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To: Clients and Friends

From: David F. Dulock

Subject: CFPB Amends HMDA Regulation C

In the October 29, 2019, issue of the *Federal Register* (84 FR 57946, [click here](#)) the Bureau of Consumer Financial Protection (CFPB) issued a final rule amending Regulation C (12 CFR Part 1003), which implements the Home Mortgage Disclosure Act (HMDA), to adjust the institutional and transactional coverage thresholds for reporting data about open-end lines of credit by extending to January 1, 2022, the current temporary threshold of 500 open-end lines of credit; incorporating into Regulation C the interpretations and procedures from the interpretive and procedural rule that the CFPB issued on August 31, 2018; and implementing further the HMDA amendments in section 104 of the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA; Pub. L. No. 115-174, 132 Stat. 1296 (2018)).

This final rule is effective on January 1, 2020, except for the amendments to §1003.2 in amendatory instruction 6, the amendments to §1003.3 in amendatory instruction 7, and the amendments to supplement I to part 1003 in amendatory instruction 8, which are effective on January 1, 2022. (*See page 58003 of the above cited Federal Register.*)

The three major final rule amendments to Regulation C are summarized below.

Institutional Coverage Threshold

Section 1003.2 Definitions. Paragraph (g) defines the term “financial institution” for the purposes of HMDA and Regulation C. In subparagraph (g)(1)(v)(B), as part of the definition of a depository financial institution (a bank, savings and loan, or credit union), and in subparagraph (g)(2)(ii)(B), as part of the definition of a nondepository financial institution (a for-profit mortgage-lending institution other than a bank, savings association, or credit union), the final rule extends the current temporary threshold of 500 open-end lines of credit originated in *each* of the two preceding calendar years that are not excluded from Regulation C pursuant to subparagraphs (c)(1) through (c)(10) of section 1003.3 to January 1, 2022. And effective January 1, 2022, the final rule restores the 2015 HMDA Rule (80 FR 66128, October 28, 2015) open-end threshold definition in subparagraphs (g)(1)(v)(B) and (g)(2)(ii)(B) to 100 originated open-end lines of credit that are not excluded from Regulation C as stated above. The preamble to the final rule states that the CFPB intends to issue a final rule in 2020 addressing the permanent open-end lines of credit threshold definition in subparagraphs (g)(1)(v)(B) and (g)(2)(ii)(B) that would take effect on January 1, 2022.

Transactional Coverage Thresholds - excluded transactions

Section 1003.3 Exempt institutions and excluded and partially exempt transactions. In subparagraph (c)(12) relating to excluded transactions for which HMDA and Regulation C do not apply, the final rule extends the current temporary open-end lines of credit threshold of 500 open-end lines of credit originated in *either* of the two preceding calendar years to January 1, 2022. And effective January 1, 2022, the final rule restores the open-end excluded transactions threshold to 100 open-end lines of credit originated

in *either* of the two preceding calendar years. The preamble to the final rule states that the CFPB intends to issue a final rule in 2020 addressing the permanent open-end lines of credit excluded transactions threshold that would take effect on January 1, 2022.

EGRRCPA Partial Exemptions Thresholds

Section 1003.3 Exempt institutions and excluded and partially exempt transactions. Section 104(a) of the EGRRCPA amended HMDA section 304(i) by adding partial exemptions from HMDA's requirements that apply to certain transactions of eligible insured depository institutions and insured credit unions. The final rule implements these EGRRCPA amendments to HMDA by adding paragraph (d) to section 1003.3. Subparagraph (d)(1) sets forth definitions relating to the partial exemptions. Subparagraphs (d)(2) and (d)(3) provide the general tests for when the partial exemptions apply for closed-end mortgage loans and open-end lines of credit, respectively. Subparagraph (d)(4) addresses voluntary reporting of data that are covered by a partial exemption for a partially exempt transaction. Subparagraph (d)(5) relates to the non-universal loan identifier that financial institutions must report for a partially exempt transaction if a ULI is not provided. Subparagraph (d)(6) implements the statutory exception to the partial exemptions for insured depository institutions with certain less than satisfactory examination histories under the CRA.

Subparagraph (d)(1) sets forth the following definitions relating to the partial exemptions:

(i) "Insured credit union" means an insured credit union as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752, "any credit union the member accounts of which are insured in accordance with the provisions of [12 U.S.C. subchapter II of chapter 14 – *i.e.*, National Credit Union Share Insurance Fund]").

(ii) "Insured depository institution" mean an insured depository institution as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813, "any bank or savings association the deposits of which are insured by the [FDIC] pursuant to this chapter [16]").

(iii) "Optional data" means the data identified in subparagraphs (a)(1)(i), (a)(9)(i), (a)(12), (a)(15) through (a)(30), and (a)(32) through (a)(38) of section 1003.4. It identifies the optional data insured credit unions and insured depository institutions need not report for a partial exempt transaction. (*See attached List of Optional Data.*)

(iv) "Partially exempt transaction" means a covered loan or application that is partially exempt under subparagraph (d)(2) or (d)(3).

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

Subparagraph (d)(3) provides that, except as provided in subparagraph (d)(6), an insured credit union or insured depository institution that, in *each* of the two preceding calendar years, originated fewer than 500 open-end lines of credit that are not excluded from Regulation C pursuant to subparagraphs (c)(1) through (c)(10) of section 1003.3 is not required to collect, record, or report optional data as defined in subparagraph (d)(1)(iii) for applications for open-end

lines of credit that it receives, open-end lines of credit that it originates, and open-end lines of credit that it purchases.

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

Subparagraph (d)(5) provides that if, pursuant to subparagraph (d)(2) or (d)(3), a financial institution does not report a universal loan identifier (ULI) pursuant to subparagraph (a)(1)(i) of section 1003.4 for an application for a partially exempt transaction that it receives, a partially exempt transaction that it originates, or a partially exempt transaction that it purchases, the financial institution shall assign and report a non-universal loan identifier (NULI). It further provides that, to identify the partially exempt transaction or application, the NULI must be composed of up to 22 characters, which: (i) may be letters, numerals, or a combination of letters and numerals; (ii) must be unique within the annual Loan/Application Register (LAR) in which the partially exempt transaction or application is included; and (iii) must not include any information that could be used to directly identify the applicant or borrower. The preamble to the final rule states that subparagraph (d)(5)(ii) and its commentary clarify that while the NULI must be unique within a financial institution's yearly LAR submission, the NULI does not need to be unique across reporting years and, thus, for example, allows a financial institution to use the same NULI for a partially exempt transaction in its 2021 LAR that the institution used for a different partially exempt transaction in its 2020 LAR.

Subparagraph (d)(6) provides that subparagraphs (d)(2) and (d)(3) do not apply to an insured depository institution that, as of the preceding December 31, had received a rating of "needs to improve record of meeting community credit needs" during each of its two most recent examinations or a rating of "substantial noncompliance in meeting community credit needs" on its most recent examination under section 807(b)(2) of the CRA.

Section 1003.4 Compilation of reportable data. Paragraph (a) of section 1003.4 requires a financial institution to collect the data specified therein about applications for covered loans it receives, covered loans it originates, and covered loans it purchases for each calendar year. Because the EGRRCPA provides partial exemptions from this data collection requirement for certain transactions of insured credit unions and insured depository institutions, the final rule amends paragraph (a) to provide that the requirement to collect the data identified in paragraph (a) is applicable except for the optional data as specified in paragraph (d) of section 1003.3, which implements the EGRRCPA partial exemptions. The final rule also amends subparagraph (a)(1)(i) to provide that, for a partially exempt transaction under paragraph (d) of section 1003.3, the loan identifier data under subparagraph (a)(1)(i) may be either a ULI or a NULI described in

subparagraph (d)(5) of section 1003.3, and that a financial institution does not need to assign and report a ULI for a partially exempt transaction for which a NULI is assigned and reported under subparagraph (d)(5) of section 1003.3.

This memorandum does not summarize or otherwise address all the amendments to Regulation C made by the final rule. Therefore, we advise our clients to review the entirety of the final rule and its preamble explanations by clicking on the hyperlink located in the first paragraph on page 1 of this memorandum.

Attachment: List of Optional Data

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List of Optional Data

- Universal or Non-Universal Loan Identifier (ULI/NULI) (1003.4(a)(1)(i))
- Property Address (1003.4(a)(9)(i))
- Rate Spread (1003.4(a)(12))
- Credit Score (1003.4(a)(15))
- Reasons for Denial (1003.4(a)(16))
- Total Loan Costs or Total Points and Fees (1003.4(a)(17))
- Origination Charges (1003.4(a)(18))
- Discount Points (1003.4(a)(19))
- Lender Credits (1003.4(a)(20))
- Interest Rate (1003.4(a)(21))
- Prepayment Penalty Term (1003.4(a)(22))
- Debt-to-Income Ratio (1003.4(a)(23))
- Combined Loan-to-Value Ratio (1003.4(a)(24))
- 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))
- Manufactured Home Secured Property Type (1003.4(a)(29))
- Manufactured Home Land Property Interest (1003.4(a)(30))
- Multifamily Affordable Units (1003.4(a)(32))
- Application Channel (1003.4(a)(33))
- Mortgage Loan Originator Identifier (1003.4(a)(34))
- Automated Underwriting System (1003.4(a)(35))
- Reverse Mortgage (1003.4(a)(36))
- Open-End Line of Credit (1003.4(a)(37))
- Business or Commercial Purpose (1003.4(a)(38))