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December 21, 2022

To: Clients and Friends

From: David F. Dulock

Subject: HMDA Regulation C Technical Amendments Reduce Closed-end Mortgage Loan Reporting Threshold

In the December 21, 2022, *Federal Register* ([87 FR 77980](#)), the CFPB issued technical amendments to Regulation C §§1003.2 and 1003.3, and comments 2(g), 3(c) and 3(c)11 of the official interpretations in Supplement I to Part 1003 of Regulation C, that decrease the closed-end mortgage loan reporting threshold from 100 loans to 25 loans in each of the two preceding calendar years, effective December 21, 2022.

The technical amendment updates the above sections and commentary of Regulation C so that it accurately reflects the September 23, 2022, order by the United States District Court for the District of Columbia that vacated the 100-loan volume reporting threshold for closed-end mortgage loans. As a result of the September 23, 2022, order, the threshold for reporting data about closed-end mortgage loans is 25, the threshold established by the 2015 HMDA Rule.

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

- Paragraph (g)(1)(v)(A): Depository financial institution means a bank, savings association, or credit union that ... Meets at least one of the following criteria: In each of the two preceding calendar years, originated at least 25 closed-end mortgage loans that are not excluded from this part pursuant to §1003.3(c)(1) through (10) or (c)(13).
- Paragraph (g)(2)(ii)(A): Nondepository financial institution means a for-profit mortgage-lending institution (other than a bank, savings association, or credit union) that ... Meets at least one of the following criteria: In each of the two preceding calendar years, originated at least 25 closed-end mortgage loans that are not excluded from this part pursuant to §1003.3(c)(1) through (10) or (c)(13).

Section 1003.3 Exempt institutions and excluded and partially exempt transactions is amended by revising paragraph (c)(11) to read as follows:

- Paragraph (c)(11): The requirements of this part 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; 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;

Under Section 1003.2—Definitions, comment 2(g) Financial Institution is revised as follows:

- Comment 2(g)-5. Originations. Whether an institution is a financial institution depends in part on whether the institution originated at least 25 closed-end mortgage loans in each of the two preceding calendar years or at least 200 open-end lines of credit in each of the two preceding calendar years. Comments 4(a)–2 through –4 discuss whether activities with respect to a particular closed-end mortgage loan or open-end line of credit constitute an origination for purposes of §1003.2(g).

Under Section 1003.3—Exempt institutions and excluded and partially exempt transactions comment 3(c) Excluded Transactions is revised as follows:

- Comment 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.
- Comment 3(c)(11)-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.

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