

**BUREAU OF CONSUMER FINANCIAL PROTECTION**

**12 CFR Part 1003**

**RIN 3170-AA81**

**Partial Exemptions from the Requirements of the Home Mortgage Disclosure Act under  
the Economic Growth, Regulatory Relief, and Consumer Protection Act (Regulation C)**

**AGENCY:** Bureau of Consumer Financial Protection.

**ACTION:** Final rule.

**SUMMARY:** The Bureau of Consumer Financial Protection (Bureau) is issuing an interpretive and procedural rule to implement and clarify the requirements of section 104(a) of the Economic Growth, Regulatory Relief, and Consumer Protection Act, which amended certain provisions of the Home Mortgage Disclosure Act.

**DATES:** This final rule is effective on [INSERT DATE OF PUBLICATION IN *FEDERAL REGISTER*].

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**SUPPLEMENTARY INFORMATION:**

**I. Summary**

On May 24, 2018, the President signed the Economic Growth, Regulatory Relief, and

Consumer Protection Act (the Act) into law.<sup>1</sup> Section 104(a) of the Act amends section 304(i) of the Home Mortgage Disclosure Act (HMDA) by adding partial exemptions from HMDA's requirements for certain insured depository institutions and insured credit unions. Financial institutions have raised questions about the new partial HMDA exemptions and how the exemptions affect collection and reporting of data for transactions with final action taken in 2018 or subsequent years. To provide timely answers to these questions, the Bureau is issuing this interpretive and procedural rule that implements and clarifies section 104(a) of the Act and effectuates the purposes of the Act and HMDA.

The rule clarifies that insured depository institutions and insured credit unions covered by a partial exemption have the option of reporting exempt data fields as long as they report all data fields within any exempt data point for which they report data; clarifies that only loans and lines of credit that are otherwise HMDA reportable count toward the thresholds for the partial exemptions; clarifies which of the data points in Regulation C are covered by the partial exemptions; designates a non-universal loan identifier for partially exempt transactions for institutions that choose not to report a universal loan identifier; and clarifies the exception to the partial exemptions for negative Community Reinvestment Act examination history. At a later date, the Bureau anticipates that it will initiate a notice-and-comment rulemaking to incorporate these interpretations and procedures into Regulation C and further implement the Act.

## **II. Background**

### *A. Home Mortgage Disclosure Act and Regulation C*

The Home Mortgage Disclosure Act (HMDA), 12 U.S.C. 2801 through 2810, requires

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<sup>1</sup> Public Law 115–174, 132 Stat. 1296 (2018).

certain depository institutions 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). The purposes of HMDA are to provide the public with loan data that can be used: (i) to help determine whether financial institutions are serving the housing needs of their communities; (ii) to assist public officials in distributing public-sector investment so as to attract private investment to areas where it is needed; and (iii) to assist in identifying possible discriminatory lending patterns and enforcing antidiscrimination statutes.<sup>2</sup> Regulation C, 12 CFR part 1003, implements HMDA. Prior to enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), Regulation C required reporting of 22 data points and allowed for optional reporting of reasons an institution denied an application.<sup>3</sup>

#### *B. Dodd-Frank Act*

In 2010, Congress enacted the Dodd-Frank Act, which amended HMDA and also transferred HMDA rulemaking authority and other functions from the Board of Governors of the Federal Reserve System (Board) to the Bureau.<sup>4</sup> Among other changes, the Dodd-Frank Act expanded the scope of information relating to mortgage applications and loans that institutions must compile, maintain, and report under HMDA. Specifically, the Dodd-Frank Act amended HMDA section 304(b)(4) by adding one new data point, the age of loan applicants and mortgagors. The Dodd-Frank Act also added new HMDA section 304(b)(5) and (6), which requires the following additional new data points: information relating to the total points and fees

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<sup>2</sup> 12 CFR 1003.1.

<sup>3</sup> As used in this interpretive and procedural rule, the term “data point” refers to items of information that entities are required to compile and report, generally listed in separate paragraphs in Regulation C. Some data points are reported using multiple data fields.

<sup>4</sup> Public Law 111–203, 124 Stat. 1376, 1980, 2035–38, 2097–101 (2010).

payable at origination (total loan costs or total points and fees); the difference between the annual percentage rate (APR) associated with the loan and a benchmark rate or rates for all loans (rate spread); the term of any prepayment penalty; the value of real property to be pledged as collateral; the term of the loan and of any introductory interest rate on the loan; the presence of contract terms allowing non-amortizing payments; the channel through which the application was made; and the credit scores of applicants and mortgagors.<sup>5</sup> New HMDA section 304(b)(6) in addition authorizes the Bureau to require, “as [it] may determine to be appropriate,” a unique identifier that identifies the loan originator, a universal loan identifier (ULI), and the parcel number that corresponds to the real property pledged as collateral for the mortgage loan.<sup>6</sup> New HMDA section 304(b)(5)(D) and (b)(6)(J) further provides the Bureau with the authority to mandate reporting of “such other information as the Bureau may require.”<sup>7</sup>

#### C. 2015 and 2017 HMDA Final Rules

In October 2015, the Bureau issued a final rule implementing the Dodd-Frank Act amendments to HMDA (2015 HMDA Final Rule).<sup>8</sup> The 2015 HMDA Final Rule implemented the new data points specified in the Dodd-Frank Act,<sup>9</sup> added a number of additional data points pursuant to the Bureau’s discretionary authority under HMDA section 304(b)(5) and (6),<sup>10</sup> and

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<sup>5</sup> Dodd-Frank Act section 1094(3), amending HMDA section 304(b), 12 U.S.C. 2803(b).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> Home Mortgage Disclosure (Regulation C), 80 FR 66128 (Oct. 28, 2015).

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

<sup>10</sup> For example, the 2015 HMDA Final Rule added a requirement to report debt-to-income ratio in § 1003.4(a)(23). *Id.* at 66218–20.

made revisions to certain pre-existing data points to clarify their requirements, provide greater specificity in reporting, and align certain data points more closely with industry data standards,<sup>11</sup> among other changes.

The 2015 HMDA Final Rule also established transactional thresholds that determine whether financial institutions are required to collect and report data on open-end lines of credit or closed-end mortgage loans.<sup>12</sup> The 2015 HMDA Final Rule set the closed-end threshold at 25 loans in each of the two preceding calendar years and the open-end threshold at 100 open-end lines of credit in each of the two preceding calendar years.<sup>13</sup> Most of the 2015 HMDA Final Rule took effect on January 1, 2018.<sup>14</sup>

After issuing the 2015 HMDA Final Rule, the Bureau heard concerns that the open-end threshold of 100 transactions was too low. In August 2017, the Bureau finalized a rule after notice and comment (2017 HMDA Final Rule) that temporarily increases the open-end threshold to 500 open-end lines of credit for calendar years 2018 and 2019.<sup>15</sup> In doing so, the Bureau indicated that the two-year period would allow time for the Bureau to decide, through an additional rulemaking, whether any permanent adjustments to the open-end threshold are needed.<sup>16</sup>

Recognizing the significant systems and operations challenges needed to adjust to the

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<sup>11</sup> For example, the 2015 HMDA Final Rule replaced property type with number of total units and construction method in § 1003.4(a)(5) and (31). *Id.* at 66180–81, 66227. It also requires disaggregation of ethnicity and race information in § 1003.4(a)(10)(i). *Id.* at 66187–94.

<sup>12</sup> *Id.* at 66128.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 66128, 66256–58.

<sup>15</sup> Home Mortgage Disclosure (Regulation C), 82 FR 43088 (Sept. 13, 2017).

<sup>16</sup> *Id.* at 43095. The 2017 HMDA Final Rule also, among other things, replaced “each” with “either” in § 1003.3(c)(11) and (12) to correct a drafting error and to ensure that the exclusion provided in that section mirrors the loan-volume threshold for financial institutions in § 1003.2(g). *Id.* at 43100, 43102.

revised regulation, the Bureau issued a statement in December 2017 indicating that, for HMDA data collected in 2018 and reported in 2019, the Bureau does not intend to require data resubmission unless data errors are material.<sup>17</sup> The statement also explained that the Bureau does not intend to assess penalties with respect to errors in data collected in 2018 and reported in 2019.<sup>18</sup> As explained in the statement, any supervisory examinations of 2018 HMDA data will be diagnostic to help institutions identify compliance weaknesses and will credit good-faith compliance efforts. The Board, the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), and the Office of the Comptroller of the Currency (OCC) released similar statements.

#### *D. Economic Growth, Regulatory Relief, and Consumer Protection Act*

Section 104(a) of the Act amends HMDA section 304(i) by adding partial exemptions from HMDA's requirements for certain insured depository institutions and insured credit unions.<sup>19</sup> New HMDA section 304(i)(1) provides that the requirements of HMDA section 304(b)(5) and (6) shall not apply with respect to closed-end mortgage loans of an insured depository institution or insured credit union if it originated fewer than 500 closed-end mortgage loans in each of the two preceding calendar years. New HMDA section 304(i)(2) provides that the requirements of HMDA section 304(b)(5) and (6) shall not apply with respect to open-end lines of credit of an insured depository institution or insured credit union if it originated fewer

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<sup>17</sup> Bureau of Consumer Fin. Prot., “Statement with Respect to HMDA Implementation” (Dec. 21, 2017), [https://files.consumerfinance.gov/f/documents/cfpb\\_statement-with-respect-to-hmda-implementation\\_122017.pdf](https://files.consumerfinance.gov/f/documents/cfpb_statement-with-respect-to-hmda-implementation_122017.pdf).

<sup>18</sup> The statement also indicated that collection and submission of the 2018 HMDA data will provide financial institutions an opportunity to identify any gaps in their implementation of amended Regulation C and make improvements in their HMDA compliance management systems for future years. *Id.*

<sup>19</sup> For purposes of HMDA section 104, the Act provides that the term “insured credit union” has the meaning given the term in section 101 of the Federal Credit Union Act, 12 U.S.C. 1752, and the term “insured depository institution” has the meaning given the term in section 3 of the Federal Deposit Insurance Act, 12 U.S.C. 1813.

than 500 open-end lines of credit in each of the two preceding calendar years. Notwithstanding the new partial exemptions, new HMDA section 304(i)(3) provides that an insured depository institution must comply with HMDA section 304(b)(5) and (6) if it has received a rating of “needs to improve record of meeting community credit needs” during each of its two most recent examinations or a rating of “substantial noncompliance in meeting community credit needs” on its most recent examination under section 807(b)(2) of the Community Reinvestment Act of 1977.<sup>20</sup>

The Act does not provide an effective date for section 104(a). Because there is no specific effective date and because there are no other statutory indications that section 104(a) becomes effective upon regulatory action or some other event or condition, the Bureau believes that the best interpretation is that section 104(a) took effect when the Act became law on May 24, 2018. On July 5, 2018, the Bureau, the Board, the FDIC, the NCUA, and the OCC released statements reiterating or referring to their December 2017 compliance statements, providing information about formatting and submission of 2018 loan/application registers, and indicating that the Bureau expected to issue guidance this summer on the applicability of the Act to HMDA data collected in 2018.<sup>21</sup>

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<sup>20</sup> 12 U.S.C. 2906(b)(2).

<sup>21</sup> See, e.g., Bureau of Consumer Fin. Prot., “Statement on the Implementation of the Economic Growth, Regulatory Relief, and Consumer Protection Act Amendments to the Home Mortgage Disclosure Act” (July 25, 2018), <https://www.consumerfinance.gov/about-us/newsroom/bureau-consumer-financial-protection-issues-statement-implementation-economic-growth-regulatory-relief-and-consumer-protection-act-amendments-home-mortgage-disclosure-act/>.

### **III. Legal Authority**

The Bureau issues this rule pursuant to the authority granted by the Dodd-Frank Act and HMDA. HMDA authorizes the Bureau to prescribe regulations that it finds necessary to carry out HMDA’s purposes.<sup>22</sup> As mentioned earlier, the Dodd-Frank Act transferred to the Bureau the “consumer financial protection functions” previously vested in certain other Federal agencies, including the Board.<sup>23</sup> The term “consumer financial protection function” includes “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>24</sup> 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>25</sup> HMDA is an “enumerated consumer law” and therefore a “Federal consumer financial law.”<sup>26</sup> Accordingly, the Bureau has authority to issue regulations to administer HMDA under both HMDA and the Dodd-Frank Act.

### **IV. Permissible Optional Reporting**

Section 104(a) of the Act provides that the requirements of HMDA section 304(b)(5) and (6) shall not apply to closed-end mortgage loans of an insured depository institution or insured credit union if the institution originated fewer than 500 closed-end mortgage loans in each of the two preceding calendar years, and it includes a similar partial exemption with respect to open-

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<sup>22</sup> 12 U.S.C. 2804(a).

<sup>23</sup> 12 U.S.C. 5581. The Dodd-Frank Act also replaced the term “Board” with “Bureau” in most places in HMDA.

<sup>24</sup> 12 U.S.C. 5581(a)(1)(A).

<sup>25</sup> 12 U.S.C. 5512(b)(1).

<sup>26</sup> 12 U.S.C. 5481(12)(K); 12 U.S.C. 5481(14).

end lines of credit.<sup>27</sup> Whether a partial exemption applies to an institution's lending activity for a particular calendar year depends on an institution's origination activity in each of the preceding two years and, in some cases, cannot be determined until just before data collection must begin for that particular calendar year. For example, whether a partial exemption applies to closed-end loans for which final action is taken in 2019 depends on the number of closed-end loans originated by the insured depository institution or insured credit union in 2017 and 2018. Thus, an insured depository institution or insured credit union might not know until the end of 2018 what information it needs to collect in 2019 and report in 2020. Some insured depository institutions and insured credit unions eligible for a partial exemption under the Act may therefore find it less burdensome to report all of the data including the exempt data points than to separate the exempt data points from the required data points and exclude the exempt data points from their submissions. This may be particularly true with respect to data submission in 2019, as collection of 2018 data was already underway when the Act took effect, and system changes implementing the new partial exemptions may take time to complete.<sup>28</sup> Even after insured depository institutions and insured credit unions have had time to adjust their systems, some may

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<sup>27</sup> The Act's two partial exemptions operate independently of one another. Thus, an insured depository institution or insured credit union could be eligible in a given calendar year for one of the partial exemptions but not the other. For example, if an insured depository institution that does not have a negative Community Reinvestment Act examination history originated fewer than 500 closed-end mortgage loans in each of the two preceding calendar years but originated 500 or more open-end lines of credit in either of the two preceding calendar years, it is eligible for the partial exemption for its closed-end loans but is not eligible for the partial exemption for its open-end lines of credit. In this circumstance, the institution is not required to collect and report exempt data for its closed-end loans. It also collects and reports complete data for its open-end lines of credit unless it qualifies for a complete regulatory exclusion under Regulation C, §§ 1003.2(g)(1)(v) and 1003.3(c)(12).

<sup>28</sup> The Bureau interprets the Act to apply to data that are collected or reported under HMDA on or after May 24, 2018. Because data collected from January 1, 2018, to May 23, 2018, would not be reported until early in 2019, the Act relieves insured depository institutions and insured credit unions that are eligible for a partial exemption under the Act of the obligation to report certain data in 2019 that may have been collected before May 24, 2018. If optional reporting of data covered by a partial exemption were not permitted, such institutions would have to remove exempt data previously collected, before submitting their 2018 data in early 2019, a process that could be burdensome for some institutions.

still find it less burdensome to report data covered by a partial exemption, especially if their loan volumes tend to fluctuate above or below the threshold from year to year. The Bureau believes that section 104(a) is best interpreted as permitting optional reporting of data covered by the Act's partial exemptions. Section 104(a) provides that certain requirements do not apply to affected institutions but does not prohibit those affected institutions from voluntarily reporting data. This interpretation is consistent not only with the statutory text but also with the apparent congressional intent to reduce burden on certain institutions. Accordingly, the Bureau interprets the Act to permit insured depository institutions and insured credit unions voluntarily to report data that are covered by the Act's partial exemptions.

Aspects of the Bureau's HMDA platform used for receiving HMDA submissions, including edit checks<sup>29</sup> performed on incoming submissions, are set up with the expectation that HMDA reporters will provide data for an entire data point when data are reported for any data field within that data point. Adjusting the HMDA platform to accept submissions for 2018 and all future submissions in which affected institutions report some, but not all, data fields in a data point covered by a partial exemption for a specific transaction would increase operational complexity and costs associated with changing the HMDA edits in the Filing Instructions Guide for HMDA Data Collected in 2018 (2018 FIG). Doing so would result in a less efficient implementation and submission process for the Bureau, HMDA reporters, their vendors, and

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<sup>29</sup> The HMDA edit checks are rules to assist filers in checking the accuracy of HMDA data prior to submission. The Filing Instructions Guide for HMDA Data Collected in 2018 (2018 FIG), a compendium of resources to help financial institutions file HMDA data collected in 2018 with the Bureau in 2019, explains that there are four types of edit checks: syntactical, validity, quality, and macro quality. Table 2 (Loan/Application Register) in the 2018 FIG identifies the data fields currently associated with each data point. *See Fed. Fin. Insts. Examination Council, “Filing Instructions Guide for HMDA Data Collected in 2018”* (2018 FIG), at 21–54, <https://www.consumerfinance.gov/data-research/hmda/static/for-filers/2018/2018-hmda-fig.pdf>; see also *supra* note 3 (discussing the relationship between data points and data fields).

other key stakeholders. Accordingly, the HMDA platform will continue to accept submissions of a data field that is covered by a partial exemption under the Act for a specific loan or application as long as those insured depository institutions and insured credit unions that choose to voluntarily report the data include all other data fields that the data point comprises. For example, if a partially exempt institution reports a data field that is part of the property address data point (such as street address) for a partially exempt loan or application, it will report all other data fields that are part of the property address data point (including zip code, city, and State<sup>30</sup>) for that transaction in accordance with the 2018 FIG.

## **V. Loans Counted Toward Partial Exemptions' Thresholds**

Section 104(a) of the Act does not define the term “closed-end mortgage loan” or “open-end line of credit.” It also does not specify whether these terms include loans or lines of credit that would otherwise not be subject to HMDA reporting under Regulation C, such as loans used primarily for agricultural purposes.<sup>31</sup> The Bureau believes that the terms “closed-end mortgage loan” and “open-end line of credit” as used in the Act are best interpreted to include only those closed-end mortgage loans and open-end lines of credit that would otherwise be reportable under HMDA. This interpretation is consistent with how loans and lines of credit are counted for purposes of the thresholds in Regulation C’s existing complete regulatory exclusions, which are independent of the Act’s new partial exemptions and unaffected by the Act.<sup>32</sup> Accordingly, the

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<sup>30</sup> Reporting the State data field is subject to the requirements both for property address, provided in § 1003.4(a)(9)(i), and property location, provided in § 1003.4(a)(9)(ii).

<sup>31</sup> 12 CFR 1003.3(c)(9).

<sup>32</sup> The definition of “depository financial institution” in § 1003.2(g)(1)(v) is currently limited to institutions that either (1) originated in each of the preceding two years at least 25 closed-end mortgage loans that are not excluded from Regulation C pursuant to § 1003.3(c)(1) through (10) or (13); or (2) originated in each of the two preceding calendar years at least 500 open-end lines of credit that are not excluded from Regulation C pursuant to

Bureau interprets the term “closed-end mortgage loan” to include any closed-end mortgage loan as defined in § 1003.2(d) that is not excluded from Regulation C pursuant to § 1003.3(c)(1) through (10) or (13) and interprets the term “open-end line of credit” to include any open-end line of credit as defined in § 1003.2(o) that is not excluded from Regulation C pursuant to § 1003.3(c)(1) through (10).

## **VI. Data Points Covered by the Partial Exemptions**

If a transaction qualifies for one of the Act’s partial exemptions, section 104(a) of the Act provides that the requirements of HMDA section 304(b)(5) and (6) shall not apply. For the reasons explained below, the Bureau interprets the requirements of HMDA section 304(b)(5) and (6) to include the 26 data points listed in the first column of table 1 at the end of this part VI. For loans or applications covered by a partial exemption, insured depository institutions and insured credit unions therefore are required to collect and report only the remaining 22 data points specified in the 2015 and 2017 HMDA Final Rules, which are identified in the second column of table 1 below.

As explained in part II.B above, the Dodd-Frank Act added HMDA section 304(b)(5) and (6), which requires certain data points and provides the Bureau discretion to require additional

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§ 1003.3(c)(1) through (10). *See also* 12 CFR 1003.3(c)(11), (12) (excluding closed-end mortgage loans from the requirements of Regulation C if the financial institution originated fewer than 25 closed-end mortgage loans in either of the two preceding calendar years, and excluding open-end lines of credit from the requirements of Regulation C if the financial institution originated fewer than 500 open-end lines of credit in either of the two preceding calendar years). As noted above, the threshold of 500 open-end lines of credit for the complete regulatory exclusion is temporary, and absent further Bureau action the permanent threshold for the Bureau’s complete regulatory exclusion will be 100 open-end lines of credit beginning January 1, 2020. While the temporary Regulation C threshold is in place, all of the open-end lines of credit that would be covered by the Act’s partial exemption for open-end lines of credit in HMDA section 304(i)(2) are excluded from the requirements of part 1003 under current §§ 1003.2(g)(1)(v) and 1003.3(c)(12).

data points.<sup>33</sup> In the 2015 HMDA Final Rule, the Bureau implemented the new data points specified in the Dodd-Frank Act (including those added in new HMDA section 304(b)(5) and (6)), added a number of additional data points pursuant to the Bureau’s discretionary authority, and made revisions to certain pre-existing data points to clarify the requirements, provide greater specificity in reporting, and align certain data points more closely with industry data standards.

For purposes of the Act, the Bureau interprets the requirements of HMDA section 304(b)(5) and (6) to include the 12 data points that the Bureau added to Regulation C in the 2015 HMDA Final Rule to implement data points specifically identified in HMDA section 304(b)(5)(A) through (C) or (b)(6)(A) through (I), which are the following: ULI; property address; rate spread<sup>34</sup>; credit score; total loan costs or total points and fees; prepayment penalty

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<sup>33</sup> HMDA section 304(b)(5) requires disclosure of the number and dollar amount of mortgage loans grouped according to measurements of:

- The total points and fees payable at origination;
- The difference between the APR associated with the loan and a benchmark rate or rates for all loans;
- The term in months of any prepayment penalty or other fee or charge payable on repayment of some portion of principal or the entire principal in advance of scheduled payments; and
- Such other information as the Bureau may require.

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

- The value of the real property pledged or proposed to be pledged as collateral;
- The actual or proposed term in months of any introductory period after which the rate of interest may change;
- The presence of contractual terms or proposed contractual terms that would allow the mortgagor or applicant to make payments other than fully amortizing payments during any portion of the loan term;
- The actual or proposed term in months of the mortgage loan;
- The channel through which application was made;
- As the Bureau may determine to be appropriate, a unique identifier that identifies the loan originator as set forth in section 5102 of this title;
- As the Bureau may determine to be appropriate, a universal loan identifier;
- As the Bureau may determine to be appropriate, the parcel number that corresponds to the real property pledged or proposed to be pledged as collateral;
- The credit score of mortgage applicants and mortgagors; and
- Such other information as the Bureau may require.

<sup>34</sup> Prior to the passage of the Dodd-Frank Act, the Board required financial institutions to report rate spread for higher-priced mortgage loans. 67 FR 7222 (Feb. 15, 2002); 67 FR 43218 (June 27, 2002). In doing so, the Board noted that “the collection of loan pricing information is necessary to fulfill the statutory purposes of HMDA and to

term; loan term; introductory rate period; non-amortizing features; property value; application channel; and mortgage loan originator identifier.<sup>35</sup> The Bureau also interprets the requirements of HMDA section 304(b)(5) and (6) to include the 14 data points that were not found in Regulation C prior to the Dodd-Frank Act and that the Bureau required in the 2015 HMDA Final Rule citing its discretionary authority under HMDA section 304(b)(5)(D) and (b)(6)(J). Specifically, these data points are the following: the total origination charges associated with the loan; the total points paid to the lender to reduce the interest rate of the loan (discount points); the amount of lender credits; the interest rate applicable at closing or account opening; the debt-to-income ratio; the ratio of the total amount of debt secured by the property to the value of the property (combined loan-to-value ratio); for transactions involving manufactured homes, whether the loan or application is or would have been secured by a manufactured home and land or by a manufactured home and not land (manufactured home secured property type); the land property interest for loans or applications related to manufactured housing (manufactured home land property interest); the number of individual dwellings units that are income-restricted pursuant to Federal, State, or local affordable housing programs (multifamily affordable units); information related to the automated underwriting system used in evaluating an application and the result generated by the automated underwriting system; whether the loan is a reverse mortgage; whether the loan is an open-end line of credit; whether the loan is primarily for a

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ensure the continued utility of the HMDA data.” 67 FR 7222, 7228 (Feb. 15, 2002). The Bureau may propose in a future notice-and-comment rulemaking to use its HMDA authority other than HMDA section 304(b)(5) and (6) to reinstate the Board’s requirement to report rate spread for higher-priced mortgage loans covered by the partial exemptions so the Bureau can receive data and views bearing on the costs and benefits of such a proposal. As explained in part IV above, insured depository institutions and insured credit unions may voluntarily report rate spread for transactions covered by the Act’s partial exemptions.

<sup>35</sup> 12 CFR 1003.4(a)(1)(i), (9)(i), (12), (15), (17), (22), (25), (26), (27), (28), (33), (34).

business or commercial purpose; and the reasons for denial of a loan application, which were optionally reported under the Board’s rule but became mandatory in the 2015 HMDA Final Rule.<sup>36</sup> Pursuant to the Act, insured depository institutions and insured credit unions need not collect or report these 26 data points for transactions that qualify for a partial exemption under the Act, unless otherwise required by their regulator.<sup>37</sup>

The Bureau interprets the requirements of HMDA section 304(b)(5) and (6) not to include four other data points that are similar or identical to data points added to Regulation C by the Board and that the Bureau re-adopted in the 2015 HMDA Final Rule: lien status of the subject property; whether the loan is subject to the Home Ownership and Equity Protection Act of 1994 (HOEPA); construction method for the dwelling related to the subject property; and the total number of individual dwelling units contained in the dwelling related to the loan (number of units).<sup>38</sup> The 2015 HMDA Final Rule did not alter the pre-existing Regulation C HOEPA status and lien status data requirements.<sup>39</sup> Construction method and total units, together, replaced property type, the pre-existing Regulation C data point; the information required by the new data points is very similar to what the Board required, but institutions now must report the precise number of units rather than categorizing dwellings into one-to-four family dwellings and multifamily dwellings.<sup>40</sup>

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<sup>36</sup> 12 CFR 1003.4(a)(16), (18), (19), (20), (21), (23), (24), (29), (30), (32), (35), (36), (37), (38).

<sup>37</sup> Certain financial institutions supervised by the OCC and the FDIC are required by those agencies to report reasons for denial on their HMDA loan/application registers. 12 CFR 27.3(a)(1)(i), 128.6, 390.147.

<sup>38</sup> 12 CFR 1003.4(a)(5), (13), (14), (31).

<sup>39</sup> The 2015 HMDA Final Rule extends the requirement to report lien status to purchased loans and no longer requires reporting of information about unsecured loans. 80 FR 66128, 66201 (Oct. 28, 2015).

<sup>40</sup> Prior to 2018, Regulation C required reporting of property type as one-to-four family dwelling (other than manufactured housing), manufactured housing, or multifamily dwelling, whereas the current rule requires reporting of whether the dwelling is site-built or manufactured home, together with the number of individual dwelling units.

The Board adopted its versions of these data points before HMDA section 304(b)(5) and (6) was added to HMDA by the Dodd-Frank Act, pursuant to HMDA authority that pre-existed section 304(b)(5) and (6). Although the Bureau cited HMDA section 304(b)(5) and (6) as additional support for these four data points in the 2015 HMDA Final Rule, the Bureau relied on HMDA section 305(a), which pre-existed the Dodd-Frank Act and independently provides legal authority for their adoption.<sup>41</sup> Given that these data points were not newly added by the Dodd-Frank Act or the Bureau, the Bureau does not interpret the Act as affecting them. This interpretation is consistent with the Act's legislative history, which suggests that Congress was focused on relieving regulatory burden associated with the Dodd-Frank Act.<sup>42</sup>

The requirements of HMDA section 304(b)(5) and (6), and thus the partial exemptions, also do not include 17 other data points included in the 2015 HMDA Final Rule that are similar or identical to pre-existing Regulation C data points established by the Board and that were not required by HMDA section 304(b)(5) and (6) or promulgated using discretionary authority under HMDA section 304(b)(D) and (b)(6)(J). These are: the Legal Entity Identifier (which replaced the pre-existing respondent identifier); application date; loan type; loan purchaser; preapproval; occupancy type; loan amount; action taken; action taken date; State; county; census tract; ethnicity; race; sex; income; and type of purchaser.<sup>43</sup> Additionally, the requirements of HMDA section 304(b)(5) and (6), and thus the partial exemptions, do not include age because the Dodd-Frank Act added that requirement instead to HMDA section 304(b)(4).<sup>44</sup>

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<sup>41</sup> 80 FR 66128, 66180–81, 66199–201, 66227 (Oct. 28, 2015).

<sup>42</sup> See, e.g., 164 Cong. Rec. S1423–24 (daily ed. Mar. 7, 2018) (statement of Sen. Crapo), S1529–30 (statement of Sen. McConnell), S1532–33 (statement of Sen. Cornyn), S.1537–39 (statement of Sen. Lankford), S1619–20 (statement of Sen. Cornyn).

<sup>43</sup> 12 CFR 1003.4(a)(1)(ii), (2), (3), (4), (6), (7), (8), (9)(ii), (10), (11), 1003.5(a)(3).

<sup>44</sup> Dodd-Frank Act section 1094(3)(A)(i).

With respect to transactions covered by one of the Act's new partial exemptions, insured depository institutions and insured credit unions are therefore required to report 22 of the 48 data points currently set forth in Regulation C, as indicated in table 1 below. Because the Act does not make any changes with respect to these 22 data points, insured depository institutions and insured credit unions that are eligible for a partial exemption under the Act must continue to report these 22 data points in the manner currently specified in Regulation C. For example, insured depository institutions and insured credit unions that are eligible for a partial exemption under the Act are still required to report a Legal Entity Identifier as well as lien status for purchased loans.<sup>45</sup>

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<sup>45</sup> 12 CFR 1003.4(a)(14), 1003.5(a)(3).

**Table 1: Effect of the Act’s Partial Exemptions on HMDA Data Points**

Covered by the Act’s Partial Exemptions	Unchanged by the Act
<ul style="list-style-type: none"> <li>• Universal Loan Identifier (ULI) (1003.4(a)(1)(i))<sup>46</sup></li> <li>• Property Address (1003.4(a)(9)(i))</li> <li>• Rate Spread (1003.4(a)(12))</li> <li>• Credit Score (1003.4(a)(15))</li> <li>• Reasons for Denial (1003.4(a)(16))</li> <li>• Total Loan Costs or Total Points and Fees (1003.4(a)(17))</li> <li>• Origination Charges (1003.4(a)(18))</li> <li>• Discount Points (1003.4(a)(19))</li> <li>• Lender Credits (1003.4(a)(20))</li> <li>• Interest Rate (1003.4(a)(21))</li> <li>• Prepayment Penalty Term (1003.4(a)(22))</li> <li>• Debt-to-Income Ratio (1003.4(a)(23))</li> <li>• Combined Loan-to-Value Ratio (1003.4(a)(24))</li> <li>• Loan Term (1003.4(a)(25))</li> <li>• Introductory Rate Period (1003.4(a)(26))</li> <li>• Non-Amortizing Features (1003.4(a)(27))</li> <li>• Property Value (1003.4(a)(28))</li> <li>• Manufactured Home Secured Property Type (1003.4(a)(29))</li> <li>• Manufactured Home Land Property Interest (1003.4(a)(30))</li> <li>• Multifamily Affordable Units (1003.4(a)(32))</li> <li>• Application Channel (1003.4(a)(33))</li> <li>• Mortgage Loan Originator Identifier (1003.4(a)(34))</li> <li>• Automated Underwriting System (1003.4(a)(35))</li> <li>• Reverse Mortgage Flag (1003.4(a)(36))</li> <li>• Open-End Line of Credit Flag (1003.4(a)(37))</li> <li>• Business or Commercial Purpose Flag (1003.4(a)(38))</li> </ul>	<ul style="list-style-type: none"> <li>• Application Date (1003.4(a)(1)(ii))</li> <li>• Loan Type (1003.4(a)(2))</li> <li>• Loan Purpose (1003.4(a)(3))</li> <li>• Preapproval (1003.4(a)(4))</li> <li>• Construction Method (1003.4(a)(5))</li> <li>• Occupancy Type (1003.4(a)(6))</li> <li>• Loan Amount (1003.4(a)(7))</li> <li>• Action Taken (1003.4(a)(8)(i))</li> <li>• Action Taken Date (1003.4(a)(8)(ii))</li> <li>• State (1003.4(a)(9)(ii)(A))</li> <li>• County (1003.4(a)(9)(ii)(B))</li> <li>• Census Tract (1003.4(a)(9)(ii)(C))</li> <li>• Ethnicity (1003.4(a)(10)(i))</li> <li>• Race (1003.4(a)(10)(i))</li> <li>• Sex (1003.4(a)(10)(i))</li> <li>• Age (1003.4(a)(10)(ii))</li> <li>• Income (1003.4(a)(10)(iii))</li> <li>• Type of Purchaser (1003.4(a)(11))</li> <li>• HOEPA Status (1003.4(a)(13))</li> <li>• Lien Status (1003.4(a)(14))</li> <li>• Number of Units (1003.4(a)(31))</li> <li>• Legal Entity Identifier (1003.5(a)(3))</li> </ul>

<sup>46</sup> See *infra* part VII (Non-Universal Loan Identifier).

## **VII. Non-Universal Loan Identifier**

In the 2015 HMDA Final Rule, the Bureau interpreted “universal loan identifier” (ULI) as used in HMDA section 304(b)(6)(G) to mean an identifier that is unique within the industry and required that the ULI include the Legal Entity Identifier of the institution that assigned the ULI.<sup>47</sup> As explained in part VI above, insured depository institutions and insured credit unions are not required to report a ULI for loans or applications that are partially exempt. Some insured depository institutions and insured credit unions may prefer to report a ULI for partially exempt loans or applications even if they are not required to do so. As explained in part IV above, voluntary reporting of ULIs for partially exempt loans and applications is permissible under the Act.

Regardless, as was true prior to the Dodd-Frank Act HMDA amendments and under Regulation C as it existed prior to the 2015 HMDA Final Rule, loans and applications must be identifiable in the HMDA data to ensure proper HMDA submission, processing, and compliance.<sup>48</sup> The Bureau does not interpret the Act to change this baseline component of data collection and reporting. Accordingly, while insured depository institutions and insured credit unions that are eligible for partial exemptions under the Act do not have to report a ULI for partially exempt transactions, they must continue to provide information so that each loan and application they report for HMDA purposes is identifiable. The ability to identify individual loans and applications is necessary to facilitate efficient and orderly submission of HMDA data and communications between the institution, the Bureau, and other applicable regulators. For example, identification of loans and applications is necessary to ensure that it is possible to

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<sup>47</sup> 80 FR 66128, 66176 (Oct. 28, 2015).

<sup>48</sup> HMDA requires that covered loans and applications be “itemized in order to clearly and conspicuously disclose” the applicable data for each loan or application. 12 U.S.C. 2803(a)(2).

address problems identified when edit checks are done upon submission or questions that arise at a later time as HMDA submissions are reviewed by regulators. To ensure the orderly administration of the HMDA program, insured depository institutions and insured credit unions must provide a non-universal loan identifier that complies with the requirements identified below for any partially exempt loan or application for which they do not report a ULI.

A non-universal loan identifier does not need to be unique within the industry and therefore does not need to include a Legal Entity Identifier as the ULI does.<sup>49</sup> The non-universal loan identifier may be composed of up to 22 characters to identify the covered loan or application, which:

1. May be letters, numerals, or a combination of letters and numerals;
2. Must be unique within the insured depository institution or insured credit union; and
3. Must not include any information that could be used to directly identify the applicant or borrower.<sup>50</sup>

Information that could be used to directly identify the applicant or borrower includes, but is not limited to, the applicant's or borrower's name, date of birth, Social Security number, official government-issued driver's license or identification number, alien registration number, government passport number, or employer or taxpayer identification number.

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<sup>49</sup> Additionally, if a financial institution that is subject to HMDA and not eligible for a partial exemption purchases a loan originated by a partially exempt institution that assigned a non-universal loan identifier rather than a ULI, the purchasing institution does not report the non-universal loan identifier previously assigned. Instead, the purchasing institution assigns its own ULI because no ULI was assigned by the institution that originated the loan. *See* comment 4(a)(1)(i)-3.

<sup>50</sup> A check digit is not required as part of a non-universal loan identifier, as it is for a ULI under 12 CFR 1003.4(a)(1)(i)(C), but may be voluntarily included in a non-universal loan identifier provided that the non-universal loan identifier, including the check digit, does not exceed 22 characters.

To ensure that a non-universal loan identifier is unique within the insured depository institution or insured credit union, the institution must assign only one non-universal loan identifier to any particular covered loan or application, and each non-universal loan identifier must correspond to a single application and ensuing loan in the case that the application is approved and a loan is originated. Similarly, refinancings or applications for refinancing should be assigned a different non-universal loan identifier than the loan that is being refinanced. An insured depository institution or insured credit union with multiple branches must ensure that its branches do not use the same non-universal loan identifier to refer to multiple covered loans or applications. An institution may not use a non-universal loan identifier previously reported if the institution reinstates or reconsiders an application that was reported in a prior calendar year.<sup>51</sup>

### **VIII. Exception Based on Community Reinvestment Act Exam Reports**

Notwithstanding the new partial exemptions, new HMDA section 304(i)(3) provides that an insured depository institution must comply with HMDA section 304(b)(5) and (6) if it has received a rating of “needs to improve record of meeting community credit needs” during each of its two most recent Community Reinvestment Act (CRA) examinations or a rating of “substantial noncompliance in meeting community credit needs” on its most recent CRA examination. The Act does not specify as of what date an insured depository institution’s two most recent CRA examinations must be assessed for purposes of this exception. The Bureau interprets the Act to require that this assessment be made as of December 31 of the preceding

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<sup>51</sup> For example, if an insured depository institution or insured credit union 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 institution reports a denied application under the original non-universal loan identifier in its annual 2020 data submission and an origination with a different non-universal loan identifier in its annual 2021 data submission, pursuant to § 1003.5(a)(1).

calendar year. This is consistent with Regulation C’s asset-size threshold and requirement that a financial institution have a home or branch office located in a Metropolitan Statistical Area, which are both assessed as of the preceding December 31.<sup>52</sup>

For example, in 2020, the preceding December 31 is December 31, 2019. Assume Insured Depository Institution A received a rating of “needs to improve record of meeting community credit needs” during each of its two most recent examinations under section 807(b)(2) of the CRA<sup>53</sup> that occurred on or before December 31, 2019. Accordingly, in 2020, Insured Depository Institution A is not eligible for the Act’s partial exemptions.

## **IX. Effective Date**

Because this rule is solely interpretive and procedural, it is not subject to the 30-day delayed effective date for substantive rules under section 553(d) of the Administrative Procedure Act.<sup>54</sup> The Bureau also believes that this rule meets the requirements for the section 553(d)(3) exception for good cause. As noted above, the Bureau believes that the best interpretation of the Act is that section 104(a) took effect when the Act became law on May 24, 2018. Because of HMDA’s ongoing collection and reporting requirements, the impact of the Act on the collection and reporting of data for transactions with final action in 2018, and the related questions raised by financial institutions, there is good cause to implement and clarify section 104(a) of the Act without delay. The Bureau therefore finds that there is good cause to make the final rule effective on [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

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<sup>52</sup> 12 CFR 1003.2(g)(1)(i)–(ii), 1003.2(g)(2)(i), comment 2(g)-1.

<sup>53</sup> 12 U.S.C. 2906(b)(2).

<sup>54</sup> 5 U.S.C. 553(d).

## **X. Dodd-Frank Act Section 1022(b) Analysis**

Section 1022(b)(2)(A) of the Dodd-Frank Act calls for the Bureau to consider the potential benefits and costs of a regulation to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services; the impact on depository institutions and credit unions with \$10 billion or less in total assets as described in section 1026 of the Dodd-Frank Act; and the impact on consumers in rural areas. Section 1022(b)(2)(B) directs the Bureau to consult with the appropriate prudential regulators or other Federal agencies regarding consistency with objectives those agencies administer. The manner and extent to which these provisions apply to a rulemaking of this kind, which interprets and provides guidance regarding existing law and establishes Bureau procedures but does not establish standards of conduct, is unclear. Nevertheless, to inform this rulemaking more fully, the Bureau performed the analyses and consultations described in those provisions of the Dodd-Frank Act.

### *A. Overview*

Section 104(a) of the Act amends HMDA section 304(i) by adding partial exemptions from HMDA's requirements for certain institutions. This interpretive and procedural rule implements the requirements of section 104(a). The rule provides clarification and guidance to all affected entities on the institutions covered by the partial exemption and what data must be collected, recorded, and reported.

The rule provides clarification and guidance on five general items:

1. Partially exempt institutions have the option to report data points covered by the partial exemption. If a data point covered by the partial exemption includes multiple

- data fields, partially exempt institutions report all of the data fields if they choose to report at least one of the data fields.
2. The terms “closed-end mortgage loan” and “open-end line of credit” include only loans and lines of credit that are otherwise reportable under HMDA.
  3. Partially exempt institutions are not required to report 26 data points specified in this rule.

4. Partially exempt institutions are required to report a non-universal loan identifier if they choose not to report a ULI.
5. For a given reporting year, the CRA ratings used to determine whether the CRA reporting exception applies are the two most recent CRA ratings as of December 31 of the preceding calendar year.

In developing this rule, the Bureau has considered potential benefits, costs, and impacts of these clarifications and guidance. The Bureau has consulted with, 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, the Department of the Treasury, the Department of Agriculture, the Federal Trade Commission, and the Federal Financial Institutions Examination Council.

#### *B. Institutions Affected by Rule or Act*

Under section 104(a) of the Act, an insured depository institution or insured credit union is eligible for a partial exemption for its closed-end mortgage loans if it originated fewer than 500 closed-end mortgage loans in each of the two preceding calendar years and did not receive a

rating of “needs to improve record of meeting community credit needs” during both of its two most recent CRA examinations or a rating of “substantial noncompliance in meeting community credit needs” during its most recent CRA examination. After applying all current HMDA reporting requirements, including Regulation C’s complete regulatory exclusion for institutions that originated fewer than 25 closed-end mortgage loans in either of the two preceding calendar years, the Bureau estimates that section 104(a) of the Act provides a partial exemption with respect to collection, recording, and reporting of 2018 HMDA data to approximately 3,300 institutions.<sup>55</sup> As a point of reference, 5,852 institutions reported data under HMDA in 2018.

For open-end lines of credit, the Bureau estimates that the new reporting criteria in section 104(a) of the Act will not have any effect on data collected in 2018. Regulation C currently provides a complete regulatory exclusion for open-end lines of credit for institutions that originated fewer than 500 open-end lines of credit in either of the preceding two years, and this exclusion applies to more institutions than the section 104(a) partial exemption criterion of fewer than 500 originations in each of the two preceding calendar years. The effect that section 104(a) will have on data collected for open-end lines of credit on or after January 1, 2020, is unclear because the temporary threshold of 500 open-end lines of credit for the complete regulatory exclusion applies only for 2018 and 2019. The Bureau has indicated that it intends to

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<sup>55</sup> To generate this estimate, the Bureau first identified all depository institutions (including credit unions) that met all reporting requirements and reported 2017 HMDA data in 2018. From this set of depository institutions, the Bureau then excluded all depository institutions that do not have to report 2018 HMDA data in 2019 because they originated fewer than 25 closed-end mortgage loans in either 2016 or 2017. Of the remaining depository institutions, approximately 3,300 originated fewer than 500 closed-end mortgage loans in each of 2016 and 2017. For purposes of this estimate, the Bureau assumes that these institutions are insured and do not have a negative CRA examination history and are partially exempt.

reconsider the threshold for the permanent regulatory exclusion for open-end lines of credit, which is currently set at 100 open-end lines of credit starting in 2020.<sup>56</sup>

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

The Bureau is using a post-statute baseline to assess the impact of this rule because the rule merely interprets and provides guidance regarding what Congress required in section 104(a) of the Act and provides procedures related to applying those requirements.<sup>57</sup> It does not impose new, or change existing, substantive requirements that would require exercise of the Bureau's legislative rulemaking authority. Using a post-statute baseline, the analysis evaluates the benefits, costs, and impacts of the rule as compared to the state of the world if the proposed interpretive and procedural rule were not adopted. Without this interpretive and procedural rule, affected institutions would lack authoritative clarification and guidance regarding how to comply with certain changes to HMDA made by section 104(a) of the Act.

Covered persons should benefit from this rule because it will ease review, understanding, and compliance with section 104(a) of the Act, which will in turn reduce the likelihood of potentially inconsistent or incorrect implementation. It is not practicable to quantify the precise magnitude of these informational benefits; however, they will likely vary over time, with earlier guidance providing higher benefits because covered persons have more time to incorporate this information into their planning and preparation. Without this rule, covered persons would either need to rely more heavily on their own independent evaluations of the statute, which would increase the likelihood of inconsistent or incorrect implementation and non-compliance, or wait

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<sup>56</sup> 82 FR 43088 (Sept. 13, 2017).

<sup>57</sup> The Bureau has discretion in any rulemaking to choose an appropriate scope of analysis with respect to potential benefits, costs, and impacts and an appropriate baseline. As noted earlier, the Bureau anticipates an upcoming notice-and-comment rulemaking and expects that the accompanying 1022(b) analysis will assess the benefits, costs, and impacts of the statute as well as the implementing regulation.

for guidance in the anticipated notice-and-comment rulemaking, which would provide covered persons less time to incorporate authoritative guidance while adopting the changes under the Act.

These short-run benefits of the rule are somewhat offset by guidance the Bureau provided in December 2017, indicating that it does not intend to require data resubmission of 2018 HMDA data unless data errors are material or to assess penalties for data errors. The Board, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the National Credit Union Administration released similar statements. Decreased potential for data resubmission and penalties in the short-run reduces the value to covered persons of receiving earlier guidance and clarification.

An additional benefit is that this rule provides covered persons with additional options, and increased options generally translate into increased benefits. For example, the rule allows for voluntary reporting of partially exempt data points such as ULI. During the 2015 HMDA rulemaking process, however, some commenters suggested that options increased reporting burden, because they added uncertainty and required more interpretation.

The Bureau expects this rule to impose negligible costs on covered persons. There are three items of note here. First, the final rule provides specific definitions of the terms “closed-end mortgage loan” or “open-end line of credit,” which are not defined in section 104(a) of the Act. The Bureau is interpreting these terms to include only loans and lines of credit that would otherwise be reportable under Regulation C. The Bureau believes that tying the definitions to the same criteria that already determines HMDA reportability will not impose any additional costs. By contrast, if the Bureau had interpreted these terms to have a broader meaning, the rule would have resulted in fewer covered persons being eligible for the Act’s partial exemptions and additional costs for covered persons.

Second, requiring partially exempt institutions that choose not to report a ULI (an exempt data point) to report a non-universal loan identifier, consistent with criteria specified in the rule, could potentially increase burden. However, the Bureau believes that this burden, if any, will be negligible, because most institutions will already have a loan identifier for internal processing and tracking purposes, and, for those that do not, creating and reporting a loan identifier will be low cost.

Third, requiring a partially exempt institution to report all data fields for an exempt data point if it voluntarily chooses to report at least one of the data fields could increase burden. In some circumstances, the institution could face increased costs in having to report all data fields rather than only the data fields it chooses to report. However, the Bureau believes that this additional burden will be small. This requirement will affect only partially exempt institutions that would prefer to voluntarily report some, but not all, data fields for a particular data point, and the number of such institutions is likely small. In addition, of the 26 exempt data points, only seven have multiple data fields (property address, credit score, reason for denial, total loan costs or total points and fees, non-amortizing features, application channel, and automated underwriting system), which also serves to limit the burden associated with this provision.

In addition to effects on covered persons discussed above, this rulemaking is expected to have negligible impact on consumers, in terms of either costs or benefits.

#### *D. Impact on Depository Institutions with No More Than \$10 Billion in Assets*

The Bureau estimates that approximately 3,300 institutions are partially exempt under section 104(a) of the Act, and that most of these institutions are depository institutions with no more than \$10 billion in assets. The benefits of this rule to these institutions are summarized in part X.C. The Bureau expects the burden of this rule on these institutions to be negligible.

#### *E. Impact on Access to Credit*

The Bureau does not expect this rule to affect consumers' access to credit. The scope of the rulemaking is limited to clarification of reporting requirements that would not be of sufficient magnitude to materially affect access to credit.

#### *F. Impact on Consumers in Rural Areas*

The Bureau does not believe that this rule will have a unique impact on consumers in rural areas. Any potential effects on consumers, expected to be negligible in all cases, would be indirect effects passed through by HMDA reporters, and any impact on HMDA reporters is not expected to vary by geographic area. In addition, many rural lenders are not required to report because of HMDA's requirement that a financial institution have a home or branch office located in a Metropolitan Statistical Area, so the rule would have no specific impacts on rural areas.

### **XI. Regulatory Requirements**

This rule articulates the Bureau's interpretation of section 104(a) of the Economic Growth, Regulatory Relief, and Consumer Protection Act. It also alters the manner and procedure in which insured depository institutions and insured credit unions eligible for the Act's new partial exemptions may present their data to the Bureau, but it does not alter those institutions' rights or interests or encode substantive value judgments beyond furthering efficiency and operational goals. This interpretive and procedural rule is exempt from notice-and-comment rulemaking requirements under the Administrative Procedure Act, 5 U.S.C. 553(b). Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis.<sup>58</sup>

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<sup>58</sup> 5 U.S.C. 603(a), 604(a).

The Bureau has determined that this interpretive and procedural rule does not impose any new or revise any existing recordkeeping, reporting, or disclosure requirements on covered entities or members of the public that would be collections of information requiring approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3501 through 3521. To the extent that eligible reporters may take advantage of the Act's partial exemptions, the Bureau lacks sufficient information at present to estimate the potential burden reduction. When the Bureau has sufficient data to make an estimate, it will revise its burden estimates as appropriate.

## **XII. Congressional Review Act**

Pursuant to the Congressional Review Act,<sup>59</sup> the Bureau will submit a report containing this interpretive rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to the rule's published effective date. The Office of Information and Regulatory Affairs has designated this interpretive rule as not a "major rule" as defined by 5 U.S.C. 804(2).

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<sup>59</sup> 5 U.S.C. 801–808.

[THIS SIGNATURE PAGE PERTAINS TO THE FINAL RULE TITLED “PARTIAL  
EXEMPTIONS FROM THE REQUIREMENTS OF THE HOME MORTGAGE  
DISCLOSURE ACT UNDER THE ECONOMIC GROWTH, REGULATORY RELIEF,  
AND CONSUMER PROTECTION ACT (REGULATION C)”]

Dated: August 30, 2018.

A handwritten signature in blue ink, appearing to read "Mick Mulvaney".

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Mick Mulvaney,

*Acting Director, Bureau of Consumer Financial Protection.*