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To: Clients and Friends

From: David F. Dulock

Subject: CFPB Issues HMDA Interpretive Rule

In the September 7, 2018, issue of the *Federal Register* (83 FR 45325, [click here](#)), the Consumer Financial Protection Bureau issued an interpretive and procedural rule (the “Interpretive Rule”) to implement and clarify the requirements of section 104(a) of the Economic Growth, Regulatory Relief, and Consumer Protection Act signed into law on May 24, 2018 (the “Act”), which 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 unions¹. These HMDA requirements are in section 304(b)(5) and (6) added by the Dodd-Frank Act that requires reporting of new data points² and also gives the CFPB discretionary authority to add other data points. In the 2015 HMDA Final Rule³, the CFPB implemented these new data points required by HMDA section 304(b)(5) and (6) and added a number of additional data points.

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 than 500 open-end lines of credit in each of the two preceding calendar years⁴. 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.

The Act’s two partial exemptions operate independently of one another – *i.e.*, 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 is, however, required to collect and reports complete data for its open-end lines of credit.

The Interpretive Rule is effective on September 7, 2018, and (I) clarifies that insured depository institutions and insured credit unions covered by a partial exemption under the Act have the option of reporting exempt data fields as long as they report all data

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fields within any exempt data point for which they report data; (II) clarifies that only loans and lines of credit that are otherwise HMDA reportable count toward the thresholds for the partial exemptions; (III) clarifies which of the data points in Regulation C (12 CFR part 1003) are covered by the partial exemptions; (IV) designates a non-universal loan identifier⁵ for partially exempt transactions for institutions that choose not to report a universal loan identifier; and (V) clarifies the exception to the partial exemptions for negative Community Reinvestment Act examination history.

(I) Permissible Optional Reporting of Exempt Data Fields

The CFPB's HMDA platform used for receiving HMDA submissions is 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. Therefore, the HMDA platform will accept submissions of an exempt 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 exempt data point comprises. For example, if a partially exempt institution reports a data field that is part of the exempt property address data point (such as street address) for a specific loan or application, it will report all other data fields that are part of the exempt property address data point (including zip code, city, and State) for that transaction in accordance with the Filing Instructions Guide for HMDA Data Collected in 2018.

(II) Loans Counted Toward Partial Exemptions' Thresholds

Although section 104(a) of the Act amends HMDA to provide for the 500 closed-end mortgage loan and 500 open-end line of credit partial exemptions, it does not define the term "closed-end mortgage loan" or "open-end line of credit." Thus, in the Interpretive Rule, the CFPB 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).

(III) Data Points Covered by the Partial Exemptions

See "Table 1—Effect of the Act's Partial Exemptions on HMDA Data Points" of the Interpretive Rule attached to this memorandum for the 26 data points covered by the partial exemptions (column 1 of Table 1) and the 22 data points not covered by the partial exemptions (column 2 of Table 1). This means that for loans or applications covered by the partial exemptions, insured depository institutions and insured credit unions (*see* fn.1) are not required to collect and report the 26 data points listed in column 1⁶ of Table 1, but may do so at their option; however, they are required to collect and report the 22 data points listed in column 2 of Table 1 in the manner currently specified in Regulation C.

(IV) Non-Universal Loan Identifier

HMDA and Regulation C require that loans and applications be identifiable in the HMDA

data to ensure proper HMDA submission, processing, and compliance. In the Interpretive Rule, the CFPB states that it does not interpret the Act to change this 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 universal loan identifier (ULI) for partially exempt transactions (*see* first bullet point in column 1 of Table 1), they must continue to provide information so that each loan and application they report for HMDA purposes is identifiable. Therefore, 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.
- 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. 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.
- 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.
- Refinancing loans or applications for refinancing loans 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.

(V) Exception Based on Community Reinvestment Act Exam Reports

As stated above, notwithstanding the new partial exemptions, 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. In the Interpretive Rule, the CFPB interprets the Act to require that this assessment be made as of December 31 of the preceding calendar year. For example, in 2020, the preceding December 31 is December 31, 2019. Thus, under the CFPB's interpretation, an insured depository institution that received a rating of "needs to improve record of meeting community credit needs" during each of its two most recent CRA examinations that occurred on or before December 31, 2019, is not eligible for the Act's partial exemptions in 2020.

Those insured depository institutions and insured credit unions that qualify for and wish to take advantage of the partial exemptions are advised to read the complete text of the Interpretive Rule hyperlinked in this memorandum and not to rely only on the summary of the Interpretive Rule in this memorandum.

Attachment: Table 1—Effect of the Act's Partial Exemptions on HMDA Data Points

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Footnotes

¹ For purposes of HMDA section 104, the Act provides that the term "insured credit union" has the meaning given the term in 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]") and the term "insured depository institution" has the meaning given the term in 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]").

² As used in the Interpretive 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 (12 CFR part 1003). Some data points are reported using multiple data fields.

³ October 28, 2015 *Federal Register* (80 FR 66128) amending Regulation C.

⁴ Regulation C §1003.3(c)(12), amended September 13, 2017 (82 FR 43132), 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 two preceding calendar years. While this complete regulatory exclusion is broader than the partial exemption of fewer than 500 open-end lines of credit originations in each of the two preceding calendar years, it is temporary and applies only for 2018 and 2019.

⁵ See *infra* requirement in section (IV) for non-universal loan identifier.

⁶ Notwithstanding this exemption, 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. (See fifth bullet point in column 1 of Table 1.)

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"> • Universal Loan Identifier (ULI) (1003.4(a)(1)(i)) ⁴ • 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 Flag (1003.4(a)(36)). • Open-End Line of Credit Flag (1003.4(a)(37)). • Business or Commercial Purpose Flag (1003.4(a)(38)). 	<ul style="list-style-type: none"> • Application Date (1003.4(a)(1)(ii)). • Loan Type (1003.4(a)(2)). • Loan Purpose (1003.4(a)(3)). • Preapproval (1003.4(a)(4)). • Construction Method (1003.4(a)(5)). • Occupancy Type (1003.4(a)(6)). • Loan Amount (1003.4(a)(7)). • Action Taken (1003.4(a)(8)(i)). • Action Taken Date (1003.4(a)(8)(ii)). • State (1003.4(a)(9)(ii)(A)). • County (1003.4(a)(9)(ii)(B)). • Census Tract (1003.4(a)(9)(ii)(C)). • Ethnicity (1003.4(a)(10)(i)). • Race (1003.4(a)(10)(i)). • Sex (1003.4(a)(10)(i)). • Age (1003.4(a)(10)(ii)). • Income (1003.4(a)(10)(iii)). • Type of Purchaser (1003.4(a)(11)). • HOEPA Status (1003.4(a)(13)). • Lien Status (1003.4(a)(14)). • Number of Units (1003.4(a)(31)). • Legal Entity Identifier (1003.5(a)(3)).