

Rules and Regulations

Federal Register

Vol. 87, No. 250

Friday, December 30, 2022

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents.

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1003

Home Mortgage Disclosure (Regulation C) Adjustment to Asset-Size Exemption Threshold

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Final rule; official interpretation.

SUMMARY: The Consumer Financial Protection Bureau (Bureau) is amending the official commentary that interprets the requirements of the Bureau's Regulation C (Home Mortgage Disclosure) to reflect the asset-size exemption threshold for banks, savings associations, and credit unions based on the annual percentage change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W). Based on the 8.6 percent increase in the average of the CPI-W for the 12-month period ending in November 2022, the exemption threshold is adjusted to \$54 million from \$50 million. Therefore, banks, savings associations, and credit unions with assets of \$54 million or less as of December 31, 2022, are exempt from collecting data in 2023.

DATES: This rule is effective on January 1, 2023.

FOR FURTHER INFORMATION CONTACT: Adrien Fernandez, Counsel, Thomas Dowell, Senior Counsel; Office of Regulations, at (202) 435-7700. If you require this document in an alternative electronic format, please contact CFPB_Accessibility@cfpb.gov.

SUPPLEMENTARY INFORMATION: The Bureau is amending Regulation C, which implements the HMDA asset thresholds, to establish the asset-sized exemption threshold for depository financial institution for 2023. The asset threshold will be \$54 million for 2023.

I. Background

The Home Mortgage Disclosure Act of 1975 (HMDA) ¹ requires most mortgage lenders located in metropolitan areas to collect data about their housing related lending activity. Annually, lenders must report their data to the appropriate Federal agencies and make the data available to the public. The Bureau's Regulation C implements HMDA.²

Prior to 1997, HMDA exempted certain depository institutions as defined in HMDA (*i.e.*, banks, savings associations, and credit unions) with assets totaling \$10 million or less as of the preceding year-end. In 1996, HMDA was amended to expand the asset-size exemption for these depository institutions.³ The amendment increased the dollar amount of the asset-size exemption threshold by requiring a one-time adjustment of the \$10 million figure based on the percentage by which the CPI-W for 1996 exceeded the CPI-W for 1975, and it provided for annual adjustments thereafter based on the annual percentage increase in the CPI-W, rounded to the nearest multiple of \$1 million.

The definition of "financial institution" in § 1003.2(g) provides that the Bureau will adjust the asset threshold based on the year-to-year change in the average of the CPI-W, not seasonally adjusted, for each 12-month period ending in November, rounded to the nearest \$1 million. For 2022, the threshold was \$50 million. During the 12-month period ending in November 2022, the average of the CPI-W increased by 8.6 percent. As a result, the exemption threshold is increased to \$54 million for 2023. Thus, banks, savings associations, and credit unions with assets of \$54 million or less as of December 31, 2022, are exempt from collecting data in 2023. An institution's exemption from collecting data in 2023 does not affect its responsibility to report data it was required to collect in 2022.

II. Procedural Requirements

A. Administrative Procedure Act

Under the Administrative Procedure Act (APA), notice and opportunity for public comment are not required if the Bureau finds that notice and public

comment are impracticable, unnecessary, or contrary to the public interest.⁴ Pursuant to this final rule, comment 2(g)-2 in Regulation C, supplement I, is amended to update the exemption threshold. The amendment in this final rule is technical and non-discretionary, and it merely applies the formula established by Regulation C for determining any adjustments to the exemption threshold. For these reasons, the Bureau has determined that publishing a notice of proposed rulemaking and providing opportunity for public comment are unnecessary. Therefore, the amendment is adopted in final form.

Section 553(d) of the APA generally requires publication of a final rule not less than 30 days before its effective date, except (1) a substantive rule which grants or recognizes an exemption or relieves a restriction; (2) interpretive rules and statements of policy; or (3) as otherwise provided by the agency for good cause found and published with the rule.⁵ At a minimum, the Bureau believes the amendments fall under the third exception to section 553(d). The Bureau finds that there is good cause to make the amendments effective on January 1, 2023. The amendment in this final rule is technical and non-discretionary, and it applies the method previously established in the agency's regulations for determining adjustments to the threshold.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) does not apply to a rulemaking where a general notice of proposed rulemaking is not required.⁶ As noted previously, the Bureau has determined that it is unnecessary to publish a general notice of proposed rulemaking for this final rule. Accordingly, the RFA's requirement relating to an initial and final regulatory flexibility analysis do not apply.

C. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995,⁷ the Bureau reviewed this final rule. The Bureau has determined that this rule does not create any new information collections or

¹ 12 U.S.C. 2801-2810.

² 12 CFR part 1003.

³ 12 U.S.C. 2808(b).

⁴ 5 U.S.C. 553(b)(B).

⁵ 5 U.S.C. 553(d).

⁶ 5 U.S.C. 603(a), 604(a).

⁷ 44 U.S.C. 3506; 5 CFR part 1320.

substantially revise any existing collections.

D. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Bureau will submit a report containing this rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to the rule taking effect. The Office of Information and Regulatory Affairs (OIRA) has designated this rule as not a “major rule” as defined by 5 U.S.C. 804(2).

III. Signing Authority

Senior Advisor Brian Shearer, having reviewed and approved this document, is delegating the authority to sign this document electronically to Laura Galban, a Bureau Federal Register Liaison, for purposes of publication in the **Federal Register**.

List of Subjects in 12 CFR Part 1003

Banks, banking, Credit unions, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations.

Authority and Issuance

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

PART 1003—HOME MORTGAGE DISCLOSURE (REGULATION C)

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

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

■ 2. Supplement I to part 1003 is amended by revising 2(g) *Financial Institution* under the heading *Section 1003.2—Definitions* to read as follows:

Supplement I to Part 1003—Official Interpretations

* * * * *

Section 1003.2—Definitions

* * * * *

2(g) Financial Institution

1. *Preceding calendar year and preceding December 31.* The definition of financial institution refers both to the preceding calendar year and the preceding December 31. These terms refer to the calendar year and the December 31 preceding the current calendar year. For example, in 2019, the preceding calendar year is 2018 and the preceding December 31 is December 31, 2018. Accordingly, in 2019, Financial Institution A satisfies the asset-size

threshold described in § 1003.2(g)(1)(i) if its assets exceeded the threshold specified in comment 2(g)–2 on December 31, 2018. Likewise, in 2020, Financial Institution A does not meet the loan-volume test described in § 1003.2(g)(1)(v)(A) if it originated fewer than 25 closed-end mortgage loans during either 2018 or 2019.

2. *Adjustment of exemption threshold for banks, savings associations, and credit unions.* For data collection in 2023, the asset-size exemption threshold is \$54 million. Banks, savings associations, and credit unions with assets at or below \$54 million as of December 31, 2022, are exempt from collecting data for 2023.

3. *Merger or acquisition—coverage of surviving or newly formed institution.* After a merger or acquisition, the surviving or newly formed institution is a financial institution under § 1003.2(g) if it, considering the combined assets, location, and lending activity of the surviving or newly formed institution and the merged or acquired institutions or acquired branches, satisfies the criteria included in § 1003.2(g). For example, A and B merge. The surviving or newly formed institution meets the loan threshold described in § 1003.2(g)(1)(v)(B) if the surviving or newly formed institution, A, and B originated a combined total of at least 200 open-end lines of credit in each of the two preceding calendar years. Likewise, the surviving or newly formed institution meets the asset-size threshold in § 1003.2(g)(1)(i) if its assets and the combined assets of A and B on December 31 of the preceding calendar year exceeded the threshold described in § 1003.2(g)(1)(i). Comment 2(g)–4 discusses a financial institution’s responsibilities during the calendar year of a merger.

4. *Merger or acquisition—coverage for calendar year of merger or acquisition.* The scenarios described below illustrate a financial institution’s responsibilities for the calendar year of a merger or acquisition. For purposes of these illustrations, a “covered institution” means a financial institution, as defined in § 1003.2(g), that is not exempt from reporting under § 1003.3(a), and “an institution that is not covered” means either an institution that is not a financial institution, as defined in § 1003.2(g), or an institution that is exempt from reporting under § 1003.3(a).

i. Two institutions that are not covered merge. The surviving or newly formed institution meets all of the requirements necessary to be a covered institution. No data collection is required for the calendar year of the

merger (even though the merger creates an institution that meets all of the requirements necessary to be a covered institution). When a branch office of an institution that is not covered is acquired by another institution that is not covered, and the acquisition results in a covered institution, no data collection is required for the calendar year of the acquisition.

ii. A covered institution and an institution that is not covered merge. The covered institution is the surviving institution, or a new covered institution is formed. For the calendar year of the merger, data collection is required for covered loans and applications handled in the offices of the merged institution that was previously covered and is optional for covered loans and applications handled in offices of the merged institution that was previously not covered. When a covered institution acquires a branch office of an institution that is not covered, data collection is optional for covered loans and applications handled by the acquired branch office for the calendar year of the acquisition.

iii. A covered institution and an institution that is not covered merge. The institution that is not covered is the surviving institution, or a new institution that is not covered is formed. For the calendar year of the merger, data collection is required for covered loans and applications handled in offices of the previously covered institution that took place prior to the merger. After the merger date, data collection is optional for covered loans and applications handled in the offices of the institution that was previously covered. When an institution remains not covered after acquiring a branch office of a covered institution, data collection is required for transactions of the acquired branch office that take place prior to the acquisition. Data collection by the acquired branch office is optional for transactions taking place in the remainder of the calendar year after the acquisition.

iv. Two covered institutions merge. The surviving or newly formed institution is a covered institution. Data collection is required for the entire calendar year of the merger. The surviving or newly formed institution files either a consolidated submission or separate submissions for that calendar year. When a covered institution acquires a branch office of a covered institution, data collection is required for the entire calendar year of the merger. Data for the acquired branch office may be submitted by either institution.

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).

6. *Branches of foreign banks—treated as banks.* A Federal branch or a State-licensed or insured branch of a foreign bank that meets the definition of a “bank” under section 3(a)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(a)) is a bank for the purposes of § 1003.2(g).

7. *Branches and offices of foreign banks and other entities—treated as nondepository financial institutions.* A Federal agency, State-licensed agency, State-licensed uninsured branch of a foreign bank, commercial lending company owned or controlled by a foreign bank, or entity operating under section 25 or 25A of the Federal Reserve Act, 12 U.S.C. 601 and 611 (Edge Act and agreement corporations) may not meet the definition of “bank” under the Federal Deposit Insurance Act and may thereby fail to satisfy the definition of a depository financial institution under § 1003.2(g)(1). An entity is nonetheless a financial institution if it meets the definition of nondepository financial institution under § 1003.2(g)(2).

* * * * *

Laura Galban,

Federal Register Liaison, Consumer Financial Protection Bureau.

[FR Doc. 2022-28441 Filed 12-29-22; 8:45 am]

BILLING CODE 4810-AM-P

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1026

Truth in Lending Act (Regulation Z) Adjustment to Asset-Size Exemption Threshold

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Final rule; official interpretation.

SUMMARY: The Consumer Financial Protection Bureau (Bureau) is amending the official commentary to its Regulation Z in order to make annual adjustments to the asset-size thresholds exempting certain creditors from the requirement to establish an escrow

account for a higher-priced mortgage loan (HPML). These changes reflect updates to the exemption from the escrow requirement in the Truth in Lending Act (TILA) for creditors that, together with their affiliates that regularly extended covered transactions secured by first liens, had total assets of less than \$2 billion (adjusted annually for inflation). They also reflect updates to the exemption the Bureau added, by implementing section 108 of the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA), for certain insured depository institutions and insured credit unions with assets of \$10 billion or less (adjusted annually for inflation). These amendments are based on the annual percentage change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W). Based on the 8.6 percent increase in the average of the CPI-W for the 12-month period ending in November 2022, the exemption threshold for creditors and their affiliates that regularly extended covered transactions secured by first liens is adjusted to \$2.537 billion from \$2.336 billion and the exemption threshold for certain insured depository institutions and insured credit unions with assets of \$10 billion or less is adjusted to \$11.374 billion from \$10.473 billion.

DATES: This rule is effective on January 1, 2023.

FOR FURTHER INFORMATION CONTACT:

Adrien Fernandez, Counsel, Thomas Dowell, Senior Counsel, Office of Regulations, at (202) 435-7700. If you require this document in an alternative electronic format, please contact CFPB_Accessibility@cfpb.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Section 129D of TILA generally requires creditors to establish escrow accounts for certain first-lien higher-priced mortgage loan transactions. However, TILA section 129D also permits the Bureau to exempt creditors from this higher-priced mortgage loan escrow requirement if they meet certain requirements, including any asset-size threshold that the Bureau may establish.

In the 2013 Escrows Final Rule,¹ the Bureau established an asset-size threshold of \$2 billion, which would adjust automatically each year, based on the year-to-year change in the average of the CPI-W for each 12-month period ending in November, with rounding to

the nearest million dollars.² In 2015, the Bureau revised the asset-size threshold for small creditors and how it applies. The Bureau included in the calculation of the asset-size threshold the assets of the creditor's affiliates that regularly extended covered transactions secured by first liens during the applicable period and added a grace period to allow an otherwise eligible creditor that exceeded the asset limit in the preceding calendar year (but not in the calendar year before the preceding year) to continue to operate as a small creditor with respect to transactions with applications received before April 1 of the current calendar year.³ For 2022, the threshold was \$2.336 billion.

During the 12-month period ending in November 2022, the average of the CPI-W increased by 8.6 percent. As a result, the exemption threshold is increased to \$2.537 billion for 2023. Thus, if the creditor's assets together with the assets of its affiliates that regularly extended first-lien covered transactions during calendar year 2022 are less than \$2.537 billion on December 31, 2022, and it meets the other requirements of § 1026.35(b)(2)(iii), the creditor will be exempt from the escrow-accounts requirement for higher-priced mortgage loans in 2023 and will also be exempt from the escrow-accounts requirement for higher-priced mortgage loans for purposes of any loan consummated in 2024 with applications received before April 1, 2024. The adjustment to the escrows asset-size exemption threshold also will increase the threshold for small-creditor portfolio and balloon-payment qualified mortgages under Regulation Z. The requirements for small-creditor portfolio qualified mortgages at § 1026.43(e)(5)(i)(D) reference the asset threshold in § 1026.35(b)(2)(iii)(C). Likewise, the requirements for balloon-payment qualified mortgages at § 1026.43(f)(1)(vi) reference the asset threshold in § 1026.35(b)(2)(iii)(C). Under § 1026.32(d)(1)(ii)(C), balloon-payment qualified mortgages that satisfy all applicable criteria in § 1026.43(f)(1)(i) through (vi) and (f)(2), including being made by creditors that have (together with certain affiliates) total assets below

² See 12 CFR 1026.35(b)(2)(iii)(C).

³ See 80 FR 59943, 59951 (Oct. 2, 2015). The Bureau also issued an interim final rule in March 2016 to revise certain provisions in Regulation Z to effectuate the Helping Expand Lending Practices in Rural Communities Act's amendments to TILA (Pub. L. 114-94, section 89003, 129 Stat. 1312, 1800-01 (2015)). The rule broadened the cohort of creditors that may be eligible under TILA for the special provisions allowing origination of balloon-payment qualified mortgages and balloon-payment high-cost mortgages, as well as for the escrow exemption. See 81 FR 16074 (Mar. 25, 2016).

¹ 78 FR 4726 (Jan. 22, 2013).