no comments regarding the proposed amendments and therefore is adopting § 1003.5(a)(3)(ii) as proposed.

#### 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. The Bureau proposed amendments to the commentary to § 1003.6(b) to clarify that incorrect entries reporting the census tract number of a property are not a violation of HMDA or Regulation C if the financial institution properly uses a geocoding tool made available through the Bureau's Web site, the financial institution enters an accurate property address, and the tool provides a census tract number for the property address entered.

To ease the burden associated with reporting the census tract number 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 proposed new comment 6(b)–2 to clarify that obtaining census tract information for covered loans and applications from the geocoding tool on the Bureau's Web site is an example of a procedure reasonably adapted to avoid incorrect entries for a census tract number under § 1003.6(b)(2). The proposed comment stated that a census tract error is not a violation of HMDA or Regulation C if the financial institution obtained the census tract number from the geocoding tool on the Bureau's Web site after entering an accurate property address. The proposed comment stated, however, 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 geocoding tool on the Bureau's Web site 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 also explained that a census tract error caused by a financial institution entering an inaccurate property address into the geocoding tool on the Bureau's Web site is not excused as a bona fide error. The Bureau also proposed to add to comment 6(b)–1 a cross reference to proposed comment 6(b)–2.

The Bureau received nine comments from trade associations, financial institutions, and other industry

participants on the proposed amendments. One commenter supported the safe harbor protections provided by using the geocoding tool on the Bureau's Web site. Several commenters suggested that the bona fide error should include any error generated by the geocoding tool on the Bureau's Web site, including the tool's failure to return an address. One vendor commenter opposed providing a safe harbor for the geocoding tool on the Bureau's Web site unless other geocoding tools receive a similar safe harbor. Several commenters expressed concern that the geocoding tool on the Bureau's Web site would not be available in a timeframe that would allow for testing and implementation and suggested that the Bureau delay the effective date of the safe harbor provision.

The Bureau is finalizing comments 6(b)–1 and –2 largely as proposed. The Bureau does not agree with commenters that the scope of proposed comment 6(b)–2 is too narrow. To provide protections for all errors generated through the use of the geocoding tool on the Bureau's Web site, regardless of the reason for the error, would be overbroad. Accurate information about the census tract of the property is essential to HMDA's purposes. Therefore, the Bureau believes that an accurate census tract should be reported in as many cases as possible. At the same time, however, a financial institution should not face compliance risk for inaccuracies resulting from information provided by the geocoding tool on the Bureau's Web site. The Bureau believes that proposed comment 6(b)–2 appropriately balances those concerns by requiring financial institutions to enter an accurate property address. For the same reason, in cases when the geocoding tool on the Bureau's Web site does not generate a census tract number for a particular address, the Bureau believes the burden is appropriately placed on financial institutions to, by other means, identify the census tract, as they do when using any other Geocoding Tool. Financial institutions bear the reporting responsibility under HMDA generally, to identify the census tract; financial institutions are in a better position to identify the census tract using other information that they have about property location, such as the local area or parcel number.

The Bureau did not intend, as commenters appear to have inferred, that only census tract errors generated by the geocoding tool on the Bureau's Web site are bona fide errors. Current § 1003.6 states that an error in

<sup>129</sup> *Id.* at 66233.

<sup>130</sup> *Id.*



compiling or recording data for a covered loan or application is not a violation if the error was unintentional and occurred despite the maintenance of procedures reasonably adapted to avoid such an error, and neither the 2015 HMDA Final Rule nor this final rule changes that provision. New comment 6(b)–2 merely clarifies that the geocoding tool on the Bureau’s Web site serves as one example of a procedure reasonably adapted to avoid incorrect entries for census tract numbers. Obtaining census tract numbers using other geocoding tools may constitute a procedure reasonably adapted to avoid geocoding errors, depending on the facts and circumstances. If a financial institution chooses to use an alternative geocoding tool that constitutes a procedure reasonably adapted to avoid census tract errors, the financial institution will receive the same safe harbor protections. The Bureau cannot extend safe harbor status to any and all such alternative geocoding tools, however, because it does not control the accuracy or reliability of such tools.

The Bureau declines to delay the effective date of these bona fide error protections, and is making the protections available beginning with data collected during the 2018 calendar year.<sup>131</sup> The Bureau believes that financial institutions should be able to take advantage of the safe harbor as soon as the Bureau makes a geocoding tool available on its Web site. While some financial institutions may not adopt its use immediately, for those that do so, the safe harbor should be available without any delay. However, to avoid any confusion in the event that the Bureau does not make the geocoding tool available on its Web site before financial institutions begin collecting 2018 calendar year data the Bureau is modifying the language in proposed comment 6(b)–2 to clarify that the safe harbor is available only once the Bureau has made the geocoding tool available on its Web site. The Bureau also is making some technical changes to the comment for clarity.

<sup>131</sup> As noted below, the effective date for an amendment to the commentary to § 1003.6(b)(1) is changed to January 1, 2019, to align with the effective date for the corresponding amendment in the 2015 HMDA Final Rule. See 2015 HMDA Final Rule, 80 FR 66128, 66257 (Oct. 28, 2015) (“The Bureau is adopting an effective date of January 1, 2019 for § 1003.6, which concerns enforcement of HMDA and Regulation C. The amendments to § 1003.6 adopted in this final rule apply to HMDA data reported beginning in 2019. Thus, current § 1003.6 applies to data collected in 2017 and reported in 2018, and amended § 1003.6 applies to 2018 data reported in 2019.”).

#### 6(c) Quarterly Recording and Reporting

Current § 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 before reporting the data to its appropriate Federal agency. In the 2015 HMDA 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 provided the same conditions that currently provide a safe harbor for errors and omissions in quarterly recorded data are satisfied. The Bureau proposed to amend § 1003.6(c)(2) so that its effective date aligns with the effective date for the quarterly reporting requirements in § 1003.5(a)(1)(ii), for which § 1003.6(c)(2) provides a safe harbor. Specifically, the Bureau proposed to remove § 1003.6(c)(2) and to redesignate § 1003.6(c)(1) as § 1003.6(c) effective January 1, 2019. The Bureau proposed to add § 1003.6(c)(2), as adopted by the 2015 HMDA Final Rule, and to redesignate § 1003.6(c) as § 1003.6(c)(1) effective January 1, 2020. The Bureau received no comments regarding this proposal and therefore is adopting the revisions to § 1003.6(c) effective January 1, 2019, and effective January 1, 2020, as proposed.

#### 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.<sup>132</sup> 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 2015 HMDA Final Rule, the Bureau revised the ethnicity, race, and sex data collection requirements and instructions.<sup>133</sup> Among other changes,

<sup>132</sup> 12 U.S.C. 2803(b)(4); 12 CFR 1003.4(a)(10).

<sup>133</sup> Revised § 1003.4(a)(10)(i); revised comment 4(a)(10)(i)–1; revised appendix B to part 1003.

revised appendix B requires financial institutions to collect disaggregated ethnic and racial categories beginning January 1, 2018. To facilitate compliance and make various corrections, the Bureau proposed certain amendments to the instructions and sample data collection form contained in revised appendix B.

#### Ethnicity and Race Subcategories

Instruction 8 in revised appendix B provides that financial institutions must report the ethnicity, race, and sex of an applicant as provided by the applicant. The instruction provides the example that, if an applicant selects the Mexican ethnicity 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. Instruction 9.i further provides that, if an applicant selects the Hispanic or Latino ethnicity category, the applicant may select up to four ethnicity subcategories.

To clarify the circumstances in which an applicant may select a subcategory and to address any perceived inconsistencies, the Bureau proposed to amend instructions 8 and 9.i. Specifically, the Bureau proposed 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 race category. The April 2017 HMDA Proposal also clarified that a financial institution should not report an aggregate category if not selected by the applicant. The Bureau further proposed to amend instruction 9.i to remove language suggesting that the selection of Hispanic or Latino is a precondition to selecting the ethnicity subcategories. For the reasons discussed below, the Bureau is adopting instructions 8 and 9.i concerning the selection of ethnicity and race subcategories as proposed with minor revisions for clarity.

The majority of commenters addressing the proposed revisions to instruction 8 and 9.i expressed appreciation for the clarifications. Consumer advocacy groups and an industry commenter also supported the proposal because it would reflect an applicant’s preferences and identity.

Some industry commenters opposed the proposed revisions to instruction 8 and 9.i. One commenter argued that the proposed clarifications are contrary to the instructions in revised appendix B and would undermine implementation work already performed. The commenter further asserted that the proposed revisions would not promote

self-identification or other benefits, as consumers submitting applications online know how to navigate through a variety of menu options. The commenter expressed the view that the proposed changes could instead have negative effects on consumers by providing too much information. The commenter further argued that the proposed revisions would require additional engineering and software development that may delay implementation. The commenter suggested that the Bureau defer making any amendments until the Bureau reviews ethnicity and race data submitted under revised appendix B.

Another industry commenter argued that the proposed revisions would not align with lender systems, which in some cases are programmed to trigger automatically the selection of a main category when a subcategory is selected. The industry commenter explained that permitting automatic selection of the aggregate category would also be important for data analysis. The commenter suggested that, if an applicant selects only a subcategory, the financial institution must also report the aggregate category to which the subcategory belongs.

The Bureau disagrees that the proposed revisions are inconsistent with the 2015 HMDA Final Rule, as revised appendix B does not definitively address the reporting of subcategories alone. Rather, as described above and in the April 2017 HMDA Proposal, the Bureau finds that revised appendix B instructions 8 and 9.i provide potentially inconsistent instructions that may cause uncertainty on whether an applicant may select only a subcategory without the corresponding aggregate category. The Bureau therefore finds it necessary to provide certainty, and indeed several commenters have expressed support for the Bureau's clarification of this issue. The clarification is also consistent with informal guidance provided to date by the Bureau.

The Bureau believes financial institutions can implement and test any adjustments that might be required as a result of the clarification before the effective date. To the extent the clarification requires certain financial institutions to make technical changes, those changes will require only minor adjustments rather than significant system updates. Moreover, commenters who expressed concern about the implementation period may not have expected this rule to be finalized so quickly, providing industry more than four months time for implementation. For these reasons, the Bureau concludes

that financial institutions will be capable of making the required changes in the several months remaining before the effective date of January 1, 2018.

The Bureau also disagrees that providing applicants the opportunity to select a subcategory alone will be confusing to applicants, and notes that the commenter provides no testing results or data for such a conclusion. Rather, the Bureau believes that providing applicants with the opportunity to view and select the enumerated subcategories will increase optionality for the applicant and promote self-identification. For example, an applicant may identify as Mexican, but not Hispanic or Latino, and providing the applicant the option to view and choose only Mexican therefore may increase the response rate. The Bureau believes that applicants should always be able to select only a subcategory if it best reflects their self-identification preferences.

The Bureau also declines to adopt the alternative proposed by an industry commenter to require a financial institution to report the corresponding aggregate category if an applicant selects only a subcategory. While the Bureau understands that such a requirement may reflect some institutions' systems, it may not reflect all financial institutions' practices. The Bureau declines as part of this rulemaking to impose an additional requirement on financial institutions to report the aggregate category if a subcategory is selected. Moreover, as discussed above, the Bureau believes that some applicants may self-identify as a subcategory but not the corresponding aggregate category, thus reporting only what the applicant selects would better reflect applicant identity and may increase the response rate. The Bureau also does not believe that such an alternative is necessary for data analysis, as users may roll up the subcategories into their corresponding categories when analyzing the data, irrespective of how the data are reported.

One industry commenter argued that the proposed clarification would result in inconsistent reporting. The commenter noted that the same applicant could be reported as an aggregate category before the effective date and a subcategory after the effective date. The commenter further noted that by removing a requirement to report the aggregate categories, many additional subcategories will be created and therefore dilute the data being reported. The commenter argued that inconsistent reporting would undermine HMDA's

purposes and requested that the Bureau provide guidance on how to analyze data collected before and after the effective date.

The Bureau declines to provide such guidance. As noted above, reporting requirements may differ from data analysis methods, and nothing in the revisions to instructions 8 and 9.i would preclude a financial institution from rolling up the subcategories into their corresponding aggregate categories for purposes of data analysis. Moreover, the Bureau sought comment only on the reporting requirements. The Bureau disagrees that the clarification will dilute the data being reported and notes that the commenter provides no evidence to support this conclusion. To the extent the clarification may result in differing reporting before and after the effective date, the Bureau notes that some variation is common during any transition period.

Several commenters asked for clarification concerning how the revisions to instructions 8 and 9.i may affect other requirements of revised appendix B. One industry commenter requested confirmation that the amendments would not alter the requirements in revised appendix B concerning the collection of ethnicity, race, and sex information on the basis of visual observation or surname. The Bureau agrees that the proposed amendments would not alter revised appendix B in this respect.

Another industry commenter requested guidance on how the clarifications would affect applications dated before January 1, 2018. The Bureau believes the commenter is referring to a Bureau approval notice issued on September 23, 2016, concerning the collection of ethnicity and race information in 2017 (Bureau Approval Notice), which provides that, at any time from January 1, 2017, through December 31, 2017, a creditor may, at its option, permit applicants to self-identify using disaggregated ethnic and racial categories as instructed in revised appendix B.<sup>134</sup> Specifically, the Bureau Approval Notice provides that, for any application in which final action is taken in 2017, a financial institution that chooses to collect disaggregated information should report the aggregate ethnicity and race categories that "correspond" with the disaggregated categories.<sup>135</sup> The Bureau Approval Notice provides further that for

<sup>134</sup> Status of New Uniform Residential Loan Application and Collection of Expanded Home Mortgage Disclosure Information About Ethnicity and Race in 2017, 81 FR 66930 (Sep 29, 2016).

<sup>135</sup> *Id.* at 66931.

purposes of submitting HMDA data for applications received on or after January 1, 2017, and before January 1, 2018, and on which final action is taken on or after January 1, 2018, the financial institution, at its option, may submit the information concerning ethnicity and race using disaggregated categories if the applicant provided such information instead of using the transition rule set forth in comment 4(a)(10)(i)–2 as adopted by the 2015 HMDA Final Rule, or it may submit the information in accordance with that transition rule.<sup>136</sup> The Bureau's clarifications to instructions 8 and 9.i do not affect the Bureau Approval Notice or the transition rule for reporting ethnicity and race information collected in 2017 or 2018; where a financial institution collects disaggregated information in 2017, but reports only aggregate information, the financial institution should report the categories that correspond to any selected subcategories.

For the reasons given above, the Bureau is adopting the amendments in instructions 8 and 9.i concerning the selection of ethnicity and race subcategories as proposed with minor revisions for clarity.

#### Other Ethnicity and Other Race Subcategories and the American Indian or Alaska Native Race Category

Instructions 9.ii and 9.iv in revised appendix B provide instructions for collecting and reporting an Other ethnicity or race subcategory and free-form field. Specifically, 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 sample data collection form included in revised appendix B provides for an Other ethnicity or race subcategory the applicant can select and a free-form field in which an applicant can provide a particular ethnicity or race. The sample data collection form also includes an American Indian or Alaska Native race category an applicant can select and a free-form field in which an applicant can provide a particular American Indian or Alaska Native

enrolled or principal tribe. Instruction 8 provides that only an applicant may self-identify as a particular American Indian or Alaska Native enrolled or principal tribe.

The Bureau proposed to revise instructions 9.ii and 9.iv to clarify that an applicant may provide a particular ethnicity or race in the free-form field, whether or not the applicant selects the Other Hispanic or Latino, Other Asian, or Other Pacific Islander subcategory. Specifically, the Bureau proposed 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 proposed similar revisions to instructions 9.iv, as related to the Other race subcategories.

Several commenters opposed the proposed amendments to instructions 9.ii and 9.iv. Some commenters stated that the proposal is a departure from revised appendix B and the 2018 FIG, which both indicate that an applicant may provide an Other race or ethnicity in the free-form field if (and arguably, by implication, only if) the applicant selects the associated Other race or ethnicity subcategory. Some commenters also argued that the proposed amendments would be inconsistent with existing industry practice and programming already conducted in preparation for the January 1, 2018, effective date. Another industry commenter stated that the proposal could potentially delay implementation and would not have consumer benefits.

Some commenters expressed particular concern about reporting only a free-form Other ethnicity or race. One commenter expressed uncertainty about how such information would be reported and concern about sending a free-form field with no code or, alternatively, improperly reporting an Other ethnicity or race subcategory code that was not selected by the applicant. A commenter suggested the Bureau amend the rule to provide that, when an applicant provides a specific Other ethnicity or race in the free-form field without selecting the Other ethnicity or race subcategory, a financial institution is permitted to report the associated Other ethnicity or race subcategory in addition to the information the applicant provided.

After consideration of the comments, the Bureau concludes that amendments to instructions 9.ii and 9.iv remain necessary. The Bureau finds that ensuring an applicant has the

opportunity to provide a specific Other ethnicity or race not listed in the standard subcategories will encourage self-identification and further the purposes of HMDA by improving the data. While the Bureau acknowledges that the proposed amendments are somewhat of a departure from revised appendix B and certain industry practice, the Bureau believes that an applicant should be provided an opportunity to provide a specific Other ethnicity or race without any preconditions or restrictions. To the extent revised appendix B implied otherwise, it did not do so intentionally.

In response to commenter concerns about reporting a free-form field that is not linked to any associated code, the Bureau will permit a financial institution to select automatically and to report the Other ethnicity or race subcategory if an applicant provides a specific Other ethnicity or race in the free-form field but does not actively select the Other ethnicity or race subcategory. The Bureau finds that the need for such flexibility is greater in the case of the Other race and ethnicity subcategory, as compared to the aggregate category and subcategory issue discussed above, given commenters' concerns and questions about maintaining and reporting a free-form field without linking that field to any associated code. The Bureau believes that such increased burden and uncertainty may undermine the purposes of HMDA and the quality of the data. Accordingly, the Bureau will permit, but not require, financial institutions to report the corresponding Other race or ethnicity subcategory when an applicant provides an Other race or ethnicity not listed in the standard subcategories, even where the applicant did not actively select the Other race or ethnicity subcategory, and final instructions 9.ii and 9.iv so provide. The Bureau believes that such a permissive standard will address industry concerns without imposing any additional regulatory burden on financial institutions.

The Bureau concludes that similar conforming revisions are also necessary in connection with the American Indian or Alaska Native race category and free-form field. Similar to the Other ethnicity or race subcategory, the Bureau believes that an applicant should be provided an opportunity to provide a particular American Indian or Alaska Native enrolled or principal tribe without any preconditions or restrictions. The Bureau further concludes that the same concerns about reporting a free-form field that is not linked to any associated code would also apply to the American

<sup>136</sup> *Id.*

Indian or Alaska Native free-form field. Accordingly, the Bureau is adding a new instruction 9.v that mirrors the instructions for reporting the Other race or ethnicity subcategories set forth in final instruction 9.ii and 9.iv.

One commenter requested additional clarification on how to count the Other race or ethnicity subcategory for purposes of the five-race or -ethnicity maximum. As described in instructions 9.ii and 9.iv, the Other race or ethnicity field will always constitute one selection for purposes of the five-race or -ethnicity maximum. For example, if an applicant selects only the Other Hispanic or Latino subcategory and does not provide a specific Other race or ethnicity in the free-form field, that selection counts as one selection for purposes of the maximum. Similarly, if an applicant selects the Other Hispanic or Latino ethnicity subcategory and also provides a specific Hispanic or Latino ethnicity in the free-form field, these selections together constitute only one selection. As set forth in final instruction 9.v, the American Indian or Alaska Native field will also always constitute one selection for purposes of the five-race maximum.

For the reasons discussed above, the Bureau is adopting certain revisions to instructions 9.ii and 9.iv to address industry comments and adding instruction 9.v to provide conforming changes to the American Indian and Alaska Native field. Specifically, the Bureau is amending instructions 9.ii and 9.iv to permit, but not require, a financial institution to report an Other Hispanic or Latino, Other Asian, or Other Pacific Islander subcategory, as applicable, if an applicant provides a specific Hispanic or Latino, Asian, or Pacific Islander ethnicity or race in the free-form field. The Bureau is also amending instructions 9.ii and 9.iv to provide examples. Otherwise, the Bureau is adopting the amendments to instructions 9.ii and 9.iv as proposed, with certain other, technical revisions for clarity. The Bureau is also adding instruction 9.v to provide guidance on the collection and reporting of the American Indian and Alaska Native race category and free-form field that mirror the guidance in final instructions 9.ii and 9.iv concerning the reporting of the Other race and ethnicity subcategories, as well as a technical revision to instruction 9.iii.

#### Five-Ethnicity Maximum

Instruction 9 in revised appendix B requires that an applicant be offered 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 2018 FIG, however, a financial institution may report up to only five-ethnicity codes. While revised appendix B includes a five-race maximum and related instructions for reporting race, revised appendix B did not include a similar five-ethnicity maximum and instructions.

Accordingly, the Bureau proposed to amend instruction 9.i to provide instructions to financial institutions on how to report ethnicity if an applicant selects both aggregate categories and all four subcategories. The proposed revisions mirror the instructions for how to report race when an applicant has selected a total of more than five aggregate race categories and race subcategories. Specifically, the Bureau proposed to revise instruction 9.i to provide that a financial institution must report every aggregate ethnicity category selected by the applicant. The proposed instruction states 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 proposed amendments to instruction 9.ii to provide 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 purposes of reporting only up to the five-ethnicity maximum.

Although the Bureau did not receive comments that pertained specifically to ethnicity, it received numerous comments from industry on the maximum generally. The commenters expressed unease about picking for the applicant which subcategories to report where the applicant selects more than five categories and subcategories combined. Some commenters noted that such a limitation is in conflict with other instructions in revised appendix B, which generally permit an applicant to choose as many selections as desired. Commenters expressed concern that, without further guidance, financial institutions may be subject to compliance scrutiny or liability. Other commenters were concerned that allowing the financial institution to choose which subcategories to report

could lead to inaccurate results, underreporting, or failure to identify discrimination against specific groups. The commenters requested that the Bureau either permit a financial institution to report all ethnicity and race selections made by the applicant or provide further guidance to financial institutions on how to pick which five-ethnicity or -race selections to report.

For the reasons discussed below, the Bureau is adopting instructions 9.i and 9.ii as proposed. Initially, the Bureau notes that many of the commenters' concerns pertain to the five-race maximum, which was not the subject of the April 2017 HMDA Proposal. As discussed in the 2015 HMDA Final Rule, to facilitate compliance, the Bureau limited the number of racial designations a financial institution may report.<sup>137</sup> The Bureau reviewed 2010 Census data to consider the occurrence of respondents that self-identify as being more than one particular race and found that, for example, where only Asian was reported as the respondents' race, only 0.11 percent of those respondents self-identified as being of three particular Asian races, and only 0.02 percent self-identified as being of seven particular Asian races. Accordingly, the Bureau concluded in the 2015 HMDA Final Rule that the likelihood of applicants self-identifying as more than five-racial designations is extremely low.

The Bureau similarly concludes that the likelihood that an applicant will report more than five-ethnicities is also very low. Although 2010 Census reports do not provide data on the number of instances in which a respondent chose multiple ethnicity selections, based on Census race reporting, the Bureau expects that the number of occurrences in which an applicant will select both aggregate ethnicity categories and all four ethnicity subcategories will be extremely low. For example, according to 2010 Census data, 97.1 percent of respondents reported only one aggregate race category.<sup>138</sup> Among respondents reporting two or more aggregate race categories, less than 1 percent reported four or more races, and only 0.1 percent of respondents identified as five races.<sup>139</sup> Given that there are fewer ethnicity categories and subcategories compared to race categories and subcategories, the Bureau expects the likelihood an applicant will select more than five-ethnicity selections to be even

<sup>137</sup> 2015 HMDA Final Rule, 80 FR 66128, 66192 (Oct. 28, 2015).

<sup>138</sup> U.S. Census Bureau, C2010BR-02, "Overview of Race and Hispanic Origin: 2010," at 4 (2011), available at <https://www.census.gov/prod/cen2010/briefs/c2010br-02.pdf>.

<sup>139</sup> *Id.* at 8-9.

lower than the likelihood that an applicant will select more than five-race selections.

The Bureau declines to permit unlimited ethnicity category and subcategory reporting. Permitting unlimited reporting would require adding a data field for each additional possible subcategory, therefore expanding the total number of data fields within the HMDA loan/application register. The Bureau believes that doing so would add additional complexity to reporting that may undermine the quality of the data. Given that the Bureau expects an applicant will rarely select more than five-ethnicity designations, the Bureau does not believe the risks and complexity of additional data fields are justified in these circumstances.

Similarly, the Bureau declines to impose additional requirements on how to report ethnicity categories and subcategories when an applicant has selected a total of more than five. Proposed instruction 9.i (as well as instruction 9.iii as related to race) provides substantial guidance. Under those instructions, a financial institution would report all the aggregate categories first, and then any subcategories up to a combined five-ethnicity maximum (or five-race maximum, as applicable to race).

Several commenters submitted comments requesting guidance on whether a particular method of choosing which categories and subcategories to report would be acceptable. Other than as described above, the rule does not place any additional limitations on which five categories and subcategories to report. Thus, to the extent the total categories and subcategories exceed five, a financial institution may choose any method for determining which additional subcategories to choose for reporting, so long as the financial institution initially complies with the instructions provided in revised appendix B. In light of the Bureau's conclusion that applicants will very rarely choose a total of more than five categories and subcategories, the Bureau declines at this time to impose additional reporting limitations and requirements on financial institutions.

#### Sample Data Collection Form

Revised appendix B includes a sample data collection form for use in collecting ethnicity, race, and sex information about the applicant. The Bureau proposed to make various technical revisions to the sample data collection form. The Bureau proposed to revise the applicant instructions to provide that an applicant may select one

or more designations for "Ethnicity," rather than one or more Hispanic or Latino origins. The Bureau also proposed 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 also proposed to add 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, rather than only on the side of the form for the applicant. The Bureau received one comment opposing the additional "check one or more" language added to the sample data collection form. Although the commenter noted generally that the proposed changes to revised appendix B are contrary to the 2015 HMDA Final Rule, will undo work already performed, and would not be in the interests of consumers, the commenter did not provide any specific examples, data, or reasoning as related to the sample data collection form. Accordingly, the Bureau is adopting the corrections to the sample data collection form as proposed.

#### VI. Effective Dates

In the April 2017 HMDA Proposal, the Bureau proposed that the amendments take effect when the related amendments to Regulation C adopted by the 2015 HMDA Final Rule take effect. As discussed more fully above, these amendments to Regulation C 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 amendments' effective dates must be synchronized with the related effective dates in the 2015 HMDA Final Rule. In the July 2017 HMDA Proposal, the Bureau proposed successive amendments to the provisions in §§ 1003.2(g) and 1003.3(c)(12) and associated commentary to effectuate a temporary increase in the open-end threshold. Accordingly, the Bureau proposed to raise the open-end threshold to 500 loans effective January 1, 2018, and then to lower the open-end threshold back to 100 loans effective January 1, 2020. For the reasons discussed below, the Bureau is adopting the effective dates for this final rule as proposed.

Concerning the proposed effective dates included in the April 2017 HMDA Proposal, one national trade association stated that scheduled updates to loan origination software cannot proceed until the proposal is finalized and recommended that the Bureau finalize the proposed amendments quickly if

any meaningful burden reduction is to be achieved. A national and State trade association recommended that the effective date for the 2015 HMDA Final Rule be delayed because, they posited, the proposal would not be finalized before January 1, 2018. One national trade association noted that the proposal would provide effective dates of January 1, 2019, or January 1, 2020, to correspond to related effective dates for certain amendments included in the 2015 HMDA Final Rule, but recommended that the Bureau delay the effective date of the 2015 HMDA Final Rule until it finalized the clarifications or for at least one year.

Many national and State trade associations, financial institutions, and industry commenters, when commenting on both the April and July 2017 HMDA Proposals, recommended that the Bureau delay the effective date for most amendments included in the 2015 HMDA Final Rule from January 1, 2018, to January 1, 2019. Several of these commenters argued that a delay of the general January 1, 2018, effective date for the 2015 HMDA Final Rule was necessary because questions remained regarding collection and reporting of data, the Bureau had not yet released the geocoding tool, edits, or platforms necessary for financial institutions to update their software and run tests, and questions remained regarding implementation of the new Uniform Residential Loan Application (URLA). Some commenters stated that the effective date of the 2015 HMDA Final Rule should be delayed until the Bureau has addressed public disclosure and data resubmission standards for data collected and reported under amended Regulation C. One national trade association recommended that financial institutions have the option to delay reporting of the new data points adopted in the 2015 HMDA Final Rule for one year, while one State trade association recommended that the effective date be delayed for one year but that optional early compliance be permitted. A State trade association suggested the Bureau look for good faith efforts at HMDA compliance as the Bureau explained it would do during implementation of the Integrated Mortgage Disclosures Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z) final rule (TILA-RESPA Final Rule). Some trade associations requested that transactional coverage for the 2018 data collection be based on the date an application was received, instead of the final action taken date, so as to allow more time in

2017 to prepare for the January 1, 2018, effective date in response to the clarifications in this rule.

The Bureau largely is adopting the effective dates for this final rule as proposed.<sup>140</sup> The 2015 HMDA Final Rule takes effect in stages between January 1, 2017, and January 1, 2020, with most of the amendments included in the 2015 HMDA Final Rule taking effect on January 1, 2018. Accordingly, as provided in the amendatory instructions below, the Bureau is adopting most of the amendments included in this final rule to take effect on January 1, 2018. The Bureau is adopting some of the amendments included in this final rule to take effect on January 1, 2019, or January 1, 2020, respectively, to correspond to related effective dates of amendments in the 2015 HMDA Final Rule. The amendments that will take effect on January 1, 2019, or January 1, 2020, respectively, are noted in the applicable section-by-section discussion in part V above, in the Dates section above, and in the amendatory instructions below. The amendatory instructions are organized sequentially by effective date, starting with all amendments that will take effect on January 1, 2018.

Apart from the temporary adjustment to the open-end threshold, the Bureau did not propose, and declines in this final rule, to delay the effective dates for the amendments included in the 2015 HMDA Final Rule or to provide for optional compliance for the 2018 calendar year. As explained in the 2015 HMDA Final Rule, “the Bureau believes that these effective dates, which provide an extended implementation period of over two years, is appropriate and will provide industry with sufficient time to revise and update policies and procedures; implement comprehensive systems change; and train staff.”<sup>141</sup> The Bureau believes that the clarifications, technical corrections, minor amendments, and temporary adjustment to the open-end threshold adopted in this final rule will facilitate implementation of the 2015 HMDA Final Rule. To the extent the

clarifications in this rule require financial institutions to make technical changes, those changes require only minor adjustments, not significant system updates. In addition, the Bureau has issued this final rule in August, four months before 2018, which the Bureau believes should afford ample time to implement any necessary minor system adjustments. The Bureau is releasing implementation aids with this final rule to facilitate implementation.

Moreover, commenters’ concerns the timing of the release of certain Bureau materials do not justify delaying the effective date. In July of 2017 the Bureau published updates to the 2018 FIG for HMDA data collected in 2018, which includes HMDA edits, and the Bureau is issuing updates to the 2018 FIG related to the amendments adopted in this final rule simultaneously to the release of this rule. Furthermore, the FFIEC agencies published on August 22, 2017, the HMDA Examination Transaction Testing Guidelines for data collected in or after 2018. In addition, the Bureau’s new HMDA filing platform is being demonstrated widely through webinars, conferences, and in-person user testing sessions. The platform will be available for wider testing in the Fall of 2017 as an open beta release prior to the start of filing season in 2018. In addition, commenters’ concerns about the timing of the Bureau’s decisions related to the public disclosure of the HMDA data do not provide a logistical reason to delay the effective date of the new data collection requirements, because, under changes adopted in the 2015 HMDA Final Rule, financial institutions will no longer have responsibility for disclosure of the data beginning with data collected for the 2017 calendar year.<sup>142</sup>

Furthermore, the Bureau does not believe that commenters’ concerns about the URLA implementation provide a reason to delay the effective date of the data collection requirements. The Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association (collectively, the Enterprises), under the conservatorship of FHFA, issued a revised and redesigned Uniform Residential Loan Application on August 23, 2016. The Enterprises have not yet provided a date when lenders may begin using the 2016 URLA or the date lenders are required to use the 2016 URLA (the cutover date), but have stated their intention to collaborate with industry stakeholders to help shape the implementation timeline for the 2016 URLA, with a goal to provide lenders with more precise

information in 2017 regarding the cutover date.<sup>143</sup>

The Bureau did not propose and also declines to amend the 2015 HMDA Final Rule to provide that data collected in 2018 include only applications received in 2018. The Bureau believes, as stated in the 2015 HMDA Final Rule, that collection of the new data should begin with transactions for which final action is taken in 2018. This collection timeframe is consistent with how financial institutions currently determine in which calendar year’s data to include a transaction. Moreover, financial institutions already have significant flexibility concerning the collection of the new disaggregated ethnicity and race fields adopted in the 2015 HMDA Final Rule. For example, revised comment 4(a)(10)(i)–2 allows financial institutions to collect ethnicity, race, and sex information in accordance with the requirements in effect at that time the information is collected, even if final action is taken on or after January 1, 2018. The Bureau also issued an approval notice in October 2016 that provides financial institutions the alternative option to begin collecting disaggregated categories in 2017.<sup>144</sup> As stated above, the Bureau believes there is sufficient time to prepare to collect data in 2018 for all covered transactions, including those with applications received in 2017, for which final action is taken in 2018. Given all of these considerations, and the over two years to prepare for the January 1, 2018, effective date provided by the 2015 HMDA Final Rule, the Bureau declines to change the timing of the new requirements’ coverage as suggested by commenters.

Additionally, as discussed in the section-by-section analysis of § 1003.6(b) above, the Bureau is not

<sup>143</sup> Press Release, Uniform Mortgage Data Program, Fannie Mae and Freddie Mac at the direction of the FHFA, “URLA Implementation Guidance and Update,” (Nov. 1, 2016), available at <https://www.fanniemae.com/content/news/urla-announcement-november-2016.pdf>. Uniform Mortgage Data Program, Fannie Mae and Freddie Mac at the direction of the FHFA, “Uniform Residential Loan Application (URLA)/Uniform Loan Application Dataset (ULAD) FAQs,” at ¶ 6 (Nov. 1, 2016), available at <https://www.fanniemae.com/content/faq/urla-ulad-faqs.pdf>.

<sup>144</sup> Status of New Uniform Residential Loan Application and Collection of Expanded Home Mortgage Disclosure Act of Information About Ethnicity and Race in 2017, 81 FR 66930 (Sept. 29, 2016). The options for collection and reporting of HMDA information about ethnicity and race are summarized in a chart available on the Bureau’s Web site. See Bureau of Consumer Fin. Prot., “Collection and Reporting of HMDA Information About Ethnicity and Race,” (Jan. 1, 2017), available at [https://www.consumerfinance.gov/documents/2507/201701\\_cfbp\\_HMDA-Ethnicity-and-Race-Collection.pdf](https://www.consumerfinance.gov/documents/2507/201701_cfbp_HMDA-Ethnicity-and-Race-Collection.pdf).

<sup>140</sup> The effective date for an amendment to the commentary to § 1003.6(b)(1) is changed to January 1, 2019, to align with the effective date for the corresponding amendment in the 2015 HMDA Final Rule. See 2015 HMDA Final Rule, 80 FR 66128, 66257 (Oct. 28, 2015) (“The Bureau is adopting an effective date of January 1, 2019 for § 1003.6, which concerns enforcement of HMDA and Regulation C. The amendments to § 1003.6 adopted in this final rule apply to HMDA data reported beginning in 2019. Thus, current § 1003.6 applies to data collected in 2017 and reported in 2018, and amended § 1003.6 applies to 2018 data reported in 2019.”).

<sup>141</sup> 2015 HMDA Final Rule, 80 FR 66128, 66257 (Oct. 28, 2015).

<sup>142</sup> *Id.* at 66252–53 (Oct. 28, 2015).

delaying the effective date of the safe harbor for the geocoder because the Bureau believes that financial institutions should be able to take advantage of the safe harbor as soon as the Bureau makes the geocoding tool available on its Web site.<sup>145</sup>

### VII. 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.<sup>146</sup> It also provides the public with information to assist in identifying possible discriminatory lending patterns and enforcing antidiscrimination statutes.<sup>147</sup>

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.<sup>148</sup> In October 2015, the Bureau issued the 2015 HMDA Final Rule which implemented the Dodd-Frank Act amendments to HMDA.<sup>149</sup> The 2015 HMDA 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 2015 HMDA Final Rule, the Bureau has identified certain technical errors in the 2015 HMDA Final Rule as well as ways to ease the burden of reporting certain data requirements and clarifications of key terms that will facilitate compliance with the Final Rule. On April 25, 2017, the Bureau issued a notice of proposed rulemaking (April 2017 HMDA

Proposal) proposing amendments to Regulation C to make technical corrections to and to clarify certain requirements of the 2015 HMDA Final Rule. In the April 2017 HMDA Proposal, the Bureau also proposed a new reporting exclusion. Since issuing the 2015 HMDA Final Rule, the Bureau also has heard concerns that the open-end threshold, which the Bureau set at 100 transactions, is too low. On July 20, 2017, the Bureau published a second proposal (July 2017 HMDA Proposal) to seek comment on addressing the threshold for reporting open-end lines of credit.<sup>150</sup> After reviewing the comments received on the April 2017 HMDA Proposal and the July 2017 HMDA Proposal, the Bureau is publishing final amendments to Regulation C pursuant to the April 2017 HMDA Proposal and the July 2017 HMDA Proposal. Comments on the benefits and costs of the rule are also discussed above in the section-by-section analysis of the preamble.

In developing this final rule, the Bureau has considered the potential benefits, costs, and impacts.<sup>151</sup> As discussed in Section III above, the Bureau has consulted with, or offered to consult with, the Board, the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency, the National Credit Union Administration (NCUA), the Department of Housing and Urban Development (HUD), the Securities and Exchange Commission, the Department of Justice, the Department of Veterans Affairs, the Federal Housing Finance Agency, the Department of the Treasury, the Department of Agriculture, the Federal Trade Commission, and the Federal Financial Institutions Examination Council.

This final rule amends Regulation C to make technical corrections and clarify certain requirements under the 2015 HMDA Final Rule amending Regulation C. As part of these amendments, the final rule corrects a drafting error and revises both the open-end and closed-end thresholds so that only financial institutions that meet the threshold for two years in a row are required to collect data in the following calendar years. The final rule also

temporarily increases the open-end reporting threshold to 500 or more open-end lines of credit for two years (calendar years 2018 and 2019). With these amendments, financial institutions that originated between 100 and 499 open-end lines of credit in either of the two preceding calendar years will not be required to begin collecting data on their open-end lending before January 1, 2020. This temporary increase will provide time for the Bureau to consider the appropriate level for the open-end threshold without requiring financial institutions originating fewer than 500 open-end lines of credit per year to collect and report data with respect to open-end lending in the meanwhile.

In the 2015 HMDA Final Rule, the Bureau conducted an in-depth Section 1022(b)(2) analysis of the costs and benefits of the 2015 HMDA Final Rule. The Bureau used as a baseline for that analysis the state of the world before the implementation in Regulation C of the Dodd-Frank Act provisions. The baseline for the analysis below assumes that the 2015 HMDA Final Rule took effect absent the amendments in this final rule. In other words, the potential benefits and costs of the provisions contained in this final rule are evaluated relative to the state of the world defined by the 2015 HMDA Final Rule.<sup>152</sup>

#### *Changes Adopted From April 2017 HMDA Proposal*

The amendments that were proposed in the April 2017 HMDA Proposal and adopted substantially in this final rule are largely clarifications and technical corrections that do not change the compliance requirements of the 2015 HMDA Final Rule and should reduce burden by easing compliance. The few minor substantive changes will all reduce burden on industry<sup>153</sup> and have

<sup>145</sup> As noted above, the effective date for an amendment to the commentary to § 1003.6(b)(1) is changed to January 1, 2019, to align with the effective date for the corresponding amendment in the 2015 HMDA Final Rule. See 2015 HMDA Final Rule, 80 FR 66128, 66257 (Oct. 28, 2015) (“The Bureau is adopting an effective date of January 1, 2019 for § 1003.6, which concerns enforcement of HMDA and Regulation C. The amendments to § 1003.6 adopted in this final rule apply to HMDA data reported beginning in 2019. Thus, current § 1003.6 applies to data collected in 2017 and reported in 2018, and amended § 1003.6 applies to 2018 data reported in 2019.”).

<sup>146</sup> HMDA section 302(b), 12 U.S.C. 2801(b); see also 12 CFR 1003.1(b)(1)(i) and (ii).

<sup>147</sup> Fair Housing Loan Data System, 54 FR 51356, 51357 (Dec. 15, 1989), *codified at* 12 CFR 1003.1(b)(1).

<sup>148</sup> Public Law 111–203, 124 Stat. 1376, 1980, 2035–38, 2097–101 (2010).

<sup>149</sup> 2015 HMDA Final Rule, 80 FR 66128 (Oct. 28, 2015).

<sup>150</sup> July 2017 HMDA Proposal, 82 FR 33455 (July 20, 2017).

<sup>151</sup> 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 or 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.

<sup>152</sup> Because the analysis of the 2015 HMDA Final Rule reflected the Bureau’s intended transactional thresholds, rather than those created by the drafting error in § 1003.3(c)(11), (12), the 2015 HMDA Final Rule baseline incorporates this rulemaking’s proposed correction of the error.

<sup>153</sup> Some commenters on the April 2017 HMDA Proposal noted that even though in the long run, the proposed changes would reduce the burden on the HMDA reporters, like any changes in regulatory requirements, it could be possible that some institutions may incur a transitory cost to adapt to such changes in the short run, as they might need to invest certain time and resources updating policies and procedures, audits, and adjusting programming in their systems. The Bureau acknowledges that such transitory costs could occur. No commenters however have provided specific estimates on such transitory costs. Overall, it is the Bureau’s belief that compared to long run reduction in compliance costs as the results of the changes contained in this final rule, the transitory costs for financial institutions to adapt to the changes is minimal.

either a positive or neutral effect on consumers.

To ease the burden associated with obtaining certain information about purchased loans, the final rule establishes certain transitional rules for reporting purchased loans. Financial institutions report that the requirement is not applicable for the loan purpose if the financial institution is reporting a purchased covered loan that was originated prior to January 1, 2018. Financial institutions also may opt not to report that the requirement is not applicable for the unique identifier for the loan originator when reporting purchased loans that were originated prior to January 10, 2014.<sup>154</sup> The final rule also provides that financial institutions have the option to report open-end lines of credit or closed-end mortgage loans, even if the financial institution may exclude those loans pursuant to the transactional thresholds included in § 1003.3(c)(11) or (12) under the 2015 HMDA Final Rule and this final rule, as discussed above in the section-by-section analysis of § 1003.3(c)(11) and (12). In addition, the final rule provides assurances to financial institutions that obtain the census tract number from a forthcoming geocoding tool on the Bureau's Web site, 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 final rule also clarifies certain key terms, including temporary financing, automated underwriting system, multifamily dwelling, extension of credit, income, and mixed-use property. The proposal also excludes preliminary transactions associated with New York CEMAs, which reduces burden by avoiding double reporting.

The final rule corrects a drafting error and aligns the transactional thresholds included in § 1003.3(c)(11) and (12) under the 2015 HMDA Final Rule with the institutional coverage thresholds in § 1003.2(g). The final rule 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 final rule also includes a variety of minor changes and technical corrections.

The Bureau sought comment on data to quantify costs and benefits and any associated burden with the proposed

changes in its April 2017 HMDA Proposal. Specifically, the Bureau sought 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. Similarly, the Bureau sought 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. The Bureau also sought 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 requested any other data that would assist in quantifying the costs and benefits of the proposal. As described in greater detail below, the Bureau received some public comments estimating the costs of the proposed changes for financial institutions. These comments have been considered in revising the cost-benefit analyses contained in this part. In general, the comments did not provide specific data.

#### *Changes Adopted From July 2017 HMDA Proposal*

The Bureau believes that the temporary increase in the open-end transactional coverage threshold, as proposed in July 2017 HMDA Proposal and finalized in this rule, generally will benefit financial institutions that originate between 100 and 499 open-end lines of credit in either of the two preceding calendar years by, at a minimum, allowing them to delay incurring one-time costs and delay the start of ongoing compliance costs associated with collecting and reporting data on open-end lines of credit, compared to the baseline established by the 2015 HMDA Final Rule. The Bureau estimates that roughly 690 such institutions will be able to take advantage of the two-year temporary increase in the open-end transactional coverage threshold. The Bureau estimates that the savings on the ongoing costs from the collection and reporting of open-end lines of credit by financial institutions temporarily exempted under this final rule will be at least \$6 million per year for two years. The Bureau believes that temporarily increasing the open-end transactional coverage threshold for two years will reduce the benefits to consumers from the open-end reporting

provisions of the 2015 HMDA Final Rule as those benefits are described in the rule. However, any such impact should be minimal because approximately three-quarters of all open-end lines of credit will still be reported.

The Bureau sought comment on data that would help to quantify costs and benefits and any associated burden with the proposed temporary increase in open-end reporting threshold in its April 2017 HMDA Proposal. In general, the comments did not provide specific data.

#### *A. Potential Benefits and Costs to Consumers and Covered Persons*

##### *Temporary Increase of Open-End Line of Credit Threshold*

Under the final rule, the open-end reporting threshold will be temporarily increased to 500 for two years (calendar years 2018 and 2019). Compared to the baseline established by the 2015 HMDA Final Rule, the proposed temporary increase in the open-end transactional coverage threshold will generally benefit financial institutions that originate between 100 and 499 open-end lines of credit in either of the two preceding calendar years. Such financial institutions will be able to delay the start of ongoing compliance costs associated with collecting and reporting data on open-end lines of credit for two years. They are also likely able to delay incurring one-time costs of commencing implementation of open-end reporting.

The Bureau can estimate the number of depository institutions that will be able to take advantage of the two-year temporary increase in the open-end transactional coverage threshold and the amount that each of these institutions will save in costs. In the July 2017 HMDA Proposal, the Bureau estimated that, in 2015, 289 depository institutions originated 500 or more open-end lines of credit and 980 depository institutions originated at least 100 open-end lines of credit.<sup>155</sup> Thus, roughly 690 depository institutions will be able to take advantage of the two-year temporary increase in the open-end transactional

<sup>155</sup> The 2015 HMDA Final Rule contained aggregated estimates for credit unions, banks, and thrifts. In developing the estimates for the July 2017 HMDA Proposal, the Bureau had constructed separate estimates for credit unions using the credit union Call Report data and assumed the parallel trend exists in the overall market. Specifically, the Bureau estimated that in 2013 there were 534 credit unions that originated 100 or more open-end lines of credit. Based on 2015 credit union Call Report data, that number is now 699. The estimates contained in the 2015 HMDA Final Rule and those stated in text are based on origination volumes for a single-year, and may overstate coverage.

<sup>154</sup> 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.



coverage threshold. On average, the institutions that will be able to take advantage of the two-year temporary increase originated fewer than 250 open-end lines of credit per year, with their median origination volume slightly below 200.<sup>156</sup>

The amount that each of these depository institutions will save in costs depends on the level of complexity of their compliance operations as defined in the 2015 HMDA Final Rule. The level of complexity in turn is related to the number of loans that an institution must report. In the 2015 HMDA Final Rule, the Bureau assumed a representative low-complexity (tier 3) open-end reporter would have 150 open-end lines of credit records reportable to HMDA, while the number of open-end lines of credit records for a representative moderate-complexity (tier 2) open-end reporter would be at 1,000. Specifically, in estimating costs specific to collecting and reporting data for open-end lines of credit in the 2015 HMDA Final Rule, the Bureau assumed that institutions that originate more than 7,000 open-end lines of credit are high-complexity or tier 1 institutions; those that originate between 200 and 7,000 such lines of credit are moderate-complexity or tier 2 institutions; and those that originate fewer than 200 such lines of credit are low-complexity or tier 3 institutions. Given the previous results, the Bureau believes that most of the financial institutions that will benefit from the two year temporary increase of the open-end lines of credit threshold are tier 3 institutions, some are tier 2 institutions, and none are tier 1 institutions. Further, the tier 2 institutions most likely to benefit from the final rule are among the smaller ones in tier 2 in terms of open-end lines of credit volume.

In the 2015 HMDA Final Rule, the Bureau estimated that, for the average tier 3 institution, the ongoing operational costs of open-end reporting will be \$8,600 per year; and for the average tier 2 institution, the ongoing operational costs will be \$43,400 per year.<sup>157</sup> Thus, if all 690 financial institutions that will benefit from the temporary threshold increase are in tier 3, the Bureau estimates that the savings in the ongoing costs from collecting and reporting open-end lines of credit will be roughly \$6 million in each of two years (approximately \$12 million total).

<sup>156</sup> See July 2017 HMDA Proposal, 82 FR 33459, 33459 n.57 (July 20, 2017). The median loan volume discussed above is based on the same credit union call report data that the Bureau used for the July 2017 HMDA Proposal.

<sup>157</sup> 2015 HMDA Final Rule, 80 FR 66128, 66286 (Oct. 28, 2015).

Assuming instead that all 690 financial institutions that will benefit from the temporary threshold increase are in tier 2, the Bureau estimates that the savings in the ongoing costs from collecting and reporting open-end lines of credit will be roughly \$30 million in each of two years (approximately \$60 million total). Since the tier 2 institutions most likely to benefit from the final rule are among the smaller ones in tier 2 in terms of open-end lines of credit volume, the Bureau believes that the savings in ongoing costs will be closer to the lower estimate (\$6 million per year for two years) than the higher estimate (\$30 million per year for two years). On the other hand, as stated in Section V, the Bureau may have underestimated the average ongoing costs for low-complexity institutions in the 2015 HMDA Final Rule. If so, the estimate of \$6 million per year in savings would understate the actual savings.

The Bureau recognized that the one-time costs of reporting open-end lines of credit could be substantial because most financial institutions do not currently report open-end lines of credit and thus will have to develop completely new reporting infrastructures to begin reporting these data. As a result, there will be one-time costs to create processes and systems to report open-end lines of credit in addition to the one-time costs to modify processes and systems for other mortgage products.<sup>158</sup> In the July 2017 HMDA Proposal, the Bureau acknowledged that the Bureau might have underestimated the one-time costs of open-end lines of credit reporting in the 2015 HMDA Final Rule, in addition to possible under-estimation of on-going costs of open-end reporting, as the Bureau was handicapped by the lack of available data concerning open-end lending.

The Bureau believes the temporary increase of the open-end threshold will allow the financial institutions that have open-end lines of credit volume between 100 and 499 per year to delay incurring one-time costs associated with open-end lines of credit reporting. However, for the purpose of this impact analysis, the Bureau is not counting such delay as one-time net cost savings because the threshold increase is only temporary. The Bureau will have the opportunity over the ensuing two-year period to assess whether to adjust the threshold permanently, and, if the Bureau were to adjust the threshold permanently as the result of that reassessment, the permanent reduction in one-time costs of open-end reporting for exempted institutions would be in

<sup>158</sup> *Id.* at 66264; see also *id.* at 66284–85.

the scope of a new impact analysis for any such potential rulemaking in the future. If the Bureau were not to adjust the threshold permanently, those temporarily exempted reporters would still incur the one-time costs of open-end reporting.

Some financial institutions may incur costs attributable to the temporary open-end lines of credit reporting threshold increase, because they have already planned to report open-end lines of credit and now will need to change their systems to delay reporting. To the extent institutions that already have incurred costs in preparing for compliance elect to take advantage of the two-year temporary increase in the open-end transactional coverage threshold, unless the Bureau elects during the two-year review period to make the increase permanent, these institutions will incur one-time expenses that, when added to expenses already incurred, may be greater than the one-time costs that would have been incurred had the institutions completed their compliance work by January 1, 2018. As noted above, the Bureau estimates that roughly 690 such institutions will be able to take advantage of the two-year temporary increase in the open-end transactional coverage threshold. As explained in the July 2017 HMDA Proposal, the Bureau does not have a reliable basis to estimate those costs. However, as discussed in the section-by-section analysis of § 1003.3(c)(11) and (12), financial institutions may opt to report open-end lines of credit or closed-end mortgage loans even if the institution may exclude those loans pursuant to the transactional thresholds included in § 1003.3(c)(11) or (12) under the 2015 HMDA Final Rule. Thus, a temporary increase in the open-end transactional coverage threshold will obviate the need for institutions that are prepared to report open-end lines of credit to change their systems.<sup>159</sup> As explained in the

<sup>159</sup> As noted above, the Bureau recently proposed to amend Regulation B to add § 1002.5(a)(4)(i), which would permit a creditor that is a financial institution under 12 CFR 1003.2(g) to collect information regarding the ethnicity, race, and sex of an applicant for a closed-end mortgage loan that is an excluded transaction under 12 CFR 1003.3(c)(11) or (12) if it submits HMDA data concerning such closed-end mortgage loans and applications or if it submitted HMDA data concerning closed-end mortgage loans for any of the preceding five calendar years. The Bureau is in the process of reviewing the comments and considering whether to issue a final rule, which the Bureau expects would be issued soon after the date this rule is issued. The option to voluntarily report analyzed in these impact analyses is conditional on the Bureau finalizing the proposed amendments to Regulation B. In the July 2017 HMDA Proposal the Bureau noted that it did not have reliable estimates of costs some institutions would incur because they have already planned to report open-end lines of credit

analysis of the optional reporting below, the Bureau believes that financial institutions that choose to exercise the option may incur benefits and costs but must benefit on net. No commenter on the July 2017 HMDA Proposal has provided data or discussion regarding such costs.

The Bureau believes that temporarily increasing the open-end transactional coverage threshold for two years will reduce the benefits to consumers from the open-end reporting provisions of the 2015 HMDA Final Rule as those benefits are described in the rule. However, the Bureau believes that such impact should be minimal because the temporary increase in the open-end transactional coverage threshold will still result in reporting on approximately three-quarters of all open-end lines of credit. The Bureau recognizes that there may be particular localities where the impact of the temporary increase in the open-end transactional coverage threshold will be more pronounced. The Bureau lacks data to be able to estimate the extent to which that may be true. No commenter on the July 2017 HMDA Proposal has provided data or discussion regarding such costs.

#### Allowing Optional Reporting for Financial Institutions When Below Loan-Volume Thresholds

This Bureau recognizes that some financial institutions that meet only one threshold may prefer to report loans even if they fall under the other transactional threshold in certain years. Thus, the final rule provides that financial institutions may opt to 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.<sup>160</sup>

and would be required to change their systems if they were not able to voluntarily report. The Bureau did not receive comments providing estimates of these costs.

<sup>160</sup> As noted above, the Bureau recently proposed to amend Regulation B to add § 1002.5(a)(4)(i), which would permit a creditor that is a financial institution under 12 CFR 1003.2(g) to collect information regarding the ethnicity, race, and sex of an applicant for a closed-end mortgage loan that is an excluded transaction under 12 CFR 1003.3(c)(11) or (12) if it submits HMDA data concerning such closed-end mortgage loans and applications or if it submitted HMDA data concerning closed-end mortgage loans for any of the preceding five calendar years. The Bureau is in the process of reviewing the comments and considering whether to issue a final rule, which the Bureau expects would be issued soon after the date this rule is issued. The option to voluntarily report analyzed in these impact analyses is conditional on the Bureau finalizing the proposed amendments to Regulation B.

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.

The Bureau believes the financial institutions most likely to choose to report when not required to do so will be low-volume, low-complexity institutions that may have made a one-time investment in reporting infrastructure and 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. Such institutions will only choose to report if the ongoing costs of reporting are less than the costs of switching off their open-end reporting systems but having to maintain the systems and potentially switching them back. In the April 2017 HMDA Proposal, the Bureau sought 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 HMDA reporting, even if they are not required to report under the 2015 HMDA Final Rule. However, the Bureau received no comments or data to this specific request.

Consumers may benefit from the optional 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 any such consumer savings will be small. Consumers may also benefit if low-volume, low-complexity institutions are more willing to originate loans because passing the thresholds will not increase burden if the institutions are already reporting HMDA information.

#### Transitional Rules on Purchased Loans

Three separate amendments provide for some flexibility with regard to reporting on purchased loans. Each of the proposed transitional rules directs or permits reporting that the requirement is not applicable 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. Under the final rule, financial institutions report that the requirement to report the loan purpose under § 1003.4(a)(3) is not applicable if the financial institution is reporting a purchased covered loan that was

originated prior to January 1, 2018. The final rule will also provide financial institutions with the option to report that the requirement to report the unique identifier for the loan originator is not applicable when reporting purchased loans that were originated prior to January 10, 2014, when Regulation Z's requirement to include the loan originator's unique identifier on loan documents went into effect. Finally, there is a transitional rule that eases NMLSR ID reporting requirements for purchases of commercial loans originated prior to January 1, 2018. The Bureau believes providing these options to financial institutions will not add costs to financial institutions but will 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.

The extent to which the transitional rules will reduce burden depends on the complexity of the financial institutions and the number of loans affected. The Bureau believes most of the financial institutions that purchase loans and are required to report under HMDA are in the high-complexity tier, with some possibly in the moderate-complexity tier, and very few in the low-complexity tier.

In the April 2017 HMDA Proposal, the Bureau specifically sought 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. The Bureau also sought 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. However, the Bureau received no comments or data corresponding to these requests.

The Bureau believes that the number of reportable loans purchased after January 1, 2018, and originated before January 1, 2018, will be relatively large in the beginning of 2018 but will diminish over time. The Bureau 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 will therefore reduce the burden on those financial institutions. This will be particularly true during the

first few years after January 1, 2018. Further, the Bureau believes that the number of reportable loans purchased after January 1, 2018, and 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 reduces the ongoing reporting cost on those financial institutions where this 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 will 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.

Deem Census Tract Errors as Bona Fide Errors if a Geocoding Tool That the Bureau Makes Available on Its Web Site Is Used

The final rule treats a census tract error as 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 that the Bureau makes available on its Web site, provided that the financial institution entered an accurate property address into the tool and the tool returned a census tract number for the property address.

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. This final rule further extends the burden reduction by providing a safe harbor for the use of the geocoding tool on the Bureau's Web site. 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. The Bureau believes this final rule will 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. The Bureau believes the financial institutions that will benefit most from this provision are low-complexity institutions that lack the resources to adopt commercially available geocoding tools.

The Bureau believes that the provision of the safe harbor to financial institutions using the geocoding tool on the Bureau's Web site will have a small impact on consumers. Consumers will 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 final rule clarifies certain key terms, including temporary financing, automated underwriting system, multifamily dwelling, extension of credit, income, and mixed-use property. The proposal excludes preliminary transactions associated with New York CEMAs to avoid double reporting. The final rule 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 final rule also includes a variety of minor changes and technical corrections.

These are all minor or clarifying changes that follow the meaning of the 2015 HMDA Final Rule as issued. The Bureau believes that these clarifications and technical corrections have the potential to reduce reporting burdens on financial institutions, as these amendments will reduce potential confusion related to certain data points and transactions. In particular, the Bureau believes these changes will help reduce the ongoing costs associated with researching questions and resolving question responses.

Some commenters on the proposal noted that even though, in the long run, the proposed changes would reduce the burden on the HMDA reporters, like any changes in regulatory requirements, some institutions could incur a cost to adapt to such changes in the short run, as they might need to invest certain time and resources updating policies and procedures, performing audits, and adjusting system programming. The Bureau acknowledges that such costs could occur. No commenters, however, provided specific estimates on such costs. Overall, the Bureau believes that there will be long-term reduction in

compliance costs resulting from this final rule and that the costs for financial institutions to adapt to the changes are minimal. The impact on consumers will also be small. Consumers will benefit to the extent to which financial institutions pass on any cost savings to consumers.

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

To the extent there are benefits to covered persons resulting from the temporary increase in the open-end transactional coverage threshold, the Bureau believes those benefits flow almost exclusively to depository institutions and credit unions with no more than \$10 billion in assets, as described in section 1026 of the Dodd-Frank Act. As discussed above, the institutions that will be temporarily excluded by the open-end threshold change originate between 100 and 499 open-end lines of credit and average fewer than 250 open-end lines of credit per year. In the 2015 HMDA Final Rule, the Bureau assumed a representative low-complexity, tier 3, open-end reporter would have 150 open-end lines of credit records reportable to HMDA, a representative moderate-complexity, tier 2, financial institutions would have 1000 open-end lines of credit records, while the number of open-end lines of credit records for a representative high-complexity, tier 1, open-end reporters would be at 30,000. Hence, the Bureau believes that, of the financial institutions that would most likely benefit from the two year temporary increase of the open-end lines of credit threshold, some, most likely most, belong to low-complexity, tier 3 institutions, some belong to moderate-complexity, tier 2 institutions, and none belong to high-complexity, tier 1 institutions. The Bureau believes none of the impacted depository institutions have assets over \$10 billion. Using the credit union Call Report data, the Bureau was able to verify that none of the credit unions that may benefit from this temporary increase in open-end reporting threshold have assets over \$10 billion.

The Bureau believes that some of the other changes in the final rule could benefit depository institutions and credit unions with no more than \$10 billion in assets more than larger financial institutions. For instance, the safe harbor for use of the geocoding tool on the Bureau's Web site mostly benefits financial institutions with assets of \$10 billion or less, because those institutions may not use a commercially available geocoder. Furthermore, the

Bureau believes that the provision that permits that financial institutions to have the option to report open-end lines of credit or closed-end loans even if they fall under the other transactional threshold mostly benefits financial institutions that have assets no more than \$10 billion. Financial institutions that are most likely to exercise such options will be low-volume, low-complexity institutions that may have made a one-time investment in reporting infrastructure and 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 financial institutions would only choose to report if doing so was burden reducing. To the extent that the majority of such small financial institutions have \$10 billion or less in assets, the changes mentioned above create a disproportional benefit for those institutions with assets of \$10 billion or less.

The only changes that could potentially benefit financial institutions with assets over \$10 billion relatively more than financial institutions with assets of no more than \$10 billion are the transitional rules related to reporting certain data points for purchased loans. Larger institutions will benefit relatively more because they are more likely to be purchasers of loans.

#### C. Impact on Access to Credit

The Bureau does not believe that the proposed temporary increase in the open-end transactional coverage threshold will reduce consumer access to consumer financial products and services. It may increase consumer access by decreasing the possibility that certain financial institutions increase their pricing as a result of the requirements of the 2015 HMDA Final Rule or seek to cap the number of open-end lines of credit they originate to stay under the open-end transactional coverage threshold.

As discussed above, the Bureau believes that none of the other changes in this final rule will add additional net costs to financial institutions. Furthermore, the clarifications in the final rule should reduce costs to financial institutions by easing implementation. Thus, all changes have the potential to reduce the costs of HMDA reporting for financial institutions. Further, as discussed above, standard economic theory predicts that in a market where financial institutions are profit maximizers, the affected financial institutions will pass on to consumers the cost saving per

application or origination (*i.e.*, the reduction in marginal cost) and will retain the one-time cost saving and saving on fixed costs of complying with the rule. Thus, the Bureau believes the impacts on consumers' access to credit will be neutral or beneficial. In no event does the Bureau anticipate that consumers will experience reduced access to credit as a result of these changes.

#### D. Impact on Consumers in Rural Areas

The Bureau believes that none of the changes is likely to have an adverse impact on consumers in rural areas. The Bureau believes that, to the extent that consumers in rural areas are more likely to be served by smaller depository institutions and credit unions and the temporary increase in open-end reporting threshold is expected to affect mainly small financial institutions, the benefits from the temporary open-end threshold increase will affect consumers in rural areas positively. The Bureau asked for comments as to the impact on consumers in rural areas in the July 2017 HMDA Proposal. None of the comments the Bureau received has led the Bureau to question this assessment.

The Bureau believes that smaller financial institutions that may opt to report HMDA information even though they fall below the other transaction threshold in certain years are more likely to be located in rural areas. If so, financial institutions and consumers in rural areas may benefit disproportionately from the clarification of options allowing lenders to choose to report. In the April 2017 HMDA Proposal, the Bureau requested 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 received no comment to this request.

The Bureau also believes that rural consumers may benefit more than consumers in urban areas from the safe harbor created for use of the geocoding tool on the Bureau's Web site because properties located in rural areas may face more geocoding challenges. The safe harbor alleviates some of that potential burden. In the April 2017 HMDA Proposal, the Bureau requested comment and data on whether properties located in rural areas face more geocoding challenges and whether the safe harbor would alleviate some of that burden. The Bureau received no comment on this specific request. For the rest of the changes contained in the final rule, the Bureau believes financial

institutions based in rural areas and consumers will not face higher burdens.

#### VIII. 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.

In the April 2017 HMDA Proposal, the Bureau concluded that the proposal, if adopted, would not have a significant economic impact on a substantial number of small entities and that an IRFA was therefore not required. The Bureau requested comment on the analysis under the RFA and any relevant data. The Bureau did not receive any comments on the analysis or data. This final rule adopts the proposed rule substantially as proposed, and, as discussed above, the Bureau believes that none of the changes will create a significant economic impact on any covered persons, including small entities. Therefore, a FRFA is not required.

In the July 2017 HMDA Proposal, the Bureau concluded that the proposal, if adopted, would not have a significant economic impact on a substantial number of small entities and that an IRFA was therefore not required. The Bureau requested comment on the analysis under the RFA and any relevant data. The Bureau did not receive any comments on the analysis or data. This final rule adopts the proposed rule as proposed, and as discussed above, the Bureau believes that none of the changes would create a significant economic impact on any covered persons, including small entities. Therefore, a FRFA is not required.

Accordingly, the undersigned certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

**IX. Paperwork Reduction Act**

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*), Federal agencies are generally required to seek 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 final rule will not impose any new recordkeeping, reporting, or disclosure requirements on members of the public that will constitute collections of information requiring approval under the PRA. The final rule does, however, make a temporary modification to a previously-approved information collection by including a temporary increase in the open-end reporting threshold for two years. The Bureau estimates that this temporary modification will save financial institutions between \$6 million and \$30 million per year for two years on ongoing operational cost related to open-end lines of credit reporting to HMDA. Using the hourly wage of \$33 that was used in 2015 Final Rule and its PRA analysis, the Bureau estimates that the final rule will reduce the recordkeeping, reporting, or disclosure requirements on members of the public associated with open-end reporting by approximately between 180,000 and 900,000 hours each year for two years during which the temporary threshold change is in effect.

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, Reporting and recordkeeping requirements, Savings associations.

**Authority and Issuance**

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

**PART 1003—HOME MORTGAGE DISCLOSURE (REGULATION C)**

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

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

■ 2. Effective January 1, 2018, § 1003.2, as amended at 80 FR 66128, is further amended by revising paragraphs (g)(1)(v)(A) and (B) and (g)(2)(ii)(A) and (B) 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

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

- (2) \* \* \*
- (ii) \* \* \*

(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

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

\* \* \* \* \*

■ 3. Effective January 1, 2018, § 1003.3, as amended at 80 FR 66128, is further amended by revising paragraphs (c)(11) and (12) and adding paragraph (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; a financial institution may collect, record, report, and disclose

information, as described in §§ 1003.4 and 1003.5, for such an excluded closed-end mortgage loan as though it were a covered loan, provided that the financial institution complies with such requirements for all applications for closed-end mortgage loans that it receives, closed-end mortgage loans that it originates, and closed-end mortgage loans that it purchases that otherwise would have been covered loans during the calendar year during which final action is taken on the excluded closed-end mortgage loan;

(12) An open-end line of credit, if the financial institution originated fewer than 500 open-end lines of credit in either of the two preceding calendar years; a financial institution may collect, record, report, and disclose information, as described in §§ 1003.4 and 1003.5, for such an excluded open-end line of credit as though it were a covered loan, provided that the financial institution complies with such requirements for all applications for open-end lines of credit that it receives, open-end lines of credit that it originates, and open-end lines of credit that it purchases that otherwise would have been covered loans during the calendar year during which final action is taken on the excluded open-end line of credit; or

(13) A transaction that provided or, in the case of an application, proposed to provide new funds to the applicant or 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 transaction.

■ 4. Effective January 1, 2018, § 1003.4, as amended at 80 FR 66128, is further amended by revising paragraphs (a)(2), (12), and (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 and applications that are approved but not accepted, and that are subject to Regulation Z, 12 CFR part 1026, other than assumptions, purchased covered loans, and reverse mortgages, 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. Effective January 1, 2018, appendix B to part 1003, as amended at 80 FR 66128, is further amended by revising paragraphs 8 and 9.i through 9.iv, adding paragraph 9.v, and revising the Sample Data Collection Form at the end of the appendix 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 but does 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. If the applicant provides only a particular Hispanic or Latino ethnicity in the space provided, you are permitted, but are not required, to report Other Hispanic or Latino in addition to reporting the particular Hispanic or Latino ethnicity provided by the applicant. For example, if an applicant provides only "Dominican," you should report "Dominican." You are permitted, but not required, to report Other Hispanic or Latino as well. 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. For purposes of the maximum of five reportable ethnicity categories and ethnicity subcategories combined, as 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. Similarly, if the applicant only enters "Dominican" in the space provided and you report both "Dominican" and Other Hispanic or Latino as permitted by this paragraph 9.ii, the reported items together are considered one selection.

iii. *Race—Aggregate categories and subcategories.* There are five aggregate race categories: American Indian or Alaska Native; Asian; Black or African American; Native Hawaiian or Other Pacific Islander; and White. The Asian and the Native Hawaiian or Other Pacific Islander aggregate categories have seven and four subcategories, respectively. The Asian race subcategories are: Asian Indian; Chinese; Filipino; Japanese; Korean; Vietnamese; and Other Asian. The Native Hawaiian or Other Pacific Islander race subcategories are: Native Hawaiian; Guamanian or Chamorro; Samoan; and Other Pacific Islander. You must report every aggregate race category selected by the applicant. If the applicant also selects one or more race subcategories, you must report each race subcategory selected by the applicant, except that you must not report more than a total of five aggregate race categories and race subcategories combined. For example, if the applicant selects all five aggregate race categories and also selects some race subcategories, you report only the five aggregate race categories. On the other hand, if the applicant selects the White, Asian, and Native Hawaiian or Other Pacific Islander aggregate race categories, and the applicant also selects the Korean, Vietnamese, and Samoan race subcategories, you must report White, Asian, Native Hawaiian or Other Pacific Islander, and any two, at your option, of the three race subcategories selected by the applicant. In this example, you must report White, Asian, and Native Hawaiian or Other Pacific Islander, and in addition you must report (at your option) either Korean

and Vietnamese, Korean and Samoan, or Vietnamese and Samoan. To determine how to report an Other race subcategory and the American Indian or Alaska Native category for purposes of the five-race maximum, see paragraphs 9.iv and 9.v below.

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 Asian race or Pacific Islander race not listed in the standard subcategories, or an applicant may do both. If the applicant provides only a particular Asian race or Pacific Islander race in the space provided, you are permitted, but are not required, to report Other Asian or Other Pacific Islander, as applicable, in addition to reporting the particular Asian race or Pacific Islander race provided by the applicant. For example, if an applicant provides only “Hmong,” you should report “Hmong.” You are permitted, but not required, to report Other Asian as well. If an applicant selects the Other Asian race or the Other Pacific Islander race subcategory and provides a particular Asian race or 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. For purposes of the maximum of five reportable race categories and race subcategories combined, as 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 selects Other Asian and enters “Thai” in the space provided, Other Asian and Thai are considered one selection. Similarly, if the applicant enters only “Thai” in the space provided and you report both “Thai” and Other Asian as permitted by this paragraph 9.iv, the reported items together are considered one selection. In the same example, 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.

v. *Race—American Indian or Alaska Native category.* An applicant may select the American Indian or Alaska Native race category, an applicant may provide a particular American Indian or

Alaska Native enrolled or principal tribe, or an applicant may do both. If the applicant provides only a particular American Indian or Alaska Native enrolled or principal tribe in the space provided, you are permitted, but are not required, to report American Indian or Alaska Native in addition to reporting the particular American Indian or Alaska Native enrolled or principal tribe provided by the applicant. For example, if an applicant provides only “Navajo,” you should report “Navajo.” You are permitted, but not required, to report American Indian or Alaska Native as well. If an applicant selects the American Indian or Alaska Native race category and also provides a particular American Indian or Alaska Native enrolled or principal tribe, you must report both the selection of American Indian or Alaska Native and the additional information provided by the applicant. For purposes of the maximum of five reportable race categories and race subcategories combined, as set forth in paragraph 9.iii, the American Indian or Alaska Native category and additional information provided by the applicant together constitute only one selection.

\* \* \* \* \*  
BILLING CODE 4810-AM-P

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, Argentinian, 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

**To Be Completed by Financial Institution (for an application taken in person):**

Was the ethnicity of the applicant collected on the basis of visual observation or surname?  
 Yes  
 No

Was the race of the applicant collected on the basis of visual observation or surname?  
 Yes  
 No

Was the sex of the applicant collected on the basis of visual observation or surname?  
 Yes  
 No

**Co-Applicant:**

**Ethnicity:** – Check one or more

- Hispanic or Latino
  - Mexican
  - Puerto Rican
  - Cuban
  - Other Hispanic or Latino – Print origin, for example, Argentinian, 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

Was the ethnicity of the co-applicant collected on the basis of visual observation or surname?  
 Yes  
 No

Was the race of the co-applicant collected on the basis of visual observation or surname?  
 Yes  
 No

Was the sex of the co-applicant collected on the basis of visual observation or surname?  
 Yes  
 No

**BILLING CODE 4810-AM-C**

■ 6. Effective January 1, 2018, appendix C to part 1003, as amended at 80 FR 66128, is further amended by revising “Generating a Check Digit” and 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 1:* Starting with the leftmost character in the string that consists of

the combination of the Legal Entity Identifier (LEI) pursuant to § 1003.4(a)(1)(i)(A) and the additional characters identifying the covered loan or application pursuant to § 1003.4(a)(1)(i)(B), replace each alphabetic character with numbers in



accordance with Table I below to obtain all numeric values in the string.

**Table I—Alphabetic to Numeric Conversion Table**

The alphabetic characters are not case-sensitive and each letter, whether it is capitalized or in lower-case, is equal to the same value as each letter illustrates in the conversion table. For example, A and a are each equal to 10.

- A = 10
- B = 11
- C = 12
- D = 13
- E = 14
- F = 15
- G = 16
- H = 17
- I = 18
- J = 19
- K = 20
- L = 21
- M = 22
- N = 23
- O = 24
- P = 25
- Q = 26
- R = 27
- S = 28
- T = 29
- U = 30
- V = 31
- W = 32
- X = 33
- Y = 34
- Z = 35

*Step 2:* After converting the combined string of characters to all numeric values, append two zeros to the rightmost positions.

*Step 3:* Apply the mathematical function  $\text{mod} = (n,97)$  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.

*Step 4:* Subtract the result in step 3 from 98. If the result is one digit, add a leading 0 to make it two digits.

*Step 5:* The two digits in the result from step 4 is the check digit. Append the resulting check digit to the rightmost position in the combined string of characters described in step 1 above to generate the ULI.

**Example**

For example, assume the LEI for a financial institution is 10Bx939c5543TqA1144M and the financial institution assigned the following string of characters to identify the covered loan: 999143X. The

combined string of characters is 10Bx939c5543TqA1144M999143X.

*Step 1:* Starting with the leftmost character in the combined string of characters, replace each alphabetic character with numbers in accordance with Table I above to obtain all numeric values in the string. The result is 1011339391255432926

1011442299914333.  
*Step 2:* Append two zeros to the rightmost positions in the combined string. The result is 1011339391255432926

101144229991433300.  
*Step 3:* Apply the mathematical function  $\text{mod} = (n,97)$  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 10426179291293122 94946332267952920.618556701030928. 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.

*Step 4:* Subtract the result in step 3 from 98. The result is 38.

*Step 5:* The two digits in the result from step 4 is the check digit. Append the check digit to the rightmost positions in the combined string of characters that consists of the LEI and the string of characters assigned by the financial institution to identify the covered loan to obtain the ULI. In this example, the ULI would be 10Bx939c5543TqA1144M999143X38.

\* \* \* \* \*  
■ 7. Effective January 1, 2018, Supplement I to Part 1003—Official Interpretations, as amended at 80 FR 66128, is further amended as follows:

- 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(g) Financial Institution*, paragraphs 3 and 5 are revised;
  - iv. Under *2(i) Home Improvement Loan*, paragraph 4 is revised;
  - v. Under *2(j) Home Purchase Loan*, paragraph 3 is revised; and
  - vi. Under *2(n) Multifamily Dwelling*, paragraph 3 is added;
- b. Under *Section 1003.3—Exempt Institutions and Excluded Transactions*, under *3(c)(3) Excluded Transactions*:
  - i. *Paragraph 3(c)(3)* is revised;
  - ii. Under *Paragraph 3(c)(10)*, paragraph 3 is revised;
  - iii. *Paragraph 3(c)(11)* and *Paragraph 3(c)(12)* are revised; and
  - iv. After the entry for *Paragraph 3(c)(12)*, the heading *Paragraph 3(c)(13)*

is added and paragraph 1 is added under that heading.

■ c. Under *Section 1003.4—Compilation of Reportable Data*, under *4(a) Data Format and Itemization*:

- i. Under *Paragraph 4(a)(1)(i)*, paragraphs 3 and 4 are revised;
- ii. *Paragraph 4(a)(2)* is revised;
- iii. Under *Paragraph 4(a)(3)*, paragraph 6 is added;
- iv. Under *Paragraph 4(a)(8)(i)*, paragraphs 6 and 9 are revised;
- v. Under *Paragraph 4(a)(9)(i)*, paragraph 3 is revised;
- vi. After the entry for *Paragraph 4(a)(9)(i)*, add the heading *Paragraph 4(a)(9)(ii)* and paragraph 1 under that heading is added;
- vii. After the entry for *Paragraph 4(a)(9)(ii)*, add the heading *Paragraph 4(a)(9)(ii)(A)* and paragraph 1 under that heading is added;
- viii. Under *Paragraph 4(a)(9)(ii)(B)*, paragraph 2 is added;
- ix. Under *Paragraph 4(a)(9)(ii)(C)*, paragraph 2 is added;
- x. Under *Paragraph 4(a)(10)(ii)*, paragraph 3 is revised;
- xi. Under *Paragraph 4(a)(10)(iii)*, paragraph 4 is revised;
- xii. Under *Paragraph 4(a)(12)*, paragraphs 1, 2, 3, 5, and 8 are revised and paragraph 9 is added;
- xiii. Under *Paragraph 4(a)(15)*, paragraphs 2 and 3 are revised;
- xiv. Under *Paragraph 4(a)(17)(i)*, paragraph 3 is revised;
- xv. Under *Paragraph 4(a)(18)*, paragraph 3 is revised;
- xvi. Under *Paragraph 4(a)(19)*, paragraph 3 is revised;
- xvii. Under *Paragraph 4(a)(20)*, paragraph 3 is revised;
- xviii. Under *Paragraph 4(a)(21)*, paragraph 1 is revised;
- xix. Under *Paragraph 4(a)(24)*, paragraph 2 is revised and paragraph 6 is added;
- xx. Under *Paragraph 4(a)(26)*, paragraph 5 is added;
- xxi. Under *Paragraph 4(a)(34)*, paragraph 4 is added; and
- xxii. Under *Paragraph 4(a)(35)* paragraph 2 is revised and paragraph 7 is added.

The revisions and addition read as follows:

**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 or, in the case of an application, proposing to provide new funds to the borrower in advance of being consolidated within the same calendar year into a supplemental mortgage under New York Tax Law section 255. See comment 3(c)(13)–1 concerning how to report a supplemental mortgage under New York Tax Law section 255 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.

2(g) Financial Institution  
\* \* \* \* \*

3. *Merger or acquisition—coverage of surviving or newly formed institution.* After a merger or acquisition, the surviving or newly formed institution is a financial institution under § 1003.2(g) if it, considering the combined assets, location, and lending activity of the surviving or newly formed institution and the merged or acquired institutions or acquired branches, satisfies the criteria included in § 1003.2(g). For example, A and B merge. The surviving or newly formed institution meets the loan threshold described in § 1003.2(g)(1)(v)(B) if the surviving or newly formed institution, A, and B originated a combined total of at least 500 open-end lines of credit in each of the two preceding calendar years. Likewise, the surviving or newly formed institution meets the asset-size threshold in § 1003.2(g)(1)(i) if its assets and the combined assets of A and B on December 31 of the preceding calendar year exceeded the threshold described in § 1003.2(g)(1)(i). Comment 2(g)–4 discusses a financial institution’s responsibilities during the calendar year of a merger.

\* \* \* \* \*

5. *Originations.* Whether an institution is a financial institution depends in part on whether the institution originated at least 25 closed-end mortgage loans in each of the two preceding calendar years or at least 500 open-end lines of credit in each of the

two preceding calendar years. Comments 4(a)–2 through –4 discuss whether activities with respect to a particular closed-end mortgage loan or open-end line of credit constitute an origination for purposes of § 1003.2(g).  
\* \* \* \* \*

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. See comment 3(c)(10)–3.ii for guidance on loans to improve primarily the commercial portion of a dwelling other than a multifamily dwelling.  
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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 by any financial institution 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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2(n) Multifamily Dwelling  
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3. *Separate dwellings.* A covered loan secured by five or more separate dwellings, which are not multifamily dwellings, in more than one location is not a loan secured by a multifamily dwelling. For example, assume a landlord uses a covered loan to improve

five or more dwellings, each with one individual dwelling unit, located in different parts of a town, and the loan is secured by those properties. The covered loan is not secured by a multifamily dwelling as defined by § 1003.2(n). Likewise, a covered loan secured by five or more separate dwellings that are located within a multifamily dwelling, but which is not secured by the entire multifamily dwelling (e.g., an entire apartment building or housing complex), is not secured by a multifamily dwelling as defined by § 1003.2(n). For example, assume that an investor purchases 10 individual unit condominiums in a 100-unit condominium complex using a covered loan. The covered loan would not be secured by a multifamily dwelling as defined by § 1003.2(n). In both of these situations, a financial institution reporting a covered loan or application secured by these separate dwellings would not be subject to the additional reporting requirements for covered loans secured by or applications proposed to be secured by multifamily dwellings under § 1003.4(a)(32). However, a financial institution would report the information required by § 1003.4(a)(4), (a)(10)(iii), and (a)(23), (29), and (30), which is not applicable to covered loans secured by and applications proposed to be secured by multifamily dwellings. See comment 2(n)–2. In addition, in both of these situations, the financial institution reports the number of individual dwelling units securing the covered loan or proposed to secure a covered loan as required by § 1003.4(a)(31). See comment 4(a)(31)–3.

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*Section 1003.3—Exempt Institutions and Excluded Transactions*

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. 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 by any financial institution 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 or from another lender. 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 resell 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.

\* \* \* \* \*

Paragraph 3(c)(11)

1. *General.* Section 1003.3(c)(11) provides that a closed-end mortgage loan is an excluded transaction if a financial institution originated fewer than 25 closed-end mortgage loans in either of the two preceding calendar years. For example, assume that a bank is a financial institution in 2018 under § 1003.2(g) because it originated 600 open-end lines of credit in 2016, 650 open-end lines of credit in 2017, and met all of the other requirements under § 1003.2(g)(1). Also assume that the bank originated 10 and 20 closed-end mortgage loans in 2016 and 2017, respectively. The open-end lines of credit that the bank originated or purchased, or for which it received applications, during 2018 are covered loans and must be reported, unless they otherwise are excluded transactions under § 1003.3(c). However, the closed-end mortgage loans that the bank originated or purchased, or for which it received applications, during 2018 are excluded transactions under § 1003.3(c)(11) and need not be reported. See comments 4(a)–2 through –4 for guidance about the activities that constitute an origination.

2. *Optional reporting.* A financial institution may report applications for, originations of, or purchases of closed-end mortgage loans that are excluded transactions because the financial institution originated fewer than 25 closed-end mortgage loans in either of the two preceding calendar years.

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

Paragraph 3(c)(12)

1. *General.* Section 1003.3(c)(12) provides that an open-end line of credit is an excluded transaction if a financial institution originated fewer than 500 open-end lines of credit in either of the two preceding calendar years. For example, assume that a bank is a financial institution in 2018 under § 1003.2(g) because it originated 50 closed-end mortgage loans in 2016, 75 closed-end mortgage loans in 2017, 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 2016 and 2017, respectively. The closed-end mortgage loans that the bank originated or purchased, or for which it received applications, during 2018 are covered loans and must be reported, unless they otherwise are excluded transactions under § 1003.3(c). However, the open-end lines of credit that the bank originated or purchased, or for which it received applications, during 2018 are excluded transactions under § 1003.3(c)(12) and need not be reported. See comments 4(a)–2 through –4 for guidance about the activities that constitute an origination.

2. *Optional reporting.* A financial institution may report applications for, originations of, or purchases of open-end lines of credit that are excluded transactions because the financial institution originated fewer than 500 open-end lines of credit in either of the two preceding calendar years. However, a financial institution that chooses to report such excluded applications for, originations of, or purchases of open-end lines of credit must report all such applications for open-end lines of credit on which it receives, open-end lines of credit that it originates, and open-end lines of credit that it purchases that otherwise would be covered loans for a given calendar year. Note that applications which remain pending at the end of a calendar year are not reported, as described in comment 4(a)(8)(i)–14.

Paragraph 3(c)(13)

1. *New funds extended before consolidation.* Section 1003.3(c)(13) provides an exclusion 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 (New York CEMA) 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 CEMA, and not as a separate amount. This exclusion applies only if, at the time the transaction that provided new funds was originated, the financial institution intended to consolidate the loan into a New York CEMA. If a New York CEMA that consolidates an excluded preliminary transaction is carried out in a transaction involving an assumption, the financial institution reports the New York CEMA and does not report the preliminary transaction separately. The § 1003.3(c)(13) 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 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 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 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 an 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, resulting 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).

\* \* \* \* \*

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 covered loans.* For purchased covered loans where origination took place prior to January 1, 2018, a financial institution complies

with § 1003.4(a)(3) by reporting that the requirement is not applicable.

\* \* \* \* \*

Paragraph 4(a)(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) and comment 4(a)–1.ii.

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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 financial institution reports the action taken as the disposition of the application based on the terms of the counteroffer. For example, assume a financial institution makes a counteroffer, the applicant agrees to proceed with the terms of the counteroffer, and the financial institution then makes a credit decision approving the application conditional on satisfying underwriting or creditworthiness conditions, and the applicant expressly withdraws before satisfying all underwriting or creditworthiness conditions and before the institution denies the application or closes the file for incompleteness. The financial institution reports that the action taken as application withdrawn in accordance with comment 4(a)(8)(i)–13.i. Similarly, assume a financial institution makes a counteroffer, the applicant agrees to proceed with consideration of the counteroffer, and

the financial institution provides a conditional approval stating the conditions to be met to originate the counteroffer. The financial institution reports the action taken on the application in accordance with comment 4(a)(8)(i)–13 regarding conditional approvals.

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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)

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

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

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

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

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

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Paragraph 4(a)(10)(i)

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3. *Applicant data—purchased loan.* A financial institution complies with § 1003.4(a)(10)(i) 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.

\* \* \* \* \*

Paragraph 4(a)(12)

1. *Average prime offer rate.* Average prime offer rates are annual percentage rates derived from average interest rates and other loan pricing terms offered to borrowers by a set of creditors for

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

2. *Bureau tables.* The Bureau publishes tables of current and historic average prime offer rates by transaction type on the FFIEC's Web site (<http://www.ffiec.gov/hmda>) and the Bureau's Web site (<https://www.consumerfinance.gov>). The Bureau calculates an annual percentage rate, consistent with Regulation Z (see 12 CFR 1026.22 and 12 CFR part 1026, appendix J), for each transaction type for which pricing terms are available from the creditor data described in comment 4(a)(12)–1. The Bureau uses loan pricing terms available in the creditor data and other information to estimate annual percentage rates for other types of transactions for which the creditor data are limited or not available. The Bureau publishes on the FFIEC's Web site and the Bureau's Web site the methodology it uses to arrive at these estimates. A financial institution may either use the average prime offer rates published by the Bureau or determine average prime offer rates itself by employing the methodology published on the FFIEC's Web site and the Bureau's Web site. A financial institution that determines average prime offer rates itself, however, is responsible for correctly determining the rates in accordance with the published methodology.

3. *Rate spread calculation—annual percentage rate.* The requirements of § 1003.4(a)(12)(i) refer to the covered loan's annual percentage rate. For closed-end mortgage loans, a financial institution complies with § 1003.4(a)(12)(i) by relying on the annual percentage rate for the covered loan, as calculated and disclosed pursuant to Regulation Z, 12 CFR 1026.18 or 1026.38. For open-end lines of credit, a financial institution complies with § 1003.4(a)(12)(i) by relying on the annual percentage rate for the covered loan, as calculated and disclosed pursuant to Regulation Z, 12 CFR 1026.6. If multiple annual percentage rates are calculated and disclosed pursuant to Regulation Z, 12 CFR 1026.6, a financial institution relies on the annual percentage rate in effect

at the time of account opening. If an open-end line of credit has a variable-rate feature and a fixed-rate and -term payment option during the draw period, a financial institution relies on the annual percentage rate in effect at the time of account opening under the variable-rate feature, which would be a discounted initial rate if one is offered under the variable-rate feature. See comment 4(a)(12)–8 for guidance regarding the annual percentage rate a financial institution relies on in the case of an application or preapproval request that was approved but not accepted.

\* \* \* \* \*

5. *Rate-set date.* The relevant date to use to determine the average prime offer rate for a comparable transaction is the date on which the interest rate was set by the financial institution for the final time before final action is taken (i.e., the application was approved but not accepted or the covered loan was originated).

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

ii. *Change in loan program.* If a financial institution issues a rate-lock commitment under one loan program, the borrower subsequently changes to another program that is subject to different pricing terms, and the financial institution changes the rate promised to the borrower under the rate-lock commitment accordingly, the rate-set date is the date of the program change. However, if the financial institution changes the promised rate to the rate that would have been available to the borrower under the new program on the date of the original rate-lock commitment, then that is the date the rate is set, provided the financial institution consistently follows that

practice in all such cases or the original rate-lock agreement so provided. For example, assume that a borrower locks a rate of 2.5 percent on June 1 for a 30-year, variable-rate loan with a five-year, fixed-rate introductory period. On June 15, the borrower decides to switch to a 30-year, fixed-rate loan, and the rate available to the borrower for that product on June 15 is 4.0 percent. On June 1, the 30-year, fixed-rate loan would have been available to the borrower at a rate of 3.5 percent. If the financial institution offers the borrower the 3.5 percent rate (i.e., the rate that would have been available to the borrower for the fixed-rate product on June 1, the date of the original rate-lock) because the original agreement so provided or because the financial institution consistently follows that practice for borrowers who change loan programs, then the financial institution should use June 1 as the rate-set date. In all other cases, the financial institution should use June 15 as the rate-set date.

iii. *Brokered loans.* When a financial institution has reporting responsibility for an application for a covered loan that it received from a broker, as discussed in comment 4(a)–2 (e.g., because the financial institution makes a credit decision prior to closing or account opening), the rate-set date is the last date the financial institution set the rate with the broker, not the date the broker set the borrower's rate.

\* \* \* \* \*

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

9. *Corrected disclosures.* In the case of a covered loan or an application that was approved but not accepted, if the annual percentage rate changes because a financial institution provides a corrected version of the disclosures required under Regulation Z, 12 CFR 1026.19(a), pursuant to 12 CFR 1026.19(a)(2), under 12 CFR 1026.19(f), pursuant to 12 CFR 1026.19(f)(2), or under 12 CFR 1026.6(a), the financial institution complies with § 1003.4(a)(12)(i) by comparing the corrected and disclosed annual percentage rate to the most recently available average prime offer rate that was in effect for a comparable transaction as of the rate-set date, provided that the corrected disclosure was provided to the borrower prior to the end of the reporting period in which final action is taken. For purposes of § 1003.4(a)(12), the date the corrected disclosure was provided to the borrower is the date the disclosure was mailed or delivered to the borrower in person; the financial institution's method of delivery does not affect the date provided. For example, where a financial institution provides a corrected version of the disclosures required under 12 CFR 1026.19(f), pursuant to 12 CFR 1026.19(f)(2), the date provided is the date disclosed pursuant to Regulation Z, 12 CFR 1026.38(a)(3)(i). The provision of a corrected disclosure does not affect how a financial institution determines the rate-set date. See comment 4(a)(12)–5. For example, 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 whom the financial institution obtains or creates a single credit score and relies on that credit score in making the credit decision for the transaction, the institution complies with § 1003.4(a)(15) by reporting that credit score for the applicant and reporting that the requirement is not applicable for the first co-applicant or, at the financial institution's discretion, by reporting that credit score for the first co-applicant and reporting that the requirement is not applicable for the applicant. Otherwise, a financial institution complies with § 1003.4(a)(15) by reporting a credit score for the applicant that it relied on in making the credit decision, if any, and a credit score for the first co-applicant that it relied on in making the credit decision, if any. To illustrate, assume a transaction involves one applicant and one co-applicant and that the financial institution obtains or creates two credit scores for the applicant and two credit scores for the co-applicant. Assume further that the financial institution relies on a single credit score that is the lowest, highest,

most recent, or average of all of the credit scores obtained or created to make the credit decision for the transaction. The financial institution complies with § 1003.4(a)(15) by reporting that credit score and information about the scoring model used for the applicant and reporting that the requirement is not applicable for the first co-applicant or, at the financial institution's discretion, by reporting the data for the first co-applicant and reporting that the requirement is not applicable for the applicant. Alternatively, assume a transaction involves one applicant and one co-applicant and that the financial institution obtains or creates three credit scores for the applicant and three credit scores for the co-applicant. Assume further that the financial institution relies on the middle credit score for the applicant and the middle credit score for the co-applicant to make the credit decision for the transaction. The financial institution complies with § 1003.4(a)(15) by reporting both the middle score for the applicant and the middle score for the co-applicant.

\* \* \* \* \*

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 closing occurs. For purposes of § 1003.4(a)(17)(i), the date the corrected disclosure was provided to the borrower is the date disclosed pursuant to Regulation Z, 12 CFR 1026.38(a)(3)(i). For example, 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 closing occurs.

\* \* \* \* \*

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 closing occurs. For purposes of § 1003.4(a)(18), the date the corrected disclosure was provided to the borrower is the date disclosed pursuant to Regulation Z, 12 CFR 1026.38(a)(3)(i). For example, 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 borrower-paid origination charges only if the corrected disclosure was provided to the borrower prior to the end of the calendar year in which closing occurs.

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 closing occurs. For purposes of § 1003.4(a)(19), the date the corrected disclosure was provided to the borrower is the date disclosed pursuant to Regulation Z, 12 CFR 1026.38(a)(3)(i). For example, 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 closing occurs.

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 closing occurs. 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 closing occurs.

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 the early and the final disclosure requirements in Regulation Z, 12 CFR 1026.19(e) and (f), a financial institution reports the interest rate disclosed pursuant to 12 CFR 1026.19(f). A financial institution may rely on the definitions and commentary to the sections of Regulation Z relevant to the disclosure of the interest rate pursuant to 12 CFR 1026.19(e) or (f). If a financial institution provides a revised or corrected version of the disclosures required under Regulation Z, 12 CFR 1026.19(e) or (f), pursuant to 12 CFR 1026.19(e)(3)(iv) or (f)(2), as applicable, the financial institution complies with § 1003.4(a)(21) by reporting the interest rate on the revised or corrected disclosure, provided that the revised or corrected disclosure was provided to the borrower prior to the end of the reporting period in which final action is taken. For purposes of § 1003.4(a)(21), the date the revised or corrected

disclosure was provided to the borrower is the date disclosed pursuant to Regulation Z, 12 CFR 1026.37(a)(4) or 1026.38(a)(3)(i), as applicable.

\* \* \* \* \*

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.

\* \* \* \* \*

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

\* \* \* \* \*

Paragraph 4(a)(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.

\* \* \* \* \*

Paragraph 4(a)(34)

\* \* \* \* \*

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

Paragraph 4(a)(35)

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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 because an AUS was not used to evaluate the application. If a financial institution has developed its own proprietary system that it uses to evaluate an application and the financial institution is also a securitizer, then the financial institution complies with § 1003.4(a)(35) by reporting the name of that system and the result generated by that system. On the other hand, if a financial institution has developed its own proprietary system that it uses to evaluate an application and the financial institution is not a securitizer, then the financial institution is not required by § 1003.4(a)(35) to report the use of that system and the result generated by that system. In addition, for an AUS to be covered by the definition in § 1003.4(a)(35)(ii), the system must provide a result regarding both the credit risk of the applicant and the eligibility of the covered loan to be originated, purchased, insured, or guaranteed by the securitizer, Federal government insurer, or Federal government guarantor that developed the system being used to evaluate the application. For example, if a system is an electronic tool that provides a determination of the eligibility of the covered loan to be originated, purchased, insured, or guaranteed by the securitizer, Federal government insurer, or Federal government guarantor that developed the system being used by a financial institution to evaluate the application, but the system does not also provide an assessment of the creditworthiness of the applicant—such as an evaluation of the applicant’s income, debt, and credit history—then that system does not qualify as an AUS, as defined in § 1003.4(a)(35)(ii). A financial institution that uses a system that is not an AUS, as defined in § 1003.4(a)(35)(ii), to evaluate an application does not report the

information required by § 1003.4(a)(35)(i).

\* \* \* \* \*

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.

\* \* \* \* \*

■ 8. Effective January 1, 2019, § 1003.5, as amended at 80 FR 66128, 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. Effective January 1, 2019, § 1003.6, as amended at 80 FR 66128, is further amended by revising paragraph (c) to read as follows:

**§ 1003.6 Enforcement.**

\* \* \* \* \*

(c) *Quarterly recording and reporting.* If a financial institution makes a good-faith effort to record all data required to be recorded pursuant to § 1003.4(f) fully and accurately within 30 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).

■ 10. Effective January 1, 2019, Supplement I to Part 1003—Official Interpretations, as amended at 80 FR 66128, is further amended under Section 1003.6—Enforcement by revising 6(b) *Bona Fide Errors* to read as follows:

**Supplement I to Part 1003—Official Interpretations**

\* \* \* \* \*

*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 a geocoding tool that the Bureau makes available on its Web site.

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. Obtaining the census tract numbers for covered loans and applications from a geocoding tool available on the Bureau’s Web site that identifies the census tract of a property using property addresses entered by users 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 geocoding tool on the Bureau’s Web site. 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 (e), because the geocoding tool on the Bureau’s Web site 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 geocoding tool on the Bureau’s Web site is not excused as a bona fide error.

■ 11. Effective January 1, 2020, § 1003.2, as amended at 80 FR 66128, is further amended by revising paragraphs (g)(1)(v)(B) and (g)(2)(ii)(B) to read as follows:

**§ 1003.2 Definitions.**

\* \* \* \* \*

- (g) \* \* \*
- (1) \* \* \*
- (v) \* \* \*

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

- (2) \* \* \*
- (ii) \* \* \*

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

\* \* \* \* \*

■ 12. Effective January 1, 2020, § 1003.3, as amended at 80 FR 66128, is further amended by revising paragraph (c)(12) to read as follows:

**§ 1003.3 Exempt institutions and excluded transactions.**

\* \* \* \* \*

- (c) \* \* \*

(12) An open-end line of credit, if the financial institution originated fewer than 100 open-end lines of credit in either of the two preceding calendar years; a financial institution may collect, record, report, and disclose information, as described in §§ 1003.4 and 1003.5, for such an excluded open-end line of credit as though it were a covered loan, provided that the financial institution complies with such requirements for all applications for open-end lines of credit that it receives, open-end lines of credit that it originates, and open-end lines of credit that it purchases that otherwise would have been covered loans during the calendar year during which final action is taken on the excluded open-end line of credit; or

\* \* \* \* \*

■ 13. Effective January 1, 2020, § 1003.5, as amended at 80 FR 66128, 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;

■ 14. Effective January 1, 2020, § 1003.6, as amended at 80 FR 66128, is further amended by revising paragraph (c) to read as follows:

**§ 1003.6 Enforcement.**

(c) *Quarterly recording and reporting.*  
 (1) If a financial institution makes a good-faith effort to record all data required to be recorded pursuant to § 1003.4(f) fully and accurately within 30 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).

(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).

■ 15. Effective January 1, 2020, Supplement I to Part 1003—Official Interpretations, as amended at 80 FR 66128, is further amended as follows:

■ a. Under *Section 1003.2—Definitions*, under *2(g) Financial Institution*, paragraphs 3 and 5 are revised.

■ b. Under *Section 1003.3—Exempt institutions and excluded transactions*, under *3(c) Excluded transactions*, *Paragraph 3(c)(12)* is revised.

■ c. Under *Section 1003.4—Compilation of Reportable Data*, under *4(a) Data Format and Itemization*:

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

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

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

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

■ v. Under *Paragraph 4(a)(19)*, paragraph 3 is revised; and

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

The revisions read as follows:

**Supplement I to Part 1003—Official Interpretations**

\* \* \* \* \*

*Section 1003.2—Definitions*

\* \* \* \* \*

**2(g) Financial Institution**

\* \* \* \* \*

*3. Merger or acquisition—coverage of surviving or newly formed institution.*

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

\* \* \* \* \*

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

\* \* \* \* \*

*Section 1003.3—Exempt Institutions and Excluded Transactions*

\* \* \* \* \*

*Section 1003.3—Exempt Institutions and Excluded Transactions*

\* \* \* \* \*

**3(c) Excluded Transactions**

\* \* \* \* \*

\* \* \* \* \*

**Paragraph 3(c)(12)**

*1. General.* Section 1003.3(c)(12) provides that an open-end line of credit is an excluded transaction if a financial institution originated fewer than 100 open-end lines of credit in either of the two preceding calendar years. For example, assume that a bank is a financial institution in 2018 under

§ 1003.2(g) because it originated 50 closed-end mortgage loans in 2016, 75 closed-end mortgage loans in 2017, 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 2016 and 2017, respectively. The closed-end mortgage loans that the bank originated or purchased, or for which it received applications, during 2018 are covered loans and must be reported, unless they otherwise are excluded transactions under § 1003.3(c). However, the open-end lines of credit that the bank originated or purchased, or for which it received applications, during 2018 are excluded transactions under § 1003.3(c)(12) and need not be reported. See comments 4(a)–2 through –4 for guidance about the activities that constitute an origination.

*2. Optional reporting.* A financial institution may report applications for, originations of, or purchases of open-end lines of credit that are excluded transactions because the financial institution originated fewer than 100 open-end lines of credit in either of the two preceding calendar years. However, a financial institution that chooses to report such excluded applications for, originations of, or purchases of open-end lines of credit must report all such applications for open-end lines of credit which it receives, open-end lines of credit that it originates, and open-end lines of credit that it purchases that otherwise would be covered loans for a given calendar year. Note that applications which remain pending at the end of a calendar year are not reported, as described in comment 4(a)(8)(i)–14.

\* \* \* \* \*

*Section 1003.4—Compilation of Reportable Data*

**4(a) Data Format and Itemization**

\* \* \* \* \*

\* \* \* \* \*

**Paragraph 4(a)(1)(i)**

\* \* \* \* \*

\* \* \* \* \*

*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 an 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, resulting in an origination in the third quarter of 2020, the financial institution may report the origination in its third-quarter 2020 data submission using the same ULI that was reported for the denied application in its second-quarter 2020 data submission, so long as the financial institution treats the origination as the same transaction for reporting. However, a financial institution may not use a ULI previously reported if it reinstates or reconsiders an application that was reported in a prior calendar

year. For example, if a financial institution reports a denied application in its fourth-quarter 2020 data submission, pursuant to § 1003.5(a)(1)(ii), but then reconsiders the application, resulting 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).

\* \* \* \* \*

Paragraph 4(a)(12)

\* \* \* \* \*

9. *Corrected disclosures.* In the case of a covered loan or an application that was approved but not accepted, if the annual percentage rate changes because a financial institution provides a corrected version of the disclosures required under Regulation Z, 12 CFR 1026.19(a), pursuant to 12 CFR 1026.19(a)(2), under 12 CFR 1026.19(f), pursuant to 12 CFR 1026.19(f)(2), or under 12 CFR 1026.6(a), the financial institution complies with § 1003.4(a)(12)(i) by comparing the corrected and disclosed annual percentage rate to the most recently available average prime offer rate that was in effect for a comparable transaction as of the rate-set date, provided that the corrected disclosure was provided to the borrower prior to the end of the reporting period in which final action is taken. For purposes of § 1003.4(a)(12), the date the corrected disclosure was provided to the borrower is the date the disclosure was mailed or delivered to the borrower in person; the financial institution's method of delivery does not affect the date provided. For example, where a financial institution provides a corrected version of the disclosures required under 12 CFR 1026.19(f), pursuant to 12 CFR 1026.19(f)(2), the date provided is the date disclosed pursuant to Regulation Z, 12 CFR 1026.38(a)(3)(i). The provision of a corrected disclosure does not affect how a financial institution determines the rate-set date. *See* comment 4(a)(12)–5. For example:

i. In the case of a financial institution's annual loan/application register submission made pursuant to § 1003.5(a)(1)(i), if the financial institution provides a corrected disclosure pursuant to Regulation Z, 12 CFR 1026.19(f)(2)(v), that reflects a corrected annual percentage rate, the financial institution reports the difference between the corrected annual percentage rate and the most recently

available average prime offer rate that was in effect for a comparable transaction as of the rate-set date only if the corrected disclosure was provided to the borrower prior to the end of the calendar year in which final action is taken.

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

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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 closing occurs. For purposes of § 1003.4(a)(17)(i), the date the corrected disclosure was provided to the borrower is the date disclosed pursuant to

Regulation Z, 12 CFR 1026.38(a)(3)(i). For example:

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

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

Paragraph 4(a)(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 closing occurs. For purposes of § 1003.4(a)(18), the date the corrected disclosure was provided to the borrower is the date disclosed pursuant to Regulation Z, 12 CFR 1026.38(a)(3)(i). For example:

i. In the case of a financial institution's annual loan/application register submission made pursuant to § 1003.5(a)(1)(i), if the financial

institution provides a corrected disclosure to the borrower to reflect a refund made pursuant to Regulation Z, 12 CFR 1026.19(f)(2)(v), the financial institution reports the corrected amount of borrower-paid origination charges only if the corrected disclosure was provided to the borrower prior to the end of the calendar year in which closing occurs.

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

Paragraph 4(a)(19)

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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 closing occurs. For purposes of § 1003.4(a)(19), the date the corrected disclosure was provided to the borrower is the date disclosed pursuant to Regulation Z, 12 CFR 1026.38(a)(3)(i). For example:

i. In the case of a financial institution's annual loan/application register submission made pursuant to § 1003.5(a)(1)(i), if the financial institution provides a corrected disclosure to the borrower to reflect a refund made pursuant to Regulation Z, 12 CFR 1026.19(f)(2)(v), the financial

institution reports the corrected amount of discount points only if the corrected disclosure was provided to the borrower prior to the end of the calendar year in which closing occurred.

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

Paragraph 4(a)(20)

\* \* \* \* \*

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

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

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

financial institution does not report the corrected amount of lender credits in its quarterly submission if the corrected disclosure was provided to the borrower after the end of the quarter in which closing occurred, even if the corrected disclosure was provided to the borrower prior to the deadline for timely submission of the financial institution's quarterly data. However, the financial institution reports the corrected amount of lender credits on its annual loan/

application register, provided that the corrected disclosure was provided to the borrower prior to the end of the calendar year in which closing occurred.

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Dated: August 23, 2017.

**Richard Cordray,**

*Director, Bureau of Consumer Financial Protection.*

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