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BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1003

[Docket No. CFPB-2019-0020]

RIN 3170-AA97

Home Mortgage Disclosure (Regulation C) Data Points and Coverage

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is issuing this Advance Notice of Proposed Rulemaking (ANPR) to solicit comments relating to whether to make changes to the data points that the Bureau's October 2015 final rule implementing the Home Mortgage Disclosure Act (HMDA) added to Regulation C or revised to require additional information. Additionally, the Bureau is issuing this ANPR to solicit comments relating to the requirement that institutions report certain business- or commercial-purpose transactions under Regulation C.

DATES: Comments must be received by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit responsive information and other comments, identified by Docket No. CFPB-2019-0020, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Email: 2019-ANPR-HMDA@cfpb.gov.* Include Docket No. CFPB-2019-0020 in the subject line of the message.
- *Mail:* Comment Intake, Bureau of Consumer Financial Protection, 1700 G Street, NW, Washington, DC 20552.
- *Hand Delivery / Courier:* Comment Intake, Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552.

Instructions: When responding to a particular question, please note the question number at the top of the response.

You are not required to answer all questions to receive consideration of your comments. The Bureau encourages the early submission of comments. All submissions must include the document title and docket number.

Because paper mail in the Washington, DC area and at the Bureau is subject to delay, commenters are encouraged to submit comments electronically. In general, all comments received will be posted without change to <http://www.regulations.gov>. In addition, comments will be available for public inspection and copying at 1700 G Street NW, Washington, DC 20552, on official business days between the hours of 10:00 a.m. and 5:00 p.m. eastern daylight time. You can make an appointment to inspect the documents by telephoning 202-435-7275.

All submissions, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information, such as account numbers or Social Security numbers, or names of other individuals, should not be included. Submissions will not be edited to remove any identifying or contact information.

The Bureau invites comment on all aspects of the ANPR from all interested parties. In the event that a respondent may have concerns about revealing proprietary or personal

information, the Bureau welcomes comments from attorneys, consumer advocacy organizations, trade associations, or other representatives that do not identify their clients.

FOR FURTHER INFORMATION CONTACT: Jaydee DiGiovanni or Shaakira Gold-Ramirez, Counsels; or Amanda Quester or Alexandra Reimelt, Senior Counsels, Office of Regulations, at 202-435-7700 or <https://reginquiries.consumerfinance.gov>. If you require this document in an alternative electronic format, please contact CFPB_Accessibility@cfpb.gov.

SUPPLEMENTARY INFORMATION: The Bureau is issuing this ANPR to solicit information relating to whether to make changes to the data points that the Bureau's October 2015 final rule implementing HMDA (2015 HMDA Rule) added to Regulation C or revised to require additional information. The Bureau also seeks comments relating to the requirement that institutions report certain business- or commercial-purpose transactions under Regulation C.

I. Background

A. HMDA and Regulation C

HMDA requires certain depository institutions and for-profit nondepository institutions to collect, record, and report 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).¹ By its statutory terms, HMDA defines “mortgage loan” as 1) “a loan which is secured by residential real property,” or 2) a “home improvement loan.”² 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

¹ To simplify review of this document, the Bureau generally refers herein to the obligation to report data instead of listing all of these obligations in each instance.

² 12 U.S.C. 2802(a)(2).

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.³ Prior to the 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.⁴

B. Dodd-Frank Act

In 2010, Congress enacted the Dodd-Frank Act, which amended HMDA and transferred HMDA rulemaking authority and other functions from the Board of Governors of the Federal Reserve System (Board) to the Bureau.⁵ 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 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

³ 12 CFR 1003.1.

⁴ As used in this document, 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.

⁵ Public Law 111–203, 124 Stat. 1376, 1980, 2035–38, 2097–101 (2010).

scores of applicants and mortgagors.⁶ 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.⁷ New HMDA section 304(b)(5)(D) and (6)(J) further provides the Bureau with the authority to mandate reporting of “such other information as the Bureau may require.”⁸

C. 2015 HMDA Rule, 2017 HMDA Rule, December 2017 Statement, and EGRRCPA

In October 2015, the Bureau issued the 2015 HMDA Rule.⁹ Most of the 2015 HMDA Rule took effect on January 1, 2018.¹⁰ The 2015 HMDA Rule, among other things, implemented the new data points specified in the Dodd-Frank Act and re-adopted certain pre-existing data points added to Regulation C by the Board. The 2015 HMDA Rule also added a number of additional data points pursuant to the Bureau’s discretionary authority under HMDA section 304(b)(5) and (6) and revised certain pre-existing data points to provide for greater specificity or additional information in reporting.

The Bureau added the following data points to Regulation C to implement specific provisions added by the Dodd-Frank Act in HMDA section 304(b)(4), (5)(A) through (C), and (6)(A) through (I): ULI;¹¹ property address; age; rate spread for all loans;¹² credit score; total

⁶ Dodd-Frank Act section 1094(3), *amending* HMDA section 304(b), 12 U.S.C. 2803(b).

⁷ *Id.*

⁸ *Id.*

⁹ Home Mortgage Disclosure (Regulation C), 80 FR 66128 (Oct. 28, 2015).

¹⁰ *Id.* at 66128, 66256–58.

¹¹ Prior to the passage of the Dodd-Frank Act, the Board required reporting of an identifying number for the loan or application but did not require that the identifier be universal. HMDA section 304(b)(6)(G) requires reporting of, “as the Bureau may determine to be appropriate, a universal loan identifier.”

loan costs or total points and fees; prepayment penalty term; loan term; introductory rate period; non-amortizing features; property value; application channel; and mortgage loan originator identifier.¹³

The Bureau also re-adopted certain data points in the 2015 HMDA Rule that are substantially similar or identical to pre-existing data points added to Regulation C by the Board. These data points include the following: application date; loan type; whether the application or covered loan involved a request for a preapproval of a home purchase loan under a preapproval program; construction method for the dwelling related to the subject property;¹⁴ the amount of the covered loan or the amount applied for; the action taken by the financial institution and the date of the action taken; State; county; census tract; sex; income; type of purchaser; whether the loan is subject to the Home Ownership and Equity Protection Act of 1994 (HOEPA); lien status of the subject property;¹⁵ and the total number of individual dwelling units contained in the dwelling related to the loan (number of units).¹⁶

In other instances, the 2015 HMDA Rule revised pre-existing Regulation C data points established by the Board to require additional information be reported for those data points.

¹² 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). HMDA section 304(b)(5)(B) requires reporting of rate spread for all loans.

¹³ 12 CFR 1003.4(a)(1)(i), (a)(9)(i), (a)(10)(ii), and (a)(12), (15), (17), (22), (25) through (28), and (33) and (34).

¹⁴ Construction method and number of 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.

¹⁵ The 2015 HMDA Rule extends the requirement to report lien status to purchased loans. 80 FR 66128, 66201 (Oct. 28, 2015).

¹⁶ 12 CFR 1003.4(a)(1)(ii), (a)(2), (4), (5), and (7), (a)(8)(i) and (ii), (a)(9)(ii), (a)(10)(i) and (iii), and (a)(11), (13) and (14), and (31).

Such revised data points include the following: the purpose of the loan or application; occupancy type; ethnicity; race; and legal entity identifier (LEI).¹⁷

Additionally, the Bureau added the following new data points in the 2015 HMDA Rule pursuant to its discretionary authority under HMDA section 304(b)(5) and (6): reasons for denial of a loan application, which were optionally reported under the Board's rule but became mandatory in the 2015 HMDA Rule;¹⁸ 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;

¹⁷ 12 CFR 1003.4(a)(3), (a)(6), (a)(10)(i); 12 CFR 1003.5(a)(3).

¹⁸ Financial institutions regulated by the Office of the Comptroller of the Currency (OCC) are also required to report reasons for denial on their HMDA loan/application registers pursuant to 12 CFR 27.3(a)(1)(i) and 128.6. Similarly, pursuant to regulations transferred from the Office of Thrift Supervision, certain financial institutions supervised by the Federal Deposit Insurance Corporation (FDIC) are required to report reasons for denial on their HMDA loan/application registers. 12 CFR 390.147.

whether the loan is an open-end line of credit; and whether the loan is primarily for a business or commercial purpose.¹⁹

The 2015 HMDA Rule also requires reporting of applications for, and originations of, dwelling-secured business- or commercial-purpose closed-end mortgage loans and open-end lines of credit for home purchase, refinancing, or home improvement purposes.²⁰ Prior to the 2015 HMDA Rule, Regulation C covered closed-end, business- or commercial-purpose loans made to purchase, refinance, or improve a dwelling. Thus, the 2015 HMDA Rule revised coverage of business- or commercial-purpose transactions by: 1) adding the dwelling-secured test, and 2) requiring reporting of dwelling-secured, business- or commercial-purpose open-end lines of credit for the purpose of home purchase, refinancing, or home improvement.

Before institutions had to comply with the new and revised data reporting requirements in 2015 HMDA Rule, the Bureau in September 2017 issued a final rule amending certain aspects of the 2015 HMDA Rule (2017 HMDA Rule).²¹ Among other things, the 2017 HMDA Rule addressed certain technical errors in the 2015 HMDA Rule, eased the burden of reporting certain data requirements, and clarified key terms to facilitate compliance with Regulation C.

The Bureau issued a statement in December 2017 (December 2017 Statement) in which it indicated that it intended to engage in a rulemaking to reconsider various aspects of the 2015 HMDA Rule, such as the institutional and transactional coverage tests and the rule's

¹⁹ 12 CFR 1003.4(a)(16), (18) through (21), (23) and (24), (29) and (30), (32), and (35) through (38).

²⁰ 80 FR 66128, 66169–72 (Oct. 28, 2015). As used in Regulation C, the term dwelling includes a multifamily residential structure or community. 12 CFR 1003.2(f); comment 2(f)–2.

²¹ Home Mortgage Disclosure (Regulation C), 82 FR 43088 (Sept. 13, 2017).

discretionary data points.²² This ANPR is part of that rulemaking.

On May 24, 2018, the President signed the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA) into law.²³ Section 104(a) of the EGRRCPA amends section 304(i) of HMDA by adding partial exemptions from HMDA’s requirements for certain transactions of insured depository institutions and insured credit unions. Certain of the data points about which the Bureau is soliciting information in this ANPR are covered under the EGRRCPA partial exemptions.²⁴

D. Feedback Since Issuing 2015 HMDA Rule and 2017 HMDA Rule

Since issuing the 2015 HMDA Rule and 2017 HMDA Rule, the Bureau has heard concerns about the burden associated with reporting certain of the new or revised data points relative to the value of the information in serving HMDA’s purposes. The Bureau has also heard continuing concerns about Regulation C’s coverage of certain business- or commercial-purpose loans. In addition, although the 2015 HMDA Rule was outside the scope of the Bureau’s Call

²² 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. Additionally, in recognition of the significant systems and operations challenges needed to adjust to the revised regulation, the December 2017 Statement indicated 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. The December 2017 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. 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 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. The Board, the FDIC, the National Credit Union Administration, and the OCC released similar statements relating to their supervisory examinations. *Id.*

²³ Public Law 115-174, 132 Stat. 1296 (2018).

²⁴ *See* Partial Exemptions from the Requirements of the Home Mortgage Disclosure Act under the Economic Growth, Regulatory Relief, and Consumer Protection Act (Regulation C), 83 FR 45325, 45328–29 (Sept. 7, 2018) (Bureau’s Interpretive and Procedural Rule clarifying and implementing EGRRCPA).

for Evidence series of Requests for Information (RFIs)²⁵ issued in spring 2018, the Bureau received several comments regarding HMDA in response to the RFIs. The Bureau has considered those comments as well as other input it has received from stakeholders through its efforts to monitor and support industry implementation of the 2015 HMDA Rule and the 2017 HMDA Rule in developing this document.

Among other things, some industry stakeholders have advised the Bureau that it is more burdensome to report information about whether a borrower owns or leases the land on which a manufactured home is located²⁶ than the Bureau anticipated in 2015 because such information is not generally collected in the ordinary course of business. Additionally, prior to the 2015 HMDA Rule, financial institutions were required to ask loan applicants to identify their ethnicity using aggregate categories (Hispanic or Latino, not Hispanic or Latino) and to do the same for race (*e.g.*, Asian). Pursuant to the 2015 HMDA Rule, institutions are now required to request that the applicant self-identify their ethnicity using disaggregated categories (*e.g.*, Cuban or Mexican) and their race using disaggregated categories (*e.g.*, Chinese or Korean) in addition to the pre-existing aggregate categories.²⁷ Some financial institutions have stated that these new requirements can prolong and complicate the application process. In response to the Bureau's RFIs, one credit union expressed concern about complying with the new disaggregated data field requirements. On the other hand, one community group stated that disaggregated data on race and ethnicity helps to identify predatory lending and that such data could have helped to avoid

²⁵ *E.g.*, Request for Information Regarding the Bureau's Adopted Regulations and New Rulemaking Authorities, 83 FR 12286 (Mar. 21, 2018); Request for Information Regarding the Bureau's Inherited Regulations and Inherited Rulemaking Authorities, 83 FR 12881 (Mar. 26, 2018).

²⁶ 80 FR 66128, 66226–27 (Oct. 28, 2015).

²⁷ *Id.* at 66187–94.

the negative impacts on many communities resulting from the housing crisis that began in 2007.

The 2015 HMDA Rule also requires financial institutions to complete free-form text fields for certain data points if certain circumstances are met. For example, the 2015 HMDA Rule made reporting of reasons for denial mandatory and provides various reporting options from which financial institutions may choose.²⁸ The 2015 HMDA Rule requires that financial institutions include a reason for loan denial in a free-form text data field if the institution chooses the option of “Other.”²⁹ Several financial institutions have expressed that using this free-form text field can be a cumbersome process.

Additionally, in the past year the Bureau has heard from several industry stakeholders requesting that the Bureau should exclude from Regulation C’s coverage business- or commercial-purpose loans made to a non-natural person and secured by a multifamily dwelling. For example, in response to the Bureau’s RFIs a few industry commenters stated that requiring reporting of such transactions is not necessary to fulfilling the purposes of HMDA and that the burden of reporting them does not outweigh the benefits of doing so.

II. Request for Comment

The Bureau is issuing this ANPR to solicit comments relating to whether to make changes to (1) the data points that the 2015 HMDA Rule added to Regulation C or revised to require additional information, and (2) Regulation C’s coverage of business- or commercial-purpose loans made to a non-natural person and secured by a multifamily dwelling. The Bureau will carefully consider the public’s input as it determines whether to formulate a proposed rule

²⁸ *Id.* at 66205.

²⁹ *Id.* at 66205–6.

relating to changing any of these data points from the 2015 HMDA Rule and in deciding whether to address certain business- or commercial-purpose transactions as part of any upcoming rulemaking.

A. Data Points Required by 2015 HMDA Rule

The Bureau is soliciting comment, data, and information from the public relating to whether to make changes to the data points that the 2015 HMDA Rule added to Regulation C or revised to require additional information.³⁰ One of the Bureau's goals in gathering information in this ANPR is to ensure that the data requirements established in the 2015 HMDA Rule appropriately balance the benefits and burdens associated with data reporting. Financial institutions were required to report their first data pursuant to the 2015 HMDA Rule by March 1, 2019. Now that financial institutions have completed their first submissions of the additional information required under the 2015 HMDA Rule and institution-specific submissions are available to the public, the Bureau believes that they and other stakeholders may have additional and more accurate information to offer relating to the benefits and burdens associated with the data points required by the 2015 HMDA Rule. Below is a table that lists the data points that the Bureau added or revised to require additional information pursuant to the 2015 HMDA Rule.

³⁰ As discussed above in part I.C, many of the data points in the 2015 HMDA Rule implement data points specified in the Dodd-Frank Act or re-adopt pre-existing data points added to Regulation C by the Board. Other data points, however, were added pursuant to the Bureau's discretionary authority provided by the Dodd-Frank Act or revise pre-existing data points to require additional information. The type or extent of changes the Bureau may propose relating to any of these data points in a future notice of proposed rulemaking may vary depending on the category under which the data point falls.

Table 1: Data Points Added or Revised to Require Additional Information Pursuant to the 2015 HMDA Rule

Data Points Added by 2015 HMDA Rule to Implement Dodd-Frank Act Requirements	Data Points Added by 2015 HMDA Rule Pursuant to Discretionary Authority	Data Points Revised by 2015 HMDA Rule to Require Additional Information
<ul style="list-style-type: none"> • Universal Loan Identifies (ULI) • Property Address • Age • Rate Spread for all loans • Credit Score • Total Loan Cost or Total Points and Fees • Prepayment Penalty Term • Loan Term • Introductory Rate Period • Non-Amortizing Features • Property Value • Application Channel • Mortgage Loan Originator Identifier 	<ul style="list-style-type: none"> • Reasons for Denial • Origination Charges • Discount Points • Lender Credits • Interest Rate • Debt-to-Income Ratio • Combined Loan to Value Ratio • Manufactured Home Secured Property Type • Manufactured Home Land Property Interest • Multifamily Affordable Units • Automated Underwriting System • Reverse Mortgage Flag • Open-End Line of Credit Flag • Business or Commercial Purpose Flag 	<ul style="list-style-type: none"> • Loan Purpose • Occupancy Type • Ethnicity • Race • Legal Entity Identifier (LEI)

The Bureau encourages commenters to be specific and, where possible, to include any relevant empirical evidence. Comment is requested from all interested parties on the following four topics:

1. Please identify any new data point or any data point revised to require additional information from the table above for which the cost of collecting and reporting the

information does not justify the benefit that the information collected and reported provides in furthering the purposes of HMDA. For each such data point:

- i. Please describe the nature and magnitude of any operational challenges in collecting and reporting the required information.
 - ii. What ongoing costs are incurred in collecting and reporting the required information? Has the Bureau's new web-based data submission and edit-check system affected ongoing costs of collecting and reporting the required information? If so, how and how much? To what extent are the data point's requirements aligned with industry standards, and how does that affect ongoing costs of collecting and reporting the required information?
 - iii. Would financial institutions generally collect the required information in the ordinary course of business absent Regulation C requirements? If so, what are the incremental costs associated with reporting the required information? If not, what are the costs associated with collecting and reporting the required information?
 - iv. How much value does the data point provide in furthering the purposes of HMDA?
2. The 2015 HMDA Rule requires financial institutions to complete free-form text fields for certain data points when certain circumstances are met. For each free-form text field required by the 2015 HMDA Rule:
- i. What are the costs of providing information through the free-form text field?
 - ii. What are the benefits of providing information through the free-form text field?

- iii. Are there better alternatives to providing information than through the free-form text field?
3. Are there other considerations the Bureau should take into account in deciding whether to propose to eliminate or revise any new data point or revised data point from the 2015 HMDA Rule?
4. Are there new or revised data points under the 2015 HMDA Rule for which more explanation is needed to clarify the collection and reporting requirements? If so, please identify any data point for which additional clarity could reduce the costs associated with collecting and reporting the data and improve the value of the data in furthering the purposes of HMDA.

B. Coverage of Certain Business- or Commercial-Purpose Transactions

The Bureau seeks to assess the extent to which requiring reporting of information on business- or commercial-purpose loans made to a non-natural person and secured by a multifamily dwelling imposes burdens on financial institutions and furthers HMDA's purposes.³¹

The Bureau seeks information that might assist the Bureau in deciding whether to propose to exclude such transactions from HMDA's requirements, including information about the following:

5. The value that data on such transactions provides in serving HMDA's purposes;
6. Other benefits associated with reporting such transactions; and
7. The burden imposed by the requirement to report data on such transactions.

³¹ HMDA's purposes are: (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. 12 CFR 1003.1.

Dated: April 26, 2019.

Kathleen L. Kraninger,

Director, Bureau of Consumer Financial Protection.

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